

**French Vs. Shoemaker**

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**Court :** US Supreme Court

**Decided On :** 1870

**Appeal No. :** 79 U.S. 86

**Appellant :** French

**Respondent :** Shoemaker

**Judgement :**

French v. Shoemaker - 79 U.S. 86 (1870)

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**French v. Shoemaker**

**79 U.S. (12 Wall.) 86**

*MOTIONS FOR DECREE OF CIRCUIT COURT OF*

*UNITED STATES FOR THE DISTRICT OF VIRGINIA*

## **SYLLABUS**

1. Where the whole law of a case before a circuit court is settled by a decree, and nothing remains to be done unless a new application shall be made at the foot of the decree, the decree is a final one so far as respects a right of appeal.

2. Where there is nothing on the record to show to the court that the indemnity given by an appeal bond is insufficient, the presumption is that it is sufficient.
3. Where a party is perpetually enjoined and restrained by a decree of a circuit court from any proceeding whatever not in accordance with certain contracts which a complainant had applied to that court to make him, by injunction, observe, that court -- though an appeal here has been taken within ten days and an appeal bond with sufficient indemnity given -- may yet properly order the defendant to desist from a second

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suit in another court of the United States to set aside the contract, just as above mentioned, passed on. And this although in such second suit new parties are introduced whom the circuit court had held were not necessary parties to the proceeding there. Such an order is not a misconstruction by the circuit court of its own decree.

These were two motions by the opposite parties in an appeal from a decree of the Circuit Court of the United States for the District of Virginia.

1. A motion on behalf of the appellee to dismiss the appeal for want of jurisdiction on the ground of the decree's being interlocutory and not final.
2. A motion on behalf of the appellant for a supersedeas or for any suitable order prohibiting the court from proceedings on the decree while the appeal was pending.

The case was thus:

In the year 1854, two persons, James S. French and Walter Lenox, subscribed for the whole stock of the Washington & Alexandria Railroad Company, then recently incorporated by the State of Virginia. French taking three-fourths and Lenox one-fourth, and *French being made president of the company*. The road was built. French and Lenox, however, spent very little money of their own in its construction, but raised large sums by borrowing. When, therefore, the road was

built, the company was seriously embarrassed. Two deeds of trust had been executed in 1855, and in 1857 another deed was made to Lenox, as trustee, to secure bonds issued to raise money for the purposes of the road.

The civil war broke out when the road was in this condition, and French and Lenox went south and were disabled by the condition of the country and by the government's taking military possession of the road from asserting their title to the property.

During their absence, a proceeding was instituted in the Alexandria County Court for the removal of Lenox as trustee in the deed of trust to him, and this resulted in an order for such removal and for the substitution of one Stewart as trustee in his place. The new trustee proceeded in alleged conformity to the deed of trust to sell the railroad.

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Under the sale thus made, a new company was organized which assumed the name of the Washington, Alexandria & Georgetown Railroad Company, and the government having relinquished the road in 1865, this company took possession of it at once, and not long afterwards entered into a contract with the Adams Express Company in relation to the conveyance of express freight and the furnishing by the latter of means to work the road. This contract did not prove satisfactory, and by consent of both parties, a lease for ten years was made to two persons named Stevens and Phelps in May, 1866, and in the following June, another contract for means of operation and for the conveyance of express freight was made for ten years with the Adams Express Company.

Litigation soon arose upon this lease and upon these contracts. One Davison, asserting himself to be a stockholder of the Washington, Alexandria & Georgetown Railroad Company, filed his bill in the Alexandria County Court in November, 1866, alleging that the lease was made without authority, and in fraud of the rights of the stockholders, and praying that it might be set aside and annulled. The Adams Express Company filed its bill about the same time, in the Circuit Court of

the United States for the District of Virginia, praying for the enforcement of its contract with the company and with the lessees, and under that proceeding, an order was made by the circuit court for the appointment of receivers of the road, who took possession.

The Adams Express Company was not a party to the suit in the state court, nor was the Washington & Alexandria Railroad Company a party to the suit in the federal court.

The Washington & Alexandria Railroad Company describing itself as *that company by James S. French, its president*, had already in March, 1866 (the government having with the suppression of the rebellion, given up, as already said, its possession, and French and Lenox having returned from the South), filed its bill in the Alexandria County Court asserting its title to the road, charging fraud in the whole proceeding for the organization of the Washington, Alexandria

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& Georgetown Railroad Company, and praying that it might be declared void and that a decree might be made establishing its own original title to the road as unimpaired by that proceeding.

In this condition of conflicting claims, and with these and other suits pending, two instruments were executed with a view to adjust things between all the parties at issue, and who were the said French and Lenox, Stevens and Phelps, and one *Shoemaker*, representing the Adams Express Company. Two other persons, *viz.*, Brent and Smith, also had an interest.

The transaction vested in Shoemaker the interest of French in the Washington & Alexandria Railroad Company as security to himself and the Adams Express Company for the repayment of the \$5,000 then advanced, and the sums to be thereafter advanced in payment of the liabilities of the company, and of the lessees incurred on account of the road, and as security to all the parties for the performance of the covenants contained in the agreement, and especially for the reorganization of the company upon the rendering of a decree by the said

Alexandria County Court establishing its title to the road, and for the distribution of the stock of the company among the parties in the stipulated proportions. These instruments, which made what might be called a sort of settlement contract, were intended as an adjustment of controversies relating to the Washington & Alexandria Railroad Company so far as the parties to it were concerned and as an arrangement for means to liquidate its just liabilities and put it into successful and profitable operation. The decree, on the rendering of which the contract was to be carried into effect, was rendered in the said Alexandria County Court on the 28th of August, 1868. It declared the sale by the trustee, Stuart, and the organization of the new company fraudulent, null, and void, and ordered that on execution of a bond in a sum specified to account to creditors for the receipts of the road, it should be "restored" by the officers of the so-called new company "to the possession of the Alexandria & Washington Railroad Company, its

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duly constituted officers and agents." At the time of this decree, the road was in possession of the receivers appointed by the federal court at the suit of Adams Express Company.

In this state of things thus far completed, Shoemaker filed a bill in the court below, the Circuit Court for Virginia, against French, and French then filed a cross-bill against him. The original bill, after stating the rendering of the decree contemplated by the settlement contract, as just above mentioned, stating also the alleged equities arising from the contract, and the action of the parties to it, except French, charged that notwithstanding French's conveyance, and notwithstanding that a meeting had been held of all the parties to the contract to reorganize the road under the contract (he having been present), French, under color of the order of restoration, had executed a pretended bond in the sum specified in the order, as the bond required by the decree, and that he had ordered the clerk of the circuit court to issue a writ of possession ordering the restoration of the road and property of the company, and under color of this fraudulent and illegal proceeding had attempted to take possession of the road notwithstanding that it was at the time in possession of the receivers of the circuit court at the suit of the Adams Express

Company, represented by the complainant; charging further that French was so reckless of his obligation to him, the complainant, Shoemaker, and so determined to prevent the execution of the reorganization of the company that unless enjoined, he would damage the interest of the complainant and the others irreparably. The bill prayed that French be enjoined from attempting to do any act as president of the said Alexandria & Washington Railroad Company, and from intermeddling with the road and property of the company, or with the parties to the agreement, or with the complainant in carrying out its provisions, or from holding any meeting for the reorganization of the company, or from taking any proceedings at law or in equity for that purpose, except by proceedings in the suit in which the bill was filed in the Circuit Court of the United States for Virginia, or by attending the meetings for the

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purpose of such reorganization, and voting or using the interest he may have under the settlement, if he have any, for the quiet and proper object of the said meetings, *and that his said interest be sold by a commissioner of the court for the payment of said sum of \$5,000, according to the practice of the court,* and that the complainant, in his own behalf and as trustee of said parties to said agreement, have such other and further relief as his case and their interest might require.

The answer of French admitted the execution of the contract, and that he was then and for some time afterwards satisfied with it, but proceeded to allege circumstances of hardship and imposition under which he was induced to become a party to it and various other matters supposed to show a want of equity in the complainant.

The matters set up in the answer were again set up in the cross-bill of French, together with other matter of complaint, as grounds for his prayer that the settlement contract might be annulled, and the parties to it be restrained from all attempts to enforce any pretended rights under it. *The point too was taken in the cross-bill that Stevens and Phelps were necessary parties to the original bill.*

The answer of the original complainant to this bill denied every substantial allegation of fact on which relief against the contract was claimed.

The decree was thus made, Chase, C. J., presiding:

"This cause coming on to be heard upon the bill, answer, and replication, and upon the cross-bill, answer, and replication, and upon the proofs, and being maturely considered, the court is of opinion that *the equity of the case is with the complainant in the original bill*, and thereupon do order, adjudge, and decree that James S. French, the defendant in the original bill, be perpetually enjoined and restrained from any use of the name or title of the president of the Washington & Alexandria Railroad Company under any election to that office heretofore held, and from any action by himself or any attorney or agent to interfere with any proceeding for the reorganization of the said company under the contracts mentioned in said bill and dated on the 6th of December, 1867, and *from any proceeding whatever not in accordance*

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*with the said contracts*, without prejudice, however, to the right of the said French to the stock assigned to him by said contract or to assert any claim he may have against said company reorganized under said contract or against the said Shoemaker, or against the Adams Express Company not in contravention of the said contract, or to pursue by proper proceedings in law or equity any claim he may have in respect to the distribution of stock made in and by said contract founded upon the failure of consideration or other cause."

"It is further ordered, adjudged, and decreed that the said defendant, French, pay the costs in this cause, and leave is given to either party to apply at the foot of this decree for such further order as may be necessary to its due execution or as may be required *in relation to any matter not finally determined by it.* "

From this decree an appeal to this Court was immediately and within ten days asked for by French, and allowed by the Chief Justice, "upon the defendant's giving bond with good and sufficient security in the sum of \$500." The bond, &c.;

was given.

In this state of things, the bill and cross-bill in the equity suit, on which the decree has just above been given, having been, as the reader will have observed, a proceeding *between French and Shoemaker alone*, and the objection to the bill for want of proper parties taken and overruled, French began a suit in the Supreme Court of the District of Columbia against all the parties to the settlement contract except Shoemaker for the purpose of setting aside the agreement. His bill being demurred to because Shoemaker was not a party, and the demurrer being sustained, Shoemaker was added.

Hereupon, on the application of Shoemaker to the Circuit Court of Virginia, that court ordered French to dismiss his bill in the District and to stop proceedings under pain of imprisonment. He dismissed his bill.

It was in this state of things that the two motions mentioned at the opening of the report (on page 79 U.S. 87|87), came before this Court.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Accurate conclusions in motions like the present, involving important questions of practice, are essential to the correct administration of justice in all judicial tribunals exercising appellate powers, but they are especially so in this Court, whether the case is brought here from a State court or a circuit court, as the jurisdiction of the Court is special, and must in every case be tested by the Constitution and the laws of Congress.

Considerable importance is attached in this case to the motion for a supersedeas as well as to the motion to dismiss the appeal, but the Court, in view of the circumstances, will first examine the motion to dismiss, as it is in its nature preliminary, and if granted will render it unnecessary to examine the other motion.

On the sixteenth of November, 1868, the appellee filed a bill of complaint against the appellant in the Circuit Court of the United States for the District of Virginia setting up

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two written agreements therein described, and to which special reference is made as exhibited in the record. They are both of the same date. Without entering much into details, suffice it to say that one purports to be an assignment by the appellant to the appellee of all his right, title, interest, claim, and demand whatsoever in and to the property, stock, road, roadbed, franchise, and charter of the Alexandria & Washington Railroad Company for two specific purposes. (1) To secure the payment to the appellee of the sum of five thousand dollars advanced by the appellee to the appellant. (2) To carry into effect the purposes and objects set forth in the other written agreement. Both agreements are signed by the appellant, and upon the back of the one given to secure the payment of the money advanced is the following agreement and consent: "We, the undersigned, do hereby agree and consent to the terms and conditions of the within assignment," which expressly recites that it was executed to accomplish the two purposes already described. Reference to the record will show that the assignment is signed by the appellant and that the endorsement is signed by all the other parties supposed by him to have an interest in the assigned property.

Special reference is made in the instrument of assignment to the purposes and objects set forth in the other written agreement, in which it is stipulated in substance and effect as follows:

(1) That the appellant and Walter Lenox will convey all their right, title, and interest in that railroad company to a new corporation, to be formed as therein specified, or to devote all of that interest to the common benefit of the parties to the instrument, in the proportions therein specified, in case the old company should be revived.

(2) That they agree to assign to the new company, when the parties shall actually organize the same, all their interest as lessees of the Washington, Alexandria &

Georgetown Railroad, or to hold the same for the exclusive use of the parties to the agreement according to their respective interests.

(3) That the appellee, for himself and the Adams Express Company, covenants to aid the new company, with

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money and credits, to pay, settle, or compromise certain specified liabilities as set forth in the agreement. Certain other important conditions are also inserted in the instrument, but they are not material in this investigation.

Process was duly issued and served, and the appellant appeared and filed an answer setting up various defenses to the merits of the claim made by the appellee. Subsequent to the filing of the answer, the appellee filed the general replication, and the cause being at issue, proofs were taken by both parties. Before the final hearing, however, the appellant filed a cross-bill in which he insisted upon the defenses set up in the answer and also alleged that the other parties to the agreements were necessary parties to the bill of complaint. Due answer was made by the appellee to the cross-bill, and the appellant filed to the same the general replication.

Such being the state of the pleadings, the cause, on the twenty-first of June last, came on for final hearing "upon the bill, answer, and replication, and upon the cross-bill, answer, and replication, and upon the proofs," and the statement in the decree is that "the court is of the opinion that the equity of the case is with the complainant," and that the court

"thereupon do order, adjudge, and decree that James S. French, the defendant in the original bill, be perpetually enjoined and restrained from any use of the name or title of the president of the Washington & Alexandria Railroad Company, under any election to that office heretofore held, and from any action by himself or any attorney or agent to interfere with any proceeding for the reorganization of the said company under the contract mentioned in said bill, &c.;, and from any proceeding whatever not in accordance with the said contracts, without prejudice,"

as therein recited. Omitting the qualifications stated in the recitals, the decree continues as follows: "It is further ordered, adjudged, and decreed that the said defendant, French, pay the costs in this cause."

Final decrees in suits in equity passed in a circuit court,

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where the matter in dispute exceeds the sum or value of two thousand dollars exclusive of costs, may be reexamined in this Court, but the act of Congress does not define what is meant by the phrase "final decree." Objection is made that the decree is not final because it does not in terms dismiss the cross-bill, but the Court is of the opinion that the statement contained in the decree that the equity of the case is with the complainant by necessary implication disposes of the cross-bill as effectually as it does of the answer filed by the appellant to the original bill of complaint. Leave, it is true, is given to either party to apply at the foot of the decree for such further order as may be necessary to the due execution of the same or as may be required in relation to any matter not finally determined by it, but it is quite apparent that that reservation was superadded to the decree as a precaution, and not because the court did not regard the whole issue between the parties as determined by the decree. Such was doubtless the view of the chief justice who passed the decree, as the application for the appeal was made to him at the same term and was immediately granted without objection.

Several cases might be referred to where it is held that a decree of foreclosure and sale of mortgaged premises is a final decree and that the defendant is entitled to his appeal without waiting for the return and confirmation of the sale by a decretal order, upon the ground that the decree of foreclosure and sale is final as to the merits, and that the ulterior proceedings are but a mode of executing the original decree. [ [Footnote 1](#) ]

Unquestionably the whole law of the case before the court was settled by the chief justice in that decree, and as nothing remains to be done unless a new application shall be made at the foot of the decree, the Court is of the opinion that the decree

is a final one, as it has conclusively settled all the legal rights of the parties involved in the pleadings. [ [Footnote 2](#) ]

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2. Beyond all doubt, the appeal of the respondent in this case was allowed within ten days from the date of the decree, and the record shows that the bond to prosecute the writ to effect and answer all damages and costs if he fail to make his plea good was filed and duly approved within the same period, but it is denied by the appellee that the appeal operates as a supersedeas, because it is insisted that the bond given in the case is not in a sum sufficient to constitute indemnity for the whole amount of the decree.

Where the judgment or decree is for the recovery of money not otherwise secured, the indemnity must be for the whole amount of the judgment or decree, including just damages for delay and costs and interest on the appeal. [ [Footnote 3](#) ]

But in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, indemnity is only required in an amount sufficient to secure the sum recovered for the use or detention of the property and the other incidental items, as in cases where the judgment or decree is for money. What is necessary is that it be sufficient, and when it is desired to make the appeal a supersedeas, that it be filed within ten days from the rendering of the decree, and the question of sufficiency must be determined in the first instance by the judge who signs the citation, but after the allowance of the appeal that question, as well as every other in the cause, becomes cognizable here. It is therefore matter of discretion with the court to increase or diminish the amount of the bond and to require additional sureties or otherwise as justice may require. [ [Footnote 4](#) ]

All that is required in a case where the writ of error is not a supersedeas is that the bond shall be in an amount sufficient to answer the costs in case the judgment or decree is affirmed. Nothing appears in the record to show that the indemnity given is insufficient, and inasmuch as nothing appears

to the contrary, the Court is of the opinion that it must be presumed that the amount is sufficient.

Appeals and writs of error are constituted a supersedeas in certain cases by virtue of the twenty-third section of the Judiciary Act, when the conditions there prescribed are fulfilled. Where those conditions are complied with, the act of Congress operates to suspend the jurisdiction of the subordinate court and stay execution pending the writ of error or appeal and until the case is determined or remanded. [ [Footnote 5](#) ]

Power to issue a supersedeas to a decree in a subordinate court does not exist in this Court where the appeal was not taken and the proper bond given within ten days from the date of the order, except where an appeal was duly taken within ten days, and the aggrieved party is obliged to take a second appeal in consequence of the clerk below having neglected to send up the record in season, or where the granting of such a writ becomes necessary to the exercise of the appellate jurisdiction of the Court, as where the subordinate court improperly rejected the sureties to the bond because they were not residents of the district. [ [Footnote 6](#) ]

Appellate power in the controversy under consideration is conferred upon this Court, and it is clear that this Court may issue a supersedeas in such a case whenever it becomes necessary to the exercise of its appropriate jurisdiction. [ [Footnote 7](#) ]

Attention will now be called to the grounds of the motion for a supersedeas, as shown in the affidavit of the appellant. He states that he filed a bill in equity in the Supreme Court of this District against Oscar A. Stevens, George W. Brent, W. Jackson Phelps, Richard T. Merrick, J. Dean Smith, and Walter Lenox; that the respondents demurred to the bill on the ground that the appellee before the court was a necessary party respondent in the case, and that the court

where the bill was pending sustained the demurrer. Wherefore the appellant here amended his bill and made the appellee a party respondent.

Consequent upon those proceedings, as the affiant states, the Circuit Court for the District of Virginia laid a rule on him requiring him to appear in that court on a day named in the rule to show cause why he should not be fined and attached for the acts set forth in the petition and charged therein to be in violation of the aforesaid order and decree of the court below in this case; that he appeared and showed cause as required, but that the court there being of opinion that he had violated the decree in the case before the court by filing his bill in equity in the Supreme Court of this District, ordered that he forthwith dismiss the same and cease all proceedings under the same on pain of imprisonment, and that he, having no alternative but to go to jail or to submit to the order of the court, chose the latter and dismissed his bill of complaint. His views are that the circuit court erred in passing that order, and that that court gave an erroneous construction to the decree entered by the chief justice in the case, making it more comprehensive than its language will warrant, and he moves this Court to issue a supersedeas or other suitable order to correct those errors.

Suppose the theory of the appellant is correct that the circuit judge, in construing the decree, gave it a scope beyond its legitimate meaning, very grave doubts are entertained whether this Court, under the present motion, could afford the appellant any remedy, as the facts supposed would not show that anything bad been done to defeat or impair the appellate jurisdiction of this Court. Acts void in themselves may be done by the circuit court outside of the jurisdiction of the circuit court which this Court cannot reexamine. Authority does not exist in this Court to issue a supersedeas except in cases where it is necessary to the exercise of its appellate jurisdiction, but the Court is not inclined to rest its decision in this case upon that ground, as we are all of the opinion that the circuit judge did not err in his construction of the order and decree enjoining the appellant in that decree.

He is perpetually enjoined and restrained from any use of the name or title of the president of the company under any election to that office heretofore held, and from any action by himself or any attorney or agent to interfere with any proceeding for the reorganization of the company under the contracts or *from any proceeding whatever not in accordance with the said contracts*. More comprehensive language could hardly be employed, and argument can hardly make it plainer or add anything to its force or effect.

*Both motions denied.*

[ [Footnote 1](#) ]

*13 Pet. 15|Whiting v. Bank of the United States, 13 Pet. 15; 2 Black 524|Bronson v. Railroad, 2 Black 524.*

[ [Footnote 2](#) ]

*6 How. 202|Forgay v. Conrad, 6 How. 202; 7 Wall. 342|Thomson v. Dean, 7 Wall. 342; Curtiss' Commentaries § 188; 19 How. 283|Beebe v. Russell, 19 How. 283.*

[ [Footnote 3](#) ]

*9 Wheat. 553|Catlett v. Brodie, 9 Wheat. 553; 16 How. 135|Stafford v. Union Bank, 16 How. 135; 17 How. 275|Same v. Same, 17 How. 275.*

[ [Footnote 4](#) ]

*6 Wall. 156|Rubber Co. v. Goodyear, 6 Wall. 156; Rule 32; 10 Wall. 273|The Slaughterhouse Cases, 10 Wall. 273; 1 Stat. at Large 404.*

[ [Footnote 5](#) ]

*11 How. 295|Hogan v. Ross, 11 How. 295.*

[ [Footnote 6](#) ]

11 How. 296|*Hogan v. Ross*, 11 How. 296; 5 Wall. 188|*Ex parte Milwaukee Railroad Co.*, 5 Wall. 188; 2 How. 74|*Stockton v. Bishop*, 2 How. 74; 4 Wall. 640|*Hardeman v. Anderson*, 4 Wall. 640; 7 Cranch 279|*Wallen v. Williams*, 7 Cranch 279; 12 How. 389|*Saltmarsh v. Tuthill*, 12 How. 389.

[ [Footnote 7](#) ]

1 Stat. at Large 81; 2 How. 75|*Stockton v. Bishop*, 2 How. 75.

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