

tained. As the questions arising upon this motion are important, affecting as they do a class of cases in this and other districts, it is desirable, of course, that a determination of them by the supreme court be had without unnecessary delay; and as they relate to the jurisdiction of the court, it is possible, under the recent rule of the supreme court, to have them decided by that tribunal at an early day.

BATES *v.* NEW ORLEANS, B. R. & V. R. Co.

(Circuit Court, N. D. New York. 1883.)

REMOVAL OF CAUSE—NOMINAL PARTIES—CITIZENSHIP.

Where the real contention is between citizens of different states, but some of the parties defendant, who are sued merely in their representative character as trustees, are citizens of the state where the suit is instituted, their citizenship ought not to be considered on the question of removal.

Memorandum of Decision.

Stanley, Clark & Smith, for the motion.

Alexander & Green, John F. Dillon, and William C. Gulliver, opposed.

COXE, J. The real contention in this case is between the plaintiff and the Louisiana corporations. The defendants McCook and Alexander, who are citizens of New York, are sued merely in their representative character as trustees. Their connection with the controversy is collateral and subsidiary to the main issue. No personal demand is made against them or either of them. Their presence on the record may be necessary to effectuate the relief sought by the plaintiff, but their citizenship ought not to be considered on the question of removal. *Bacon v. Rives*, 106 U. S. 99; [S. C. 1 Sup. Ct. Rep. 3;] *Pond v. Sibley*, 19 Blatchf. 189, 196; [S. C. 7 FED. REP. 129;] *Barney v. Latham*, 103 U. S. 205.

The motion to remand should be denied.

See *Deford v. Mehaffy*, 14 FED. REP. 181, and note, 182.

ANTELOPE Co. v. CHICAGO, B. & Q. R. Co.

(Circuit Court, D. Nebraska. May, 1883.)

1. JURISDICTION—CONSOLIDATION OF RAILROAD COMPANIES—CITIZENSHIP.

The Chicago, Burlington & Quincy Railroad Company, created under the laws of Illinois, was consolidated with the Burlington & Missouri River Railroad Company of Iowa, and subsequently entered into articles of consolidation with the Burlington & Missouri River Railroad Company in Nebraska, the latter being a Nebraska corporation, by a sale and transfer to it of the Nebraska road. *Held*, that the Chicago, Burlington & Quincy Railroad Company did not, under the Nebraska laws, become a domestic corporation, but remained an Illinois corporation for the purposes of the jurisdiction of the federal court.

2. SAME—FOREIGN CORPORATION—JURISDICTION.

Where the state does not assume by its legislation to create a corporation, or to require a foreign corporation to become domestic, but recognizes the existence of such foreign corporation and its right to come into the state and transact business therein, such foreign corporation remains a corporation of the state under whose laws it was created, and, for the purposes of the jurisdiction of the federal courts, a citizen of that state.

Plea to Jurisdiction of Court.

Mr. Munger, for plaintiff.

Mr. Marquett, for defendant.

McCARY, J. This case is before the court on a plea in abatement, raising the question whether the defendant is a corporation of Nebraska. The essential facts are as follows:

(1) The Chicago, Burlington & Quincy Railroad Company was originally created a corporation of the state of Illinois under the laws of that state.

(2) Afterwards said corporation was consolidated with the Burlington & Missouri River Railroad Company of Iowa, and thereby became the owner of a line of railway extending across that state from the Mississippi to the Missouri river, which has for a number of years been operated as a part of the Chicago, Burlington & Quincy Railroad, and as part of a through line from Chicago, Illinois, to the Missouri river. This consolidated company appears to have been regarded in the courts of Iowa as an Illinois corporation.

(3) On the first of January, 1880, the said Chicago, Burlington & Quincy Railroad Company and the Burlington & Missouri River Railroad Company in Nebraska—the latter being a corporation of Nebraska—entered into articles of consolidation. These articles provide—

“That for the purpose of consolidating the stock, property, and franchises of the parties hereto, and of making of said corporations one joint-stock company, which, as the lines of railroad of the respective parties hereto connect at the boundary line between the states of Iowa and Nebraska, may be done under the laws of said states and the contracts aforesaid, it is agreed as follows; that is to say: