

Counsel for Plaintiffs in Error.

## WILLIAMS v. PASSUMPSIC SAVINGS BANK.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF FLORIDA.

No. 1354. Submitted March 30, 1891. — Decided April 6, 1891.

A decree in chancery in a Circuit Court having been brought up by writ of error instead of appeal, the defendant in error consented to the dismissal of the writ, and the court announced that if an appeal is seasonably taken the transcript of the record in this cause may be filed as part of return.

THIS was a motion by the defendant in error to dismiss a writ of error for the following reasons :

*First.* Because said cause is a suit in equity and not at law and for that reason a writ of error does not lie to revise the proceedings of the United States Circuit Court in the premises.

*Second.* Because the proceedings sought to be revised by said writ of error terminated in a final decree and judgment on the 19th day of October, 1889, at a term of the United States Circuit Court in and for the Northern District of Florida, which term finally terminated and adjourned on the 22d day of November, 1889, and said writ of error was not sued out until the first day of July, 1890, and no citation has ever been issued or served in said cause.

Thereupon the plaintiffs in error moved as follows :

Now come the plaintiffs in error in the above entitled cause, by H. Bisbee, their solicitor, and consent to granting the motion to dismiss, made by defendant in error; and plaintiffs in error move for leave to withdraw the transcript of the record, on the ground that the failure to bring the cause within the jurisdiction of this court is not attributable to their negligence, but to that of their solicitors in the court below, and plaintiffs desire to take and perfect an appeal and should not be subjected to the expense of another transcript.

*Mr. H. Bisbee* for plaintiffs in error.

## Statement of the Case.

*Mr. Henry C. Ide* for defendant in error.

FULLER, C. J. The mandate in this cause will issue forthwith, and if the plaintiffs in error seasonably take and prosecute an appeal from that rendered by the Circuit Court, leave will be granted them to file as part of the return on said appeal the transcript of the record in this cause.

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UNION PACIFIC RAILWAY COMPANY *v.*  
BOTSFORD.

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

No. 1375. Submitted January 6, 1891. — Decided May 25, 1891.

A court of the United States cannot order a plaintiff, in an action for an injury to the person, to submit to a surgical examination in advance of the trial.

THE original action was by Clara L. Botsford against the Union Pacific Railway Company, for negligence in the construction and care of an upper berth in a sleeping car in which she was a passenger, by reason of which the berth fell upon her head, bruising and wounding her, rupturing the membranes of the brain and spinal cord, and causing a concussion of the same, resulting in great suffering and pain to her in body and mind, and in permanent and increasing injuries. Answer, a general denial.

Three days before the trial (as appeared by the defendant's bill of exceptions) "the defendant moved the court for an order against the plaintiff, requiring her to submit to a surgical examination, in the presence of her own surgeon and attorneys, if she desired their presence; it being proposed by the defendant that such examination should be made in manner not to expose the person of the plaintiff in any indelicate manner; the defendant at the time informing the court that