

Statement of the Case.

MOTION TO DISMISS. The case is stated in the opinion.

Mr. Edgar H. Farrar and *Mr. Ernest B. Kruttschnitt* for the motion.

Mr. C. W. Hornor and *Mr. W. S. Benedict* opposing.

MR. JUSTICE MILLER: A motion is made to dismiss this cause because Charles Lafitte, the husband of the defendant in error, is not named in the writ of error as a party to the proceedings. The judgment was in favor of his wife Josephine, and he was a party authorizing her in the suit below, according to the forms of the Louisiana law, which require that the husband must be joined with the wife when she sues, whether he has any interest or not; and the plaintiff in error has served a citation on Lafitte, although he was not named in the writ of error. It may be doubtful whether Lafitte is a necessary party in this court, seeing he was not a party to the judgment. If for conformity's sake he ought to have been brought here to aid his wife in the writ of error, the citation to him is sufficient for that purpose. The motion to dismiss the case is overruled.

WESTERN AIR LINE CONSTRUCTION COMPANY
v. McGILLIS.

ORIGINAL MOTION IN A CAUSE BROUGHT HERE BY WRIT OF ERROR
TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTH-
ERN DISTRICT OF ILLINOIS.

No. 1283. Submitted April 9, 1888.—Decided April 16, 1888.

The court, for reasons stated in its opinion, denies a motion to vacate a supersedeas or to make an order that the appeal bond filed in the case does not operate as a supersedeas.

THE defendants in error made the following motion:

“And now come the defendants in error in the above cause, by John S. Cooper, their attorney and counsel, and move the

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court to vacate the supersedeas in the above cause, or for an order declaring that the appeal bond filed by appellant in said cause does not operate as a supersedeas; because the writ of error was not sued out or served within sixty days after the rendering of the judgment entered and complained of in said cause.

“JOHN S. COOPER,

“*Attorney and Counsel for Defendants in Error.*”

Mr. John S. Cooper for the motion.

Mr. E. Walker opposing.

MR. JUSTICE MILLER: This is a motion to vacate what is called a supersedeas. The papers show that the writ was neither sued out or served within sixty days after the rendition of the judgment which is the subject of the writ of error: It follows as a matter of course that the writ cannot operate as a supersedeas, and we know of no motion that is necessary or proper in this court on that subject. Writs of supersedeas do not issue, unless it may become necessary from some peculiar circumstances. The statute declares that, when within sixty days, the plaintiff sues out his writ of error, files it with the clerk of the proper court, and then gives a bond within a certain time mentioned by the statute, that the bond, if approved for that purpose by the judge who grants the citation and the writ of error, shall operate as a supersedeas. It is a matter of law whether it operates as a supersedeas.

There is no evidence here of any proceeding to collect a debt which has been disregarded. At all events there is no occasion for a supersedeas.

The motion is denied.

