

not nominally so. But, according to the averments of the bill, the act of assembly under which the defendants are proceeding is violative of the fourteenth amendment to the constitution, and also contravenes section 5219 of the Revised Statutes of the United States. If this be so, then the defendants, while claiming to act in their official capacities, are proceeding without lawful authority. The case therefore falls directly within the principle of the decision of the supreme court of the United States in the case of *Osborn v. Bank*, 9 Wheat. 738, which was reaffirmed in *Pennoyer v. McConnaughy*, 140 U. S. 1, 10, 11 Sup. Ct. 699, that, where grounds of equity jurisdiction exist, an injunction from a circuit court will lie to restrain a person who is a state officer from performing an act directed by an unconstitutional law of the state, when such act would destroy or violate the rights of the complainant. Thus Mr. Justice Agnew, of the supreme court of Pennsylvania, sitting at nisi prius, held that the auditor general and treasurer of the state could be restrained by injunction from collecting an illegal tax imposed by the state upon stockholders in a national bank. *Markoe v. Hartranft*, 6 Am. Law Reg. (N. S.) 487. A court of equity, at the suit of a national bank, will restrain the imposition and collection of an illegal state tax because of the trust relation in which the bank stands to its stockholders, and to avoid a multiplicity of suits. *Cummings v. Bank*, 101 U. S. 153. The present bill not only discloses these grounds for equitable relief, but also the further ground that a cloud upon the bank's title to real estate has been imposed or is threatened. *Union Pac. Ry. Co. v. City of Cheyenne*, 113 U. S. 516, 525, 5 Sup. Ct. 601. The existence of a special statutory mode of redress under the law of the state is no bar to the equity jurisdiction of the circuit court of the United States. *Barber v. Barber*, 21 How. 582, 592. To the foregoing authorities, which require the overruling of the plea, may be added the decision of the circuit court of appeals for this circuit in *Gregg v. Sanford*, 12 C. C. A. 525, 65 Fed. 151. And now, September 4, 1896, the plea is overruled, with leave to the defendants to answer the bill within 30 days.

---

BISHOP v. AVERILL et ux.

(Circuit Court, D. Washington, E. D. October 5, 1896.)

1. JURISDICTION—CITIZENSHIP.

Allegations that defendant has left the United States, and become permanently domiciled in the dominion of Canada, and now resides there, and intends to become a naturalized citizen of that country, does not show his alienage for the purpose of conferring jurisdiction on the federal court.

2. SAME.

The mere fact that defendants have, by removal from the United States, become residents of a foreign country, does not make them citizens thereof for the purpose of conferring jurisdiction on the federal court.

Action commenced in the superior court of the state of Washington, and removed to this court by the defendants. After his appearance in this court, the plaintiff filed a special plea to the jurisdic-

tion, controverting the allegations of the petition for removal as to the citizenship of the defendants. The case was tried upon this issue, and submitted upon the uncontradicted testimony of the defendant G. W. Averill, showing that he is a citizen of the United States; that he formerly lived in the state of Montana, and was a citizen of that state; that about 15 months prior to the commencement of this action he left Montana, with his family, and became permanently domiciled in the town of Grand Forks, in the province of British Columbia, dominion of Canada, and now resides there, and that he intends to become a naturalized citizen of that country. Remanded.

Danson & Huneke, for plaintiff.

W. T. Stoll, for defendants.

HANFORD, District Judge. In their petition for removal the defendants say: That the controversy in this action "is wholly between citizens of different states, to wit, between your petitioners, G. W. Averill and F. A. Averill, who each aver that at the time of the bringing of this action they were, and still are, citizens of the province of British Columbia, and the plaintiff, who, as your petitioners aver, was then, and still is, a citizen of the state of Montana." There is no ground of jurisdiction in this court, other than the alleged diverse citizenship of the parties. On the question as to the sufficiency of the record to show jurisdiction, I am unable to distinguish this case from *Stuart v. City of Easton*, 156 U. S. 46, 47, 15 Sup. Ct. 268, in which the supreme court of the United States held that a record showing only that the plaintiff in error was "a citizen of London, England," and that the other party was a corporation of the state of Pennsylvania, failed to show affirmatively the alienage of the plaintiff in error, and therefore failed to show jurisdiction, and for that cause reversed the judgment. It affirmatively appears that the controversy in this case is not between citizens of different states of our own nation, and to sustain the claim of the defendants that this court has jurisdiction we must find as a fact that the defendants are citizens or subjects of a foreign state, or aliens, as I understand the supreme court in the decision above referred to. The province of British Columbia is not a sovereign state. Its government is subordinate to the dominion of Canada, and it owes allegiance to the crown of Great Britain. London has a city government, and may as well be considered a foreign state as the province of British Columbia. If allegiance to the sovereign of Great Britain could not be inferred from the allegation as to citizenship of a party in the case cited, it cannot be so inferred in this case.

On the evidence, also, I must hold that the court does not have jurisdiction. The defendants have, by removal from Montana, lost their citizenship in that state, and they have become residents of a foreign country, but they have not acquired the rights nor assumed the obligations of a new citizenship. Citizenship, and not place of residence, is the test of jurisdiction. *Parker v. Overman*, 18 How. 137; *Robertson v. Cease*, 97 U. S. 646; *Denny v. Pironi*, 141 U. S. 121, 11 Sup. Ct. 966; *Horne v. George H. Hammond Co.*, 155 U. S.

393, 15 Sup. Ct. 167; *Stuart v. City of Easton*, 156 U. S. 46, 47, 15 Sup. Ct. 268.

The case will be remanded.

---

MALLON v. HYDE et al.

(Circuit Court, D. Washington, E. D. September 29, 1896.)

1. REMOVAL OF CAUSE—FEDERAL QUESTION.

The right of removal of a suit involving a federal question is not affected by the fact that the supreme court has laid down general principles which will probably control the decision, such previous decisions being on entirely different states of facts.

2. BANK OFFICERS—INDIVIDUAL LIABILITY—FRAUDULENT RECEIPT OF DEPOSITS.

Const. Wash. art. 12, § 12, making individually liable an officer of a bank receiving deposits after he has knowledge of the bank's insolvency, is self-executing.

3. SAME.

A right of action upon such liability does not inure to the bank, nor become an asset of the bank which a receiver is entitled to control, but is vested in the depositors whose money is so fraudulently taken.

At Law:

Action to recover money deposited in an insolvent national bank, commenced in the superior court of the state of Washington for Spokane county, and removed to this court by the defendants. The complaint alleges that the defendants are officers and directors of a national bank now in charge of a receiver appointed by the comptroller of the currency; that they each assented to the reception of the money on deposit, by the bank, with full knowledge on their part that the bank was then insolvent, or in failing circumstances. The petition for removal states that, by the plaintiff's statement of his case in his complaint, it appears that there is a federal question involved, for that the action is brought to enforce against the defendants a provision of the constitution of the state of Washington making any officer or director of a banking institution in this state, who shall receive or assent to the reception of deposits after he shall have knowledge of the fact that his bank is insolvent, individually responsible for deposits so received, which the defendants claim to be either not applicable to national banks, or in conflict with the laws of the United States. Argued and submitted upon a motion to remand, and upon a general demurrer to the complaint. Motion denied and demurrer overruled.

Blake & Post, for plaintiff.

Jones, Voorhees & Stephens, for defendants.

HANFORD, District Judge. In support of their motion to remand, the plaintiff's attorneys have argued that the supposed federal question is not now a debatable question,—the same having been decided, and the law settled, by the supreme court of the United States,—and they have cited the following cases: *Bank v. Kentucky*, 9 Wall. 363, 364; *Waite v. Dowley*, 94 U. S. 527-534. It is true that the opinion of the supreme court in each of the cases cited lays down general principles which, in my opinion, must control the decision of the federal question in this case. But the supreme court, like any other court, makes its decisions to fit the particular facts of the cases presented; and, when general rules are given, the application thereof to other cases involving different facts may be questioned.