

he was entitled, could shown that no more is because such sources to, and in the control in the ordinary course for the protection of law imposes the bur- claimant where a case . And when the evi- the government carries l one of suspicion, and reduced, the court can ced case, then the bur- aimants, and their fail- s which could not but it influence, and which clusive control, must

he merchandise, I con- di to be on the claim- offered no evidence to by the government. the collection act re- rate the goods at the of such merchandise. . Huntton, a tobacco fixes the price at least dollars a thousand. at this price, would . And the same wit- n his knowledge of the trade, proves that five ize mentioned by the at quantity. strict court is affirmed.

D. 2,233.

v. TYSON.

r. Mag. 456.]

Nov. Term, 1840.¹

TO ENDORSE NOTES—EX- AUTHORITY.

authorizing the endorse- principal's name confines the principal or those in and cannot be extended of the attorney or of a member.]

Sam Butcher and Sam- he holders of a note Tyson & Co. for \$1,187- payable to the defend- and endorsed "David Tyson, Atty." The suit the defendant as the [Judgment for defend-

plaintiffs proved and over of attorney from I. Tyson, duly executed

inable.]

by him to George W. Tyson. The power was in the usual form for the transaction of business, for the collection of money, &c. It also contained a power or clause, in these words: "Also to draw and indorse checks, notes, and bills of exchange, in my name," &c. The endorsement in question was proved to be in the handwriting of George W. Tyson, the attorney, and to have been delivered by him to the agent of the plaintiffs.

On the cross-examination of the plaintiffs' witnesses, it appeared that the note was given in part payment for a bill of exchange that had been loaned to the firm of George W. Tyson & Co., by the plaintiffs, for the accommodation of that firm; that George W. Tyson, the attorney named in the power, was one of the firm of George W. Tyson & Co., and was the person who handed the note aforesaid to the agent of the plaintiffs; that George W. Tyson had at first given the agent other notes for the bill, and had afterwards substituted the note in question, among others, in lieu of the notes first given. Although some objection was raised as to the notification of the defendant as endorser of the note, the defendant's counsel rested their defence principally on the ground, that the power conferred no authority on the attorney to endorse this note; and they contended, that the endorsement of the defendant's name upon the note, being made by the attorney on a note not belonging to the defendant, or in which the defendant was interested, but on a note made by the firm of George W. Tyson & Co., of which firm the attorney was a member, and the endorse- ment being made by the attorney for the benefit of that firm, and not for the benefit of the defendant, or in relation to his business, it was not made in the due execution of the power delegated to the attorney, but was unauthorized and void; that from the nature of the transaction the plaintiffs were fully apprised that the endorsement was not authorized by the power; and they contended also that there was no consideration which could render the defendant liable under the money counts. The plaintiffs' counsel, on the other side, insisted that the power of attorney authorized the endorsement of the note.

But THE COURT, after observing that several questions of law were raised upon the case, declared that they considered the controlling point to rest in the construction of the power of attorney; and they decided that the true construction of the power confined the authority of the attorney to the transaction of the defendant's business only, and did not authorize the attorney, George W. Tyson, to endorse promissory notes, or bills of exchange, in the name of the defendant, for the satisfaction of the individual debts of the attorney, or of the firm of which he was a member, or for his or their benefit; and they gave judgment for the defendant.

Case No. 2,234.

BUTCHERS' ASS'N v. SLAUGHTER HOUSE CO.

[1 Woods, 50.]¹

Circuit Court, D. Louisiana. June Term, 1870.

WRIT OF ERROR—EFFECT OF ALLOWANCE—SECURITY—SUPERSEDEAS.

1. Where the supreme court of a state gave judgment for a perpetual injunction against defendants, and they sued out a writ of error to the supreme court of the United States, and within ten days gave bond in the sum of \$10,000 to supersede the judgment of the state court, a justice of the United States supreme court refused, on motion, to require plaintiffs in error to give an additional bond with a larger penalty, although satisfied that the bond already given was not sufficient to cover the fees and emoluments claimed by defendants in error, which would come to the possession of the plaintiffs in error by reason of the supersedeas of the judgment of the state court.

2. As soon as a writ of error from the United States supreme court is applied for and allowed, the jurisdiction of that court attaches and super- sedes any further action of a justice of that court at chambers.

3. It seems to be the settled understanding of the courts of the United States that both appeals and writs of error operate as a supersedeas without any express order to that effect, if taken within the proper time and with an offer of the requisite security.

[At chambers. The suits known as the "Slaughter House Cases" were brought in the Louisiana state courts, and involved the validity of a statute of that state granting a monopoly to a corporation entitled the "Crescent City Live Stock Landing & Slaughter House Company." The cases were decided in favor of the corporation in the supreme court of Louisiana, and writs of error were sued out by complainants.]

On the 3d of June, 1870, an application was made to Mr. Justice Bradley of the supreme court of the United States, at chambers, in New Orleans, to require additional bonds in those cases, in which writs of error to the supreme court of the United States had been allowed and bonds already given [and the justice declined to take any further action in regard to the securities].

C. Roselius, W. H. Hunt, and J. P. Horner, for the motion.

John A. Campbell, J. B. Cotton, and J. Q. A. Fellows, contra.

BRADLEY, Circuit Justice. In these cases writs of error were allowed, and bonds to prosecute and to answer all damages and costs were taken within ten days from the rendering of the decrees in the state court, to which the writs were directed. The bonds were required in such amounts respectively as then appeared to me sufficient, being the same as required on appeal from the state district to the state supreme court. Affidavits have since been laid before me, for the

¹ [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]

purpose of showing that the amount of the bonds is not sufficient as security for the damages which the defendants in error will sustain if the writs are to be deemed a supersedeas of the decrees and executions thereon, and if the decrees should be affirmed.

In the private suits the decrees are not for sums of money, except as to costs; but in the suits of defendants in error, they are for perpetual injunctions against the plaintiffs in error, to restrain them from violating the exclusive right granted to the defendants of having cattle landings, live stock depots and slaughter houses in New Orleans. In the suits of the plaintiffs in error, the decrees are for the dismissal of the petitions, and a dissolution of the injunction obtained by the plaintiffs. If these decrees should severally be affirmed, there would still be no decree against the plaintiffs in error for the payment of any money, other than the costs; but only for the perpetuity of the injunctions of the defendants and the dissolution of the injunctions of the plaintiffs.

But the defendants in error insist that they will, in the mean time, sustain damage by the suspension of their injunctions if they are suspended by the writs of error, and by the continuance of the plaintiffs' injunctions, if they are continued by the writ of error, and that this damage will be largely in excess of the bonds taken on allowing the writs of error. I do not see any evidence that this effect will follow in any case but that of the Live Stock Dealers and Butchers' Association against the Crescent City Live Stock Landing and Slaughter House Company. In this case it does appear that the probable emoluments and fees which will accumulate and become due from the plaintiffs to the defendants in error during the pending of the appeal, will largely exceed the amount of the bond taken. The bond is in the penalty of \$10,000, and the fees will probably accumulate in one year to the amount of over \$60,000. But have I any right to demand a bond sufficient to guaranty the payment of this accumulation of fees? At first I supposed I had such a right; and I purposed requiring a bond to be given to the amount of \$100,000. But on a more careful examination of the cases, particularly of the case of *Roberts v. Cooper*, 19 How. [60 U. S.] 375, I am satisfied that it would not be competent for me to do so. In that case a plaintiff in ejectment recovered the land and nominal damages. The defendant brought a writ of error and gave a bond of only \$1,000, being all that the judge required. An affidavit being presented to the court, showing that by being kept out of possession pending the writ of error, the plaintiff would suffer \$25,000 damages, the court refused to order an increase of the bond, holding that the case was not provided for by any legislation of congress.

On further examination, I am not entirely satisfied that I could now order an additional

bond, if one were proper to be demanded. The language of several of the cases seems to imply that as soon as the writ of error or appeal is allowed, the jurisdiction of the supreme court attaches to the case, and supersedes the further action of the judge at chambers. In the *Rubber Co. v. Goodyear*, 6 Wall. [73 U. S.] 156, the court says: "In equity cases, the appellate jurisdiction of this court attaches upon the allowance of the appeal." And again: "The question of sufficiency (of the bond) must be determined in the first instance by the judge who signs the citation, but after the allowance of the appeal, this question, as well as every other in the cause, becomes cognizable here." I am referred to one case, that of *Black v. Zacharie*, 3 How. [44 U. S.] 493, in which the circuit court of the district of Louisiana annulled their order for a supersedeas on account of the insufficiency of the bond. In the cases before me, I have made no order for a supersedeas, but have left the cases to the legal effect of the several writs of error allowed, having simply approved the several bonds which were tendered in the cases. That approval undoubtedly imports that the bonds are sufficient for a supersedeas of further proceeding under the decrees, so far as a writ of error can legally operate as such, and to that extent it was my intention that they should operate.

The question as to what is the legal effect of writs of error on subsequent proceedings in these cases, it is not necessary for me to decide. The suits are really suits in equity, the relief sought being an injunction, which is purely equitable relief. In England, appeals from decrees in equity do not suspend proceedings in the court below, nor the operation of the orders or decrees appealed from, unless, on special application, an order to that effect be made, either by the court appealed from or the court appealed to. But the reason for this rule seems to be that appeals are allowed there from interlocutory as well as final orders and decrees; and if every appeal had the effect of suspending further proceedings, no case would ever be determined except by consent of parties. The *Warden v. Morris*, 9 Ves. 316; *Huguenin v. Basely*, 15 Ves. 184; *Waldo v. Caley*, 16 Ves. 206. And it seems to be the settled understanding of the courts of the United States, in which and to which appeals are only allowed from final decrees, that an appeal, as well as a writ of error, operates as a supersedeas, if taken within the proper time and with an offer of the requisite security. "The act of 1803," says Mr. Justice McLean, in *Stafford v. Union Bank of Louisiana*, 16 How. [57 U. S.] 139, "places appeals in chancery on the same footing as writs of error." [2 Stat. 244, § 2.] And in the case of *Catlett v. Brodie*, 9 Wheat. [22 U. S.] 553, this court held that security must be given on a writ of error to operate as a supersedeas for the amount of the judgment." And again:

"There is the judge or writ of error. The decree is set aside. and has 140. In U. S.] 15 sary, is, and when supersede of render

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hat is the legal effect bsequent proceedings t necessary for me to really suits in equity, an injunction, which ef. In England, ap- quity do not suspend below, nor the opera- decrees appealed from, lication, an order to ther by the court ap- rt appealed to. But seems to be that ap- e from interlocutory and decrees; and if effect of suspending case would ever be usent of parties. The s. 316; Huguenin v. ldo v. Caley, 16 Ves. be the settled under- of the United States, appeals are only al- s, that an appeal, as operates as a super- the proper time and usite security. "The Justice McLean, in f Louisiana, 16 How. appeals in chancery writs of error. [2 he case of Catlett v. . S.] 553, this court be given on a writ supersedeas for the ent." And again:

"There is no discretion to be exercised by the judge taking the bond when the appeal or writ of error is to operate as a supersedeas. This rule was established in 1817, and has been adhered to ever since." *Id.* 140. In *Rubber Co. v. Goodyear*, 6 Wall. [73 U. S.] 156, the court say: "What is necessary, is, that it [the security] be sufficient, and when it is desired to make the appeal a supersedeas, that it be given within ten days of rendering the decree."

But suppose it to be granted that an appeal, properly allowed, is a suspension in equity cases as well as in cases of law; of what is it a supersedeas? Does it supersede the decree? Will a defendant, after appealing from a decree for specific performance requiring him to execute a deed, be amenable to an attachment if he neglects to execute such deed? It would seem to be the logical consequence that the whole effect of the decree is suspended, and that without some special order to the contrary (which it seems can only be made by the appellate court), things must remain in statu quo ante decretum until the appeal is determined.² But on this subject parties must take the law at their peril, as I cannot, sitting here, make any judicial determination which will bind them. The result simply is that I must, under the circumstances, decline to take any further action with regard to the securities.

Case No. 2,235.

In re BUTLER.

Ex parte WENDLINGER.

[2 Hughes, 247.]¹

District Court, E. D. Virginia. Nov. Term, 1875.

VENDOR'S LIEN—LOSS BY LACHES.

Where a bond for part of the purchase-money of land has been assigned by the vendor, and the vendor, upon a representation by the vendee that he has paid the said bond to its holder, makes a deed to him of the land, and the deed is punctually recorded, and the holder of the bond, who resides in the same county with the vendor and vendee and the land, fails to assert his equity in the land for fifteen years, during which other liens against the vendee attach upon the land, *held*, that the equity of the holder of the bond is lost by laches, or is no greater than the equities subsequently attaching to the land, and that the court will not hear a prayer to subject the land to the payment of the bond.

In bankruptcy. Some time in the year 1857 James T. Butler purchased from H. C. Peatross a tract of land in Caroline county, known as "Ready Church," containing 183 acres, for the sum of \$1,830. In August, 1857, James T. Butler executed his bond to Peatross for \$524.63, in part payment of this land. Peatross assigned this bond to T. L. Scott. In

November, 1858, Butler informed Peatross that he had settled this bond with Scott, or that the balance of accounts between himself and Scott would show the bond to be about settled, or something to that effect. Thereupon Peatross and wife executed a deed to Butler for this land, a copy of which is filed with the papers. This deed was promptly admitted to record in Caroline county, where the land was situated. T. L. Scott has himself become a bankrupt, and his assignee [C. H. Wendlinger], by petition dated 8th May, 1873, not filed in this cause until a date not known, claims that this bond was not settled by Butler, although Scott admits that there were unsettled accounts between them, and prays that what is due on the bond may be satisfied out of the land. Scott had always retained this bond till his assignee filed it with his deposition as a claim against James T. Butler in this cause. Under the laws of Virginia, since the adoption of the Code of 1849, there can, in general, be no vendor's lien for the purchase-money of real estate, where a deed actually passes, unless it be expressly reserved in the deed. Here the vendor (Peatross) assigned a bond of the vendee (Butler) for part of the purchase-money of land to Scott, and soon afterwards, on a representation of the vendee that the bond had been paid, made a deed of the land to the vendee (Butler), containing no reservation of lien for the bond held by Scott. This deed, when recorded, was notice to the world of its existence, binding by law on all subsequent purchasers; and Scott, who lived in the county and in the very neighborhood of the vendor and vendee, the vendee, Butler, having possession of the land all the while, and having dealings with Scott as a merchant, held his bond for more than twelve years without any inquiry as to Butler's title. Butler had the possession and the legal title until his bankruptcy, when both title and possession passed to his assignee for the benefit of, first, Butler's lien creditors; and, second, Butler's general creditors. The liens by judgment accrued after the deed of Peatross to Butler. It is not pretended that Scott gave notice of his lien to anybody. These judgments all attached without notice of the existence of Scott's claim. Butler's assignee is, of course, clothed only with the title which Butler had.

I do not feel disposed to deny that Scott had an equitable lien upon the land after the deed of Peatross to Butler, which he could have enforced against Butler. He could have enforced it for the reason that a representation of Butler to Peatross, whether true or false, could not deprive Scott of any rights he may have had. If it were a fact (which is vigorously denied) that Butler did owe Scott the bond at the time Butler obtained the deed from Peatross, then Scott's lien in equity remained notwithstanding the deed made by Peatross. But it is also true that in the period of more than twelve years that followed other equities attached upon that same

² This subject is discussed, and a somewhat different view taken, in "Slaughter House Cases," 10 Wall. [77 U. S.] 273.

¹ [Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.]