

in that court successfully, on his being taken into that court adversely more than six years ago."

But the court could not relieve from the hardship, and the judgment had to be reversed for want of jurisdiction, and the cause remanded to the state court. The benefit of a reasonable doubt should never be given to a practice that protracts and fosters litigation and multiplies costs. The sound rule on this subject is stated by Judge LOVE in *Kessinger v. Vannatta*, 27 Fed. Rep. 890. That learned and experienced judge said:

"It is the constant practice of this court to remand causes brought here from the state courts in cases of doubtful jurisdiction. The reason of this practice is obvious and conclusive. In the first place, the jurisdiction of the state court is unquestionable. It is, at least, concurrent with this court. But the jurisdiction of this court depends upon special facts, and it is in the present case, to say the least, doubtful. It is the safer and wiser course to send a cause for trial to a court of unquestionable jurisdiction, rather than retain it here, and go through all the forms of trial, when the jurisdiction is doubtful."

It is needless to say the case at bar is not a doubtful one. It is perfectly clear it must be remanded, and it is so ordered.

The defendant the Missouri Pacific Railway Company will be required to pay the costs of removal, including all the costs incurred in the cause in this court.

CARSON v. DONALDSON *et al.*

OGLE v. SAME.

(Circuit Court, D. Washington, W. D. March 4, 1891.)

On Petition for Removal.

Galusha Parsons, for plaintiff.

Thad. Huston, W. S. Beebe, and Watson, Hume & Watson, for defendants.

HANFORD, J. These cases were commenced in a territorial district court, and were pending when the state of Washington was admitted into the Union, and were transferred to this court by order of the superior court of Pierce county, upon a petition of one of the defendants, Samuel Coulter, a citizen of the state of Oregon, showing as ground for the jurisdiction of this court that there is involved in each of the cases a separate controversy between himself and plaintiffs, who are now citizens of the state of Washington, and who were at the time the cases were commenced residents of the territory of Washington. The attorney for the plaintiffs has contended that there is no separate controversy between the plaintiffs and the defendant Coulter, and on that ground alone has

questioned the jurisdiction of this court. I have heretofore decided this point adversely to the plaintiffs, for reasons not now necessary to reiterate. But now, although counsel on both sides have in argument supported the contrary view, I am of the opinion that the court has no jurisdiction of the case, there being no ground of jurisdiction shown other than the diverse citizenship of the parties. My reasons for this decision are stated in the opinion just filed in the case of *Nickerson v. Crook*, ante, 658.

Let an order be entered upon the court's own motion, remanding the case to the superior court of Pierce county.

CHADBOURN *et al.* v. COE *et al.*

(Circuit Court, D. Minnesota, Third Division. May 4, 1891.)

FRAUDULENT CONVEYANCES—PARTIES.

A bill in equity against a trustee to subject property alleged to have been fraudulently conveyed to him cannot be sustained when the debtor is not a party, and complainant has no judgment against him, but merely alleges indebtedness upon promissory notes.

In Equity. Demurrer to bill, for defect of parties.

In September, 1889, Reuben W. Chadbourn, now deceased, filed his bill in equity in this court against Orlen P. Whitcomb and James N. Coe. After the death of Reuben W. Chadbourn the action was revived in the name of the complainants herein. The said Reuben W. Chadbourn was at the time of the filing of the bill, and the present complainants now are, residents and citizens of the state of Wisconsin. The defendant Coe is a resident and citizen of the state of Minnesota, and the said Orlen P. Whitcomb is a resident and citizen of the state of Colorado. Whitcomb filed a plea in abatement, alleging that he was at the time of the filing of said bill, and now is, a citizen of the state of Colorado, and alleging that this court had no jurisdiction over his person or the subject-matter. Said plea has been sustained by this court, and Whitcomb is out of the case.

The bill alleges that Orlen P. Whitcomb is indebted to the complainants in a sum exceeding \$5,000, exclusive of costs, and that the debt is evidenced by Whitcomb's three promissory notes. No judgment has been obtained against Whitcomb. It is alleged that Whitcomb is insolvent, and has been so since 1875; that since about 1883 he has been a resident and citizen of the state of Colorado, and absent from the state of Minnesota; that complainants cannot procure a judgment against him in any action at law in the courts of the state of Minnesota, or in the United States circuit court of said state of Minnesota, to collect said notes; that jurisdiction cannot be had by the service of process on Whitcomb in any action at law in said courts to collect said notes or to pro-