

struction of some provision of the constitution, laws, or treaties of the United States, and the application thereof to the facts of the particular case, in such sense that the ruling thus made will materially affect the conclusion reached upon the controversy between the adversary parties to the litigation. Unless from the record it clearly appears that the federal question must be met and decided before the issue or issues in the particular cause can be finally disposed of, it cannot be said that the matter in dispute arises under the constitution or laws of the United States, within the meaning of the statute."

A decision by Justice BREWER in the case of *Cheesman v. Shreve*, 37 Fed. Rep. 36; in a case very similar to the one at bar, has been cited as an authority supporting the opposite contention. From the brief report of the facts considered by the court in that case I am not able to say whether it conflicts with the oft-repeated decisions of Judge SAWYER or not; but, even if it does, I should feel bound to give greater weight to the decisions of the judge, who, if now present, would be entitled to preside, and according to whose opinion the judgment herein would be entered, even if I should hold to the contrary.

Let a judgment be entered herein sustaining the demurrer, and dismissing the case for want of jurisdiction.

MURRAY v. BLUEBIRD MIN. Co., Limited.

(Circuit Court, D. Montana. February 4, 1891.)

TRANSFER OF CAUSES FROM TERRITORIAL COURTS.

A written request to transfer a cause which was pending in a territorial court to the United States circuit court for the district of Montana, not filed until after the parties have voluntarily appeared in a state court and contested a motion in the case, and after compliance with an order made by the state court, is too late to be effective in transferring the cause to the circuit court.

(Syllabus by the Court.)

In Equity.

Wm. Scallon and F. W. Cole, for plaintiff.

Vaile & Wolcott, W. W. Dixon, M. Kirkpatrick, and Forbis & Forbis, for defendant.

HANFORD, J. This case is in all material respects similar to the case of *Murray v. Mining Co.*, ante, 385, (just disposed of,) and must take the same course. True, it is contended that the facts are different for that the plaintiff, upon whose petition the order to transfer the case was made, was not the moving party in any other proceeding in the state court. The record shows, however, that he did voluntarily appear in the state court, and resist a motion to require him to give additional security against damages by reason of an injunction granted by the territorial court, and that in obedience to the order of the state court he did afterwards file therein an additional bond. Upon familiar principles, by thus voluntarily appearing and contesting a point in the state court,

the plaintiff has submitted to its jurisdiction of his person, and, as there can be no question as to the jurisdiction of that court of the subject-matter, I am bound to hold that full and perfect jurisdiction in the state court had attached before the filing of any written request to transfer the cause to this court.

BLUEBIRD MIN. Co., Limited, v. MURRAY *et al.*

(Circuit Court, D. Montana. February 4, 1891.)

REMOVAL OF CAUSES—TRANSFER FROM TERRITORIAL COURTS.

The twenty-third section of the act of congress, providing for the admission of Montana and other territories into the Union, provides for the direct transfer from the territorial courts of causes pending therein to the successors of said courts, and does not authorize the removal under any circumstances of a cause from a state court to a United States circuit court.

(*Syllabus by the Court.*)

In Equity.

Vaile & Wolcott, W. W. Dixon, M. Kirkpatrick, and Forbis & Forbis, for plaintiff.

Wm. Scallon and F. W. Cole, for defendants.

HANFORD, J. Upon a motion to remand this cause to the district court for the second judicial district of the state of Montana, counsel have with earnestness and ability argued the questions as to whether this case is one arising under the constitution and laws of the United States, and whether, considering its origin and previous history, it is a case of which this court can take jurisdiction.

I am constrained to decide that the court is without jurisdiction, and to remand the cause to the state court, which in my opinion is the only court having, at the present time, power to take cognizance of it; and I do so without considering the subject of the controversy. The case was commenced in September, 1889, in a district court of the territory of Montana, and the pleadings were made complete in that court. After the state government of Montana had become operative, the defendants made an application to the district court of the second judicial district of the state for relief from the binding obligation of a restraining order granted by the territorial court, which application, after a hearing of affidavits and arguments in behalf of the parties on both sides, was granted, and from that order the plaintiff appealed to the supreme court of the state. The defendants appeared in the supreme court, and moved to dismiss the appeal, not on the ground that the district court had not acquired jurisdiction of the cause in due course of procedure, as successor of the territorial court, but solely on the grounds (1) that the supreme court had no jurisdiction of the appeal or case; (2) that the order sought to be appealed from was not appealable; and (3) that no exception was taken to said order, and there was no bill of exceptions