

promptly refused to acquiesce, but repudiated what had been done. When this suit was commenced, Edwards had paid but \$2,000 of the purchase price, but paid the balance, \$8,000, after being fully advised of the matters set up in the bill of complaint. It is in the power of the corporation to refund the purchase money, and this should be done.

Complainant is entitled to a decree setting aside the sale, and for a conveyance of the property to the Houghton Copper Works, making the injunction perpetual, and referring the cause to a master to take proofs and state an account for the use of the property. The Houghton Copper Works is to be decreed to refund the purchase price paid by defendant Edwards, less whatever may be found owing from him for the use of the property, for which use Edwards is to account and pay.

UNITED STATES v. HUMASON.

(Circuit Court, D. Oregon. July 22, 1881.)

1. OFFICIAL BOND—PROOF OF EXECUTION.

In an action upon an official bond, if the execution thereof is denied, it cannot be proven by a copy certified by the secretary of the treasury under section 882 of the Revised Statutes, but a copy certified by the register of the treasury under the seal of the department, under section 886 of the Revised Statutes, is sufficient proof of such execution, it being declared to have the same force as the original when duly authenticated or proven in court.

2. NONSUIT BY THE PLAINTIFF.

Under section 243 of the Oregon Code, the plaintiff in an action can only become nonsuit before the trial commences, or afterwards, with the consent of the defendant; and this is considered the later and better rule generally.

3. NEW TRIAL—STALE CLAIM.

The United States delayed bringing an action against the sureties in the bond of a deceased Indian agent in Oregon, for an alleged failure to account for \$7,000 or \$8,000 received thereunder, for a period of 14 years; and on the trial there was a verdict for the defendant, by the direction of the court, because of the failure of the plaintiff to produce proof of the execution of the bond, which was denied, as provided in section 886 of the Revised Statutes. *Held*, that the plaintiff was guilty of negligence, and therefore was not entitled to a new trial; and that in passing upon the motion weight ought to be given to the fact of the long delay in bringing the suit, whereby it had become difficult, expensive, and almost impossible to make legal proof of facts which probably existed tending to show that the deceased had duly disbursed the money in question.

4. STIPULATION TO ABIDE EVENT OF ANOTHER ACTION.

A stipulation in one action to abide the event of another entitles either party thereto to such proceedings in the former as will enable him to have the benefit of his stipulation, provided the result of the latter action is favorable to him.

Action at Law.

Rufus Mallory, for the United States.

Seneca Smith, for defendant.

DEADY, D. J. This action is brought against the defendant, Phœbe M. Humason, as executrix of the will of Orlando Humason, on two bonds executed by William Logan in his life-time, as Indian agent, together with said Humason and others as sureties,—the one on August 1, 1861, in the penal sum of \$25,000, and the other on July 1, 1862, in the sum of \$20,000, and both conditioned that said Logan would “carefully discharge the duties” of said office, and “faithfully expend all public moneys and honestly account for the same, and for all public property which shall or may come into his hands, without fraud or delay. The case was first before the court on a demurrer to the complaint, which was overruled on June 7, 1879, (see opinion of that date.) It was again before the court on a demurrer to the third, fourth, and fifth pleas or defences contained in the answer, which was overruled on December 15, 1879, (see opinion of that date,) and on June 2, 1880, the plaintiff replied to the answer, and the cause was at issue upon questions of fact. On February 19, 1881, the cause was tried with a jury and a verdict was given for the defendant.

On the trial the plaintiff proved the commissions to Logan, as Indian agent, under which the bonds were executed as alleged in the complaint, and then offered in evidence the transcripts of two bonds, purporting to have been executed by William Logan, as Indian agent and principal, and O. S. Savage, W. C. Moody, H. P. Isaacs, and O. Humason, as sureties, on August 1, 1861, and July 1, 1862, respectively, and certified by the secretary of the treasury, under the seal of the department, on April 20, 1878, in pursuance of section 882 of the Revised Statutes, to be true copies of bonds on file in that department. The execution of the bond by the defendant's testator being denied by the answer, the introduction of the transcripts was objected to by counsel, because they were not certified to under and in the manner prescribed by section 886 of the Revised Statutes, instead of section 882 thereof, and the objection was sustained. The plaintiff then asked to become nonsuit, but the defendant objected, and asked that the case be submitted to the jury, which was done, with direction to find a verdict for the defendant.

In the case of the *U. S. v. Isaacs*, it being an action upon the same bonds, there was a stipulation that it should abide the event of this action, and thereupon an order was made directing the latter to be included in the entry of the trial and verdict of the former; and the