

Cases Omitted in the Reports.

The third is a decree from the same court, directing the Milwaukee and St. Paul Company to deliver this rolling stock into the possession of the Milwaukee and Minnesota Company, upon the idea, already explained, that the decision on the demurrer to the supplemental bill had determined that the right belonged to the Eastern Division. For the reasons above stated this decree is erroneous, and should be reversed.

Decree reversed. Cause remanded, and decree to be entered for Milwaukee and St. Paul Company.

Decree reversed in each case.

MR. JUSTICE MILLER dissented.

Mr. J. W. Cary for appellant in each case. *Mr. H. A. Cram, Mr. Caleb Cushing* and *Mr. M. H. Carpenter* for appellee in Nos. 43 and 62, and *Mr. H. A. Cram* and *Mr. Caleb Cushing* for appellee in No. 161.

PATTERSON *v.* HOA'S EXECUTRIX.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 326. December Term, 1867.—Decided March 27, 1868.

It appearing, on inspection of the record, that the appeal bond was filed too late to make the writ of error operate as a *supersedeas*, the court vacates an order heretofore made allowing a writ of *supersedeas*.

MOTION to vacate a *supersedeas*. The case is stated in the opinion.

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

This is a motion to vacate a *supersedeas*, allowed provisionally in this cause at a former day of this term.

It is made on the coming in of the answer of the District Judge holding the Circuit Court for the District of Louisiana, to a rule to show cause why an absolute *supersedeas* should not issue.

On inspection of the record we find that the judgment of the Circuit Court was rendered on the 13th of May, 1863, and that the bond for prosecution of the writ of error sued out upon it was not filed until the 25th. In order to make a writ of error a *supersedeas*, the law requires that the bond be filed within ten days. In this case, consequently, the bond was filed too late.

It is unnecessary, therefore, to consider the matters stated in the answer of the judge of the court below.

The order heretofore made, allowing a writ of *supersedeas*, will

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be vacated, and the order now directed will be certified to the Circuit Court for the District of Louisiana. See 8 Wall. 292.

Mr. P. Phillips for the motion. *Mr. T. J. Durant* opposing.

THE STATE OF VIRGINIA, PETITIONER.

ORIGINAL.

No. 11. Original. December Term, 1868. — Decided February 15, 1869.

The court withholds its decision on this motion for a writ of prohibition, until the certificate of division of opinion on the allowance of the writs of *habeas corpus* complained of can be filed, and a hearing had thereon.

THIS was a petition for a writ of prohibition. The case is stated in the opinion.

Mr. Chief Justice Chase delivered the opinion of the court.

The Chief Justice, who holds by allotment the Circuit Court for the District of Virginia, has informed the court that before the pending motion for prohibition was made, he signified to the district judge his dissent from the opinion expressed by him in favor of the allowance of the writs of *habeas corpus* complained of in the petition; and that he has advised the district judge now holding the Circuit Court, to direct that this division of opinion in respect to the motion for the writ now pending in the case of Peter Phillips, be certified to this court.

There is nothing in the provisional order, staying further proceedings by the district judge, which can be properly construed as prohibiting this course; and it is expected that the certificate will be filed at an early day.

On the first Friday thereafter the court will hear argument upon it; and in the meantime the decision of this court on the motion for a writ of prohibition, pending, will be withheld.

The clerk will advise counsel accordingly, and will certify this direction to the district judge for the District of Virginia.

Mr. J. H. Bradley and *Mr. James Lyons* for petitioner.

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ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 78. December Term, 1868. — Decided February 15, 1869.

The legal title must prevail in ejectment; and neither party can set up facts which go to show that equitably the other party is the rightful owner of the property.