

and located at Wichita, Kan., and the removal was denied on the ground that only a nonresident defendant of Kansas could do that. Counsel for plaintiff cited to the contrary *Yuba Co. v. Pioneer Gold Min. Co.*, 32 Fed. 183, decided at circuit by Judge Sawyer, Justice Field and Judge Sabin concurring. Justices Field and Sawyer, at circuit, in *Wilson v. Telegraph Co.*, 34 Fed. 561, expressly overruled that case on the very point, expressing gratification at so early an opportunity to correct their error, of which they had been convinced for some time. It was doubtless the *Yuba Co.* Case which misled Judge Hallett in *Mining Co. v. Markell*, 33 Fed. 387, and perhaps other judges. Motion to remand denied.

STALKER v. PULLMAN'S PALACE-CAR CO.

(Circuit Court, S. D. California. May 1, 1895.)

REMOVAL OF CAUSES—NONRESIDENT DEFENDANT—JURISDICTION.

A suit commenced in a state court, by a British subject, against a non-resident corporation, to recover \$20,000 damages for personal injuries, is removable to the circuit court on the application of the defendant.

Action by James H. Stalker against the Pullman's Palace-Car Company to recover for personal injuries. The cause was removed from the state court on petition of defendant. Heard on motion to remand.

McLachlan & Cohrs, for plaintiff.
Hunsaker & Wright, for defendant.

ROSS, Circuit Judge. The plaintiff, a British subject, commenced this suit in one of the superior courts of the state, against a corporation organized and existing under the laws of the state of Illinois, to recover damages in the sum of \$20,000 for personal injuries. The defendant filed in the superior court a petition and bond for the removal of the cause to this court. The bond was approved, and an order of transfer entered, and here the defendant appeared specially for the purpose, and moved the court to set aside the service of process made in the state court, upon the coming on of which for argument, the plaintiff moved the court to remand the case to the state court, upon the ground that it was improperly brought here, and also made a motion that, in the event the motion to remand be denied, the plaintiff be allowed to amend the return of service of process, to which latter motion the defendant objected, for the reason that no notice thereof had been given.

The motion to remand must be denied, under the ruling of the supreme court made in the case of *Railroad Co. v. Davidson*, 15 Sup. Ct. 563, in which that court held that section 2 of the judiciary act of 1887, as amended by the act of 1888, refers to the first part of section 1 of the same act, by which jurisdiction is conferred on the circuit courts, and not to the clause thereof relating to the district in which suit may be brought, which restriction, as has been repeatedly held, is but a personal privilege of the defendant, and may be

waived by him. The necessary result of this ruling is that this court would have had original jurisdiction of the present suit by virtue of the first section of the act of 1887, as corrected by that of 1888, subject to the exercise of the personal privilege conferred upon the defendant by the restrictive clause referred to.

A ruling upon the motion of the defendant to set aside the service of process made in the state court should, I think, be withheld until the plaintiff has had an opportunity to give notice of his motion to amend the return of service of such process.

Motion to remand denied.

HEALEY v. HUMPHREY et al.

(Circuit Court of Appeals, Ninth Circuit. June 28, 1897.)

No. 333.

1. JUDGMENT—EJECTMENT—RENTS—JURISDICTION.

When an action in the circuit court to recover the possession of land situated in another district is joined with an action for rents, issues, and profits of the land, that part of the judgment rendered for the value of the rents is within the jurisdiction of the court, and is valid.

2. COURTS—VENUE IN REPLEVIN—LAW OF NEVADA.

The circuit court for the district of Nevada has jurisdiction in a replevin action though the property sought to be recovered is in another state, under Gen. St. Nev. 1885, §§ 3040-3042, which provide that the action may be brought wherever the defendant resides, and, if he be nonresident, in any county which the plaintiff may designate in his complaint.

Appeal from the Circuit Court of the United States for the District of Nevada.

This was a suit in equity by M. Healey against G. M. Humphrey, the Bullion & Exchange Bank, and others, to enjoin the enforcement of two judgments. There was a decree dismissing the bill, and complainant appeals.

E. V. Spencer, for appellant.
Trenmor Coffin, for appellees.

Before GILBERT and ROSS, Circuit Judges, and MORROW, District Judge.

GILBERT, Circuit Judge. This is an appeal from a decree of the circuit court of the United States for the district of Nevada dismissing the appellant's bill, which he brought to enjoin the appellees from enforcing two certain judgments which had been rendered in that court. The bill alleged that on March 21, 1893, the defendant the Bullion & Exchange Bank commenced an action against the complainant and another to recover possession of certain lands situate, not in Nevada, but in California, and that the answer in the action admitted that the lands were without the state of Nevada; that judgment was thereafter rendered in favor of the plaintiff for the recovery of the possession of the land, and for the sum of \$962.50, the value of the rents, issues, and profits thereof; that on said March 21,