

Case No. 819.
[4 Dill. 558.]¹

BALMEAR v. OTIS.

Circuit Court, D. Iowa.

1877.

EQUITY—JURISDICTION—STATUTORY SUIT TO QUIET TITLE—LAW.

An action brought under the Iowa statute to quiet title, is, in its essence, an equity suit, and must be brought and heard as such.

[Sec Leggett v. Cole, 3 Fed. 332.]

This was an action at law, [by Herman Balmear against H. W. Otis,] under the Iowa statute, to quiet title. Demurrer to the petition on the ground that the remedy for the case stated in the petition was in equity. [Sustained.]

Wright, Gatch & Wright, for plaintiff. Mr. Richards, for defendant.

Before DILLON, Circuit Judge, and LOVE, District Judge.

DILLON, Circuit Judge. A proceeding under the Iowa statute to quiet title, is, in its essence, an equity suit in the federal courts, whether a particular case is one at law or equity, depends upon the case stated in the petition. If the case there made shows a mere contest of legal titles, and the defendant is in possession, the remedy is at law.

If the plaintiff is in possession, or if neither party is in possession, and the petition or bill shows that equitable relief is necessary or proper, the jurisdiction is in equity.

The statements of the petition in this case show that the case is equitable in its nature, and the demurrer thereto must be sustained. It must be heard as an equity suit, and not as an action at law.

Demurrer sustained.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]