BUSHNELL v. PARK BROS. & CO., Limited.

(*Circuit Court, S. D. New York.* May 1, 1891.)

REMOVAL OF CAUSES—CITIZENSHIP—JOINT-STOCK COMPANY.

A joint-stock association, limited, created under Act Pa. June 2, 1874, (P. L. 271,) having some of the characteristics of a partnership and some of a corporation, including the right to a common seal, ownership of property, real and personal, by the association, and the right to sue and be sued by the corporate name, is a new artificial person, and as much a citizen of Pennsylvania as a corporation organized under its laws, and, when sued in a New York court, is entitled to removal to the federal court, irrespective of the citizenship of its individual members.

On Motion to Remand.

Parsons, Shepard & Ogden, for plaintiff.

Arnoux, Ritch & Woodford, for defendant.

LACOMBE, Circuit Judge. This motion must be determined upon the facts as they now appear. Section 5 of the judiciary act of 1875, as amended by the judiciary act of 1887. Defendant is organized under the laws of Pennsylvania. Act June 2, 1874, (P. L. 271.) If it were a corporation, it would therefore be a citizen of that state, and, so far as appears, a non-resident of this district. If it be not a corporation, but a limited partnership, then it does not appear that its members are citizens of a state or states different from that of which plaintiff is a citizen, and jurisdiction of a federal court over the matter in dispute is not shown. Whether associations formed under the constitution and laws of a particular state are legally corporations or not, is a question in answer to which the decision of the highest court of the state will be accepted as conclusive. *Secombe* v. *Railway Co.*, 23 Wall. 108. The supreme court of Pennsylvania, (1889,) commenting upon this statute, and the organizations formed under it, has held that when such organization "is called into life by the organic act, [recording the certificate of organization,] the promoters cease to act as individuals or as partners in the common business, but through the name and upon the credit of the joint-stock association;" and that the statute has "created a new artificial person, to be called a 'joint-stock association,' having some of the characteristics of a partnership and some of a corporation." *Hill* v. *Stetler*, 127 Pa. St. 145, 13 Atl. Rep. 306, and 17 Atl. Rep. 887. Among these characteristics of a corporation are included the right to a common seal, ownership of property, real and personal, by the association, and the right to sue and be sued by the corporate name. Act of June 2, 1874, supplement and amendments. See, also, *Patterson* v. *Pipe Co.*, 12 Wkly. Notes Cas. 452. For the purposes of this suit the defendant must therefore be considered to be a Pennsylvania corporation, and as such had the right to remove.

Motion for remand is denied.

PATON *et al. v.* MAJORS.

(*Circuit Court, E. D. Louisiana.* May 7, 1891.)

1. EQUITY—ADEQUATE REMEDY AT LAW.
   Where it appears that complainants bought cotton of defendant, that defendant's agent who weighed it had an annual contract with him, guarantying him against loss by overweights, by which contract the agent was led to report weights which were, without defendant's knowledge, excessive, so that, though both complainants and defendant were innocent, there was paid to defendant a large sum in excess of the amount due for the cotton actually sold and received, the complainants' remedy at law is perfect by action for money had and received, and equity will not take jurisdiction.
2. SAME—DISCOVERY.
   Semble, since under Rev. St. U. S. § 869, either party may call the other as a witness, and, by *subpœna duces tecum*, require him to produce books and papers, the complainant cannot give jurisdiction to a court of equity, in a proceeding where his remedy is otherwise perfect at law, by asking for a discovery.

In Equity. On demurrer to bill.

Farrar, Jones & Kruttschnitt, for complainants.

Thomas J. Semmes, for defendant.

BILLINGS, J. The case is submitted on a general demurrer to the bill of complaint. It being conceded that since the federal statute, (Rev. St. § 869,) which allows either party to call the other as a witness, and to require him, under a *subpœna duces*, to produce any papers or documents which are in his possession, takes away from the complainants any help which, without the statute, might have been theirs from regarding the bill as one of discovery, the question turns wholly on whether the complainant has, as to the case made by the bill, independently of discovery, an adequate remedy at law. The cause of action stated in the bill is that the complainants bought of the defendant a large quantity of cotton, that the agent of the defendant, who weighed the cotton, had an annual contract with the defendant, guarantying him against loss by false weights, by which contract he was led to report weights which were, without defendant's knowledge, excessive, so that, both the complainants and the respondent being innocent, there was paid $4,200 to the defendant in excess of the amount due for the true amount of cotton sold and received, to recover which amount, with the aid of the discovery, the suit is brought. The cause of action, then, is the excess of price of cotton sold which was paid and received through the fraud of the defendant's, the vendor's, agent. Under our Code it would be a suit to recover a sum paid through error. But this cause of action has a definite name and place in the common-law actions. It would be classed with those actions falling under the head of *assumpsit* for money had and received. 1 Chit. Pl. p. 100; *Dana* v. *Kemble*, 17 Pick. 545. The fact that it was for a fraud would not of itself bring it within the cognizance of a court of equity. There must be some additional circumstance which must be found among those recognized as conferring equity jurisdiction. It is an action simply to recover money for a fraud, and it lacks all of those circumstances which give equity jurisdiction. In *Buzard* v. *Hous-*