

UNITED STATES v. SOUTHERN PAC. R. Co. *et al.*

(Circuit Court, N. D. California. February 14, 1892.)

1. CIRCUIT COURTS—JURISDICTION—PRESUMPTIONS.

The federal circuit courts possess no powers except such as the constitution and acts of congress concur in conferring, and the presumption is that every case is without their jurisdiction until the contrary affirmatively appears.

2. SAME—RESIDENCE OF PARTIES.

Act Cong. March 3, 1887, requiring suits in which the federal jurisdiction is founded only on diversity of citizenship to be brought in the district of the residence either of the plaintiff or the defendant, does not apply to suits brought by the federal government, since it is present everywhere within the territorial limits of the United States. The only restriction with respect to such suits is that they shall be brought in the district of which the defendant is an "inhabitant."

3. SAME—CITIZENSHIP OF CORPORATIONS—"INHABITANCY."

While, under the acts respecting the jurisdiction of the federal courts, a corporation is a "citizen" only of the state under whose laws it was organized, yet, with respect to the district in which it may be sued, under Act Cong. March 3, 1887, a railroad or telegraph company, chartered either by a state or the United States, is an "inhabitant" of any state in which it operates its lines and maintains offices for the transaction of business.

In Equity. Suit by the United States against the Southern Pacific Railroad Company, the Southern Pacific Company, the Atlantic & Pacific Railroad Company, and the Western Union Telegraph Company. Heard on pleas and motion to dismiss. Overruled.

Atty. Gen. Miller and Charles H. Aldrich, for the United States.

Charles H. Tweed, J. Hubley Ashton, and Harvey S. Brown, for the Southern Pacific Railroad Company and the Southern Pacific Company.

Pillsbury, Blanding & Hayne, Wm. C. Hazledine, and John J. McCook, for the Atlantic & Pacific Railroad Company.

Wager Swayne and Rush Taggart, for the Western Union Telegraph Company.

HARLAN, Circuit Justice.¹ This case is under submission on pleas and motions to dismiss, which contest the jurisdiction of this court to proceed *in personam* against such of the defendants, not corporations of California, as are not before the court otherwise than by service of process upon their agents in this district. On this question there is such conflict in the decisions of the circuit courts that it is proper to examine it as if now for the first time presented. It depends upon the interpretation that may be given to the act of March 3, 1887, defining the jurisdiction of the circuit courts of the United States. 24 St. p. 552, c. 373; 25 St. p. 433, c. 866. Before looking at the provisions of that act, it will be well to inquire as to the nature of this suit.

By the act of congress of August 7, 1888, known as the "Telegraph Act," it is provided that all railroad and telegraph companies to which the United States has granted any subsidy in lands, bonds, or loan of credit, for the construction of either railroad or telegraph lines, and which

¹Mr. Justice HARLAN heard this case under special commission issued by Mr. Justice FIELD, pursuant to section 617 of the Revised Statutes, and by consent of the parties.

are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating such railroad telegraph lines—

"Shall forthwith and henceforward, by and through their own respective corporate officers and employes, maintain and operate, for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants, as aforesaid." 25 St. p. 882, c. 772, § 1; 12 St. p. 489, c. 120; 13 St. p. 356, c. 216.

This suit was brought pursuant to that act, its fourth section declaring:

"That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act, and of the several acts to which this act is supplementary, it is hereby made the duty of the attorney general of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation."

The Southern Pacific Railroad Company is a corporation organized under the laws of California, entitled, it is alleged, in respect to its railroad, to all the rights and privileges granted, and subject to all the conditions prescribed, by the acts of congress relating to the Atlantic & Pacific Railroad Company, and to be treated as if its railroad and telegraph line had been constructed as a part of the main line of that company.

The Southern Pacific Company is a corporation of Kentucky, but it has no property or business in that state, nor any officer or agent there, except an assistant clerk, holding a subordinate position, and maintained for the purpose of preserving the charter of the company under the laws of that commonwealth. The company has a large amount of property in California, and is operating lines of railroad in this district. Its general offices are, and for many years have been, in San Francisco, where its principal executive officers reside. The bill alleges that the Southern Pacific Railroad Company claims to have transferred to this company all its property, real, personal, and mixed.

The Atlantic & Pacific Railroad Company is a corporation organized under an act of congress approved July 27, 1866, with authority to construct a line of railroad and telegraph; and to carry on its business, in this state and elsewhere. 14 St. p. 292. Its general officers reside here, and at the commencement of this suit it was operating its railroad and maintaining offices in California.

The Western Union Telegraph Company is a New York corporation, owning a large amount of property and engaged in operating lines of tel-