

The only question there can be, therefore, in this case, is whether congress had the power to authorize the removal of a cause where there was one controversy between citizens of different states, and another between the plaintiff and some defendants who were citizens of the same state with him. No question seems ever to have been made by the courts as to the right of congress to pass such a law, and therefore I think the court will order the transcript to be filed and the case to be docketed in this court.

See *City of Chicago v. Hutchinson*, 15 FED. REP. 129.

LANGDON v. FOGG.

(Circuit Court, S. D. New York. July 16, 1883.)

1. REMOVAL—ACT OF 1875, § 2—SEVERABLE CONTROVERSY—MINING CORPORATION—FRAUDULENT ORGANIZATION.

An action against several defendants may be removed to the circuit court by one of them, against whom alone there is a separable controversy, which can be fully determined without the presence of the other defendants, no matter what additional controversies or grounds of action the complaint may contain.

2. SAME—MINING CORPORATION—FRAUDULENT ORGANIZATION—ILLEGAL ISSUE OF STOCK.

Where the trustees of a mining company, with \$10,000,000 nominal capital, at its organization issued all its stock as full-paid, in the purchase of certain mining property worth less than \$100,000, and then, in pursuance of a previous agreement with the grantor of the land, took back an assignment of all the stock to themselves, and paid to the seller of the property less than \$100,000, and then put the stock on the market as full-paid stock, and sold it for their individual account, some of which the plaintiff purchased, *held*, in an action brought by the plaintiff to compel the trustees individually to "account" for \$10,000,000, and also that each of them severally account for their profits on such sales of stock, that the complaint charged no joint account or community of interest in such sales or profits on stock sold, and that in respect thereto the controversy was severable, as neither, if accountable at all, could be held for the profits of the others, and the profits of each could be determined without the presence of the other defendants, and that the cause was, therefore, removable.

Motion to Remand.

John R. O'Donnell and *Grove M. Harwood*, for plaintiff.

E. F. Hyde, for defendant.

BROWN, J. This action was brought in the superior court of this city by the plaintiff, as a stockholder in the Silver Era Mining Company, in behalf of himself and all other stockholders. The company was organized as a corporation under the laws of this state in February, 1880, to have a capital of \$10,000,000, divided into 100,000 shares of \$100 each. The defendants in the suit are the corporation, and five individual defendants who are alleged to have been the trustees of the corporation at the time of its formation, and during the first year afterwards. Three of the defendants, as well as the plain-

off, are citizens of New York, where the main office of the corporation is also located. The suit was removed to this court upon the petition of the defendant Fisk, a citizen of New Jersey, under section 2 of the act of 1875, on the ground that the suit contains a controversy which is wholly between himself and the plaintiff, who are citizens of different states. A demurrer to the complaint was served by the defendant Fisk, on May 22, 1883, before the cause was at issue as to the other defendants; and at the June term, which was the first term of the superior court at which the issue of law upon the demurrer as to the defendant Fisk could possibly have been tried, the cause was removed to this court. It was, therefore, removed in due time, and the first ground for remanding cannot be sustained. *Johnson v. Johnson*, 13 FED. REP. 193; *Cramer v. Mack*, 12 FED. REP. 803; *Knowlton v. Congress, etc.*, 13 Blatchf. 170; *Forrest v. Keeler*. 17 Blatchf. 522; [S. C. 1 FED. REP. 459.]

2. The only other ground for the motion to remand is that the cause was not removable at all, because, as it is claimed, it does not contain any controversy which can be separately determined between the defendant Fisk and the plaintiff; and this involves an examination of the nature of the action. The complaint is in equity. In substance it alleges that the defendants, shortly after the organization of the company, and acting as its trustees, agreed with one Henry S. Sanders to issue to him as full-paid stock the whole of the capital stock of the corporation, in consideration of the conveyance to the corporation by Sanders of certain mining claims and property in Arizona, which were of no value for mining purposes, and of the actual market value of less than \$100,000, as the defendants knew; that shortly afterwards all of said stock was by Sanders turned over to the five individual defendants, or some of them, or to them and their associates and nominees, upon payment of the sum of \$46,666.67, as near as the plaintiff can ascertain, but at any rate not over \$100,000, and that this was done in pursuance of an agreement between the defendants and Sanders prior to the conveyance of the mining property; that the defendants thereafter, assuming to act in behalf of the corporation, by certificates of stock issued and circulated by them, represented to the public, including the plaintiff, that the stock was full-paid; that the plaintiff purchased his stock in the market as full-paid stock, relying on such representations; that after the issue of said stock as aforesaid the corporation had no means of developing and improving the property purchased, and, failing to work it, it had become forfeited and passed beyond the control of the corporation; that upon the purchase of plaintiff's stock a new certificate was issued to him for 100 shares as full-paid stock, upon his surrender of the former certificates.

The complaint then charges "that the individual defendants have individually sold the stock, or a portion thereof, so turned over to them, as aforesaid, and that said individual defendants have indi-