

CASES

ARGUED AND DETERMINED

IN THE

UNITED STATES CIRCUIT COURTS OF APPEALS AND THE CIRCUIT AND DISTRICT COURTS.

NOONAN v. DELAWARE, L. & W. R. CO.

(Circuit Court, S. D. New York. May 14, 1895.)

1. UNITED STATES COURTS—JURISDICTION—DEMURRER.

A citizen of New Jersey sued a citizen of Pennsylvania in a federal court in New York. The defendant appeared generally, and demurred for want of jurisdiction. *Held*, that the objection that the action was brought in the wrong district was waived by the appearance, and was not raised by the demurrer.

2. PLEADING—ACTION ON STATE STATUTE.

The action was founded on a statute of New Jersey, which was not pleaded. *Held* that, as the courts of the United States take judicial notice of the laws of the several states, the right could, nevertheless, be enforced by the federal court in New York.

This was an action by John Joseph Noonan, as administrator of James A. Noonan, against the Delaware, Lackawanna & Western Railroad Company, to recover damages for the death of his intestate. Defendant demurred to the complaint for want of jurisdiction, and also on the ground that the complaint did not state facts sufficient to constitute a cause of action.

A. G. Vanderpoel, for plaintiff.
Hammond Odell, for defendant.

WHEELER, District Judge. The plaintiff is a citizen of New Jersey, suing as administrator, appointed in New York, for the death of his intestate in New Jersey; and the defendant is a citizen of Pennsylvania, having its principal office in New York. The personal, and not the represented, citizenship governs as to the place of bringing suit; and, under the act of 1888, this suit could properly be brought only in the district of New Jersey or a district of Pennsylvania. But it is between citizens of different states, and it could properly be brought in the circuit court of the United States for some district. The right to have it brought in such district could be waived, and would be by a general appearance in it, if brought in some other district and making defense. *Ex parte*

Schollenberger, 96 U. S. 369; Bank v. Morgan, 132 U. S. 141, 10 Sup. Ct. 37. The appearance here was general, accompanied by a demand of service of all papers upon the attorney appearing. The irregularity as to place was thereby waived. The demurrer raises the general question of the jurisdiction of the court over the subject-matter of the suit, but not that of this irregularity. That no law of New Jersey is alleged giving such an action is set down as ground of demurrer; but that the courts of the United States take judicial notice of the laws of the several states which they are called upon to administer is well settled. This right of recovery can be enforced here. Dennick v. Railroad Co., 103 U. S. 11. The statute gives the action to the administrator for the benefit of the widow and next of kin, with damages with reference to the pecuniary injury resulting to them; and this complaint alleges damages to the next of kin, which seems to be sufficient. Demurrer overruled.

ST. PAUL, M. & M. RY. CO. et al. v. ST. PAUL & N. P. R. CO.

ST. PAUL & N. P. R. CO. v. ST. PAUL, M. & M. RY. CO. et al.

(Circuit Court of Appeals, Eighth Circuit. May 6, 1895.)

Nos. 455 and 456.

1. FEDERAL COURTS—JURISDICTION—FEDERAL QUESTION.

If it appears from the plaintiff's complaint that, in any aspect which the case may assume, the right of recovery may depend upon the construction of federal statutes, and if the right of recovery, so far as it turns upon the construction of such statutes, is not merely a colorable claim, but rests on a reasonable foundation, a federal question is involved which is adequate to confer jurisdiction, although the right of recovery is also predicated on other grounds, not involving federal questions, and although the case is ultimately decided upon grounds not involving the determination of any federal question.

2. SAME—CLAIM MERELY COLORABLE.

A case which, in fact, depends for its decision upon questions of local or general law, cannot be brought within the jurisdiction of the federal courts by a reference in the complaint to a federal statute, and by setting up a merely colorable claim thereunder, nor because it may be found necessary to consult some federal statute to ascertain the meaning of a contract or the scope and effect of a local law.

3. SAME—TITLE DERIVED FROM UNITED STATES.

The federal courts do not acquire jurisdiction of a controversy in respect to the title to lands because the title was derived originally from the United States unless the controversy involves the construction, meaning, or effect of the granting acts.

4. STATUTES—CONSTRUCTION—FORFEITURE OF LAND GRANT.

The state of Minnesota conferred upon the S. & P. Ry. Co. the interest of the state in a large quantity of land granted to the state by congress, in aid of the construction of a railroad, by certain acts which provided that the title to the lands should only be acquired as the road adjacent to the particular lands was completed. By subsequent proceedings, the S. & P. Co. was practically divided into two corporations, the second known as the F. D. Co. The F. D. Co. constructed a large part of the road, and the governor of the state, acting in his official capacity and upon the supposition that such lands had been duly earned by the F. D. Co., conveyed large quantities of land to it, including some land beyond the furthest point to which the road was built. The deeds were duly recorded at the