

## CONNELL, Adm'r, etc., v. UTICA, U. &amp; E. R. Co. and others.

(Circuit Court, N. D. New York. July 28, 1882.)

## 1. REMOVAL OF CAUSE—ON GROUND OF CITIZENSHIP.

A cause is not removable under the first clause of section 2 of the act of March 3, 1875, unless all the parties on one side are citizens of different states from those on the other, and all the defendants must join in the petition.

## 2. SAME—SEPARATE CONTROVERSY.

A suit is not removable under the second clause of that section unless it is a separate controversy, wholly between citizens of different states.

## 3. REPEAL OF ACT OF 1866.

The second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

*S. H. Wilcox*, for plaintiff.

*J. H. Choate*, for defendant King.

BLATCHFORD, Justice. This suit was not removable under the first clause of section 2 of the act of March 3, 1875, because all the parties on one side of the controversy were not citizens of different states from those on the other, and also because all the defendants did not petition for removal. Nor was the suit removable under the second clause of that section, because there was not in the suit a separate controversy wholly between citizens of different states. To entitle a party to a removal under the second clause there must exist in the suit a separate and distinct cause of action, in respect to which all the necessary parties on one side are citizens of different states from those on the other. *Hyde v. Ruble*, 3 Morr. Trans. 516. The present case does not fall within that of *Barney v. Latham*, 103 U. S. 205. The decision of the state court, at the special and general terms, that the cause of action is entire, is a decision which it is proper for this court to follow, and it leads to the conclusion that there is but a single controversy in the suit, and that parties to the suit who are citizens of the same state with the plaintiff, are necessary parties to the controversy to which the plaintiff and the defendant King are parties.

The case of *Hyde v. Ruble*, *supra*, decides that the second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

The motion to remand is granted, with costs, to be taxed.

**SAHLGAARD v. KENNEDY and others.****STRICKER v. SAME.****MESSCHAERT v. SAME.***(Circuit Court, D. Minnesota. July 15, 1882.)***1. EQUITY—PARTIES—JOINT INTERESTS.**

While it may be that the holder of negotiable securities can at law maintain a suit in his own name, excluding equities under given circumstances, yet when joint parties seek to upset judicial decrees, charge trusts, and fasten supposed liens in consequence of joint interests, all of them should be before the court, that it may be known to what extent and in whose favor a decree may be had.

**2. SAME—INTERFERENCE WITH DECREES OF OTHER COURTS.**

Courts should judiciously refrain from interfering with the decrees of other courts, except when such interference or impeachment is plainly necessary.

The First Division of the St. Paul & Pacific Railroad Company, owning a line of railroad from St. Paul via St. Anthony to Watab, a distance of about 80 miles, known as its Branch Line, and a line of railroad from St. Anthony to Breckinridge, a distance of 207 miles, known as its Main Line, to each of which lines was attached a land grant consisting originally of 6 sections per mile, and subsequently increased to 10 sections, made the following trust mortgages:

On the *Branch Line*, a \$1,200,000 mortgage, dated June 2, 1862, and covering also the 6-section land grant; and a \$2,800,000 mortgage, dated October 1, 1865, covering also the entire 10-section land grant. On the *Main Line*, a \$1,500,000 mortgage dated March 1, 1864, and covering the first 150 miles of the railroad but not the land grant. A \$3,000,000 mortgage, also dated March 1, 1864, and covering the first 150 miles of road and the 6-section land grant appertaining thereto, which mortgage was by its terms made subordinate to the lien of the contemporaneous \$1,500,000 mortgage. A \$6,000,000 mortgage dated July 1, 1868, covering the entire Main Line of railroad, the additional 4-section grant appertaining to the first 150 miles, and the entire 10-section grant appertaining to the remaining 57 miles of the line. The bonds secured by the \$1,500,000 mortgage (and which had never been negotiated) were, pursuant to the terms of the \$6,000,000 mortgage, turned over to and held by the trustees of that mortgage, as additional security for the bonds secured by that mortgage.