

Baltimore Railroad *v.* Marshall County Supervisors.

MOTION to give security for costs, etc.

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

This is a motion in behalf of defendant in error for an order that plaintiff in error, who was also plaintiff below, give additional security for costs and damages which may be sustained by the defendant by reason of his wrongful complaint. The motion is founded on affidavits of insolvency of the sureties in the original bond, which certainly are, *prima facie*, sufficient.

But no notice of the motion appears to have been given to the plaintiff in error; and he has had no opportunity to put in counter affidavits.

The hearing of the motion will, therefore, be postponed until the first motion day in November next, in order that proper notice may be given.

Mr. L. P. Poland and Mr. George S. Boutwell for the motion.
Mr. P. Phillips opposing.

THE BALTIMORE & OHIO RAILROAD *v.* MARSHALL COUNTY SUPERVISORS.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

No. 267. December Term, 1869. — Decided December 13, 1869.

This court has jurisdiction of a case brought up on a certificate of division of opinion on the question whether the Circuit Court has jurisdiction of it.

A motion to advance is denied, because not coming within the 30th rule.

THE case is stated in the opinion.

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

The motion, to dismiss this case for want of jurisdiction, must be denied. It comes here upon a certificate of division of opinion, and the principal point certified is whether the Circuit Court has jurisdiction. It is quite clear that this court has jurisdiction to determine that point.

A motion has also been made to advance the cause upon the docket on the ground that very important interests of the State of West Virginia are involved in the litigation.

The case, however, does not come within any of the exceptions to the 30th rule, which requires that all cases shall be heard when

APPENDIX.

Cases Omitted in the Reports.

reached in the regular call of the docket, and in the order in which they are entered.

We are obliged, therefore, to deny the motions.

Both motions denied.

Mr. B. Stanton and Mr. D. Lamb for the motions. *Mr. J. H. B. Latrobe and Mr. J. R. Tucker* opposing.

COX v. UNITED STATES *ex rel. McGARRAHAN.***ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

No. 337. December Term, 1869. — Decided January 19, 1870.

The court deny a motion to rescind an order advancing this cause founded upon the fact that the writ of error to the judgment below was allowed November 30, 1869, less than thirty days before the first day of the present term, which began December 6, 1869.

THIS was a motion to rescind an order, made December 13, 1869, advancing this case for trial. The case is stated in the opinion.

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

We have considered the objection made by *Mr. Phillips* to the hearing, during the present term, of the case of *The Secretary of the Interior v. McGarrahan.* It is founded upon the fact that the writ of error to the judgment of the Supreme Court of the District of Columbia, directing the issue of a peremptory *mandamus* to the Secretary was allowed on the 30th November, 1869, less than thirty days before the first day of the present term began, on the sixth of the present month.

The citations and the writ of error were both served on the same day. The 22d section of the Judiciary Act, taken in connection with the act of 1803, provides for the re-examination of cases on writ of error, the adverse party having at least thirty days' notice. This provision does not necessarily require that the thirty days' notice shall be given prior to the first day of the term; but in the case of *Welsh v. Mandeville*, 5 Cranch, 321, the court held as a matter of discretion, that they would not compel the hearing of the cause at the first term unless such notice had been given, and this decision was made the rule of the court. This decision was made in accordance with a rule of the court adopted February Term, 1803, 1 Wheat. xvi, Rule XVI, that where the writ of error issued within thirty days before the meeting of the court, the defendant is at liberty