

These citations sufficiently show that the point considered was different from the present, for in the last case it was directly adjudged that where the parties stand in the same relation as in the present case the court had jurisdiction of the action, the motion to remand being denied. On referring to the act of congress itself, there seems to me no doubt of the jurisdiction in the present case, since it is expressly provided that "where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." This is a clear qualification of the language immediately preceding, and authorizes suit in the circuit court of the district where the plaintiff resides, when, as in this case, the jurisdiction is founded only on the fact that the action is between citizens of different states. The provision of the statute itself seems to me so clear that it is unnecessary to refer to the extreme inconvenience of any different construction. Motion denied.

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INDEPENDENT DISTRICT OF ROCK RAPIDS *v.* BANK OF ROCK RAPIDS *et al.*

(Circuit Court, N. D. Iowa, W. D. November 9, 1891.)

REMOVAL OF CAUSE—PARTIES—CANCELLATION OF JUDGMENTS.

When a judgment is recovered by a bank against an independent school-district, and the latter issues orders for the payment thereof, which orders the bank transfers to a third person, the transferee claiming to be the owner, the bank, as well as the transferee, is a proper party defendant to a bill to cancel the judgments, and, when a resident of the same state with the plaintiff, the cause is not removable to the federal courts.

In Equity. Bill to cancel judgments on ground of illegality of consideration. Motion to remand to state court.

*McMillan & Van Wagenen*, for complainant.

*J. M. Parsons and James H. Crase*, for defendants.

SHIRAS, J. This suit was brought in the district court of Lyon county, Iowa, the purpose of the bill being to obtain the cancellation of two judgments in favor of the Bank of Rock Rapids and against the complainant. From the allegations of the bill, it appears that, after the rendition of these judgments, the independent district issued orders for the payment thereof upon the treasurer of the district, and these orders have been delivered or transferred by the bank to John N. Richards, and the latter-named party now claims to be the owner of the judgments. Under these circumstances, it cannot be questioned that both the Bank of Rock Rapids and John N. Richards are at least proper, if not necessary, parties to a bill brought for the purpose of canceling the judgments and orders drawn on the treasury of the district, for illegality alleged to inhere in the judgments. There is not involved in the bill separable and distinct controversies, there being in fact but one issue, to-wit, are the judg-

ments void for illegality; and, although the relation of the defendants to this issue may be different, in that the bank is the party in whose name the judgment was rendered, and Richards is the assignee thereof, yet the controversy presented by the bill as to both defendants is one and the same, to-wit, can the judgment be vacated for fraud and illegality? There being but one controversy, and the defendants being proper parties thereto, it follows that this court has not jurisdiction, because the Bank of Rock Rapids, one of the defendants, and the complainant are both corporations created under the laws of Iowa, and therefore, for jurisdictional purposes, are deemed to be citizens of Iowa.

Motion to remand is granted, at cost of the defendant John N. Richards.

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INDEPENDENT DISTRICT OF ROCK RAPIDS v. MILLER *et al.*

(Circuit Court, N. D. Iowa, W. D. November 9, 1891.)

In Equity. Motion to remand.

*McMillan & Van Wagenen*, for complainant.

*J. M. Parsons and James H. Crase*, for defendants.

SHIRAS, J. This cause is remanded to state court, at cost of *William Jacobson*, for the reason that part of the defendants are citizens of Iowa, and there is not a separable controversy in the case on behalf of Jacobson. See opinion in *Same Plaintiff v. Bank of Rock Rapids*, 48 Fed. Rep. 2.

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MORGAN *et al.* v. HUGGINS *et al.*

(Circuit Court, N. D. Georgia. July 6, 1891.)

1. COSTS OF ADMINISTRATION—PLEADING.

When, in a suit in a federal court to annul a will, the administrator, without objection, files an amended answer, alleging that the complainants have attempted by litigation in this and the state courts to have the will declared void, and have thus required large sums to be paid out as counsel fees, costs, and expenses, which are debts against the estate, and that these items are properly chargeable against undivided property, etc., this is sufficient to warrant the court in deciding upon what part of the estate these expenses are chargeable.

2. SAME—CHARGEABLE UPON UNDEVIDED ESTATE.

Where a will names but a single legatee, and the court decides that the devise to him does not carry after-acquired real estate, the costs of the administration and the debts of the estate are chargeable upon such undivided lands, under Code Ga. § 2533, which classes the "necessary expenses of administration" with the debts of the estate, and section 2534, making debts chargeable upon undivided estate when not otherwise specially provided by the will, and when there is no residuary clause.

In Equity. Bill by Morgan and others, as assignees of certain heirs at law of Riley Garrett, to restrain H. H. Huggins, his administrator,