

the assignee in bankruptcy, occupies no different position in this respect from any other third person.

The syndic asks that the property be taken away from the attaching creditor, and delivered over to him to be distributed pro rata among all the creditors, on the ground that the statute of congress required a dissolution of the attachment. The answer to this is that a judgment maintaining the attachment stands now between the syndic and this property. The very force of the judgment in a case where there has been an attachment under our law gives the plaintiff the right of having his judgment satisfied out of the proceeds of the property in preference to other creditors, who were to be paid in the order of the date of their attachments. 1 Hen. Dig. verbo "Attachment," § 11, par. 8, p. 148. My opinion, therefore, is that the plaintiffs, Muser Bros., have a prior right to the fund in the registry of the court by virtue of their judgment maintaining their attachment. The judgment must be accordingly.

---

WHITTLE et al. v. ARTIS et al.

SAME v. BOOKWALTER.

(Circuit Court, S. D. Ohio. May 12, 1893.)

1. EJECTMENT—ACTION BY TENANTS IN COMMON—NECESSARY PARTIES.

One or more tenants in common may sue in ejectment to recover their undivided interest without joining all their cotenants.

2. SAME—OBJECTION TO JURISDICTION—DISMISSAL AS TO CERTAIN PLAINTIFFS—RIGHT TO PROCEED.

An action of ejectment, in which partition at law was also sought, was begun in the circuit court for the southern district of Ohio,—some of the plaintiffs being citizens and residents of Virginia; others, of Maryland; and two, of the District of Columbia. All the defendants were citizens and residents of the southern district of Ohio. On defendants' objection the joinder of citizens and residents of the District of Columbia as parties plaintiff was held to be fatal to the jurisdiction of the court. On plaintiffs' motion the action was dismissed without prejudice as to the residents of the District of Columbia, as was also so much of the action as sought partition, leaving the action pending as an action in ejectment by the remaining plaintiffs. *Held*, that the remaining plaintiffs were entitled to proceed with the action, and that it need not be dismissed by reason of the objection to the jurisdiction.

3. SPECIAL APPEARANCE—EFFECT—JURISDICTION.

The court being without jurisdiction of the action, as originally brought, the service of summons was ineffectual, and, defendants having appeared specially for the purpose of objecting to the jurisdiction, the remaining plaintiffs could proceed in the case only by obtaining new summons and service.

At Law. These were actions of ejectment. The first-entitled case arose in the eastern division, and the second in the western division, of this district. They are now heard together on motions to dismiss. Denied on terms.

Matthews & Cleveland, for plaintiffs.

R. A. Harrison and W. H. West, for defendants.

SAGE, District Judge. These cases involve the same questions. They are in ejectment against cotenants for an undivided interest in lands. Some of the plaintiffs are citizens and residents of Virginia, and others, of Maryland. In each petition, as it originally stood, partition at law was also sought, and Jane Barr and her husband, David Barr, citizens and residents of the District of Columbia, were joined as plaintiffs; all the defendants being citizens and residents of the southern district of Ohio. Upon the defendants' objection, under a special appearance for that purpose only, this joinder was held to be fatal to the jurisdiction of this court. Thereupon, on motion of the plaintiffs, the action was dismissed without prejudice as to Jane Barr and David Barr, as was also so much of the action as related to partition of the real estate described in the petition. These dismissals left the actions pending as actions in ejectment by the remaining plaintiffs. Now the objection is made that the case cannot proceed on their behalf only, and it presents the questions whether, by reason of the objection to the jurisdiction, the actions must be dismissed, and whether all the tenants in common are necessary parties to the action. They were necessary parties to the action for partition. But that action, although joined with the action in ejectment, was separable and independent, and might be, as it was, dismissed without prejudice, and without affecting the jurisdiction of the action in ejectment. If Mrs. Barr and her husband, as plaintiffs in the action in ejectment, could be dismissed therefrom, and the action still be maintained, the action could proceed; otherwise, it must be dismissed. Jane Barr and her husband are not necessary parties to the action in ejectment. At common law, tenants in common cannot join, but must sever, in separate demises, in a declaration in ejectment. Chit. Pl. § 71. A tenant in common recovers only his aliquot part or share. *Mobley v. Bruner*, 59 Pa. St. 481; *Minke v. McNamee*, 30 Md. 294; *Jones v. Walker*, 47 Ala. 175. Two or more tenants in common may sue in ejectment, or any one may sue alone for his share. *Tilden v. Tilden*, 13 Gray, 108; *Bush v. Bradley*, 4 Day, 303; *Penrod v. Danner*, 19 Ohio, 218; *Shepard v. Ryers*, 15 Johns. 501. I see no necessity for a dismissal, but service of summons in an action over which the court at the time has no jurisdiction brings nobody into court. The appearance was special, for the purpose only of objecting to the jurisdiction, and there must be new summons and service, (excepting in No. 570, where there was a general appearance,) and the plaintiffs must pay the costs already incurred.

Upon these terms the motion to dismiss will be overruled.

## CLOUGH v. UNITED STATES.

(Circuit Court, W. D. Tennessee. April 13, 1893.)

No. 3,127.

1. UNITED STATES COMMISSIONERS—FEES — ACKNOWLEDGMENT OF BAIL BONDS.  
A commissioner of the United States courts can charge only one acknowledgment fee for the principal and sureties in a bail bond, and not a separate fee for each. U. S. v. Ewing, 11 Sup. Ct. Rep. 743, 140 U. S. 142, followed.
2. SAME—AFFIXING SEALS.  
A commissioner, in Tennessee, cannot charge a fee for affixing seals to writs. U. S. v. Clough, 55 Fed. Rep. 373, followed.
3. SAME—DRAWING COMPLAINTS.  
A United States commissioner is entitled to fees for drawing complaints in criminal cases at the rate of 20 cents per folio. U. S. v. Ewing, 11 Sup. Ct. Rep. 743, 140 U. S. 142, followed.
4. SAME—COPIES OF PROCESS—DRAFTING AFFIDAVITS—CERTIFYING OATHS.  
A commissioner is also entitled to fees for copies of process returned to court in cases where preliminary examinations in criminal cases have been had; for drafting affidavits of sureties in bail bonds; for certifying to oaths officially taken before him; for entering the returns of, and filing, process, and for issuing mittimus writs. U. S. v. Barber, 11 Sup. Ct. Rep. 751, 140 U. S. 177; U. S. v. Ewing, 11 Sup. Ct. Rep. 743, 140 U. S. 142, followed.
5. SAME—CERTIFICATES TO WITNESSES.  
He is likewise entitled to fees for certificates furnished to witnesses, of the amount due them for attendance before him, as commissioner. U. S. v. Barber, 11 Sup. Ct. Rep. 749, 140 U. S. 164, followed.
6. SAME—SETTING OUT NAME OF DEFENDANT.  
If the department refuse payment of the account of a clerk of a federal court for services rendered the government in cases of arrest, on the ground that the names of the defendants were not given, and a duplicate of the account filed in the clerk's office shows who the defendants were, and the records of the court show that they were subsequently indicted and tried, the court will direct payment of the fees.
7. SAME—FILING PAPERS—ENTERING ORDERS—RECORDING BONDS.  
The clerk of the federal courts is entitled to charge for filing papers sent in by commissioners; for entering orders approving officers' accounts; for recording official bonds on minutes; for making final records; and for certifying to marshal's fees of jurors and witnesses.
8. SAME—FILING REGISTRY REPORT.  
He is entitled to a fee of 10 cents for filing a registry report, under Rev. St. § 828, allowing that fee for filing "every declaration \* \* \* or other paper."
9. SAME—COPIES OF MITTIMUS—COPIES OF SCI. FA.  
He is also entitled to charge fees for copies of mittimus writs issued under Rev. St. § 1028, and for copies of writs of sci. fa. issued under Rev. St. § 716; they having been issued by order of court, and not as matter of course, in the routine of office.
10. SAME—SEVERAL DEFENDANTS—SEPARATE WRITS.  
Where several defendants are jointly indicted for conspiracy, the department erred in refusing payment of the charges of the clerk for capias writs for their arrest on the ground that a separate writ was issued against each defendant under the practice of the court.
11. SAME—SWEARING JURORS.  
The swearing on the first day of the term of persons summoned as grand and petit jurors, to make true answer touching their qualifications as