

Boise County Commissioners *v.* Gorman.

clear that it cannot be done in this case, more than sixty days having elapsed since the judgment was remitted to and recorded in the Corporation Court.

Doubtless the dismissal of the suit will be satisfactory to the present defendant, as he will be immediately entitled to a writ of *habere facias possessionem*, and the plaintiff will never be able, by any subsequent writ of error or other proceeding, to supersede the judgment pending the litigation.

For these reasons I am of the opinion that the motion to dismiss should be denied.

Mr. S. Ferguson Beach for plaintiffs in error. *Mr. P. Phillips*, *Mr. C. Cushing* and *Mr. C. W. Wattles* for defendant in error.

BOISE COUNTY COMMISSIONERS *v.* GORMAN.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF IDAHO.

No. 717. October Term, 1873.—Decided March 16, 1874.

Supersedeas will not issue without notice to the other party, when the object is to avoid an alleged improper execution of the judgment below.

MOTION for *supersedeas*. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The plaintiffs in error moved in this cause, 1, for the allowance of a *supersedeas*; and 2, for a writ which shall command the marshal of the Territory to restore Ben. T. Davis to the office of assessor and tax-collector of Boise County, from which he has been removed by the execution of the judgment in the court below.

They claim that before the judgment had been enforced by the execution it had been stayed by *supersedeas*. If this claim is supported by the facts, no new *supersedeas* is now necessary. That already obtained will operate to stay any further proceedings which may be had under the judgment.

The real object of this motion is to avoid the effect of the alleged improper execution of the judgment, and restore Davis to his office. Such a motion cannot be entertained, except after reasonable notice to the opposing party. No such notice has been given in this case. This motion is, therefore, overruled, but without prejudice to its renewal after reasonable notice to the defendant in error.

In the event of its renewal, the plaintiffs in error in order to

Cases Omitted in the Reports.

obtain the relief asked, will be required to show to the satisfaction of the court, that the judgment below was in fact executed after they had become entitled to a stay of proceedings. *Motion denied.*

Mr. Henry E. Prickett for plaintiffs in error. No appearance for defendant in error.

Notice of the motion was given in accordance with the suggestion of the court. The opinion of the court on this motion will be found in 19 Wall. 661.

DANE v. CHICAGO MANUFACTURING COMPANY.**APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.**

No. 76. October Term, 1874. — Decided January 11, 1875.

All the combinations and all their separate elements patented to William Westlake, April 6, 1864, for an improvement in lanterns, for which re-issued letters were obtained December 23, 1869, were anticipated by inventions referred to in the opinion of the court.

BILL IN EQUITY for the infringement of letters patent. Decree dismissing the bill. Complainants appealed. The case is stated in the opinion.

MR. JUSTICE BRADLEY delivered the opinion of the court.

This case comes before us under peculiar circumstances. The appellants were complainants below, and filed a bill as assignees of William Westlake, of certain letters patent granted to him April 26, 1864, for an improvement in lanterns, for which they obtained a re-issued patent November 23, 1869. The bill was dismissed, on what ground does not appear. The defendants have not appeared to contest this appeal. We are left to ascertain as best we can, with such aid as the appellant's counsel have given us, the real merits of the controversy.

The nature and objects of the alleged invention are described by the patentee as follows:

“ The nature and objects of my invention consist in the construction of lantern guards without hooks, projections or catches, sticking out and interfering with the safe and convenient use of the lanterns, and so that the same can be readily attached or detached; in the employment of a band or disc to fill or cover the space between the enlarged band or ring at the upper end of the guard and the top of the globe, and in the application of suitable fastenings to