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 character as 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.

CARDWELL *v.* AMERICAN RIVER BRIDGE CO.

(*Circuit Court, D. California.* March 3, 1884.)

NAVIGABLE RIVERS—UNSETTLED QUESTION OF STATE AND FEDERAL POWERS.

The supreme court of the United States, in the case of *Escanaba Co.* v. *Chicago*, 2 Sup. Ct. Rep. 187, determines that the control of "rivers wholly within the bounds of a state" is held by the legislature thereof, until the congress of the United States passes some act assuming control for the national government. In the *Wheeling Bridge Case*, 13 How. 519, the same court held that the mere confirmation by congress of a compact theretofore made between Kentucky and Virginia, relative to keeping open the Ohio river, was tantamount to an act assuming such control. Under these two decisions, *quære* whether such navigable rivers of California are within the control of that state, or have been removed therefrom by the act of congress admitting it into the Union, which act contains these words: "All navigable rivers within the state of California shall be common highways and forever free, as well to the inhabitants of that state as to the citizens of the United States, without any tax, duty, or impost therefor." Decided (*pro forma*) the latter.

Escanaba Co. v. *Chicago*, 2 Sup. Ct. Rep. 187, and other cases reflecting on the matter in discussion, noted and commented upon, and their various distinguishing points mentioned.

In Equity.

Scrivener & McKinney, for complainant.

H. O. & W. H. Beatty and *J. B. Haggin*, for defendant.

SAWYER, J. This case is clearly within the rule as laid down in the *Wallamet Bridge Case*, 7 Sawy. 127; S. C. 6 FED. REP. 326, 780. If that case can be sustained in the broad terms of the rule stated, then the demurrer in this case should be overruled. Since that decision was rendered, the supreme court of the United States has decided the case of *Escanaba Co.* v. *Chicago*, 107 U. S. 679, S. C. 2 Sup. Ct. Rep. 185, which defendant insists overrules the principle announced in the *Wallamet Bridge Case;* that, under the clause of the act admitting Oregon into the Union, the state has no power to authorize the construction of bridges over the navigable waters of the state which shall materially obstruct their navigation. It must be admitted, I think, that there is language in the opinion that favors that view; and I am by no means certain that the court did not intend to go as far as its broadest language indicates. It is sought to distinguish this case from the *Chicago Bridge Case.* If it can be distinguished, it must be on the following grounds: In the *Blackbird Creek Case*, 2 Pet. 245, arising in Delaware, the *Schuylkill Bridge Case*, 14 Wall. 442, in Pennsylvania, and all others since decided, following the decisions in those cases, it was held that congress, under its authority to regulate commerce and establish post-roads, had power to control, for those purposes, the internal navigable waters of the various states; that as soon as congress legislates in regard to any such navigable waters, its power becomes exclusive and the states cannot afterwards authorize any material obstruction to their navigation; but, till congress acts, the legislature of any state has the power to authorize the ob-