Before ACHESON and DALLAS, Circuit Judges, and WALES, District Judge.

DALLAS, Circuit Judge. Notwithstanding the thorough and very able argument submitted on behalf of the appellant, we are fully satisfied with the action of the court below, and with the reasoning by which it was supported. The remarks of appellant's counsel in criticism of the opinion of the learned judge have had our attentive consideration, but have failed to convince us that it does not sufficiently maintain his conclusion. Therefore, the decree of the circuit court is, upon the opinion there filed, affirmed.

C. & A. POTTS & CO. v. CREAGER et al.

(Circuit Court, S. D. Ohio, W. D. January 15, 1896.)

No. 4,244.

1. PLEADING AND PRACTICE IN EQUITY—SUPPLEMENTAL BILL—REHEARING.
Where, in a suit for infringement of a patent, it is sought to introduce newly-discovered evidence after the entry of the usual interlocutory decree awarding an injunction and an accounting, the proper practice is to petition for a rehearing, and the case is not one for the filing of a supplemental bill.

2. APPEAL—MANDATE—PROCEEDINGS BELOW—REHEARING.
Where a decree dismissing a bill for infringement of a patent is reversed, with directions for further proceedings in accordance with the opinion, and on the coming down of the mandate a decree is entered awarding an injunction and an accounting, the lower court is not thereby precluded from afterwards allowing amendments to the pleadings, and granting a rehearing for the introduction of newly-discovered evidence, for the decree entered pursuant to the mandate is interlocutory, and not final.

This was a bill in equity by C. & A. Potts & Co. against Frank F. Creager and others for alleged infringement of patent No. 322,393, issued July 14, 1885, to C. & A. Potts for improvements in disintegrating clay. This court heretofore entered a decree dismissing the bill (44 Fed. 680), but upon an appeal to the supreme court the decree was reversed and remanded, with directions for further proceedings in accordance with the opinion there rendered (155 U. S. 597, 15 Sup. Ct. 194). On the coming down of the mandate this court entered an interlocutory decree granting an injunction and an accounting. The cause is now before the court upon a petition for leave to file a supplemental bill to bring in newly-discovered evidence, and for a rehearing.

C. & E. W. Bradford, for complainants.
Wood & Boyd, for respondents.

SAGE, District Judge. This case is before the court on a petition which is, in one aspect, a petition for rehearing, and upon a showing of newly-discovered alleged anticipations of the complainants' patent. Upon the hearing this court dismissed the bill. The supreme

court, upon appeal, reversed the decree of dismissal, and on the 7th of January, 1895, remanded the case for further proceedings in conformity with its opinion. A decree for an injunction and for an account was thereupon entered in this court. That decree is an interlocutory decree, not a final decree. The petition is for leave to file a supplemental bill for the purpose of bringing before the court, in due form, newly-discovered evidence, and for a rehearing of the cause at the time and in connection with the hearing of said supplemental bill; also for leave to bring in said newly-discovered matters in such manner and form as may be most consistent with the rules and practice of the court. This is not a case for a supplemental bill, which is in the nature of a bill of review. Such bills can be brought only upon a final, and not upon an interlocutory, decree. The proper practice requires a petition for rehearing. It is objected that the proceeding is wholly improper, the only jurisdiction remaining in this court being to execute the mandate of the supreme court. Counsel cite Sibald v. U. S., 12 Pet. 492; Ex parte Story, Id. 339; Humphrey v. Baker, 103 U. S. 736; Stewart v. Salmon, 97 U. S. 361; Ex parte Dubuque & P. R. Co., 1 Wall. 69; Leslie v. Town of Urbana, 6 C. C. A. 111, 56 Fed. 762. In each of these cases, however, the decree directed by the supreme court was the final decree in the original suit. Here the decree is interlocutory. The mandate has been executed by an entry made in exact pursuance of its terms. Upon the authority of In re Sanford Fork & Tool Co. (decided recently by the supreme court, but not yet officially reported) 16 Sup. Ct. 291, under a mandate directing an interlocutory decree and further proceedings in conformity with the opinion of the supreme court, the lower court may, in its discretion, allow amendments to the pleadings, and a rehearing upon a showing such as is made by the defendants in this case. In that case a bill was filed to set aside a mortgage. The defendants filed an answer insisting that the mortgage was valid. The plaintiffs filed exceptions to the answer for insufficiency. The exceptions were sustained by the court below, and, the defendants declining to plead further, and electing to stand by their answer, the court entered a final decree in favor of the plaintiffs, which was reversed by the supreme court in Sanford Fork & Tool Co. v. Howe, Brown & Co., 157 U. S. 312, 15 Sup. Ct. 621. The case of In re Sanford Fork & Tool Co. was for mandamus to command the judge below to enter a final decree in favor of the defendants below in accordance with the mandate of the supreme court in Sanford Fork & Tool Co. v. Howe, Brown & Co. The supreme court said that when the decree of the circuit court sustaining the plaintiffs' exceptions to the answer, and (because the defendants declined to plead further) granting to the plaintiffs the relief prayed for in the bill, was reversed, the only matter which was or could be decided by that court upon the record before it was that the answer was sufficient, and that the supreme court, in so deciding, could go no further than the circuit court could have done had it made a like decision. It further said that the court did not under-

take, either by its opinion or by its mandate, to preclude the plaintiffs from filing a replication, and that while the supreme court declared that, assuming the facts alleged in the answer to be true, the mortgage was valid, yet neither the opinion nor the mandate ordered a final judgment for the defendants, but only that the judgment for the plaintiffs be reversed, and the cause remanded to the circuit court for further proceedings not inconsistent with the opinion of the supreme court. So here, the supreme court decided that, upon the facts presented at the interlocutory hearing, the plaintiffs were entitled to an interlocutory decree, and, reversing the final decree which had been entered below for the defendants, remanded the case to the circuit court for further proceedings not inconsistent with the opinion of the supreme court. The court proceeded in its opinion:

"The case being thus left open, by the opinion and mandate of this court, and by the general rules of practice in equity, for further proceedings, with a right in the plaintiffs to file a replication putting the cause at issue, the circuit court might, in its discretion, allow amendments of the pleadings for the purpose of more fully or clearly presenting the facts at issue between the parties."

The case is parallel to this case. The opinion, reversing the final decree in favor of the defendants below and ordering further proceedings in accordance with the opinion of the supreme court, placed the plaintiffs in no better position than they would have occupied if the decree by the court below had been in their favor. The further proceedings must be under and in accordance with the supreme court rules governing practice in equity. As in the Sanford Tool Co. Case amendments to the pleadings could be allowed in the discretion of the court below, and in accordance with those rules, so in this case the interlocutory decree could be opened upon a proper showing for a rehearing upon newly-discovered evidence, presenting matters which were not and could not have been considered in the case presented to the supreme court. The opinion of the supreme court will, of course, be recognized as the law of the case, and unless the defendants, upon the matters suggested in the application for rehearing, can make a case radically different from that presented to the supreme court, the rehearing will not avail. With this understanding and qualification, the petition for rehearing will be allowed.

UNITED STATES v. FLOURNOY LIVE-STOCK & REAL-ESTATE CO. et al.

(Circuit Court, D. Nebraska. January 7, 1896.)

1. INDIAN LANDS—ALLOTMENTS IN SEVERALTY—EFFECT OF CITIZENSHIP.
The fact that Indians, to whom lands have been allotted in severalty, are declared to be citizens of the United States, does not render null and void as to them, or as to the remaining portions of their tribes, restrictions upon alienation of their lands contained in the acts of congress under which allotments in severalty have been made, nor terminate the right and duty of the United States to preserve the reservation lands for the use and benefit of the Indians. Beck v. Real-Estate Co., 12 C. C. A.

497, 65 Fed. 30; U. S. v. Real-Estate Co., 69 Fed. 886; and Pilgrim v. Beck, Id. 895,—followed.

2. SAME—RELATIONS TO GOVERNMENT.
Lapse of time and allotment of portions of their reservations in severalty do not terminate the tribal relations of Indians, nor remove them from the supervision and control of the interior department of the government.

3. SAME—UNAUTHORIZED LEASE—POWER OF COURT.
The government has the right to invoke the aid of the court to remove from the lands of Indians under its supervision and control persons who have intruded thereon under unauthorized leases from the Indians, and to restrain such persons from procuring other such leases from the Indians.

4. FEDERAL COURTS—JURISDICTION—SUITS BY THE UNITED STATES.
The federal courts have jurisdiction of suits by the United States without regard to the amount in controversy.

This was a suit by the United States against the Flournoy Live-Stock & Real-Estate Company and others to require the removal of the defendants from certain lands claimed under leases from certain Omaha and Winnebago Indians, and to restrain the defendants from procuring other such leases. A demurrer to the bill was overruled. 69 Fed. 886. The defendants answered, and the cause was now heard on bill and answer.

A. J. Sawyer, U. S. Dist. Atty., and R. W. Breckenridge, for the United States.

Brome, Burnett & Jones, for defendants.

SHIRAS, District Judge. This case has already been before the court upon a demurrer to the bill, and reference may be made to the opinion then given for a statement of the questions involved and the facts out of which they arise. See 69 Fed. 886. After the overruling of the demurrer, the Flournoy Live-Stock & Real-Estate Company and the other defendants filed answers to the bill, and thereupon the case was by the complainant set down for hearing upon the bill and answer, and in this form, after argument by counsel, has been submitted to the court. The answers, which are the same in substance, in effect admit the making of the treaties with the Omaha and Winnebago tribes of Indians; the enactment of the several acts of congress recited in the bill; the allotment of portions of the reservation lands to the members of the named tribes in severalty; the leasing thereof by the Flournoy Live-Stock & Real-Estate Company and by the other defendants, and the occupation of these leased lands by the defendants; but aver that all restrictions contained in the treaties or acts of congress upon the absolute right of alienation by the allottees are now obsolete, null, and void. As the case has been set down for hearing upon the bill and the answers filed thereto, the defendants are entitled to the benefit of all matters properly pleaded in the answer, and the questions at issue are therefore those presented by the averments of the bill, not denied in the answers, read in connection with any facts properly pleaded in the answers. Banks v. Manchester, 128 U. S. 244–251, 9 Sup. Ct. 36.

Averments in an answer of legal conclusions from admitted facts, or touching matters of which the court takes judicial knowledge,

are not held to be facts properly pleaded, in such sense as to preclude the court from drawing the proper conclusions of law, or from relying upon its judicial knowledge of such matters as the court is bound to take notice of, and which may be pertinent to the questions at issue. U. S. v. Ames, 99 U. S. 35–45; Dillon v. Barnard, 21 Wall. 430; Jones v. U. S., 137 U. S. 202–214, 11 Sup. Ct. 80; Wilson v. Gaines, 103 U. S. 417; Railroad Co. v. Palmes, 109 U. S. 244–253, 3 Sup. Ct. 193. The courts of the United States take judicial notice not only of the public acts of congress and of the legislatures of the several states of the Union, but also of the rules and regulations prescribed by the several departments for the transaction of the public business (Caha v. U. S., 152 U. S. 211, 14 Sup. Ct. 513); also of the territorial extent of the jurisdiction exercised by the government whose laws they execute; also of the acts of the executive branch of the government, in the enforcement of the treaties or public laws of the country (Jones v. U. S., 137 U. S. 202–214, 11 Sup. Ct. 80); also of all matters of general history or of public notoriety; also of the official character of persons appointed by the president or heads of the departments or of the bureaus therein for the performance of duties created by acts of congress (Brown v. Piper, 91 U. S. 37; Keyser v. Hitz, 133 U. S. 138–145, 10 Sup. Ct. 290).

The first question argued by counsel is that of the jurisdiction of the court, based upon the fact that the bill avers that the amount in controversy exceeds $2,000, which is denied in the answers. If, under the statutes now in force, the restriction as to amount applied to cases wherein the United States is plaintiff or complainant, the contention would have force; but it does not, and therefore it is immaterial whether the amount in controversy exceeds $2,000 or not, because this court has jurisdiction of all cases brought by the United States, regardless of the amount involved. The answers admit the creation of the Omaha and Winnebago reservations in Nebraska under the treaties entered into with the United States before Nebraska became a state; admit the enactment of the acts of congress recited in the bill; but aver that by reason of the fact that the Indian allottees are declared to be citizens of the United States, all the restrictions upon the right of alienation contained in the acts of congress under which the allotments in severalty were made are wholly void, and that all the control exercised by the United States government over these reservations is without authority, and that the Indians, holding the lands in severalty, have full right to alienate the same; that the leases under which the defendants claim title are valid, and that the defendants have the lawful right to occupy these lands for their own benefit; and the answers deny that the laws and the authority of the United States are paramount and supreme over the reservations in question. Thus it appears that the questions which are decisive of the case now before the court are questions of law, the pivotal point being whether conferring citizenship upon the Indian allottees freed the lands allotted to them from the restrictions contained in the acts of congress upon the right of alienation, and terminated all right of control on part of the United

States over the reservations, the lands therein, and the Indians occupying the same. Nothing has been adduced by way of argument or authority which leads me to conclude that the views expressed in the opinion rendered upon the demurrer to the bill in this case and in the case of Pilgrim v. Beck, 69 Fed. 895, are erroneous, and I shall not attempt to enlarge the argument therein contained, or to repeat the substance thereof at the present time. Relying upon these opinions and that of the circuit court of appeals for this circuit in the case of Beck v. Real-Estate Co., 12 C. C. A. 497, 65 Fed. 30, I hold that the fact that the Indian allottees are declared to be citizens of the United States does not render null and void as to them, or as to the remaining portion of the Omaha and Winnebago tribes, the restrictions upon the right of alienation contained in the several acts of congress under which allotments in severalty have been made of portions of these reservations; and it therefore follows, and must be so held, that the several leases under which the defendants claim title and right of possession are wholly void.

I further hold that these reservations continue to be Indian reservations; that the United States has never yet been released from the treaty stipulations and obligations by which it assumed to preserve these lands for the use and benefit of the Indians; that the United States holds the title of these lands charged with the trust created by the treaties in question, and it is its duty to do whatever is necessary to protect the Indians in the proper use and occupancy thereof; that the power and right in the United States to do whatever is necessary for the fulfillment of its treaty duties, trusts, and obligations towards the Indians rests upon every foot of soil and upon every individual within the boundaries of the reservations, and this power and right is paramount and supreme.

I further hold that the lapse of time and the allotment of portions of these reservations have not, as claimed by defendants, terminated the tribal relation of the Indians, nor have the Omahas and Winnebagos been taken from under the supervision and control of the interior department of the government, nor does it appear that by act of congress or by any act of the executive have these reservation lands been thrown open to the occupancy and ownership of the whites, nor can there be found any proper authority for leasing any portions thereof, excepting under the control of the interior department; and as it appears that the leases held by the defendants were not taken under the rules and regulations of the department, but in total disregard thereof, and as it further appears that the defendants hold possession, not under any right, license, or permission granted by the United States, but in defiance of the orders, rules, and regulations of the Indian office and of the interior department, I further hold that the United States has the right to invoke the aid of the court to remove the defendants from the possession of the lands in the bill described, and also to restrain them from procuring the execution of other leases from the Indian allottees, except in the mode provided in the acts of congress, and under the control and supervision of the department of the interior. Decree accordingly.

COLLINS v. GOLDSMITH.

(Circuit Court, D. Oregon. January 7, 1896.)

No. 2,113.

1. DEEDS—OF MARRIED WOMAN—STATUTE CURING DEFECTIVE EXECUTION.
One B., in February, 1855, acting for himself and as attorney in fact for his wife, executed a deed to one F. of land in Oregon belonging to his wife, and in July of the same year B.'s wife alone executed a deed of the land to F. The statutes of Oregon at the time gave no power to a married woman to convey land, except by deed in which her husband should join, nor any power to execute a power of attorney. Subsequently the legislature of Oregon passed an act providing that all deeds theretofore executed, which had been signed by the grantor in due form, should be valid, without any other execution or acknowledgment. *Held*, that such statute was intended only to remedy defective execution of deeds by persons having power to make them, not to validate deeds which the grantors had no power to make, and accordingly did not give validity to the deeds of B. and his wife, which passed only B.'s right of curtesy in the land.

2. JUDGMENTS—EFFECT—EJECTMENT—OREGON STATUTE.
The statutes of Oregon provide that in actions to recover real property the jury shall find the nature and duration of the estate or interest of the successful party in the land. *Held*, that a judgment in an action of ejectment, in which it was found that the defendant was entitled to a freehold estate in the land for the life of another, was conclusive as to the title of a grantee of the defendant in that suit in an action subsequently brought against such grantee by a grantee of the plaintiff therein.

This was an action of ejectment by J. L. Collins against L. Goldsmith to recover lands in Polk county, Or.

Raleigh Stott and R. P. Boise, for plaintiff.
L. B. Cox, for defendant.

BELLINGER, District Judge. This is an action of ejectment, submitted without a jury, on stipulation of the parties, to recover possession of certain real property in Polk county. The plaintiff claims title in fee simple, by deed executed October 19, 1877, from Violet W. Elliott, who, as Violet W. Berry, was the grantee of the lands in controversy from the United States under what is known as the "Donation Act." On February 5, 1855, William J. Berry, then the husband of said Violet, acting for himself and as attorney in fact for his wife, executed a deed to the premises to one Fuller for the expressed consideration of $2,000. On July 22d following, the wife alone executed a deed to Fuller for the premises for the expressed consideration of $1,400. Fuller conveyed his title to one Teal, who conveyed to defendant. It is conceded that the power of attorney under which Berry executed the first deed to Fuller and the separate deed of Mrs. Berry were nullities. A married woman cannot invest another with power to convey her interest in real property, nor herself convey it by a deed not joined in by her husband, without a statute to that effect. But it is claimed by the defendant that these deeds were made effective by a curative act of the legislature passed in 1878. This act is entitled "An act to cure