

WESTERN UNION TEL. Co. V. NATIONAL
TEL. Co. AND OTHERS.

Circuit Court, S. D. New York. March 6, 1884.

1. JURISDICTION OF FEDERAL COURTS—RIGHT OF
REMOVAL—CASE INVOLVING FEDERAL LAW.

A case may be removed to the federal courts whenever rights of the parties are alleged to depend in any way upon an act of congress, even though the act is only set up by way of defense, and though other questions not of a federal character enter into the controversy.

2. SAME—SEPARATE CONTROVERSY BETWEEN
CITIZENS OF DIFFERENT STATES.

Boyd v. Gill, 19 FED. REP. 145, followed:

Motion to Remand.

Dillon & Swayne, for Western Union Tel. Co.

Dorsheimer, Bacon & Steele, for Nat. Tel. Co. and

B. & O. Tel. Co.

P. B. McLennan, for N. Y. W. S. & B. Ry. Co.

WALLACE, J. Whether the complainant acquired any exclusive right as against the telegraph companies, the defendants, to build or maintain its lines upon the lands of the railway company; whether it acquired any easement not subject to a co-extensive easement in favor of the other telegraph companies; and whether any easement it may have acquired is of such characters would entitle it to compensation before the other telegraph companies can occupy the lands of the railway company with their lines, are all questions which may depend upon the force and effect of the act of congress of July 24, 1866, and arise under the issues presented by the pleadings. The suit was therefore properly removed from the state court as a controversy arising under the laws of the United States. Cases arising under the laws of the United States, within the meaning of the removal act, are such as grow out of the legislation of congress, whether they constitute the

right, claim, protection, or defense, in whole or in part, of the party by whom they are asserted. If a federal law is to any extent an ingredient of the controversy by way of claim or defense, the condition exists upon which the right of removal depends, and the right is not impaired because other questions are involved which are not of a federal character. *Cruikshank v. Fourth Nat. Bank*, 16 Fed. Rep. 888; *Mayor v. Cooper*, 6 Wall. 247-252; *Railroad Co. v. Mississippi*, 102 U. S. 135. The motion to remand is denied.

The defendant the Baltimore & Ohio Telegraph Company, has also removed the suit upon its separate petition, alleging that there is a controversy which is wholly between it and the complainant citizens of different states. Within the recent decision of this court in *Boyd v. Gill*, 19 FED. REP. 145, such a separate controversy is not disclosed by the pleadings. See also *Peterson v. Chapman*, 13 Blatchf. 395. So far as the removal has been effected upon this petition the suit should be remanded.

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