

one. Both parties derive their respective rights from a land claim once owned by John Fletcher, Sr. The complainants found their right upon a devise thereof by Fletcher. The defendants claim under a probate sale of the same land claim made by the order of the parish court of La Fayette parish, La. The difference between this and the other above-mentioned cases is this: According to the statements of the bill, John Fletcher, Sr., was not resident in Louisiana at the date of his death, but was domiciled in Adams county, Miss. He died in 1862, and left a will, whereby he devised all his property to his two children, Jane Virginia Fletcher, one of the complainants, and John Fletcher, Jr., from the latter of whom the other complainants take by descent. This will was duly probated in the probate court for Adams county in the same year. It seems clear that the administration of Fletcher's succession in the La Fayette parish court, in 1870, was wholly unauthorized by law, and could have no effect upon the title asserted by the complainants for two reasons: First, because the decedent was domiciled in Mississippi at the time of his death, and the situs of his claim was there; and, second, because his estate, including this claim, had already been judicially administered in the state of his domicile by a court of competent jurisdiction. This is in accord with the principles recognized by this court as sound in the case of *Garrett v. Boeing* (No. 197), where the subject was discussed. It is unnecessary to repeat what was there said. Upon the other questions, which were also involved in *Hodge v. Palms* (No. 232) and *Morancy v. Palms* (No. 234), relating to the standing of the complainants upon the footing of a constructive trust and to affirmative defenses as well as the scope of the relief to which the complainants may be entitled, if they maintain their suit, we do not, for the reasons expressed in those cases, now express an opinion. The decree of the circuit court sustaining the demurrer and dismissing the bill will be reversed, with directions to permit the defendants to answer the bill.

MCCANTS et al. v. PENINSULAR LAND CO. et al.

(Circuit Court of Appeals, Sixth Circuit. May 13, 1895.)

No. 233.

JUDGMENT—COLLATERAL ATTACK—PLEADING.

One M., a citizen of Louisiana, died, leaving a will by which he disposed of other property, but not of an inchoate land claim arising under the treaty of cession of Louisiana and the acts of congress pursuant thereto. Such claim was afterwards sold in proceedings instituted in a Louisiana parish court to administer the same as a part of his estate. *Held*, in a suit seeking to impeach, collaterally, such proceedings in the parish court, that an allegation that the succession of M. was duly opened and fully administered in the proper court in 1865 (before the proceedings sought to be impeached), and was accepted by his heirs and owners of all the assets of said estate capable of being reduced to possession, was insufficient to show that the land claim was not properly administered in the proceedings questioned.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

This was a suit by David A. McCants and others against the Peninsular Land Company and others to impress a trust upon the legal title to certain lands and for an accounting. The circuit court sustained a demurrer to the bill. Complainants appeal. Affirmed.

Robert B. Lines and Dwight C. Rexford, for appellants.

H. M. Duffield and J. T. Keena, for appellees.

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

SEVERENS, District Judge. This case also is like those of *Garrett v. Boeing* (No. 197) 68 Fed. 51; *Hodge v. Palms* (No. 232) Id. 61; *Morancy v. Palms* (No. 234) Id. 64; and *Fletcher v. McArthur* (No. 235) Id. 65,—and is the case of a suit in equity brought by certain persons claiming to be the representatives of one David McCants, an original owner of a deferred Louisiana land claim, against persons who derive their title under patents from the United States to land located under a certificate of the surveyor general of Louisiana, approved by the commissioner of the general land office, issued by the former officer to one who represented himself to be the purchaser of the claim at a probate sale of it as of the succession of the original owner. The defendants demurred. The demurrer was sustained, and the bill dismissed. The facts are in all material respects the same as in the *Garrett Case* (No. 197) Id., the only difference worthy of attention being that in this the original owner, McCants, left a will whereby he devised his other property, but as to this land claim died intestate. The bill states “that the succession of the said David McCants was duly opened and fully administered in the proper court of the said parish of East Feliciana in the year 1865, and was in said year accepted by his said heirs and owners of all the assets of said estate capable of being reduced to possession,”—an exceedingly vague allegation, which we have some difficulty in construing. There is no allegation that there was any order of the court disposing of anything, and, as this claim was not one capable of being reduced to possession, the inference is that it was not administered at all, but was an unnoticed waif. That being so, it was competent for the parish court to administer it in an independent proceeding. Whether it would have been a more regular way to have opened the first proceedings, and dealt with it in that, we do not undertake to say. There was a choice of ways. This brings the case within the scope of the same principles as those upon which the *Garrett Case* was decided, and leads to an affirmance of the decree. The decree of the court below is accordingly affirmed.

GAY MANUF'G CO. v. CAMP.

(Circuit Court of Appeals, Fourth Circuit. May 31, 1895.)

No. 106.

EQUITY PRACTICE—MASTER'S REPORT—EXCEPTIONS.

No exception to a master's report, based upon matters of fact, should be heard by the court, unless such matters have been brought to the ma-