

within its limits; for it may not unreasonably be assumed that it will exert its powers there during the whole of its corporate existence, or so long as it is profitable to do so. It does there just what it would do if it had received its charter from that state. It seems to the court that a corporation of a state, or a corporation of the United States, holding such close relations with the business and people of another state, may, within a reasonable interpretation of the act of 1887, be deemed an "inhabitant" of the latter state for all purposes of jurisdiction *in personam* by the courts held there; although a corporation is, and, while its corporate existence lasts, must remain, a "citizen" only of the state which gave it life.

It is ordered and adjudged that the pleas and motions to dismiss, so far as they question the jurisdiction of this court to proceed *in personam* against the several defendant corporations, as inhabitants of this district, within the meaning of the above act of congress, be, and the same are hereby, overruled.

UNITED STATES v. CENTRAL PAC. R. CO. et al.

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

In Equity. Suit by the United States against the Central Pacific Railroad Company, the Southern Pacific Company, and the Western Union Telegraph Company. Heard on pleas and motions 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 Central Pacific Railroad Company and the Southern Pacific Company.

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

HARLAN, Circuit Justice. The questions presented in this case do not differ in any material respect from those disposed of in the case of *U. S. v. Railroad Co.*, 49 Fed. Rep. 297. For the reasons given in the opinion in that case, it is ordered and adjudged that the pleas and motions to dismiss, so far as they question the jurisdiction of this court to proceed *in personam* against the several defendant corporations, as inhabitants of this state and district, be, and the same are hereby, overruled.

CHENEY *et al.* v. BACON.

(Circuit Court of Appeals, Eighth Circuit. February 8, 1892.)

APPEAL—ASSIGNMENTS OF ERROR.

Where the assignment of error is based on an allegation of fact which the record shows to be without foundation, the decree will be affirmed.

Appeal from the Circuit Court of the United States for the District of Nebraska.

Suit by Solon Bacon against Prentiss D. Cheney and Annette Cheney for specific performance. Decree for complainant. Defendants appeal. Affirmed.

Prentiss D. Cheney, for appellants.

Samuel P. Davidson, for appellee.

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

CALDWELL, Circuit Judge. This is a suit in equity, commenced by the complainant, Bacon, against the respondents, Cheney and wife, to compel the specific performance of a contract to convey a quarter section of land in Johnson county, Neb. The suit was begun in the state court, and removed to the circuit court by the respondents. The contract was executed by Cheney on the 2d day of March, 1880. It recites that he contracts, bargains, and agrees to sell the land (describing it) to the complainant at the price of \$1,120, and that \$200 of that sum has been paid, and the balance is to be paid in 10 annual installments, each for \$92 and interest, for which notes were executed, which are described in the contract. Upon the payment of the purchase money and interest in the time and manner provided, the respondent was to execute a deed conveying the land to the complainant. The contract stipulated "that no assignment of the premises or of this contract shall be valid unless with the written consent of the first party, and by indorsement of the assignment hereon." It was declared that time was the essence of the contract; that "no court shall relieve the said second party from a failure to comply strictly and literally with this contract;" and, upon the failure of the purchaser to comply strictly with his engagements under the contract, all his rights thereunder were to be forfeited. The bill alleges payment of the purchase money in the time and manner required by the contract, and prays that the respondents be required to execute and deliver to complainant a deed for the land. The court below entered a decree in conformity to the prayer of the bill. The proof shows the purchase money was paid, as alleged in the bill, and that the complainant has been in possession of the land for a long time, and has made valuable improvements thereon. The answer set up only this defense:

"This defendant, further answering, avers the fact to be that the complainant sold and transferred the possession and rights of possession to the land named in complainant's bill of complaint on or about the 22d day of February, v.49f.no.5—20