

This answer is a substitute for the common-law plea in abatement, and only differs from it in name.

Section 193 provides: "If no objection be taken by either demurrer or answer, the defendant shall be deemed to have waived the same, excepting," etc., not including defects of parties. *Lee v. Wilkes*, 27 How. Pr. 336; *Pavisich v. Bean*, 48 Cal. 364.

The judgment is reversed, and the case is remanded for a new trial.

CAMPBELL v. SILVER BOW BASIN MINING CO.

(Circuit Court of Appeals, Ninth Circuit. January 25, 1892.)

ACTION TO RECOVER POSSESSION OF REAL PROPERTY.

By the law of Oregon, which is in force in Alaska, a person in possession may maintain an action to recover possession of real property from which he has been ousted by a mere intruder.

(Syllabus by the Court.)

Error to the District Court of the United States for the District of Alaska.

At Law: Action of ejectment by Archibald Campbell against the Silver Bow Basin Mining Company. From a judgment sustaining defendant's demurrer to plaintiff's complaint, plaintiff brought error. Reversed.

C. S. Johnson and John G. Heid, (W. S. Wood, of counsel,) for plaintiff in error.

Before DEADY, HAWLEY, and MORROW, District Judges.

DEADY, District Judge. This action is brought to recover the possession of a dump claim for mill tailings, situate in Harris mining district, in the district of Alaska.

It is alleged, in the amended complaint, that the claim does not contain five acres, and is of no value, either as agricultural or mineral land; that the plaintiff is the owner in fee of the mining claim known as the "Fuller First Lode," situate in Silver Bow basin, in the district aforesaid, which is very valuable for the gold it contains; that the plaintiff, for the purpose of mining said lode, has built a quartz-mill, and located and appropriated said dump claim, which is about 1,150 feet south of said quartz-mill, and worth more than \$5,000, and is essential to the proper working of said lode; that while the plaintiff was so possessed and entitled to the possession of said dump claim the defendant entered upon the same, and ousted plaintiff therefrom, and still wrongfully withholds the possession thereof from the plaintiff.

There was a demurrer to the complaint, which was sustained by the court. The case is here on error, for review of the decision on the demurrer. There is no opinion of the court below in the record, nor is there any brief or appearance of counsel for the defendant.

Upon the facts stated in the complaint, and admitted by the demurrer, the plaintiff is entitled to recover. He appears to have had, at least, possession of the claim, and the defendant ousted him without a shadow of right, and is, in fact, a naked trespasser.

The laws of the state of Oregon govern this procedure, (23 St. p. 25,) and by them any "person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action at law." Hill's Comp. 1887, § 316.

In *Wilson v. Fine*, 14 Sawy. 38, 38 Fed. Rep. 789, it was held, in the United States circuit court for the district of Oregon, that a person in the possession of real property might maintain this action to recover the same against a mere intruder or wrong-doer.

The judgment of the court below is reversed, and the cause is remanded for further proceedings in accordance with this opinion.

In re BOYD.

(Circuit Court of Appeals, Eighth Circuit. January 25, 1892.)

1. HABEAS CORPUS—SUBSTITUTE FOR WRIT OF ERROR.

A writ of *habeas corpus* cannot be used as a mere substitute for a writ of error, but will only be issued if applied for to relieve from imprisonment under the order or sentence of some inferior federal court, when such court has acted without jurisdiction, or has exceeded its jurisdiction, and its order is for that reason void.

2. SPIRITUOUS LIQUORS—INTRODUCTION INTO INDIAN COUNTRY—INFORMATION.

An information lodged with a United States commissioner charged the accused with "introducing ten gallons of beer into the Indian country, the same being then and there spirituous liquor, in violation of section 2189, Rev. St. U. S." *Held*, that introducing spirituous liquor into the Indian country was an offense under section 2189; that the commissioner had jurisdiction of such offenses, and the power to determine if beer was a spirituous liquor; and that his decision on that question could not be reviewed on a writ of *habeas corpus*.

Appeal from the United States Court in the Indian Territory.

Application by Silas J. Boyd for a writ of *habeas corpus*. The writ was denied, and he appeals. Affirmed.

W. B. Johnson and *C. B. Stuart*, for appellant.

Before CALDWELL, Circuit Judge, and SHIRAS and THAYER, District Judges.

THAYER, District Judge. This is an appeal from an order of the United States court in the Indian Territory, denying an application for a writ of *habeas corpus*. An information appears to have been lodged with a United States commissioner¹ in the Indian Territory, which was intended to charge the appellant with the commission of an offense under section 2139, Rev. St. U. S. The commissioner issued a warrant, and, after an arrest and hearing in due form, committed the accused in default of bail for trial before the United States court in the Indian Territory. Thereupon the

Albert Rennie.