of this court, she only realized $8,600 net. The cargo was libeled in the Southern district of New York, and the proceeds of the auction sale thereof amounted to the sum of $14,147.59.

That it is a case of arduous salvage services, carried on for many days in bad weather and severe cold, is not disputed. The only question raised relates to the amount to be awarded the salvors. The libelants, in order to show the nature and extent of the services they were called on to render, have offered proof of the cost of the services rendered, if paid for upon the basis of quantum meruit, which shows the value of the services to be the sum of $17,520.79. The argument of the libelants is that, as this is a case for salvage compensation, the libelants must be awarded more than $17,520.79; otherwise they will receive no salvage compensation at all. No case has been found where, in awarding compensation for salvage services, the salvors have not been awarded more than the value of their services upon the basis of quantum meruit, and I am unable to see any ground upon which to deny these salvors some extra compensation for their risk and their trouble. If these claimants had employed no salvors, but had undertaken to get this vessel and her cargo off themselves, they would, upon the proofs, have been compelled to expend $17,520.79. Taking the testimony of Merritt to show the exact value of the services rendered, I am of the opinion that the ship and cargo should pay, in addition to the sum of $17,520.79, the sum of $1,500, amounting in all to the sum of $19,020.79. As the proceeds of the cargo are not in this court, this court can only award salvage against the vessel. The sum awarded as the proper salvage for both vessel and cargo should be apportioned between the vessel and the cargo in proportion to their value. The proceeds of the vessel amount to $8,000. The proceeds of the cargo amount to $14,147.59. This will make the salvage compensation to be paid by the vessel the sum of $6,900, for which sum the libelants may have a decree. I have fixed the sum above named upon the supposition that the testimony of Merritt as to the value of the services rendered is correct. It was not disputed on the trial. If, however, the claimants have any idea that his statement is exaggerated, they may have a reference to ascertain the value of the services rendered upon the basis of a quantum meruit, and the award will be modified accordingly.

NOTE. The reference being taken and proofs offered to oppose the valuation of services, and also to show additional expenses incurred by the owners of the vessel, it was ruled that, nevertheless, the award made should stand.

STATE OF MISSOURI ex rel. RAUCH v. BOWLES MILLING CO. et al.

(Circuit Court, E. D. Missouri, E. D. April 24, 1897.)

No. 4,023.

FEDERAL JURISDICTION—STATE AS NOMINAL PARTY.

Under Rev. St. Mo. 1889, §§ 527, 531, 532, attachment bonds are payable to the state, and may be sued on at the instance of any party injured, in the name of the state, to his use, and defendant may avail himself of any set-off he may have against the party to whose use the suit is brought with the same effect as if such party were the plaintiff, etc. *Held*, that in suits on such attachment bonds the state is merely a formal party, whose presence cannot oust the jurisdiction of the federal court.

L. F. Parker, for plaintiff.

Wm. S. Pope, Warwick Hough, and W. F. Carter, for defendants.

ADAMS, District Judge. This is a motion by defendants to dismiss the case for want of jurisdiction. The action is upon a bond given by the defendants on the institution of a suit by attachment in the state courts of Missouri against the relator. By the provisions of the statutes of Missouri the attachment bond is payable to the state of Missouri, and may be sued on at the instance of any party injured, in the name of the state, to his use. The defendant in such suit may avail himself of any set-off or counterclaim he may have against the party to whose use the suit is brought, with the same effect as if such party were the plaintiff; and, if such set-off or counterclaim exceeds in amount the damages proved in behalf of the relator, judgment is rendered against the relator in favor of the defendant setting up the set-off or counterclaim for the amount of the excess and all proper costs. Rev. St. Mo. 1889, §§ 527, 531, 532. The relator, or the person to whose use such action is brought, may be required to give security for the costs of the suit. Rev. St. Mo. 1889, § 2915.

From the foregoing it is clear that in such suit the state is at best only a nominal party, without any interest. It does not institute or control the litigation by any of its law officers. On the contrary, the party in interest to whose use the suit is brought has a legal right to make use of the name of the state, not for the benefit or at the peril of the state, but as a matter of personal right, and for his own purposes exclusively. The real controversy in this case is, therefore, between the relator, a citizen of Illinois, and the defendants, citizens of Missouri, and as there is no controversy between the state of Missouri and the defendants, the formal use of the name of the state of Missouri as a supposed necessary party cannot oust this court of jurisdiction. Maryland v. Baldwin, 112 U. S. 490, 5 Sup. Ct. 278; Browne v. Strode, 5 Cranch, 303; McNutt v. Bland, 2 How. 9.

Attention is called to the feature of the Missouri statute which provides for a judgment for the penalty of the bond, and execution for the assessed damages only, in favor of the relator, and to that further provision of the statutes relating to scire facias on such judgment for further execution in favor of other persons damaged

within the purview of the attachment bond; and these features of the Missouri statute are claimed to present a case different from the cases supra. It is said that the state statutes involved in the Maryland Case, supra, made provision for any number of independent consecutive suits on the bond, at the instance of any person or persons injured, and that the proceeding by scire facias is not there recognized. It is further claimed that, as only one judgment can be rendered for the penalty of the bond in Missouri, and as the only recourse for subsequent breaches is by way of scire facias on that judgment, persons damaged by subsequent breaches, who may not happen to be citizens of states other than that of the defendants, can have no remedy. Without expressing any opinion concerning the claims so made, I am satisfied that the results, whatever they may be in the exceptional case suggested, cannot countervail the clear provisions of the constitution and acts of congress as interpreted by the supreme court. The motion to dismiss must be overruled.

HARDING et al. v. GUICE.

(Circuit Court of Appeals, Fourth Circuit. May 4, 1897.)

No. 201.

FEDERAL COURTS—FOLLOWING STATE DECISIONS—BILL TO REMOVE CLOUD ON TITLE.

The decisions of the supreme court of West Virginia holding that, under the state statutes, a bill to remove a cloud on title created by an irregular or void tax deed can be maintained by one out of possession, who relies solely on his legal title, are controlling in the federal courts.

Appeal from the Circuit Court of the United States for the District of West Virginia.

John T. McGraw, for appellants.
B. M. Ambler, for appellee.

Before SIMONTON, Circuit Judge, and BRAWLEY, District Judge.

SIMONTON, Circuit Judge. This case comes up on appeal from the circuit court of the United States for the district of West Virginia, in equity. The bill is filed for the purpose of removing a cloud from the title of land. The complainant alleges that she is the owner in fee simple of 2,212 acres of land in the county of Randolph, W. Va., and sets out in detail her chain of title. The title is traced to C. J. P. Cresap, who purchased the same at a tax sale made by the sheriff, 8th of November, 1871, for taxes assessed in 1865 and 1866, the land at that time being the property of one George Reagan. Reagan himself traced his title to a sale made on the 6th of April, 1854, on the forfeiture of these lands by the original patentee. She further alleges that the land is in the state of nature, wild and uncultivated, but covered with a large quantity of valuable timber, which constitutes its chief element of value; that upon the faith of this she

had selected it as her portion in the division of an estate in which she was one of the devisees. She further alleges that John S. Hoffman, under whom she holds the land as devisee, and that she herself after him, had as full possession of these lands as, according to their nature, they were capable of possession. The bill goes on to allege that there has appeared on the record of the county of Randolph, where said lands are located, a deed to the defendant Harding, purporting to convey said lands to him under a sale alleged to have been made by the sheriff of said county in November, 1889, for taxes assessed on the said land for the year 1887 as the property of one John Reagan and others, and that Harding and Butcher, the other defendant, are preparing to take possession of said land to cut the timber thereon. This title to Harding, the bill charges, is null and void. The answer challenges the title and possession of complainant; denies that she has in fact any title; admits their proposed use of the land to which they aver they have good title; prays the dismissal of the bill, and the dissolution of the restraining order granted thereon on the filing thereof. The cause came on to be heard on the pleadings and on depositions. It resulted in a decree that complainant had a good and valid title to the land as claimed by her, that the title set up by defendants was null and void, that they had not proved possession in themselves, that the tax deed under which they claim be canceled and annulled, and that the injunction be made perpetual. Leave to appeal from this decree was granted to the defendants, and the cause is before this court on their assignments of error. These assignments of error go to the jurisdiction of the court. They allege that a court of equity passed upon and settled the legal title to the land in controversy when there was no other question before it, and that it took from defendants the land of which they held both title and possession, without the intervention of a jury. Also, in that plaintiff has a plain, adequate, and complete remedy at law. Also, in that plaintiff, being out of possession, seeks to remove a cloud upon the title to the land in controversy without showing ground for equitable relief.

The jurisdiction of courts of equity to entertain bills for the removal of a cloud on the title of real property is too well established to be now drawn in question. McConihay v. Wright, 121 U. S. 205, 7 Sup. Ct. 940. The general rule is that such bills will not lie if the party complainant be not in possession. If the complainant be in possession, he could not have any remedy at law, for under such circumstances he could not bring his action to try the title. The rule is clearly and distinctly stated by the supreme court of West Virginia in Moore v. McNutt, 24 S. E. 682, as follows:

"Equity will exercise jurisdiction to remove a cloud resting upon the title of real estate—First, where the complainant has only the equitable title, and is either in or out of actual possession, and whether his adversary is in or out of actual possession; second, where complainant, though having legal title, is in actual possession. It will not exercise such jurisdiction where complainant has legal title and is not in actual possession, no matter whether his adversary is in actual possession or not. The party is left to his remedy at law; that being plain, adequate, and complete." But only when it is plain, adequate, and complete. Rich v. Braxton, 158 U. S. 406, 15 Sup. Ct. 1006.

There can be no doubt that a bill will lie to remove a cloud created on the title to land by a tax deed alleged to be void for fraud or irregularity, although the complainant set up his legal title only, if he be in possession. In the case at bar, although the bill alleges possession in the complainant, it seems to be that possession which the legal title draws to it. The important question in this case, therefore, is, will a bill lie to remove a cloud upon the title created by a tax deed, if the complainant be not in actual possession of the land, and if he relies on his legal title? As we have seen, the general rule requires that in such a case the complainant should allege and prove actual possession. The supreme court of the United States, while holding that remedies in the courts of the United States are at common law or in equity, according to the essential character of the case, uncontrolled in this particular by the practice of the state courts (New Orleans v. Louisiana Const. Co., 129 U. S. 45, 9 Sup. Ct. 223), yet an enlargement of equitable rights by state statute may be administered by the circuit courts of the United States as well as by the courts of the state, etc. Gormley v. Clark, 134 U. S. 348, 10 Sup. Ct. 554; Frost v. Spitley, 121 U. S. 552, 7 Sup. Ct. 1129; Greeley v. Lowe, 155 U. S. 58, 15 Sup. Ct. 24. This doctrine was applied in the case of Holland v. Challen, 110 U. S. 15, 3 Sup. Ct. 495. This was a case from Nebraska. The complainant in a bill to quiet title set up a claim to the land under a tax sale, but did not aver possession. The defendant was the prior owner of the land sold for taxes. A statute of Nebraska provides that an action may be brought, and prosecuted to final decree, judgment, or order, by any person, whether in actual possession or not, who claims the title to real estate, against any other person setting up an adverse estate or interest therein, for the purpose of determining between these conflicting claims. The supreme court held that this created an exception to the general rule on that subject. The language of the court shows that this statute modifies the general rule of equity, that, in order to maintain a bill to quiet title, it is necessary that the complainant must be in possession, and, in most cases, that his title should have been established by law, or founded on undisputed evidence or long-continued possession. The court also held that this was an enlargement of equitable rights which could be administered by the circuit courts of the United States within that state as well as by the courts of the state itself. There are cases in the supreme court which seem to conflict with the doctrine of Holland v. Challen,—such as Whitehead v. Shattuck, 138 U. S. 146, 11 Sup. Ct. 276, in which this case and others are commented upon. But these cases all turn upon the crucial question, is this a suit cognizable in equity, or has the complainant a plain, adequate, and complete remedy at law? Wehrman v. Conklin, 155 U. S. 314, 15 Sup. Ct. 129. The supreme court of the United States, in Rich v. Braxton, 158 U. S. 376, 15 Sup. Ct. 1006, held in a case like the one at bar, coming up from West Virginia, that the complainant who sought to quiet his title did not have a plain, adequate, and complete remedy at law. In Davis v. Gray, 16 Wall. 203, it is held that a party going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the state