

two years in which to appear in the foreclosure suit, service being by publication only; yet he permitted this time to elapse, though he doubtless well knew that the decree had been entered. The bill fails to set forth any fact or facts which show that the state court had not jurisdiction of the foreclosure proceedings. The decree therein cannot be held void, and, being valid, the sale made in pursuance thereof ripened into a title, which has passed to the defendant Crandall. That the failure to redeem within the proper time was caused by the misfortunes of complainant, resulting from the "grasshopper plague," may be true, but that is a misfortune of which the consequences should not now be visited upon the defendants, who had no part or lot therein. Courts of equity cannot alone base a decree against a defendant upon a misfortune of the complainant. If a legal title is vested in a defendant, as there is in this cause, he cannot be deprived thereof, save upon some ground which affects him, or shows that it would be inequitable or unjust for him to retain his legal advantage against the superior equity of the opposing party.

The state of facts set forth in the bill as amended fails to show a ground for holding the title of the defendant void in law, and likewise fails to show a sufficient reason why a court of equity should interpose to defeat a title which has been allowed to remain undisturbed for eight years. The demurrer to bill is therefore sustained, and same will be dismissed at cost of complainant.

NICKERSON and others v. ATCHISON, T. & S. F. R. Co. and others.¹

(Circuit Court, D. Kansas. June, 1880.)

1. EQUITY—PRACTICE IN UNITED STATES CIRCUIT—AGREED FACTS WITHOUT PLEADING—REV. ST. U. S. § 918.

This court will not take cognizance of a case in equity, in which parties agree upon a statement of facts, and stipulate that the court shall take jurisdiction, try the cause, and render decree without pleadings.

2. SAME—PRACTICE IN STATE COURTS—COMP. LAWS KAN. CH. 80.

The statute of Kansas, authorizing such a proceeding in the courts of that state, confers no jurisdiction upon this court, sitting as a federal court of equity, nor does it change the chancery practice in this court in any respect.

(Syllabus by the Court.)

In Equity.

Ross Burns and A. A. Hunt, for plaintiffs.

Geo. R. Peck, for defendants.

McCRARY, J. A stipulation has been filed, signed by the parties to this controversy, setting forth an agreed statement of facts, and consent-

¹This case was inadvertently overlooked when filed, and is now published at the request of a subscriber. See 17 Fed. Rep. 408.

ing that the court may take jurisdiction, hear, try, and determine the case, and render decree without pleadings. Section 913 of the Revised Statutes of the United States provides that "the forms and modes of proceeding in suits of equity, * * * in the circuit and district courts, shall be according to the principles, rules, and usages which belong to courts of equity, * * * except when otherwise provided by statute or by rules of court, made in pursuance thereof." It is well settled that this statute adopts the equity practice as it existed in England at the time of the passage of the judiciary act. I am not aware of anything in that practice that would authorize the institution of a proceeding in equity, by the filing in court of such a stipulation as that now before me. I take it to be well settled that the practice in a court of equity is regulated by law or rule and cannot be varied by the agreement of the parties. This court cannot be constituted a board of arbitration, in the absence of a law of the United States to authorize such a proceeding. We are referred to a statute of Kansas, which seems to authorize such a proceeding in the courts of that state, (Comp. Laws Kan. c. 80;) but it is clear that the jurisdiction and practice of this court as a court of equity is not affected by that statute. *Boyle v. Zacharie*, 6 Pet. 658; *U. S. v. Howland*, 4 Wheat. 115; *Neves v. Scott*, 13 How. 271; *Noonan v. Lee*, 2 Black, 507; *Robinson v. Campbell*, 3 Wheat. 323.

The application is overruled.

FOSTER, J., concurs.

CHICAGO & I. R. Co. and another v. PYNE and others.

(Circuit Court, S. D. New York. February 22, 1887.)

RAILROADS—BONDS—PAYMENT BEFORE MATURITY.

The complainant railroad, having executed certain mortgage bonds payable in 30 years, made a traffic contract with another railroad by which it was agreed that the latter road should retain complainant's share of the earnings under the contract, and pay them over semi-annually to a trustee, to be applied to the redemption of the bonds, the contract to continue in force for 30 years, "or for so long a time as will be sufficient to provide a fund large enough to redeem all of said bonds." This agreement was indorsed on the bonds. Held, in an action between the complainant railroad and the bondholders, that this agreement did not give the railroad the right to pay off the bonds as soon as a fund sufficient for that purpose had accrued, and without waiting for the expiration of the 30 years, when the bonds were to mature.

On motion for Interlocutory Injunction.

B. H. Bristow, for complainants.

Joseph H. Choate, for defendants.

WALLACE, J. The complainants seek an interlocutory injunction to restrain the defendants from prosecuting actions at law. The bill of