

CARPENTER v. CHICAGO, M. & ST. P. RY. CO.

(Circuit Court, N. D. Iowa. September 24, 1891.)

REMOVAL OF CAUSES—PRACTICE.

Where a petition, supported by affidavits, for the removal of a cause from a state to the federal court, on the ground of local prejudice or influence, has been legally granted, the filing of the transcript in the federal court in accordance with the order of removal merely takes the case there for trial, and does not give plaintiff a right to file affidavits, denying the existence of local prejudice, in support of a motion to remand, and to compel the court to re-examine the question; but, before such issue can be made, leave of the court must be first obtained. Ordinarily the first hearing and determination will be held final.

At Law.

Rickel, Crocker & Christie, for plaintiff.

Mills & Keeler, for defendant.

SHIRAS, J. From the record in this cause it appears that the action was brought in the district court of Linn county, Iowa, the plaintiff being a citizen of the state of Iowa, and the defendant a corporation created under the laws of the state of Wisconsin. A petition was filed in due season in this court by the defendant, supported by affidavits, praying for an order removing the case into this court, on the ground of the existence of local prejudice and influence. This court found the showing thus made to be sufficient, and granted an order for the removal of the cause. The transcript having been filed in this court, the plaintiff filed a motion to remand, supported by affidavits, denying the existence of local prejudice or influence, and now seeks to have the court reconsider its finding and ruling upon that question. There can be no doubt that, under the ruling made by the supreme court, in *Re Pennsylvania Co.*, 137 U. S. 451, 11 Sup. Ct. Rep. 141, this court was justified in granting the order for removal upon the showing submitted to it. The showing then made was sufficient to legally satisfy the court of the truth of the allegations contained in the petition for removal. The order of removal was, therefore, properly made, and the cause was rightfully removed. The filing of the transcript in accordance with the order of removal brought the case here for trial, not for a re-examination of the grounds upon which the order of removal was based. It is not open, under such circumstances, as a mere matter of right, to the plaintiff to file affidavits denying the existence of local prejudice, and thus to compel the court to re-examine that question. Of course if, upon the face of the record, it appeared that jurisdiction did not exist, a motion to remand would be entirely proper; but, if the purpose is to have the court retry the question of fact already determined in granting the order of removal, then, before such issue can be made, leave of court must be first obtained for such purpose. It is possible that in extreme cases, and where it may be true that the court has been imposed upon in some matter connected with the hearing and granting of the order of removal, a re-examination of the question of fact may be allowed; but ordinarily the

one hearing and determination, although *ex parte*, will be held final. When a party makes a sufficient showing under the statute, and obtains an order of removal, no good purpose can be subserved by permitting a war of affidavits to be entered upon, touching the existence or non-existence of local prejudice or influence. The motion to remand is overruled.

NORTHERN PAC. R. CO. v. ST. PAUL, M. & M. RY. CO. *et al.*

(Circuit Court, D. Minnesota, Third Division. October 3, 1891.)

1. JUDGMENT—RES JUDICATA—DISMISSAL "WITHOUT PREJUDICE."

In a suit by a railroad company to recover a large quantity of lands claimed by it, the decree, as to all such lands not awarded by it to the plaintiff, dismissed the bill, without prejudice to the right of said plaintiff to institute and prosecute other suits or proceedings for establishing its right to said lands. *Held*, that this gave the railroad company the right to bring another suit in equity to establish its right and title to such lands, although its bill in such new suit on its face showed no better or greater equitable right to the land than was set up in the former suit.

2. INJUNCTION.

Pending such former suit, the land being in demand for settlement, the parties had made a stipulation agreeing upon a special commissioner, subject to the approval of the court, to take possession of and sell, under the terms of the stipulation, all lands in dispute in that suit; and such commissioner had in the depository of the court a large sum, proceeds of such sales, which, under the stipulation, would be turned over to the defendant in that suit. *Held* that, as the bill in the second suit showed a primary equity in such lands and their proceeds, and the commissioner was a party defendant thereto, an injunction should be granted therein to prevent the transfer, payment, etc., of any moneys, credits, contracts, etc., derived from the sale of the lands claimed therein, notwithstanding defendant's alleged pecuniary responsibility to pay any decree that might be obtained.

3. RECEIVERS.

It further appeared that the control of the special commissioner over such fund would cease when the mandate in the former suit should be executed, and that he had in his hands contracts for the unpaid purchase price of lands sold by him. *Held*, that a receiver of such property should be appointed.

In Equity. On motion for injunction, etc.

F. M. Dudley, James McNaught, J. H. Howe, and John C. Bullitt, Jr., for complainant.

Geo. B. Young and Thomas R. Benton, for defendants.

NELSON, J. A bill is filed by the Northern Pacific Railroad Company, asserting title to certain lands claimed by the defendant company, the St. Paul, Minneapolis & Manitoba Railway Company, which lands are embraced within the indemnity limits of the complainant's railroad under congressional land grants. Other parties are made defendants, and an injunction is prayed for, and such other relief in the premises as is just and equitable. In 1875 a suit was instituted by this complainant seeking to recover a large quantity of land, including the land claimed in this bill of complaint, and proceeded to final decree in the circuit court for this district. The quantity of land being large, and in demand for settlement, a stipulation was made and entered into, and filed