

Opinion of the court.

was founded on a second mortgage given by the La Crosse and Milwaukee Company to Bronson, Soutter, and Knapp, which was in the nature of a further assurance concerning the rolling stock, was properly dismissed. As the effect of dismissing the supplemental bill was to affirm the right of the St. Paul Company to the use of the rolling stock on the Western Division on the ground it was covered by the first mortgage, and which we have affirmed, the cross-bill was useless and of no effect.

DECREE AFFIRMED; CAUSE REMANDED TO COURT BELOW.

In the first of these two appeals, Mr. Justice MILLER dissented.

FLEMING *v.* SOUTTER.

Where a decree of foreclosure and sale for default in payment of an amount due, contained a clause authorizing the complainants on petition to have an order of sale in case of default as to any future instalment, successive orders of sale upon such summary proceeding by petition are regular and sufficient.

APPEALS in three decretal orders from the Circuit Court for Wisconsin.

Messrs. Cushing and Stark, for the appellants; Messrs. Cary and Carlisle, contra.

Mr. Justice NELSON stated the facts and delivered the opinion of the court.

These are appeals from decretal orders made in the case of Soutter, survivor, &c., *v.* The La Crosse and Milwaukee Railroad Company and others. That suit was instituted for the foreclosure of a mortgage on the Eastern Division of the road of the La Crosse and Milwaukee Company, and a decree had been entered in the Circuit Court in pursuance of a mandate from this court, in which it was directed that the

Statement of the case.

complainant shall be at liberty, when further instalments of interest should become due and unpaid, to apply for an order for the sale of the said mortgaged premises in accordance with the mandate. On the 18th September, 1866, an order was entered directing a sale of the premises on account of default in the payment of \$40,000, an instalment of interest that had become due on the first of the same month, which order was entered on petition and due notice, and after argument by counsel. The first two appeals were taken from this order.

A second default was made in payment of another instalment on the first of March, 1867, and after hearing the parties on both sides, an order for a sale was made on the fifth of the same month. The third appeal is from this order.

We have examined the proceedings to which objections have been taken, and are of opinion that they are in conformity with the principal decree in the cause, and that the order should be

AFFIRMED.

RAILROAD COMPANIES *v.* CHAMBERLAIN.

Where a bill was filed by a Wisconsin railroad company to set aside a judgment, and a lease in the nature of a mortgage to secure the same, and another railroad corporation created by the same State, having become equitable owner of the lease and mortgage, was admitted as defendant, and also filed a cross-bill to have the judgment enforced, the Circuit Court dismissed the original bill on the merits, and also dismissed the cross-bill for want of jurisdiction, the parties being all citizens of the same State: *Held*, that this latter decree was erroneous; the proceeding being merely ancillary to the judgment in the Circuit Court, which could only be enforced in that court.

THESE were two appeals from the Circuit Court for the District of Wisconsin; one by the Milwaukee and Minnesota Railroad Company against Chamberlain, the other by the Milwaukee and St. Paul Railroad Company against both the parties to the other case.