

taken upon the subject, I have deemed it best to lay aside all technical objections to the informal manner in which the matter has been presented, and to ascertain, if possible, whether the defendants have sustained their allegations by their proofs. After a careful examination of the testimony furnished, I am of the opinion they have not sustained them. The most that has been done is to show that some of the officials of a rival company, with which the complainant has close business relations, have been friendly and active in giving him aid in the preparation of his case. I have never understood that a lawsuit is of such an exclusive and sacred character that parties may not have the sympathies and accept the aid of associates and friends in carrying it on without subjecting themselves to the charge of collusion.

2. With regard to the second point, the learned counsel, on the argument, took even a wider range than the testimony, and much time was spent in the discussion of questions that more appropriately belong to the final hearing. I do not propose to follow them now. Without intending to intimate any opinion on the merits of the controversy, it is sufficient for my present purpose to say, that, looking at the bill, answer, and affidavits, which furnish to the court the evidence on which to act on the question of a preliminary injunction, I find no circumstances existing and no facts developed which, in my judgment, authorize me to interfere, at this stage of the proceedings, by ordering such an injunction to issue.

The motion is therefore denied, but without prejudice to the complainant to renew it if any subsequent acts of the defendants, before final hearing, should render its renewal necessary or proper.

FERRY v. TOWN OF WESTFIELD.

(Circuit Court, W. D. Wisconsin. December Term, 1883.)

JURISDICTION—CITIZENSHIP.

Ferry v. Town of Merrimack, 18 FED. REP. 657, followed, and cause remanded to state court.

Decision Remanding Cause to the circuit court of Sauk county.

James G. Flanders, complainant's solicitor.

H. W. Chynoweth, defendant's solicitor.

BUNN, J. This cause was argued and submitted upon general demurrer to the complainant's bill. But in the examination of the case there appears upon the face of the bill a certain defect of jurisdiction, which will render it unnecessary to remand the cause to the state court. The suit is brought by William F. Ferry, a citizen of Illinois, against the defendant, a citizen of Wisconsin, upon a claim arising upon a

non-negotiable contract between the defendant town and the Chicago & Northwestern Railway Company, also a citizen of Wisconsin, and who assigned the claim to the plaintiff. The plaintiff is therefore suing upon a contract, his title to which is derived through a formal written assignment from a resident of the same state with the defendant, and who was itself incorporated by virtue of section 1 of the act of March 3, 1875, to maintain a suit thereon in the federal court.

The question was before us and decided in the case of the same plaintiff against the town of Merrimack, at the present term of this court, where the same defect appeared in the record. And we beg leave to refer to that decision for the grounds of the opinion that this court cannot take cognizance of such a case, whether originally brought here, or begun in the state court and afterwards removed to this court on the application of the plaintiff.

The case will be remanded to the circuit court of Sauk county, Wisconsin, from where it came to this court.

HARLAN, J., concurs.

SHARP *v.* WHITESIDE and others.

WHITESIDE *v.* SHARP.¹

(Circuit Court, E. D. Tennessee, S. D. October 1, 1883.)

1. JURISDICTION—REMOVAL OF CAUSE—DISSOLVING PRELIMINARY INJUNCTION GRANTED IN STATE COURT.

A circuit court of the United States has no revisory power over the chancery court of a state, but when, before removal of a cause from the state court, an *ex parte* preliminary injunction has been granted, it may in a proper case dissolve such injunction.

2. PRIVATE PROPERTY USED FOR PARK—CONTRACT TO EXCLUDE PERSONS NOT BROUGHT BY CERTAIN PARTY—TAX ON PROFITS—INJUNCTION.

The owner of what is known as the Point of Lookout mountain, a favorite resort on account of the extended view therefrom, who was also the owner of a chartered turnpike which was a regular toll road leading up the mountain nearly to the Point, inclosed her ground as a park and charged an entrance fee from visitors. Subsequently she entered into a contract with a certain party, by the terms of which he was to carry all passengers over her turnpike instead of over another route leading to the Point, and was to have the exclusive privilege of bringing or conveying persons into the park. Complainant, who was engaged principally in the business of carrying visitors to and from the park, sought to enjoin the owner from refusing admission thereto to such parties carried there by him as might tender the usual admission fee. *Held*, that the fact that the park had long been a popular resort for sight-seers, that an admission fee was charged, and that a tax was imposed by the state on the owner for the privilege of keeping a park, did not render the use to which the property was devoted a public use, or change the character of the property, and that the court could not invade the rights of the owner and enjoin her

¹See S. C., *ante*, 150.