

rule to be, "if the plaintiff has a cause of action in tort or upon contract against several defendants, which is joint, or, being joint and several, is declared on jointly by the plaintiff, the defendants cannot, by tendering separate issues in their answers, create separable controversies, so as to authorize a removal of the cause." But the plaintiffs here cannot, by joining entirely separate and distinct causes of action, some legal and some equitable, upon each and every bill of lading, upon each and every policy of insurance, and upon the contract of the compress company, severable alike, also, as to themselves, so that each and every marine company has each and every cause of action all to itself upon all these contracts, possessing not one single element of joint right or joint liability among them all, defeat the federal jurisdiction over any one of them, where the conditions of the removal act are complied with in time, and any of the proper defendants make the application. Overrule the motion.

NOTE. I find upon re-examination of the record that the "C. V. & C. Line" is attached as a non-resident under the Tennessee Code, and garnishments were issued on that attachment. But it is still plain that this garnishment of the fire companies was only incidental to the suit as against the C. V. & C. Line, and did not at all affect the fact that the fire companies are made parties on their own account, and are sued in that capacity. The fact that they are also garnishees as to a co-defendant, and occupy this dual relation to the record, does not in any sense change the attitude of the case in this matter of the removability of the suit. If they were discharged as garnishees on their answer to that process that they owed nothing, they would still, on this record, be parties to the suit, and would be compelled to answer such decree for contribution or other relief as might be given against them.

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CASEY v. VASSOR *et al.*

(Circuit Court, D. Nebraska. July, 1882.)

**PUBLIC LANDS—JURISDICTION OF LAND OFFICERS.**

The courts will not, by reason of their jurisdiction of the parties to a cause, determine their respective rights to enter or purchase from the United States a tract of the public land, when the controversy between them remains pending before the land department of the government; nor will they pass a decree that will render void a patent when issued. *Marquez v. Frisbie*, 101 U. S. 478, applied.

**In Equity.** On demurrer to bill.

The complainant in her bill alleges that she is a *bona fide* settler upon 80 acres of the public land situated within the Sac and Fox reservation in Richardson county, Neb.; that she became an actual settler and occupant upon said land with the intent of purchasing from the United States, and becoming the owner thereof, under an act of congress authorizing its sale, approved August 15, 1876, (19 St. p. 208;) that said land was duly appraised, as required by said statute, at \$5 per acre; that complainant, on the 21st day of June, 1878, made the requisite proof before the register and receiver of the land office at Beatrice, Neb., and that she then paid to the receiver of said land office the sum of \$133.34, being the first payment of one third of the purchase price, and thereupon she was allowed to enter said land, and received from said officer a certificate

showing the said facts. The bill proceeds to aver the making of improvements and other facts tending to show that complainant was "an actual settler" within the meaning of the statutes. It is further averred that on the 26th of August, 1879, the defendant Vassor served complainant with notice that he would contest her right to enter said land, and that afterwards a trial was had before the register and receiver, who decided in complainant's favor, and held that she was an actual settler; and that thereupon said Vassor appealed from said ruling to the commissioner of the general land office at Washington, by whom the decision below was reversed, and it was declared that Vassor had the right to enter the land. It is alleged that Vassor was not an actual settler, and had no right to enter the land, and that the decision of the commissioner of the general land office was incorrect, and not sustained by law; that complainant has fully complied with the law, and the respondent Vassor has not; that since the commencement of this suit respondents have paid one or more installments upon the land, and now unjustly claim that one or both have the exclusive right to purchase, and that they have expelled complainant from the land, and that defendant Vassor has executed a deed conveying said land to defendant Quinlan, who is charged with notice of complainant's rights. It is not alleged that a patent has been issued to either claimant. The prayer is for decree that complainant has the first, sole, and exclusive right, as against defendants, to enter and become the purchaser of said land, and that whatever right the respondents may have is subordinate and subject to her rights, and held by them simply as trustees for her, and that they be ordered to convey, etc.

C. Gillespie and E. W. Thomas, for complainant.

Manderson & Congdon, for respondents.

McCrary, Circuit Judge. This case falls clearly within the principle announced by the supreme court of the United States in *Marquez v. Frisbie*, 101 U. S. 473. It is there held, in a case very analogous to the one before us, that a court will not, by reason of its jurisdiction of the parties, determine their respective rights to a tract of land which are the subject-matter of a pending controversy in the land department, nor will it pass a decree which will render void a patent when it shall be issued. Relief in that case was refused because it appeared—"First, that defendants had not the legal title; second, that it was in the United States; and, third, that the matter was still *in fieri*, and under the control of the land officers." For the same reason we must refuse relief in the present case. The effect of a decree, if one were rendered in accordance with the prayer of the bill, would be to interfere with the officers of the government while in the discharge of their duties in disposing of the public lands, and this the courts will not do. *Litchfield v. Register*, 9 Wall. 575; *Gaines v. Thompson*, 7 Wall. 347; *Secretary v. McGarahan*, 9 Wall. 298; *Marquez v. Frisbie*, *supra*. It is unnecessary to determine the question whether the decision of the land department that complainant was not an actual settler is the decision of a question of fact, and, in the absence of fraud, final and conclusive. The demurrer to the bill is sustained.

**BARLING *et al.* v. BANK OF BRITISH NORTH AMERICA.***(Circuit Court of Appeals, Ninth Circuit. April 23, 1892.)***1. STATE LEGISLATION—SUITS IN NATIONAL COURTS.**

The act of the California legislature of April 1, 1876, entitled "An act concerning corporations and persons engaged in the business of banking," does not prohibit such corporations or persons from maintaining actions in the national courts, nor has the legislature the power so to do; nor does the act apply to business done by a foreign corporation without the state.

**2. NOTE PAYABLE TO BEARER**

A note made by a California corporation payable to itself and indorsed in blank, and delivered to another, is a note payable to bearer; and a foreign corporation, which subsequently becomes the holder thereof, may maintain an action thereon in the national court, sitting in California, against a citizen thereof, and may also maintain such action against such citizen who is a stockholder in such corporation, on the ground of his statutory liability for the debts of the corporation, even if said note is payable to order.

**3. JURISDICTION.**

A party against whom a judgment is rendered in a district or circuit court may take the case to the supreme court directly on the question of jurisdiction, if the same is at issue, or to the circuit court of appeals on the whole case, and the court of appeals may, if it sees proper, certify any question arising therein to the supreme court.

46 Fed. Rep. 357, affirmed.

*(Syllabus by the Court.)*

Error to the Circuit Court of the Northern District of California.

At Law. Affirmed.

*Daniel Titus*, for plaintiffs in error.

*Carter P. Pomeroy*, for defendant in error.

Before McKENNA and GILBERT, Circuit Judges, and DEADY, District Judge.

DEADY, District Judge. On April 5, 1888, the Alaska Improvement Company, a corporation formed under the laws of California, drew three bills of exchange on William T. Coleman & Co., citizens of the state of California, payable to itself, the first two in 60 days, and the third in 90 days, after date, for the sum of \$2,740, \$2,500, and \$4,000, respectively, and on the same day indorsed the same in blank, and, before maturity thereof, transferred and delivered the same to said Coleman & Co., who subsequently, and before maturity thereof, in consideration of the amount of the face of said bills, paid them by the plaintiff, transferred and delivered the same to it in the state of Oregon; and on April 27, 1888, said bills were duly accepted by said Coleman & Co., who failed to pay them, upon due presentation for that purpose, of all which the Alaska Company had notice and neglected to pay the same.

On April 8, 1890, this action was commenced in the circuit court by the plaintiff against the defendants Barling and Eva, citizens of California, and stockholders of said Alaska Company, under section 322 of the Civil Code of California, which provides that—

"Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares