and might raise the question for which the distinction was made in that opinion. But that question is not here, for this is the initial proceeding for the assessment, which is placed in the county court. Although conducted under judicial forms, and in a court having judicial powers, I am of opinion that it is exclusively an administrative proceeding, and not cognizable by the federal court,—a court not contemplated by the legislature for participation in the assessment, and which has uniformly denied any function of taxation. "The legislature makes, the executive executes, and the judiciary construes the law" (Wayman v. Southard, 10 Wheat. 1, 46); and it is only when the legislature or executive abuse their power that the judicial arm is extended for arrest of the abuse.

2. Thus far I have not referred to two important cases, which were strongly urged to maintain jurisdiction here, and should control if applicable to this proceeding, viz. Pacific Railroad Removal Cases, 115 U. S. 1, 5 Sup. Ct. 1113, and City of Chicago v. Hutchinson, 11 Biss. 484, 15 Fed. 129. Their consideration comes under the inquiry of separable controversy, and has therefore been left to the second point. In Pacific Railroad Removal Cases there was involved in one of them a proceeding by the city of Kansas "for widening a street through the depot grounds of the company, and thereby taking a portion of its grounds and the property of many other persons." Under the statute, a jury had been summoned before the mayor, and assessed the value of the company's property taken, and benefits against certain other property of the company towards payment of the total damages. The statute gave an appeal to the circuit court of the state, and the company and other dissatisfied persons took separate appeals accordingly. The company obtained removal of its case to the United States court. The decision passes upon several cases for different causes of action so removed by the company, and concludes that the incorporation of the company under the laws of the United States entitles it to removal of each, upon the ground that they are suits "arising under the laws of the United States." The opinion then answers further objections made in the City of Kansas Case as follows: (1) That it was a suit at law under the rule in Boom Co. v. Patterson, 98 U. S. 403. (2) That the appeal of the company could be tried separately from the others as the issues were distinct, and involved only three points of inquiry: First, the value of the property taken; secondly, the amount of benefits to the remaining property not taken; and perhaps, thirdly, the right to open a street across the depot grounds. The only difficulty was found in reference to the assessment of benefits, and as to that it says:

"The balance of damages for property taken, after deducting the amount to be paid by the city, is to be divided and assessed pro rata upon those whose property is benefited, in proportion to the benefit to each. But each piece of property taken is valued by itself, without reference to the proposed improvement; and the amount of benefit to each piece of property benefited is ascertained separately, without reference to the other pieces benefited. It is only after this has been done that the aggregate amounts are ascertained, and the damages are assessed pro rata against the pieces of property benefited according to the benefits to each, which is the result of a mere arithmetical calculation. In the state court the jury ascertains and finds all these facts, and reports them in one general verdict."

Aside from the independent ground for removal, because the company was a federal corporation, there are important distinctions between the cases there presented and the one here, which I think place this outside that ruling, viz.: (1) There the proceeding was for condemnation of private property for public use, in which the value was to be assessed, marking a controversy, as well pointed out in the Boom Co. Case. The assessment of benefits against other property was, by legislative act, made an incident to the same proceeding, and governed by its rules. Its status was placed upon the eminent domain rights, within judicial cognizance, and not under the administrative rule of taxation, which applies here. (2) That case was regularly in a court of law, upon a separate and distinct appeal, allowed by the statute; while the matter here presented is an original assessment. (3) It is stated in the City of Kansas Case that "the amount of benefit to each piece of property benefited is ascertained separately, without reference to the other pieces benefited"; and, when the aggregate amounts of damages and benefits are ascertained, the pro rata assessments are "the result of a mere arithmetical calculation." The provisions of the statute under which that proceeding was taken are not sufficiently stated to show the method by which the assessment against each parcel could be worked out independently; but it is clear that the simple rule there stated cannot be made applicable for an independent assessment under this statute. There are factors for the result in each case which can only be supplied when the whole proceeding is before the court. In the first place, there is no defined district through which the assessment shall be spread. That is left to be determined by the tribunal making the assessment, according to its discretion of the territory which may be benefited by the improvement. Each individual assessment is dependent upon the number who shall be so brought in. Again, it is the theory of the statute that there shall be a valuation of benefit to each lot. It is not assessed for this whole benefit, but for the pro rata share of the expense to be assessed which its valuation of benefits bears to the aggregate of such valuations. Each assessment requires for its ascertainment the aggregate of expense to be assessed and the aggregate valuation of benefits. It is therefore impossible to make a just assessment in an individual case without having as parties all other lot owners involved. The tribunal of assessment determines who shall be such parties, and all are equally entitled to hearing. This can only be accomplished in a court having jurisdiction over all, and in a single trial, or through a trial which shall be dominant (in case of appeal) for establishing these factors. This court cannot take a place either dominant or servient. (4) In the City of Kansas Case there was no decision by the state supreme court interpreting the statute there in question. 115 U. S. 21.[1] Here the supreme court of Illinois has directly passed upon this statute, in People v. Gary, 105 Ill. 332, and held that "it was clear beyond question that the proceeding on the part of the city was an indivisible suit;" that "there were no proper means by which the suit could have been di-

[1] 5 Sup. Ct. Rep. 1123.

vided so as to render it a several proceeding;" that "the trial was one as to all of the defendants," and one judgment; and that the declaration of the statute that the judgment should be considered several was only for the purpose of regulating the manner of obtaining satisfaction. This is an interpretation of a local statute by the highest tribunal of the state, and must be respected as such. The point suggested by counsel for the lot owner—that such construction would approve legislation to deprive the federal court of legitimate jurisdiction—is not well taken. The means for tax assessment are entirely within legislative control.

The case of City of Chicago v. Hutchinson was decided in this court prior to the Pacific Railroad Removal Cases. It was a similar condemnation proceeding, and entirely in the line of the later decision. It is equally distinguished from the present case.

I am satisfied that there cannot be independent separate proceedings for this assessment; that this court is without jurisdiction, in whole or in part; and it must remain with the county court, where placed by the statute. An order for remand will be entered accordingly.

ALLEY et al. v. EDWARD HINES LUMBER CO.

(Circuit Court, W. D. Michigan, S. D. December 27, 1894.)

REMOVAL OF CAUSES—DIVERSE CITIZENSHIP.

It is not necessary, to entitle a defendant, sued in a court of a state of which he is not a citizen, to remove the case to the United States circuit court on the ground of diverse citizenship, under the second clause of section 2, Act Cong. March 3, 1887, that all the plaintiffs should be citizens of the state in which the action is brought.

This was a suit by Charles G. Alley and others against Edward Hines Lumber Company. The suit was brought in a court of the state of Michigan, and was removed by the defendant to the United States circuit court. Plaintiffs move to remand.

Smith, Nims, Hoyt & Erwin, for plaintiffs.
Bunker & Carpenter, for defendant.

SEVERENS, District Judge. Two of the plaintiffs are citizens of New York and one of Michigan. The defendant is a citizen of Illinois, and has removed the case. The ground on which the motion to remand is made is that the plaintiffs are not all citizens of Michigan, that being the state in which the suit is brought. The question turns on the construction of the act of March 3, 1887. Original jurisdiction is given by section 1. The second section provides for removals. The first and second clauses of that section require the same elements of jurisdiction to exist as in section 1. The present case is one comprehended in the second clause, and the conditions of removal must be ascertained by reference to those required by the first section for original suits. See Tod v. Railway Co. (C. C. A., 6th Circuit, Oct. Sess. 1894) 65 Fed. 145. The fourth clause of section 2, being the one which provides for removals on the ground of local prejudice, contains an additional requirement,