

value of improvements by commissioners under the occupying claimant's law, though the supreme court of the United States, as we have seen, had held it impossible, under the seventh amendment of the federal constitution. *Hunt v. McMahan*, 5 Ohio, 132. The fact that in a state court a proceeding is triable in an action at law does not affect the right and duty of the United States court, if the action is, under the federal system, cognizable in equity, to take jurisdiction of it in equity. *Mississippi Mills v. Cohn*, 150 U. S. 202, 14 Sup. Ct. 75.

It follows from what has been said that it was the duty of the circuit court, when the defendants below objected to the joinder of the petition for partition with the action to recover real property, to dismiss the petition for partition, with leave to the plaintiffs to file a bill in equity for the same purpose. The judgment of the court below in partition is reversed, with instructions to dismiss, for want of jurisdiction, so much of the amended petition as prayed partition and the proceedings thereon, at the costs of the plaintiffs. The costs in this court will be equally divided.

VESEY et al. v. SEAWALL et al.

CRAWFORD et al. v. SAME.

(Circuit Court of Appeals, Sixth Circuit. January 8, 1895.)

Nos. 151 and 152.

In Error to the Circuit Court of the United States for the Southern District of Ohio.

Mills Gardner and Humphrey Jones, for plaintiffs in error.

Matthews & Cleveland, for defendants in error.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

TAFT, Circuit Judge. As in these cases the same question is presented as that just now discussed, the same order must be made, reversing the case so far as partition proceedings are concerned, and affirming the judgment in ejectment. See opinion in *Klever v. Seawall* (No. 150) 65 Fed. 393.

VESEY v. SEAWALL et al.

CRAWFORD et al. v. SAME.

(Circuit Court of Appeals, Sixth Circuit. May 14, 1894.)

Nos. 151 and 152.

In Error to the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio.

Mills Gardner and Humphrey Jones, for plaintiffs in error.

Matthews & Cleveland, for defendants in error.

Before TAFT and LURTON, Circuit Judges, and BARR, District Judge.

TAFT, Circuit Judge. In these cases the same question precisely is presented which was decided in the preceding case of *Klever v. Seawall*, 65 Fed. 373. The same result, therefore, is reached, and the same orders will be made.

WEED v. UNITED STATES.

(District Court, D. Montana. November 19, 1894.)

1. UNITED STATES ATTORNEYS—FEES—DOUBLE COMPENSATION.

The provisions of 26 Stat. 947; 27 Stat. 223, 714; Rev. St. § 837; and Supp. Rev. St. p. 767, § 16,—that United States district attorneys for Montana shall, for services, receive double fees, applies not only to the regular fee of \$20 allowed by Rev. St. § 824, in a criminal case, but to the counsel fee, not exceeding \$30, which it provides they may be allowed, in addition to the regular fee, when a conviction is had in a criminal case before a jury.

2. SAME—EXTRA SERVICES—EXAMINING TITLES.

A United States district attorney is entitled to extra compensation for examining the title to public property and making an abstract thereof, though not for giving an opinion on the title; this being part of his duty, under Rev. St. § 355, requiring him to furnish to the attorney general assistance or information in relation to the title to public property within his district.

3. SAME—ACTION FOR FEES—PETITION.

The petition of a United States district attorney in an action for fees need not state how or when the account claimed was presented to the proper accounting officer.

4. GENERAL DEMURRER—PLEADING NOT WHOLLY BAD.

A demurrer to a petition on the ground that it, in either or all of its paragraphs, does not state facts constituting a cause of action, will be overruled if, in any part of the petition, facts are stated showing a cause of action.

Action by Elbert D. Weed against the United States for services rendered as United States attorney for the district of Montana. Heard on demurrer to the petition.

Elbert D. Weed, in pro. per.

P. H. Leslie, U. S. Atty.

KNOWLES, District Judge. Petitioner, between the 21st day of February, 1890, and the 21st day of February, 1894, was a United States district attorney for the district of Montana. He brings this action against the United States to recover certain fees claimed to be due him as said attorney under and by virtue of certain laws of congress, and also to recover certain charges made by him for examining the titles to certain lands, and preparing a report concerning the same, and giving a written opinion thereon to the attorney general of the United States. The whole amount for which petitioner asks judgment is \$980.

The first claims he presents are for the fee of \$40 each in the cases of the United States against Fred Partello and the United States against Julia D. Barnum. In both cases, indictments were found, and trials before a jury were had.

The first clause of section 824, Rev. St., providing fees for district attorneys, etc., is as follows:

"On a trial before a jury, in civil or criminal causes or before a referee, or on a final hearing in equity or admiralty and maritime jurisdiction a docket fee of twenty dollars."

The balance of that clause has no bearing upon the question at issue.