upon the proofs that, had she been navigating in mid river, the catastrophe would not have occurred; and the district judge, therefore, properly held her in fault for the collision.

The appellants insist that the Transfer was also guilty of fault contributing to the collision. When the Empire rounded Lunatic Point, she blew a signal of two whistles to the Transfer, indicating a request that both vessels should pass, not according to rule port to port, but starboard to starboard. The Empire claims that this signal was assented to, the Transfer giving an answering signal of two whistles; and that thus, under the rule laid down in The Burke and The Sammie, 37 Fed. 907, the Empire was not in fault for continuing on the course agreed upon, and the Transfer was in fault for not navigating in accordance with the agreement, and keeping to port. Upon this question, however,—viz. what signals were sounded by the Transfer?—there is a conflict of evidence, the witnesses for the Transfer testifying that she replied, not with two whistles, but with an alarm signal of three whistles. Upon this conflict the district judge, who saw most of the witnesses, seems to have found in favor of the Transfer, as he holds her free from fault, and we are not satisfied that his conclusion was erroneous.

It is not contended that the Transfer was at fault for any failure to stop and back; nor is she to be held liable for not having a stationed lookout, as her captain saw the Empire at a distance sufficient to allow him to pass her safely, according to the customary rules of navigation. Had he seen her sooner than he did, at any time, in fact, before she blew her two whistle signal, such discovery would not have warranted him in assuming that the Empire was going to try to pass him starboard to starboard, because, although she passed within 150 feet of Lunatic Point, the trend of the shore is such that had she kept on without further starboarding, or ported a little, she would have been where she ought to have been by the time the vessels reached each other. As an earlier view of the Empire would not have called for any change in the navigation of the Trasfer, the failure to discover her when she was still below Lunatic Point in no way contributed to the collision.

The decree of the district court is affirmed, with interest to the libelants against the Empire, and costs to the Transfer against the Empire.

THE SAALE.

NORTH GERMAN LLOYD v. TROUTON et al.

(Circuit Court of Appeals, Second Circuit. September 12, 1894.)

No. 157.

1. COLLISION—STEAM AND SAIL IN FOG—MODERATE SPEED.
A reduction of but 1 knot from a full speed of 16 knots is not "moderate speed." Nor is 10 knots moderate speed, if it does not enable the steamer to avoid a vessel sighted in her track at a distance of from twice to three times her length. 59 Fed. 716, affirmed.

2. SAME.

A steamer is bound to reduce speed as soon as she enters a fog bank, and failure to do so for a brief space—two to five minutes—puts her in fault for a resulting collision. 59 Fed. 716, affirmed.

Appeal from a decree of the district court, southern district of New York (59 Fed. 716) holding the steamship Saale liable to the libelants, owners of the cargo laden on the bark Tordenskjold, which was sunk by a collision with said steamship on August 4, 1892, about 7 p. m., in 43° 31′ north latitude, and 56° 4′ west longitude. The bark was struck on the port side between the fore and main rigging, the angle of collision being about seven points between the bows of the two vessels.

William D. Shipman, for appellant.
Harrington Putnam, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The district judge found that the bark, which had been sailing about northwest, changed her course to starboard after hearing the steamer's whistle, and that, had she not so changed, the steamer would unquestionably have passed her by a good margin without collision. This finding is supported by the evidence, and fixes the primary responsibility for the collision upon the bark. The change of course by the bark was made before the steamer sighted her, and did not mislead the latter's officers. The libelants, owners of cargo, and therefore not themselves in any fault, further contended that the steamship was not, at the time of collision, navigating at the moderate speed required by article 13 of the international rules of 1885. The district judge so found, and further held that the steamer failed to show that this statutory fault could not have contributed to the collision. The rule cited requires that "every ship * * * shall in a fog, mist, or falling snow, go at a moderate speed." That the Saale, whose full speed was about 16 knots, was going at 15 knots, is conceded. The atmospheric condition is in dispute on the testimony. All the witnesses from the bark testify that she had been running in a thick fog for about two hours prior to the time of collision. They were of course unable to testify to the atmospheric conditions surrounding the steamer until the moment before the catastrophe. The log of the Saale reports: "Until 6 p. m., light hazy mist; later, passing fog showers. Gave fog signals according to rules. Compartments closed. Placed double lookout. At 6:40 p. m., set engine telegraph on 'Stand-by.' Somewhat invisible. * * * We, on the bridge, were under the impression of still being able to see a mile off." The officers of the Saale, when called to the stand, corroborated this statement as to the impression prevailing on the bridge, but both lookouts, stationed on the bow, testified that for about four or five minutes before they saw the bark the steamer was in a fog so dense that they could not see more than two or three lengths ahead. No change, however, was made in the speed of the Saale until she sighted the Tordenskjold, about a minute before collision, at a distance which the officers on the bridge estimated at from 1,200 to 1,400 feet, and

the lookouts and boatswain (the latter standing on the foredeck) estimated at from a length to a length and a half (440 to 660 feet). The helm was at once ordered hard a-port, and the engine reversed as soon as possible. There is in fact no contention that there was any failure on the part of the Saale to do all she could to avoid collision after sighting. The whistles of the Saale were heard on the bark, but the bark's fog horn, though sounded properly, and at regular intervals, was not heard on the steamer until just as she was sighted. We concur with the district judge in the finding that the fog was of such density as made the thirteenth article applicable, and required the Saale to go at "moderate" speed. However free from mist the atmosphere may have been for the hour preceding collision, the moment she ran her nose into the bank or jacket of fog in which the bark lay hid it became at once her duty to moderate her speed. The City of Alexandria, 31 Fed. 431; The Trave, 55 Fed. 119. Although the Saale was not in a dense fog until she entered the bank in which the bark was enveloped, we are satisfied from the evidence that for a brief space before sighting—2, 3, 4, or 5 minutes—both vessels were moving in a dense fog, and during that time the steamer in no way reduced her speed of 15 knots. Her full speed was 16 knots, and the testimony shows that from full speed it takes 4 minutes under reversed engines to bring her to a standstill. There is no evidence in the case to show within what time or distance she can be brought to a standstill from a more moderate speed. That a reduction of but one knot from such speed is not a compliance with the thirteenth article, when the atmosphere in which the steamer is moving makes such article applicable, is no longer open to discussion. Whatever may be the demands of passengers, freighters, and postmasters-general as to maintaining the highest speed attainable, controlling authority has prescribed that speed in a fog shall be moderate; and, however difficult it may be to define the word "moderate" with mathematical precision, it is abundantly settled by similar authority that a reduction of but 1 knot from a full speed of 16 is not a compliance with the rule. The Pennsylvania, 19 Wall. 135; The Nacoochee, 137 U. S. 330, 11 Sup. Ct. 122; The City of New York, 147 U. S. 72, 13 Sup. Ct. 211.

We are further of the opinion that, had the steamer been going at the moderate speed which the thirteenth article requires, she could have cleared the bark. The district judge reached the same conclusion. Elaborate calculations are presented by the appellant to prove the negative of this proposition on the assumption that the steamer, before sighting, was running at the rate of 10 knots. It is not necessary to review these calculations, since, if 10 knots were a speed so great that the steamer could not avoid a vessel lying in her track within the space at which she sighted her,—which the evidence shows to be from twice to three times her own length,—then it was not moderate, under the authorities above cited. She should have reduced to nine, or even eight, knots, and certainly the evidence does not warrant the finding that at that speed she could not have cleared the bark. The decree of the district court is affirmed, with interest and costs.

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

(Circuit Court, S. D. California. October 11, 1894.)

No. 587.

JURISDICTION OF FEDERAL COURTS—SUITS BY UNITED STATES TO QUIET TITLE —NONRESIDENT DEFENDANTS.

A suit by the United States to quiet title is within the jurisdiction of the circuit court of the district where the land lies, although defendants may not be inhabitants of that district, for such a suit is "substantially a suit in rem," within the doctrine of cases like Pennoyer v. Neff, 95 U. S. 714, and Arndt v. Griggs, 10 Sup. Ct. 557, 134 U. S. 316, and therefore falls within the provisions of section 8 of the judiciary act of 1875, relating to service by publication in certain cases affecting real estate, which section was expressly continued in force by the act of 1887–88.

George J. Denis, U. S. Atty., and Joseph H. Call, Spec. Asst. U. S. Atty.

Joseph D. Redding, for defendants.

ROSS, District Judge. This is a suit in equity brought by the government to quiet its alleged title to a large number of townships, sections, and parts of sections of land situated within this judicial district, in which it is alleged the defendants claim an interest under and by virtue of an act of congress approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (16 Stat. 573), and to enjoin the defendants from cutting or removing from said lands timber, wood, minerals, or other valuable deposits. To the bill the Southern Pacific Railroad Company, alleged to be a corporation organized and existing under the laws of the state of California; D. O. Mills and Gerrit L. Lansing, trustees, alleged to be citizens of the state of California, and residents of the city of San Francisco, of that state; the Central Trust Company of New York, alleged to be a corporation organized and existing under the laws of the state of New York; the Southern Pacific Company, alleged to be a corporation organized and existing under the laws of the state of Kentucky; and the Colorado River Irrigation Company, alleged to be a corporation organized and existing under the laws of the state of Colorado, —are made parties defendant. The Southern Pacific Railroad Company, the Southern Pacific Company, and Gerrit L. Lansing have appeared specially, and filed pleas in the nature of pleas in abatement, objecting to the jurisdiction of the court. The plea of the Southern Pacific Railroad Company sets up that it is a corporation duly organized under the laws of the state of California, and while admitting that it operates a line of railway through this judicial district, and maintains a ticket and freight office and depot therein, alleges that it is not an inhabitant of this district, but that it has its principal office, habitat, and domicile in the city and county of San Francisco, state of California. The plea of the Southern Pacific Company alleges that it is not an inhabitant or resident of this judicial district, but is a corpora-

tion organized and existing under the laws of the state of Kentucky, and having its habitat and domicile in that state. The plea of Gerrit L. Lansing alleges that he does not reside in this judicial district, but is an inhabitant and resident of the city and county of San Francisco, in the northern district of this state. Each of the defendants so appearing pray that the suit against them be dismissed for want of jurisdiction. On motion of the government the pleas were set down for argument. The question, therefore, is whether, under the facts as alleged in the bill and in the pleas, the court has jurisdiction to entertain the suit and proceed in the cause.

The court, of course, takes judicial notice of the fact that the state of California is divided into two judicial districts. It is further aware of the fact that it is the established law that a corporation organized in one of the United States, and in that state only, cannot be considered a citizen, an inhabitant, or a resident of any other state, and that a corporation created by a state in which there are two or more judicial districts is to be considered an inhabitant of that district in which its general offices are situated, and in which its general business, as distinguished from its local business, is transacted. Railway Co. v. Gonzales, 151 U. S. 496, 14 Sup. Ct. 401, and cases there cited. The Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing, trustees, are therefore to be regarded as citizens and inhabitants of the northern district of California; the Central Trust Company, as a citizen and inhabitant of the state of New York; the Southern Pacific Company of Kentucky, as a citizen and inhabitant of the state of Kentucky; and the Colorado River Irrigation Company, as a citizen and inhabitant of the state of Colorado. And as the government is not a citizen or inhabitant of any particular state or district, but is everywhere present within the territorial limits of the United States, none of the parties to the suit can be regarded as citizens or inhabitants of this judicial district; but the lands which constitute the subject of the suit are situated within this judicial district. By the act of congress of March 3, 1887 (24 Stat. 552), as corrected by the act of August 13, 1888 (25 Stat. 433), the circuit courts of the United States are given "original cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners * * *;" and, by a subsequent provision of the same section, it is declared: "No civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the

residence of either the plaintiff or the defendant * * *." It has been held by the supreme court that suits falling within the last clause quoted—that is to say, suits in which jurisdiction depends solely upon the diverse citizenship of the parties—cannot be brought in the district of the residence of the plaintiff unless, where there is more than one plaintiff, all of the plaintiffs reside in the district, nor, unless all of the defendants reside in the same district, can suit be brought therein, because the statute does not confer the right to bring the suit in a district wherein a part only of the defendants reside. Smith v. Lyon, 133 U. S. 315, 10 Sup. Ct. 303. One of the reasons assigned for that conclusion was that the court found, from the history of the legislation respecting the jurisdiction of the United States courts, a manifest purpose upon the part of congress, in passing the act of 1887, as corrected by the act of 1888, to restrict, rather than to enlarge, the jurisdiction of the circuit courts. The reasons which induced the court to hold that, in cases where the jurisdiction is founded only on the fact that the action is between citizens of different states, each plaintiff must be competent to sue, and, if there are several defendants, each defendant must be liable to be sued, or the jurisdiction cannot be entertained, would seem to apply with equal force to that clause of the act of 1887, as corrected by the act of 1888, which declares that "no civil suit shall be brought, before either of said courts, against any person, by any original process or proceeding, in any other district than that whereof he is an inhabitant." That is to say, each defendant must be an inhabitant of the district in which he is sued, because the provision of the statute quoted expressly so declares; and, if this provision of the statute is the law which applies to and controls the present case, the result must necessarily be that the suit cannot be maintained in any district; because the defendants are inhabitants of different districts. Yet the suit was instituted by the attorney general pursuant to an act of congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes" (24 Stat. 556), by which the secretary of the interior was authorized and directed to adjust, in accordance with the decisions of the supreme court, each of the railroad land grants made by congress to aid in the construction of railroads, and theretofore unadjusted, and by which the attorney general was, upon certain conditions, required to thereafter "commence and prosecute, in the proper courts, the necessary proceedings to cancel all patents, certifications, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States." By the act last mentioned, congress was not providing for the bringing of suits in the absence of a law conferring upon the courts jurisdiction to entertain them, nor for the bringing of as many suits respecting the same land in as many different districts as there should be diverse claimants thereto. The act of August 13, 1888, as well

as that of March 3, 1887, conferring jurisdiction on the circuit courts, expressly, by the fifth section thereof, continued in force section 8 of the act of March 3, 1875 (18 Stat. p. 472), which provides as follows:

"That when, in any suit, commenced in any circuit court of the United States, to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance or lien or cloud upon, the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district. And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district, but within the same state, said suit may be brought in either district in said state; provided, however, that any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said circuit court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law."

It is thus seen that by section 8 of the act of March 3, 1875, provision is made for the bringing in, by publication if necessary, in any suit commenced in any circuit court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon, the title to real property within the district where such suit is brought, any one or more defendants, whether an inhabitant of the district or not, and thereafter, upon the failure of the defendant or defendants so served to appear, plead, answer, or demur within the time allowed, the court is empowered to entertain jurisdiction and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the district, provided, however, that such adjudication shall, as regards such absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein within such district. The jurisdiction thus conferred by section 8 of the act of March 3, 1875, and continued in force by the acts of 1887 and 1888,

grows out of the nature of the subject-matter, and is in addition to that conferred on the circuit courts by the first section of the acts of 1875, 1887, and 1888, the provisions of which do not apply to cases over which jurisdiction is otherwise conferred upon the federal courts by reason of the subject-matter. In re Hohorst, 150 U. S. 653, 14 Sup. Ct. 221; In re Louisville Underwriters, 134 U. S. 488, 10 Sup. Ct. 587; Toledo, etc., R. Co. v. Pennsylvania Co., 54 Fed. 730. In Northern Indiana R. Co. v. Michigan Cent. R. Co., 15 How. 242, the supreme court said:

"Wherever the subject-matter in controversy is local, and lies beyond the limit of the district, no jurisdiction attaches to the circuit court sitting within it. An action of ejectment cannot be maintained in the district of Michigan for land in any other district. Nor can an action of trespass quare clausum fregit be prosecuted where the act complained of was not done in the district. Both of these actions are local in their character, and must be prosecuted where the process of the court can reach the locus in quo."

A suit to quiet title, the object of which is to reach and settle the title to land, where provision is made by statute for the bringing in of nonresident claimants, would also seem to be local in its nature. In respect to such suits, section 741 of the Revised Statutes provides:

"In suits of a local nature, where the defendant resides in a different district in the same state from that in which the suit is brought, the plaintiff may have original and final process against him directed to the marshal of the district in which he resides."

It is, however, strenuously contended by counsel for the defendants objecting to the jurisdiction of this court that a suit to quiet title is one in personam, strictly, and therefore embraced by the provisions of the first section of the act of March 3, 1887, as corrected by the act of August 13, 1888; and in support of this contention much stress is laid by counsel on the case of Hart v. Sansom, 110 U. S. 151, 3 Sup. Ct. 586. In the subsequent case of Arndt v. Griggs, 134 U. S. 316, 10 Sup. Ct. 557, the supreme court held that it is the established doctrine of that court that a state (and, of course, the United States) has power, by statute, to provide for the adjudication of title to real estate within its limits, as against nonresidents who are brought into court only by publication, and that it was not the intention of the court, in the case of Hart v. Sansom, 110 U. S. 151, 3 Sup. Ct. 586, to overthrow the series of cases affirming that power; on the contrary, that the court, in Hart v. Sansom, distinctly recognized it by saying, among other things, that:

"It would doubtless be within the power of the state in which the land lies to provide by statute that if the defendant is not found within the jurisdiction, or refuses to make or to cancel a deed, this should be done in his behalf by a trustee appointed by the court for that purpose."

And in Arndt v. Griggs it is added:

"Of course it follows that, if a state has power to bring in a nonresident by publication for the purpose of appointing a trustee, it can in like manner bring him in and subject him to a direct decree."

The court, in Arndt v. Griggs, cited and reviewed the cases upon the subject at length; among others, that of Boswell's Lessee v. Otis, 9 How. 336, where, said the court—

"Was presented a case of a bill for a specific performance and an accounting, and in which was a decree for specific performance and accounting, and an adjudication that the amount due on such accounting should operate as a judgment at law. Service was had by publication, the defendants being nonresidents. The validity of a sale under such judgment was in question. The court held that portion of the decree and the sale made under it void; but, with reference to jurisdiction in a case for specific performance alone, made these observations: Jurisdiction is acquired in one of two modes: First, as against the person of the defendant, by the service of process; or, second, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case the defendant is not personally bound by the judgment beyond the property in question, and it is immaterial whether the proceeding against the property be by an attachment or by bill in chancery. It must be substantially a proceeding in rem. A bill for the specific execution of a contract to convey real estate is not strictly a proceeding in rem, in ordinary cases; but where such a procedure is authorized by statute, on publication, without personal service of process, it is substantially of that character."

If a bill for the specific execution of a contract to convey real estate is substantially a proceeding in rem, where, by statute, service of process in such suit may be had by publication, it would seem that a suit to quiet title to real estate is of the same character in cases where the statute authorizes a similar service. In the case of Pennoyer v. Neff, 95 U. S. 714, 727–734, in which the question of jurisdiction in cases of service by publication was considered at length, the court, by Mr. Justice Field, thus stated the law:

"Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the state, or of some interest therein, by enforcing a contract or lien respecting the same, or to partition it among different owners, or, where the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem. * * * It is true that in a strict sense a proceeding in rem is one taken directly against property, and has for its object the disposition of the property without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties where the direct object is to reach and dispose of property owned by them or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. So far as they affect property in the state, they are substantially proceedings in rem, in the broader sense which we have mentioned."

The principle of these cases, in my opinion, sustains jurisdiction here, to the extent, at least, of settling the question of the title to the lands in dispute. Whether, should the facts warrant it, such decree may also include the injunction prayed for by the complainant, upon the ground that it is but incidental and ancillary to the principal relief sought, or under the principle that where jurisdiction is acquired against the person by the service of process, or by a voluntary appearance, a court of general jurisdiction will settle the matter in controversy between the parties, need not now be determined. The pleas and motions to dismiss are overruled.

WYLY v. RICHMOND & D. R. CO.

(Circuit Court, N. D. Georgia. June 14, 1894.)

No. 1,074.

REMOVAL OF CAUSES—MOTION TO REMAND—WHEN TOO LATE.

A motion to remand on the ground that the removal was made after the case was to be treated as on trial under the state practice comes too late after more than a year has elapsed, and after the case has been transferred by consent to the equity docket, treated as an intervention in a pending receivership case, and referred to a special master therein; there being no question as to the jurisdiction of the federal court.

This was an action by George A. Wyly against the Richmond & Danville Railroad Company. Heard on motion to remand to the state court.

Glenn & Slaton, for plaintiff.
Jackson and Leftwich, for defendant.

NEWMAN, District Judge. This is a motion to remand, entered a few days ago. The case was removed to this court on the ground of prejudice and local influence on the 11th day of February, 1893. The Richmond & Danville Railroad and the Georgia Pacific Railroad Company are in the hands of receivers appointed by this court, and were in that situation at the time of removal. A special master had been appointed in the equity case in which the receivers were appointed, to hear all claims by way of intervention against the receivers arising in this district, and suits brought against the corporation. By consent of counsel, an order was taken in the above-stated case after its removal, transferring it to the equity side of the court, and treating it as an intervention in the equity case named, and referring it to the special master in the equity cause. This order was taken on the 23d day of May, 1893. For some reason, unexplained, the case has been delayed before the special master, and counsel for plaintiff now moves to remand it on the ground that it was removed to this court too late. They say, while it was not actually on trial, that substantially, under the ruling and practice in the state court, it had reached a stage at which it was treated as being on trial. No question going to the jurisdiction of this court is raised. The necessary diverse citizenship exists, plaintiff is a resident citizen, defendant being a corporation of the state of Virginia, and the necessary jurisdictional amount is involved. I think the motion to remand comes too late. Of course, if the question raised as to the right of this court to retain it was jurisdictional, and was well taken, no doubt the duty of this court would exist to remand at any stage of the proceeding; but, after the proceeding noted above has been taken in a removed case, it seems to me to be entirely too late, after more than a year has elapsed, to move to remand on the ground that is here set up. The motion to remand will be denied, but the special master will be directed to speed the case by hearing the same, and making a report to this court within 30 days from this date. Let an order be taken to this effect, and let the special master be notified of the same.