BENNETT v. DEVINE.

(Circuit Court, S. D. Iowa, W. D. April 22, 1891.)

1. REMOVAL OF CAUSES—JURISDICTIONAL AMOUNT—COUNTER-CLAIM.
Where the amount claimed in a petition is not sufficient to allow the cause to be removed to a federal court, damages claimed in a counter-claim cannot be added thereto, so as to make out the jurisdictional amount.
2. SAME.
Though the amount of the counter-claim is of itself equal to the jurisdictional amount, defendant, having as to such claim voluntarily invoked the jurisdiction of the state court, cannot claim the right of removal.

Motion to Remand.

P. P. Kelly and *F. W. Miller*, for plaintiff.

Flickinger Bros. and *Shirley Gilliland*, for defendant.

SHIRAS, J. The plaintiff, a citizen of Iowa, brought this action in the district court of Mills county, Iowa, to recover damages in the sum of $1,950 against the defendant, a citizen of the state of Ohio. The defendant, appearing in the action, filed a counter-claim, seeking to recover damages against the plaintiff in the sum of $3,000, and then filed a petition in this court, asking a removal of the cause on the ground of local prejudice, the petition averring on its face that the amount in controversy was the sum of $4,950. The order of removal was granted, and, the transcript having been filed, the plaintiff moves for an order remanding the cause. From the transcript it now appears that the averments in the petition for removal, that the amount involved in the controversy was $4,950, can only be sustained by adding the sums claimed in the original petition and in the counter-claim. When the action was first brought it was based upon a cause of action for $1,950. This controversy has not been changed, and it still remains a controversy involving only $1,950, and no more; and hence this court cannot take jurisdiction thereof. Defendant has an independent and distinct cause of action, and the damages therein claimed cannot be added to the amount involved in the cause of action declared on by plaintiff in order to make out the jurisdictional amount. The case cannot, therefore, be properly removed by reason of the controversy presented in the action as it stood when the original petition was filed. So far as the counter-claim is concerned, the party seeking the removal is the plaintiff therein, and the right of removal does not exist in favor of a plaintiff or party who has voluntarily invoked the jurisdiction of the state court. The case is remanded at the costs of the defendant.

LAND & RIVER IMP. CO. *v.* BARDON.

(*Circuit Court, W. D. Wisconsin.* March 11, 1891.)

1. FEDERAL COURTS—JURISDICTION—STATE STATUTES.
An action under St. Wis. § 3186, enlarging the equitable remedies of quieting title and removing clouds, may be brought in a federal court.

2. TAX-DEEDS—STATUTE OF LIMITATIONS.
The statute of limitations does not in the case of a tax-deed preclude inquiry as to whether a tax was levied, or, if levied, whether by competent authority, or whether the tax has been paid; but, barring these questions, the recording of a tax-deed valid on its face prevents any inquiry into the validity of the deed, or the regulating of the tax proceedings, after the lapse of the statutory period of limitations.

3. TAXATION—SALE IN SEPARATE TRACTS.
Where a quarter section of land is owned by one person, the assessment and sale thereof as a whole is not in violation of a statutory provision that land shall be assessed and sold in separate tracts.

4. REGISTRATION OF DEEDS—INDEX.
Rev. St. Wis. 1858, c. 13, § 142, provides that every register of deeds shall keep a general index, each page of which shall be divided into eight columns, with certain heads to the columns. Section 143 provides that the register shall make correct entries of every instrument received for record under the respective and appropriate heads, and the same shall be considered as recorded at the time so noted. *Held* that, though an index was imperfect, still, where there was nothing misleading about it, and it furnished all the information that an ordinarily prudent man would want to send him to the full record of the deed, it was sufficient.

In Equity.

Pinney & Sanborn, (*F. W. Downer, Jr.*, of counsel,) for complainant.

W. F. Bailey, (*Silverthorn, Hurley, Ryan & Jones*, of counsel,) for defendant.

BUNN, J. This suit in equity is brought under a provision of the statute of Wisconsin, (section 3186,) the complainant being in possession of land, to bar the title of the former owner, and compel him to release. The provision is this:

"Any person having the possession and legal title to land may institute an action against any other person setting up a claim thereto, and, if the plaintiff shall be able to substantiate his title to such land, the defendant shall be adjudged to release to the plaintiff all claim thereto, and to pay the costs of such action, unless the defendant shall, by answer, disclaim all title to such land, and give a release thereof to the plaintiff, in which case he shall recover costs, unless the court shall otherwise order. It shall be sufficient to aver in the complaint in such action the nature and extent of the plaintiff's estate in such land, describing it as accurately as may be, and that he is in possession thereof, and that the defendant makes some claim thereto, and to demand judgment that the plaintiff's claim be established against any claim of the defendant, and that he be forever barred against having or claiming any right or title to the land adverse to the plaintiff," etc.

There can be no doubt that this statute constitutes a considerable enlargement of the ordinary equitable action to quiet title to land and to remove a cloud; and it is seriously contended by the defendant that the remedy so provided cannot be available to suitors in these courts, being an innovation upon the settled rules of equity jurisdiction in such cases. But this contention can hardly be sustained. It is well enough