these fees shall be allowed "to witnesses and jurors who may be lawfully summoned." It would be a very forced construction of this provision, as well as unjust, to hold that this lawfulness depends upon any other fact than the regular service of the summons by a lawful officer. The jurors and witnesses are compelled, when thus summoned, to obey the writ. They have no right to consider whether the summons issued on a proper state of facts as they might appear to the coroner, nor the means of deciding it, if they had the right. When witnesses and jurors thus summoned actually attend, they are entitled to their fees. It can make no difference in the justice or legality of the claims whether they are presented by the witnesses and jurors to the Levy Court, or whether they are first paid by the coroner and presented by him. He loses enough by his mistake in judgment, when he is refused compensation for his own services, without being compelled to lose what he has advanced for the public service.

We discover no error in the record, and the judgment of the Circuit Court is, therefore,

AFFIRMED.

MILWAUKIE AND MINNESOTA RAILROAD COMPANY AND FLEMING, APPELLANTS, *v.* SOUTTER, SURVIVOR.

1. Though a court below is bound to follow the instructions given to it by a mandate from this, yet where a mandate has plainly been framed, as regards a minor point, on a supposition which is proved by the subsequent course of things to be without base, the mandate must not be *so* followed as to work manifest injustice. On the contrary, it must be construed otherwise, and reasonably.
2. The appointment or discharge of a receiver is ordinarily matter resting wholly within the discretion of the court below. But it is not always and absolutely so.

   Thus, where there is a proceeding to foreclose a mortgage given by a railroad corporation on its road, &c.—a long and actively worked road—(a sort of property to a control of which a receiver ought not to be appointed at all, except from necessity), and the amount due on the mortgage is a matter still unsettled and fiercely contested, the appointment

Statement of the case.

or discharge of a receiver is matter belonging to the discretion of the court in which the litigation is pending.

But when the amount due has been passed on and finally fixed by *this* court, and the right of the mortgagor to pay the sum thus settled and fixed is clear, the court below has then no discretion to withhold such restoration; and a refusal to discharge the receiver is judicial error, which this court may correct, supposing the matter (not itself one in the nature of a final decree) to be in any way fairly before it otherwise.

If other parties in the case set up claims on the road, which they look to the receiver to provide for and protect, these other claims being disputed, and, in reference to the main concerns of the road, small,—this court will not the less exercise its power of discharge. It will exercise it, however, under conditions, such as that of the company's giving security to pay those other claims, if established as liens.

BRONSON and Soutter had filed a bill in the Circuit Court for Wisconsin, against the *La Crosse and Milwaukie* Railroad Company, to foreclose a mortgage given by the said company to them to secure bonds to the extent of one million of dollars, which that company had put into circulation, and the interest to a large amount on which was due and unpaid. To this bill the *Milwaukie and Minnesota* Railroad Company—a company which, on a sale under a mortgage *junior* to that of Bronson and Soutter, was organized, and became, under the laws of Wisconsin, successor in title and interest to the *La Crosse and Milwaukie* Company, and also three other persons, one named Sebre Howard—were made or became defendants, and opposed the prayer for foreclosure. They alleged that the bonds which the mortgage to Bronson and Soutter had been given to secure, had been sold, transferred or negotiated at grossly inadequate prices, fraudulently in fact, and were not held for full value by these persons, who sought by the foreclosure to recover their par. The court below, being of this opinion, gave a decree in that suit to the extent of but fifty cents on the dollar. Coming here by appeal at the last term,* the decree, after an animated, protracted, and very able argument in support of it by *Mr. Carpenter*, in behalf of numerous parties interested, was reversed, and a decree ordered to be entered

* See *supra*, page 283.

below for the full amount, *cent* for *cent.** The suit, at the time of the decree here, had been pending for four years. The mandate from this court ran thus:

"It is ordered that this cause be remanded to the Circuit Court of the United States for the District of Wisconsin, with directions to enter a decree for all the interest due and secured by the mortgage, with costs; that the court *ascertain the amount of moneys in the hands of the receiver or receivers from the earnings of the road covered by the mortgage, which may be applicable to the discharge of the interest*, and apply it to the same; and that *if* the moneys thus applied are not sufficient to discharge the interest due on the first day of March, 1864, *then* to ascertain the balance remaining due at that date. *And in case such* balance is not paid within one year from the date of the order of the court ascertaining it, *then* an order shall be entered directing a sale of the mortgaged premises."

Upon the filing of this mandate in the court below, the receiver was ordered to make report of the funds in his hands; from which it appeared that he had some $50,000 to $60,000 applicable to the payment of the interest on the bonds in suit.

The Milwaukie and Minnesota Railroad Company, who, as already stated, was an incumbrancer on the road, *junior* to Bronson and Soutter, insisted that instead of this small amount, there was really, or ought to be, in the receiver's hands, between $300,000 and $400,000 applicable to the payment of interest; and asked an order of reference to a master, with instructions to hear testimony, and ascertain and report on this claim. The court made the order, and postponed further action in the case, until the succeeding term in September. At that term it was ascertained that the master would be unable to report on the complicated accounts of the receiver, involving several millions of dollars; and the receiver was again ordered to report the funds actually in his hands. From this second report, it appeared,

* See *supra*, page 312.

that he had no money properly applicable to the payment of the debt of Bronson and Soutter, and thereupon the court proceeded to ascertain the amount of interest due on the bonds secured by their mortgage, and entered a decree accordingly, giving the defendant a year to pay it, before a sale of the mortgaged premises.

From this decree the Milwaukie and Minnesota Railroad Company, the already mentioned successors in title and interest to the La Crosse and Milwaukie Railroad Company, appealed; the first ground assigned for their appeal being that the decree was a departure from the mandate of the court, because such decree should not have been rendered *until the accounts of the receiver were adjusted, and it was judicially ascertained how much of the millions he had received ought now to be applied to the payment of complainants' interest.*

But another matter was now presented here.

At the first term of the court below, after the mandate was filed, the Milwaukie and Minnesota Railroad Company proposed to pay all the interest due on the mortgage of Bronson and Soutter, on condition that an order should be made, discharging the receiver, and placing the road and its appurtenances in the possession of them, the Milwaukie Company, just named. Upon the hearing of this petition, the judges of the Circuit Court were divided in opinion, and the application so, necessarily, refused.

The amount of Bronson and Soutter's debt, above mentioned, exclusive of interest, which the Milwaukie and Minnesota Railroad Company proposed to pay, was one million of dollars; and this, added to twelve hundred thousand dollars of prior mortgages, made two millions two hundred thousand dollars, which the road and its appurtenances would have to be worth, in order to secure the debt of Bronson and Soutter. The road on which the mortgage was a lien is ninety-five miles, and runs from Milwaukie to Portage, besides the depots, rolling stock, and other appurtenances belonging to it. It was in good condition. It constitutes a part of the direct line from Milwaukie to the

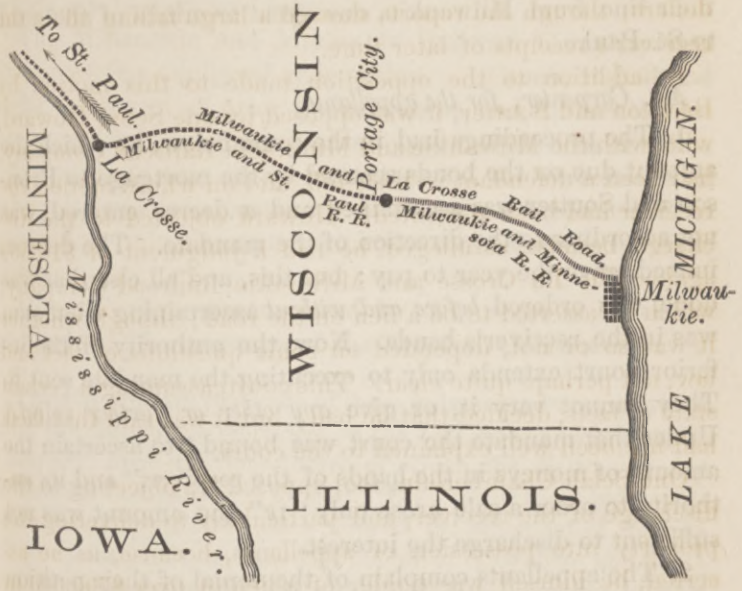
Mississippi, and is one of the valuable railroads of the United States. The gross earnings from this ninety-five miles for the year preceding the application to discharge the receiver, as shown by his reports, were about eight hundred thousand dollars; though the reports showed a large falling off in the receiver's receipts of later time.

In addition to the opposition made to this motion by Bronson and Soutter, it was opposed by one Sebre Howard, who, with the Milwaukie and Minnesota Railroad Company, had been a defendant to their bill, and on whose motion the receiver had been appointed. Howard objected to the discharge, because, as alleged, he had a judgment of $16,000 against the La Crosse and Milwaukie Railroad Company, which he asserted to be a lien on the road; though whether it was so or not, depended on some questions of fact and law, not perhaps quite clear. This court, assuming a certain state of facts, decided that he had; but it was said that facts had not been well explained to the court.

One Selah Chamberlain, too, opposed it; objecting to the discharge of the receiver, and particularly to delivering the property into possession of appellants, because, as he asserted, he himself was holder of a lien of over $700,000 in the road, and because that lien, according to his view, was secured by a lease which entitled him to the possession of the road. This same Chamberlain had been in possession under his lease for some time prior to the appointment of the receiver, under a contract with the La Crosse and Milwaukie Railroad Company, by which he bound himself to keep down the interest on the various mortgages on the road, including the one on which Bronson and Soutter had filed their bill. This he had failed to do, and he had actually abandoned the possession to the Milwaukie and Minnesota Company, who were in possession at the time the receiver was appointed. His judgment on a suit by the complainants had been assailed, and as it seemed, though counsel denied this view, declared to be fraudulent and void, by a decree of the District Court of the United States; but that question was not finally determined.

Statement of the case.

A *third* railroad company, called the Milwaukie and St. Paul Company, a rival company of the Milwaukie and Minnesota, whose relation to it will appear in the diagram below, also opposed the discharge.



This company was an organization created after the litigation already mentioned, as brought about by the proceedings of Bronson and Soutter to foreclose their mortgage, had commenced. It was no party to preceding suits. It owned the *western* end of the La Crosse and Milwaukie Railroad; that is to say, the road from Portage to La Crosse (one hundred and five miles), and was organized for the purpose of working a road, as its name imports, from Milwaukie to St. Paul; of course, the ownership and control of an eastern end was indispensable to the purpose. This company had procured, in June, 1863, an order from the District Court, that the receiver should deliver to them the eastern end of this road, and all its appurtenances, and they had used them from that day. This court, however, subsequently declared the proceeding of the District Court to have been without

jurisdiction, and the order a usurpation of authority.* The interest of this third company was, of course, of a strong character, for the necessities of their situation required that they should own an *eastern* end of the road, to complete their line from Milwaukie, one great terminus of the road to St. Paul.

Mr. Carpenter, for the appellants.

1. The proceedings had in the court below, by which the amount due on the bonds secured by the mortgage to Bronson and Soutter was ascertained and a decree entered, was not according to the direction of the mandate. The decree, indeed, gave the year to pay; but this, and all else that was done, was ordered *before and without* ascertaining what sum was in the receiver's hands. Now, the authority of the inferior court extends only to executing the mandate sent it. They cannot vary it, or give *any other or further* relief.† Under that mandate the court was bound "to ascertain the amount of moneys in the hands of the receiver," and its authority to order a sale arose only "IF" the amount was not sufficient to discharge the interest.

2. The appellants complain of the denial of their petition to the Circuit Court, since the cause was remanded, for leave to pay into court all the money due the complainants in this cause, and for possession of the mortgaged premises.

It is admitted that this order is not such as might be appealed from before a final decree. But, when an appeal is properly taken from a final decree, as it has been decided that the present one is,‡ the appellant may be relieved from any interlocutory order or proceeding by which he is aggrieved. The continuance of the receivership until the final decree, or until the amount due the complainants is paid into court, is matter of discretion, and not reviewable here. But after the amount due the complainant had been fixed by a final decree, as that also has been in this court,§ and

* Bronson *v.* La Crosse Railroad Company, 1 Wallace, 405.

† *Ex parte* Dubuque and Pacific Railroad, Id. 69.

‡ See *supra*, p. 440.

§ See *supra*, p. 312.

the owner of the equity of redemption offered to pay that amount into court, the discharge of the receiver was demandable as a matter of right; and its refusal was error, which can be reviewed here.

The Milwaukie and Minnesota Railroad Company was owner of the equity of redemption. As such, it had the right to redeem all prior incumbrances, and the foreclosure under which it was organized extinguished all liens of a date subsequent to that of the mortgage, on the foreclosure of which it came into existence. It was, therefore, entitled to possession, unless some other person could show better right thereto.

Howard's lien was declared by this court to be extinguished.* The language of the Supreme Court is this:

"Now it appears that each of these judgments were recovered after the date of the mortgage on the La Crosse and Milwaukie Company, upon the foreclosure of which the Milwaukie and Minnesota Company was formed. The liens of these judgments were cut off by its foreclosure; indeed, the judgment of *Howard*, of November, 1858, and the last judgment of Graham and Scott, which was recovered in 1860, never were liens upon any interest in the road of the La Crosse and Milwaukie Railroad Company."

It will be said that this opinion was delivered under a mistake of fact. Perhaps it was so, and perhaps, in a proper proceeding in his case, it may be found that Howard has a valid subsisting lien; but, on this motion, we must consider the presumption to be the other way, and act accordingly.

Chamberlain's opposition demands more respect. He claimed possession under his lease and judgment, which, the case shows, had been vacated by the decree of the District Court. This decree may be erroneous, but cannot be questioned collaterally. It was rendered in a cause in which the complainant, as a judgment creditor, sought to vacate the lease and judgment.

* *Supra*, p. 304.

Argument for the appellee.

The opposition of the Milwaukie and *St. Paul* Railroad has no foundation except in selfish interest. The motives of that company to keep the road *out* of the hands of its true owners, and *in* the hands of a receiver, interested in his commissions chiefly, are obvious when the topographical position of the rival companies is seen. It is a case where pecuniary motive is as strong as better reasons are weak.

Messrs. Cary and Carlisle, contra.

1. The mandate has been as well observed as in the nature of the difficulties it could be. The obligation of an inferior court to obey the order sent it, is not to be followed to the extent of sacrificing the spirit of the order to its letter.

The denying the appellant's motion to have the receiver pay the money in his hands into court, to discharge him, and to hand the road over to the Milwaukie and Minnesota Company, is so clearly a matter pertaining to the practice of the court below, and so entirely within the discretion of that court, that we have been surprised to hear counsel of Mr. Carpenter's ability, and regard to what positions he asserts, insist upon his right to appeal from it. Such matters *must* be left to discretion, if such a thing as discretion is to exist in an inferior court at all. But if this court will consider a matter in which, from the nature of the case, we think it has no good opportunity to form a judgment, then we say that both the judgment of Howard and the claim of Chamberlain should control the question. The receiver was appointed on Howard's motion. This court has, indeed, said* that his lien was discharged. Undoubtedly this idea proceeds on a misapprehension of fact. Howard's judgment in the State court against the La Crosse Company was recovered on the 1st day of May, 1858, and became a lien *prior* to the mortgage under which the Milwaukie and Minnesota Company sprung. This judgment was "sued over" in the Federal court, and judgment obtained there November 28th, 1859; but the record, of course, discloses the original lien of

* *Supra*, p. 304.

his judgment. The opinion of this court mentions the Howard judgment in the *Federal* court, but makes no mention of the judgment in the State court upon which the judgment of the Federal court was founded. Suing over in the Federal court did not extinguish its lien.

Chamberlain or Howard—if anybody but the present receiver—should have the road. Chamberlain was a judgment creditor and a lessee of the road. Counsel insist that the effect of that decree in the District Court was to *vacate and annul* the judgment and lease as to all the world, and that they are now of no force or effect, as between the parties thereto. But such, *we* apprehend, is not the effect in law. The effect of that decree was but to postpone the lease to the judgment of another party. The Milwaukie and Minnesota Company can claim no advantage from it.

The attack on the Milwaukie and St. Paul Railroad Company is gratuitous wholly. Legal rights are not to be denied it, merely because the granting of those rights are necessary to its interests and would greatly promote them. Yet this, in effect, is the argument of the other side.

Mr. Justice MILLER delivered the opinion of the court.

The first ground assigned for the appeal is, that the decree is a departure from the mandate of the court, because it should not have been rendered until the accounts of the receiver were adjusted, and it was judicially ascertained how much of the millions he had received ought now to be applied to the payment of complainants' interest coupons.

This construction of the mandate cannot be sustained. The receiver is the officer of the court, and neither party is responsible for his misfeasance or malfeasance, if any such exists, and it was not, therefore, reasonable that complainants should be delayed in the collection of their debts until the close of a litigation over the receiver's accounts, which might occupy several years. The suit had already been pending four years, and the mandate required the Circuit Court, in its decree *nisi*, to give another year for the payment of the sum found due. To suppose that this court

intended, in addition to these five years, to withhold the recovery of complainants for the additional uncertain period which might be necessary to litigate the receiver's accounts, is to impute to it a manifest injustice. The language of the mandate had reference to the sum *actually* in the receiver's hands, properly applicable to the payment of this debt, and not to what it might turn out on full investigation *ought* to be there for that purpose. This court had no reason to suppose that there would be any controversy with the receiver on the subject, and framed its mandate on the supposition that all the money for which he would be responsible, would be at once forthcoming. If such is not the case, neither the loss nor the delay of ascertaining the fact was intended by this court to be imposed on the complainants. The decree of the court is, therefore, AFFIRMED.

But another order was made by the Circuit Court, of a very important nature, after the return of the case from this court, and before the decree just affirmed, which appellants seek to have reversed.

At the first term of that court after the mandate was filed, the appellant proposed to pay all the money due on complainants' mortgage, on condition that an order should be made discharging the receiver, and placing the road and its appurtenances in the possession of appellants. Upon the hearing of this petition of appellant, the judges of the Circuit Court were divided in opinion, and the application was thereupon refused, as it was not a division upon a subject which is authorized to be certified to this court for its action.

The appellant insists that this court shall now review the order of the Circuit Court on this subject; and while conceding that it is not such an order, as standing alone could be the subject of an appeal, contends, that as the record is properly here on appeal from the final decree which we have just considered, the whole record is open for our inspection, and that it is our duty to correct the error of which he complains in this particular.

Opinion of the court.

There is no question but that many orders or decrees, affecting materially the rights of the parties, are made in the progress of a chancery suit, which are not final in the sense of that word in its relation to appeals. The order of the court affirming or annulling a patent, and referring the case to a master for an account, is an instance. The adjudications which the court makes on exception to reports of masters, often involving the whole matter in litigation, are not final decrees; and in these and numerous other cases, if the court can only, on appeal, examine the final or last order or decree which gives the right of appeal, it is obvious that the entire benefit of an appeal must, in many cases, be lost.

The order complained of in this case seems to be one of this class. The complainants are seeking a foreclosure of a mortgage with a view to make their debt. The owner of the equity of redemption in the mortgaged premises comes forward and offers to pay this debt, or all of it that is due, provided his property, which is in the custody of the court, shall then be restored to his possession. The right of the owner to this order is, under ordinary circumstances, very clear, and a refusal by the court to give him this right would seem to call for the revisory power of this court, when the whole case is before it, on the record brought here by appeal from a final decree.

The only doubt which the court could have on the question arises from the principle that the appointment and discharge of a receiver are ordinarily matters of discretion in the Circuit Court, with which this court will not interfere.

As a general rule, this proposition is not denied. But we do not think it applicable to the case before us. While the parties to this suit were fiercely litigating the amount of the mortgage debt, and questions of fraud in the origin of that debt, the appointment, or the discharge of a receiver for the mortgaged property, very properly belonged to the discretion of the court in which the litigation was pending. But when those questions had been passed upon by the Circuit Court, and by this court also on appeal, and the amount of the debt definitely fixed by this court, the right of the defen-

dant to pay that sum, and have a restoration of his property by discharge of the receiver, is clear, and does not depend on the discretion of the Circuit Court. It is a right which the party can claim; and if he shows himself entitled to it on the facts in the record, there is no discretion in the court to withhold it. A refusal is error—judicial error—which this court is bound to correct when the matter, as in this instance, is fairly before it. That the order asked for by appellants should have been granted, seems to us very clear.

It was objected by the complainants that the receiver should not be discharged, because the security of the road and its appurtenances was not sufficient to insure the payment of their debt, and, therefore, its receipts should be applied to that purpose through the agency of a receiver.

The amount of complainants' debt, exclusive of the interest (which appellants proposed to pay), was one million of dollars, which, added to twelve hundred thousand dollars of prior mortgages, made the sum of two millions two hundred thousand dollars which the road and its appurtenances should be worth to secure complainants' debt. The road bed on which complainants' mortgage is a lien is ninety-five miles from Milwaukie to Portage, besides the depots, rolling stock, and other appurtenances belonging to it. It constitutes a part of the direct line from the former city to the Mississippi River, which is one of the most valuable routes in the United States, both present and prospective. The gross earnings from this ninety-five miles for the year preceding the application to discharge the receiver, as shown by his reports, were about eight hundred thousand dollars; and although these reports show a great falling off in the receiver's receipts since that time, the circumstances which have produced it are not of a character to incline us to continue the road in the possession of a receiver. The road was also in good repair. The decree which we have just affirmed authorizes the complainants, upon default in payment of any future instalment of interest, to apply for and have an order of sale of the road under that decree. Under these circumstances, when appellants propose to pay to me $300,000 or

$400,000 of complainants' debt before possession is given, it is idle to say that the security of their debt requires the road still to be detained from its lawful owner.

Sebre Howard objects to the discharge of a receiver, because he has a judgment of $16,000 against the La Crosse and Milwaukie Railroad Company, which he claims to be a lien on the road; and as the present receiver has also been appointed receiver in his suit, he claims that his debt must first be paid before he can be discharged.

The idea of appointing or continuing a receiver for the purpose of taking ninety-five miles of railroad from its lawful owners, which is earning a gross revenue of $800,000 per annum, to enforce the payment of a judgment of $16,000, the lien of which is seriously controverted, is so repugnant to all our ideas of judicial proceedings that we cannot argue the question. If Mr. Howard has a valid judgment, the usual modes of enforcing that judgment are open to him, both at law and in chancery; but the extraordinary proceeding of taking millions of dollars worth of property—of such peculiar character as railroad property is—from its rightful possessors, as one of the usual means of collecting such a comparatively small debt, can find no countenance in this court.

Selah Chamberlain objects to the discharge of the receiver, and particularly to delivering the property into possession of appellants, because he says he has a lien of over $700,000 on the road, and because that lien is secured by a lease which entitles him to the possession of the road.

Mr. Chamberlain had been in possession under his lease for some time prior to the appointment of a receiver, under a contract with the La Crosse and Milwaukie Railroad Company, by which he bound himself to keep down the interest on the various mortgages on the road, including the one on which this suit is brought. This he had failed to do, and had actually abandoned the possession to the complainants in this suit, who were in possession at the time the receiver was appointed. His judgment was assailed, and declared to be fraudulent and void by a decree of the District Court of the United States. There is a question whether that decree

is binding as between him and the present appellants, which we do not intend to decide here; but we refer to this fact as having strong influence on the question of the propriety of keeping the road in the hands of a receiver for his benefit, or delivering it to him if the receiver is discharged. We shall endeavor to protect his interest, whatever it may be, in any order that shall be made on the subject.

As to the Milwaukie and St. Paul Railway Company, who also resisted this application, we do not see that they have any legal interest in the matter; and the interest which prompts their interference is not such as the court can consider on an application of this kind.

In reference to all these parties we remark again, that the court deprives them of none of their rights to proceed in the courts in the ordinary mode to collect their debts, and that the appointment of receivers by a court to manage the affairs of a long line of railroad, continued through five or six years, is one of those judicial powers, the exercise of which can only be justified by the pressure of an absolute necessity. Such a necessity does not exist here; and the fact that so many years of the exercise of this power has not produced payment of any part of the debts which the receiver was appointed to secure, is an irresistible argument against his longer continuance.

The order of the court dismissing this application is, therefore, REVERSED, and the case remanded to the Circuit Court, with instructions to ascertain the amount due to complainants within some reasonable time to be fixed by said court, and to make an order that on the payment of that sum, with the costs of complainants, into court, the receiver shall be discharged, and the railroad from Milwaukie to Portage City, with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of road, be delivered by said receiver to the Milwaukie and Minnesota Railroad Company; but that no such discharge of the receiver, or delivery of the road and its appurtenances, shall be made until said company shall first enter into bond

Statement of the case.

with sufficient surety to pay to Sebre Howard and Selah Chamberlain all such sums as may come into the hands of said company, which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as liens on said road. And the appellants to recover their costs in this court.

ACTION ACCORDINGLY.

UNITED STATES *v.* STONE.

1. The United States may properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued by itself, ignorantly or in mistake, for lands reserved from sale by law, and a grant of which by patent was therefore void.
2. The southern boundary of Camp Leavenworth is the line as established by the surveyor, McCoy, A. D. 1830, for such extent as it was adopted by the subsequent surveys of Captains Johnson and Hunt, A. D. 1839, 1854, and by the Government of the United States. The Secretary of the Interior, in 1861, transcended his authority when he ordered surveys to be made north of it.
3. The treaty of 30th May, 1860, between the United States and the Delaware Indians, conferred a right to locate grants only on that portion of the Delawares' lands reserved for their "permanent home" by the treaty of 6th May, 1854, and did not authorize their location on that portion of those lands which, by that treaty, were to be sold for their uses.

THE United States, by treaty with the Delaware Indians, in 1818, agreed to provide for them a country to reside in; and in 1829, by supplementary treaty, agreed that the country in the fork of the Kansas and Missouri Rivers, extending "up the Missouri TO Camp Leavenworth," should be conveyed and secured to them as their said home.

A Senate resolution of 29th May, 1830, ratifying this treaty, provided that the President should employ a surveyor to run the lines, to establish certain and notorious landmarks, and to distinguish the boundaries of the granted country, *in the presence of an agent of the Delawares*, and to report to the President his proceedings, with a map; and