Syllabus.

BRONSON & SOUTTER, Complainants and Appellants, *v.* THE LA CROSSE AND MILWAUKEE RAILROAD CO.; THE MILWAUKEE AND MINNESOTA RAILROAD CO., CHAMBERLAIN ET AL. [Appeal.]

ALSO,

THE MILWAUKEE AND MINNESOTA RAILROAD CO., Appellants, *v.* SOUTTER, who survived BRONSON & SOUTTER, Trustees, &c. [Cross Appeal.]

An act of Congress (July 15, 1862) repealed all Circuit Court powers given to certain District Courts of the United States. A subsequent statute (March 3, 1863) enacted, "That in all cases wherein the District Court had rendered *final judgments or decrees* prior to the passage of the act, said District Court shall have power to *issue writs of execution*, or other *final process*, or to use such other powers and proceedings as may be in accordance with law, *to enforce the judgments and decrees aforesaid*," anything in said act of July 15th, 1862, to the contrary notwithstanding:

1. *Held*,—

I. That the District Court acquired only such powers as might be necessary to insure the execution of any final process that it might issue; that is to say, such powers as might be necessary to regulate and control its officers in the execution of their ministerial duties.

II. That the words "judgments and decrees," within the meaning of this act, were such judgments and decrees as disposed of the whole case, so that nothing remained to be done but to issue "final process."

III. That even if the statute in question conferred larger powers, and gave the court more general jurisdiction over its former cases, such court could not, pending an appeal by a party in whose favor it had decreed, exercise them on the application and in favor of such party; the Supreme Court, however, in order to guard against misconstruction, saying, that where a decree had been rendered affecting property in litigation, the court below, being in custody of such property, had full power to adopt proper measures to protect it from waste or loss; and where a railroad was the property, reasonably to apply its revenues for its conservation, but not to appropriate them beyond this, and among litigating parties.

2. In a case where this court, after an examination of very voluminous records, did not doubt that the court below was acting upon a sincere conviction that it possessed full power and authority to make certain orders, which this court now decided that it had made under a misapprehension of its powers, and without authority of law, and that it was influenced by a high sense of duty, and by what it believed to be for the best interests of all parties concerned, in what this court characterized as "a most complicated, difficult, and severely contested cause," and that it needed but to be advised by the *opinion* of this court, on a motion

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Statement of the case.

which had been made for a writ of prohibition against it, the said court below, this court, for the present, withheld the appropriate remedy, giving its *opinion* that the court below had no jurisdiction, and was acting against law, with liberty to counsel to apply hereafter to this court if necessary. CATRON, J., dissenting.

BRONSON along with one Soutter had filed their bill in the District Court of the United States for the District of Wisconsin (*the Circuit Court system not being at the time introduced into that region, but the District Courts having Circuit Court powers*), to foreclose a mortgage which had been given by the *La Crosse and Milwaukee* Railroad Company on a portion of their road, called the Eastern portion; the *Milwaukee and Minnesota* Railroad Company being also made defendants in the suit. The mortgage had been given to secure the holders of bonds which the former company had issued in large amounts. The evidence in the case was very voluminous, the issues complicated, and the cause severely contested. The court below had given to it patient investigation. On the 13th January, 1862, a final decree of foreclosure was entered in the said *District* Court, *in favor* of the complainants in the suit, and an appeal was taken by those complainants to this court on the 17th of the same month. The *Milwaukee and Minnesota* Railroad Company also, one of the defendants in the suit, took a cross-appeal on the 14th of September following.

On the 12th of June, 1863, *pending the above appeals*, the District Court entered an order in the cause of Bronson and Soutter against the companies, &c., on the petition of a third company, the Milwaukee and *St. Paul* Railroad Company, not a party to the suit, directing a receiver, into whose hands the La Crosse and Milwaukee Railroad and its assets had been placed, on filing the bill for the foreclosure of the mortgage, to turn over the road, its appurtenances and rolling stock, to them, the petitioners; and also directing that this last-named company, subject to the orders of the court, should operate this Eastern division of the road (the one covered by the mortgage), in connection with the Western division; and further, that the same company should, out of the revenues of

the road, keep the rolling stock in good order and condition, and defray all running expenses, &c.

On the 5th day of October, 1863, another order was entered in the same cause, purporting to be on behalf of the appellants, directing that after disbursements of moneys arising from revenues of the Eastern division of the road to previous incumbrances and necessary expenses, the receiver pay to the holders of the bonds secured by the mortgage their proportionate share of the surplus, if any; all such payments to be credited on the decree of the court in the cause, or on such decree as might be eventually made, if the present decree should be reversed or modified; and on the 26th October another order was made directing the receiver to report, on the first Monday of January, the amount of moneys in his hands after paying previous incumbrances, &c.

A motion was now made in this cause by the appellees in the first appeal, and appellants in the cross-appeal, to this court, for a writ of *prohibition* to the District Court, enjoining it against any further proceedings on the order of the 12th of June, and of the 5th and 26th of October. The motion was placed mainly upon the ground that the *District* Court possessed no jurisdiction to entertain the motion or to make the orders; and that its proceedings are *coram non judice* and void.

The question involved the construction of two acts of Congress: the first passed *July* 15, 1862,* the second passed *March* 3, 1863.†

The first act provided for extending the *Circuit* Court system of the United States to the State of Wisconsin, and which included it in the Eighth Circuit. One section of this act—the second—provides that so much of any act of Congress as vests in the *District* Courts of the United States (of which the district in question is one) the powers and jurisdiction of the *Circuit* Courts, be and the same is hereby repealed. Another section—the third—provides that all actions, suits, prosecutions, causes, pleas, process, and *other*

* 12 Stat. at Large, 576. † Ib., 807.

proceedings, relative to any cause, civil or criminal (which might or could have been originally cognizable in a Circuit Court), *now pending in or returnable to the several District Courts* (of which the district in question is one), acting as Circuit Courts, on the first day of October next, shall be and are hereby declared to be *transferable*, *returnable*, *and continued* to the *Circuit* Courts, &c.

[This court had already held, at the last term, in a case in which the question arose, that the second section repealed in terms all the Circuit Court powers and jurisdiction of the District Courts.]

The *second* of the two acts referred to was entitled "An act to enable the *District* Courts of the United States to issue executions and other final process in certain cases," and provides, "that in all cases wherein the District Courts *had rendered final judgments or decrees prior to the passage of the act of 15th July*, 1862, and which cases might have been brought in the Circuit Courts, the District Courts shall have power to issue writs of execution or other final process, or *to use such other powers and proceedings as may be in accordance with law, to enforce the judgments and decrees.*"

Against the motion it was argued that the act of July, 1862—the first act—gave the *District* Court, in terms, the right not only to issue writs of execution and other final process, but the right to use such "*other* powers and *proceedings*" as would enforce decrees which they had rendered prior to July 15, 1862; that the decree of foreclosure in this case was rendered prior to that date,—was made on the 13th of January preceding,—more, therefore, than six months prior; that it came accordingly within the very terms of the act.

Mr. Carpenter, contra.

Mr. Justice NELSON, after stating the case, delivered the opinion of the court:

The question involves the construction of two acts of Congress.

After the decision of this court at the last term, it cannot

be pretended that the District Court possessed any power, after the act of 15th July went into effect, to grant the orders complained of, unless it is found in the subsequent act of 3d March, 1863.

It is supposed that the orders are warranted by the last clause of the act, namely, "or to use such other powers and proceedings as may be in accordance with law, to enforce the judgments and decrees." We do not agree to this construction. The obvious meaning and intention of this clause is, to provide for the use and exercise of such powers as might be necessary, after the issuing of execution or other final process, in order to insure the execution of the process; such as are necessary to regulate and control the ministerial duties of officers in the execution of final process. The exercise of such powers are frequently necessary, and are familiar to the profession and the courts, and when authority was given to the District Courts under this act to issue execution on final judgments or decrees that had already been rendered in their courts, it was fit and proper to confer this additional power, otherwise the final process might be unavailable. But if other powers, beyond the enforcement of the ministerial duties of the officers, in the execution of final process, become necessary, recourse must be had to the jurisdiction of the Circuit Court. We are also of opinion that, according to the true construction of the act, the judgments or decrees there referred to are those disposing of the whole case, so that nothing is left to be done but to issue the final process; that if any proceedings remain to be taken for the purpose of completing the final disposition of it, the case or suit pending is not one within the provisions of the act. It belongs to the cognizance of the Circuit Court.

Another reason why this particular case is not within the provisions of the act of the 3d March is, that the District Court, even if it had jurisdiction of the proceedings, would not be warranted in taking any steps in the execution of the decree in favor of the appellants. They having appealed from the decree, it would be against all reason and principle to permit them to proceed in the execution of it, pending the

appeal. They assert the decree is founded in error, and for that reason should not be executed, but should be reversed and corrected in the appellate tribunal. The appeal suspends the execution of the decree. This is not a case where security is to be given in order to supersede the execution. That rule applies in cases where the decree or judgment is against the party appealing, and who desires to suspend the issuing of execution by the adverse party until the appeal is heard and determined. It is true that the adverse party in this cause has entered a cross-appeal, but, as the appeal already taken had superseded the execution, a bond in the cross-appeal would have been an act of supererogation. It would have been otherwise if the complainants, in whose favor the decree was rendered in the court below, had not appealed.

To guard against misconstruction in respect to the powers of a court having jurisdiction over the subject-matter, and where a decree has been rendered affecting the property in litigation—the road in this case—and an appeal is taken to this court, as the property in controversy is not brought into the appellate tribunal, but remains in the custody and care of the court below, it is agreed that full power exists in that court, pending the appeal, to adopt all proper and judicious measures to protect and preserve it from waste or loss. For this reason there can be no well-founded objection in the present case to the running of the road, and the reasonable application and expenditure of its revenues for that purpose. Beyond this, any appropriation of the revenues is not warranted. They should be reserved for such disposition as may be directed by the final decree in the cause.

For the reasons above given, we are entirely satisfied, on the facts set forth in support of this motion, and upon which it is founded, that the District Court has not only misconstrued its powers under the acts of Congress in question, but has overlooked the effect of the appeal from the decree in their favor by the complainants below in the first entitled cause, and is acting under that decree upon a misapprehension of its powers, and without authority of law.

The only remaining question in the case is as to the proper

remedy to be applied. We do not doubt but that the learned court below is acting upon a sincere conviction that it possesses full power and authority to make the several orders complained of, and that it is influenced by a high sense of duty, and what is believed to be for the best interest of all parties concerned in this most complicated, difficult, and severely contested cause, and that it needs but to be advised by the opinion of this court on the motion, to conform to the views of the court as there expressed. For the present, therefore, we shall withhold the appropriate remedy, with liberty to the counsel to apply hereafter to the court if necessary in the matter.

Mr. Justice CATRON:

1. I agree that no writ of prohibition ought to issue on this cause, and that the motion for such writ must be refused.

2. As to the *advice* proffered in the court below, I do not agree. There are no facts before us on which we can, judicially, make any order binding the parties or the District Court, nor is any motion before us calling for action on the part of this court, except the motion for a writ of prohibition. I am, therefore, unwilling to give any opinion (or rather advice), offered by the majority of the court.

NOTE.

Besides the branches of the case presented as in the preceding pages, another part of the case, involving chiefly questions of fact, and among these largely questions of accounts and of fraud—the *fact* part, as we may style it, of the controversy—was heard and decided in an equity suit at this term. It is this part of the case which, in connection with the discussion upon it, invited, probably, the characterization above given of the suit as a "*most* complicated, difficult, and severely contested cause." The record of the case filled more than one thousand large 8vo. pages, of small pica type, set "solid;" a record, therefore, itself greatly larger than the whole of the present volume. The discussion of the case, too, by counsel, consumed no small fraction of a five months' term. The Reporter presumes that he need make but slight apology for not reporting this part of the case in existing circumstances. The hearing and discussion took place some months before he had the honor to enter upon the office which, by the gracious invitation of the court, he now holds. Without having heard the discussion it would be impossible for him to understand a case such as he has described; and without at least the belief that he understood it, absolutely so, he hopes, for him to attempt the presentation of it.