generally that there is no appeal on a mere question of costs, to and including Bank v. Hunter, ubi supra. They were all, however, equity or admiralty appeals, except that in Wood v. Weimar, 104 U. S. 786, 792, there is a dictum that no writ of error lies from a judgment as to costs alone. But in O'Reilly v. Morse, 15 How. 62, 124, 137, where the patentee had not disclaimed certain void portions of one of his claims, and the circuit court allowed him costs, the supreme court affirmed the decree as to its merits, but reversed it as to the costs. And in Burns v. Rosenstein, 135 U. S. 449, 456, 10 Sup. Ct. 817, the court affirmed that it has entire control of the costs, as well as of the merits, where it has possession of a case on an appeal from a final decree. Bank v. Cannon, ubi supra, is apparently to the same effect.

That no appeal lies from a mere matter of costs has been said to be the rule of the house of lords, though a late statement of it very much qualifies it. Asylum Dist. v. Hill, 5 App. Cas. 582, 584. And an appeal clearly lies to the court of appeal on a mere matter of costs where a question of principle is involved. Annual Practice (1895), 1115. But, whatever may be the rule of the supreme court, the right of appeal to this court, given by the sixth section of the act establishing it, is of the broadest character. The statute is remedial, and we have always held that there is no necessity for limiting it in any respect when neither its language nor the clear rules of construction require it. Davis Electrical Works v. Edison Electric Light Co., 8 C. C. A. 615, 60 Fed. 276, 277; Marden v. Manufacturing Co., 15 C. C. A. 26, 67 Fed. 809, 814. Cases may be conceived where a party may not be greatly inconvenienced by the decision of the merits of a cause against him, and yet be ruined by a false principle of allowance of costs. We therefore hold that while, perhaps, there may be no appeal from the ordinary questions within the common jurisdiction of taxing masters, there may be when the force of a statute or some positive rule of law is involved, although it concerns only costs, and that, therefore, the question raised by the assignment of error which we have quoted is before us for determination.

The practice in this circuit has been for many years as stated in U. S. v. Sanborn, ubi supra. Nevertheless, the question involved is not one of usage, but of statutory construction, and has never been passed on by this court. Wherever the question has been before other circuit courts of appeals, it has been decided as claimed by the appellants; but this has not been to such an extent as to make such a body of concurring decisions as to compel our acquiescence. We therefore must abide by the long-continued construction of the law given by the federal judges within this circuit, and by the great weight of judicial authority involved therein. The decree of the district court is affirmed, and the costs of appeal are adjudged to the appellee.

GOMBERT et al. v. LYON et al.

(Circuit Court, D. Nebraska. May 3, 1897.)

FEDERAL COURTS—EQUITY JURISDICTION—STATE STATUTE—REMOVED CASES.

A suit brought in a state court, under a state statute, to quiet title against one in possession, is an equitable suit, which cannot, after removal to a federal court, be prosecuted therein, because there is an adequate remedy at law. The federal court will not, however, dismiss the suit, but will remand it to the state court.

Benjamin S. Baker and Cole & Brown, for complainants.
L. C. Burr and Searl & Coleman, for respondents.

MUNGER, District Judge. Complainants brought this action in the state court to quiet title in them against the claim of title on the part of the respondents to certain real estate in the bill described, situate in the state of Nebraska. The complainants in their bill allege they are the owners in fee simple of said real estate. The respondents deny complainants' title; allege title in themselves, and that they are in the possession of said premises. By the pleadings and proof it is clearly shown that respondents are now, and were at the time of the bringing of the action, in the possession of said real estate. Respondents removed the case into this court on the ground that a federal question was involved, and now move to have the case dismissed for the reason that the action is an equitable one, and that this court has no jurisdiction to determine the rights of the parties in an equitable proceeding, as complainants have an adequate remedy at law. The action is one in equity, and is authorized to be brought and maintained in the state court by the provisions of the state statute. Comp. St. Neb. 1895, c. 73, § 57; Foree v. Stubbs, 41 Neb. 271, 59 N. W. 798; Dolen v. Black, 48 Neb. 688, 67 N. W. 760. It is claimed on the part of complainants that this equitable remedy given by the state statute may be maintained in the federal courts, and they cite in support thereof Holland v. Challen, 110 U. S. 15, 3 Sup. Ct. 495; Reynolds v. Bank, 112 U. S. 405, 5 Sup. Ct. 213; and Arndt v. Griggs, 134 U. S. 316, 10 Sup. Ct. 557. We do not think these cases so hold. Holland v. Challen was a case involving, it is true, this statute of Nebraska; but in that case there was no one in possession of the premises, and complainant had no adequate remedy at law. In Reynolds v. Bank the question as to whether complainant had a complete adequate remedy at law did not arise. In Arndt v. Griggs it was held that "a state may provide by statute that the title to real estate within its limits shall be settled and determined by a suit in which the defendant, being a nonresident, is brought into court by publication." The judiciary act provides "that suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law." In Whitehead v. Shattuck, 138 U. S. 146, 11 Sup. Ct. 276, it was held that a demurrer was properly sustained to a bill that alleged that the plaintiff was the owner in fee of the premises; that, notwithstanding such ownership, defendants were in possession, holding the same adversely under claim of title,—on the ground that plaintiff had a plain,

adequate, and complete remedy at law. To the same effect are the following: Sanders v. Devereux, 8 C. C. A. 629, 60 Fed. 311; Frey v. Willoughby, 11 C. C. A. 463, 63 Fed. 865. In the case before us it seems clear that plaintiffs, under the pleadings, have an adequate and complete remedy by the action of ejectment, and for that reason this action cannot be maintained in this court. But should the motion to dismiss be sustained? We think not. The case was one properly brought in the state court. That court was given jurisdiction by the state statute to determine the controversy between the parties in this equitable proceeding, and to dismiss the action would be, in effect, to hold that the state court did not have jurisdiction, and thus nullify the state statute. We think the proper proceeding is to remand the case to the state court, and this view we think sustained in Cates v. Allen, 149 U. S. 451, 13 Sup. Ct. 883, 977. The case will be remanded to the state court at the cost of respondents.

FRINK v. BLACKINTON CO.

(Circuit Court, D. Massachusetts. April 29, 1897.)

No. 618.

1. REMOVAL OF CAUSES — FILING OF RECORD BY PLAINTIFF — MOTION TO REMAND.
   Quære, whether, after the removal papers are filed in the state court, and before the time allowed to defendant for filing the record in the federal court, the plaintiff may himself file the record, and move to remand.
2. SAME—TIME OF REMOVAL.
   The rule of the superior court of Massachusetts requiring demurrers, answers, pleas in abatement, and motions to dismiss to be filed within the time allowed by law for entering an appearance is a general rule of practice, so as to require that a petition for removal to a federal court shall be filed within the same period; nor is it material that the rule permits the court to enlarge the time on special cause shown. First Littleton Bridge Corp. v. Connecticut River Lumber Co., 71 Fed. 225, affirmed.

George R. Nutter, for plaintiff.
Charles H. Williams, for defendant.

PUTNAM, Circuit Judge. This is a "plea of land," or "real action," brought in the superior court of Massachusetts. The defendant filed the proper petition and bond to remove the cause to this court. They were filed at such a date that pursuant to the act of August 13, 1888, c. 866, § 1 (25 Stat. 433), the bond was necessarily conditioned for entering the copy of the record in this court at the May term, 1897. During the October term, 1896, of this court, the plaintiff asked leave to file a copy of the record, and moved this court to forthwith remand the case. The defendant claims that we have no jurisdiction to entertain this motion prior to the May term.

The weight of authority and the reason of the case seem to be with the plaintiff so far as concerns this proposition. The statute contains no express provision on this topic; and the most that can be said in regard to it is that its requirements looking to the entering of the

copy of the record in the circuit court at a specific term raise an implication that the cause is not pending there until that time. However, it does not expressly prohibit either party from entering such copy at an earlier term; and what it does not prohibit cannot be held to be a legal impossibility. Various expressions of the supreme court make it certain that, after the filing of proper removal papers, a case is no longer pending in the state court for any useful end; and there seems to be no theory nor fiction of law which renders it illogical to maintain that, for practical purposes, it must be regarded as pending in one court, if not in the other. Gross injustice would often be done, and great hardships ensue, if it should be held that there was an interregnum during which no court could make interlocutory orders, no matter how great the necessity; and we are not inclined to the view that such is the law. However, in the absence of any ruling on this question by the supreme court, we prefer not to hazard unnecessarily the chance of laying a serious error in the very foundation of this litigation, and we believe that the expression of our views on the remaining question presented to us will enable the parties to accomplish seasonably practical results with safety.

The only reason for remanding now relied on by the plaintiff is that the removal papers were not seasonably filed in the superior court. A rule of that court provides that "demurrers, answers and pleas in abatement, and motions to dismiss, shall be filed within the time allowed by law for entering an appearance, unless otherwise ordered by the court for good cause shown"; and the time allowed by law, as provided by the acts and resolves of Massachusetts (St. 1885, c. 384, § 7), for entering an appearance, is ten days after the return day of the writ. The removal papers were not filed until after the expiration of the ten days named. This rule, or one of the same character, has prevailed so long in all the superior courts of judicature of Massachusetts that it has become universally known as a general principle of practice. Under a like rule of the supreme court of New Hampshire, in First Littleton Bridge Corp. v. Connecticut River Lumber Co. (September 24, 1895) 71 Fed. 225, we applied the expressions of the supreme court in Martin's Adm'r v. Railroad Co., 151 U. S. 673, 14 Sup. Ct. 533, and held that the rule limited the time for filing removal papers in the manner claimed by the plaintiff in the cause at bar. Judge Simonton, in Mahoney v. Association (November 7, 1895) 70 Fed. 513, declined to follow the expressions of the supreme court, on the ground that they were not essential to the decision of the case referred to. Notwithstanding the great weight to be given to whatever comes from that learned judge, we do not consider ourselves at liberty to follow him. The expressions of the supreme court in Martin's Adm'r v. Railroad Co. were repeated by it in Goldey v. Morning News (March 11, 1895) 156 U. S. 518, 524, 525, 15 Sup. Ct. 559, in such way that we must accept them as stating deliberate conclusions of that court which we are not at liberty to disregard. Moreover, in view of the delays in litigation arising unavoidably from the right of removal, the construction of doubtful provisions should be in favor of requiring the greatest diligence from parties exercising that right. The supreme court, in Martin's Adm'r v. Railroad Co., at page 687, 151