of abbreviating it for the convenience of, and lessening the expense to, him who desires to take the case to another tribunal.

I am authorized by Judge RICKS, who sat with me, and heard this motion, to say that he concurs in the conclusions that have been reached. The motion is therefore denied.

COIT & CO. v. SULLIVAN-KELLY CO. et al.

(Circuit Court, N. D. California. December 31, 1897.)

No. 12,510.

COURTS—PRACTICE—UNITING LEGAL AND EQUITABLE ACTIONS.

Seeking recovery under one complaint against a corporation for goods sold and delivered to it, and against an individual alleged to have an interest in its business, and the full control, management, and disposition of its property and assets, is an improper joinder of legal and equitable causes of action, and will not be permitted in the federal courts, though allowable in the courts of the state where the action was brought.

L. T. Hatfield, for plaintiff.

Robert T. Devlin, for defendants.

HAWLEY, District Judge (orally). This action is brought to recover the sum of $3,682.58, alleged to be a balance due and owing from the defendant the Sullivan-Kelly Company for goods, wares, merchandise, and paint supplies sold and delivered by the plaintiff to said corporation. The defendants have separately appeared, and moved to dismiss the action, and have also separately interposed a demurrer to the amended complaint. One ground of the demurrer, and the only one that need be noticed, is "that there is a misjoinder of parties defendant, in this: that Robert T. Devlin, alleged to be a trustee, is made a party with the defendant the Sullivan-Kelly Company, alleged to be a debtor." The cause of action against the defendant Devlin is stated in the following averment:

"That under an arrangement between defendants, the Sullivan-Kelly Company and Robert T. Devlin, the details of which are unknown to plaintiff, defendant Robert T. Devlin has become a party in interest in the ownership, control, and management of the business and property of the Sullivan-Kelly Company, to the extent of having the sole control of the disposition of the assets of the Sullivan-Kelly Company, the collection of the money arising therefrom, and the disbursement thereof, for distribution among all the owners of such property and business, and for the payment of all indebtedness of the Sullivan-Kelly Company, including the indebtedness to plaintiff; and he is now, and for more than five months prior to the commencement of this action has been, so in control of such business and property of the Sullivan-Kelly Company, and the disposition of the money arising therefrom, and is now, and at all times within said period of five months has been, beneficially interested therein."

The plaintiff "prays judgment against defendants for the sum of three thousand six hundred and eighty-two and $^{58}/_{100}$ dollars, with interest, * * * and for such other and further relief as plaintiff may be entitled to in law, and under the practice of this court."

The character of this complaint cannot be classified either as an

action at law or a suit in equity. The plaintiff really seeks to amalgamate the two causes in one complaint. The defendants ought, under the rules and practice of this court, to have made a motion to compel plaintiff to elect whether it would proceed at law or in equity, which motion would have been granted. The motion to dismiss will, however, be denied.

If the complaint is to be treated as an action at law to recover from both defendants the amount of money alleged to be due, it is wholly insufficient, because there are no allegations which aver any contractual relations between the plaintiff and the defendant Devlin, or any averment of any character to show that defendant Devlin, in any way or manner, or by any transaction, had become obligated to pay plaintiff any sum or amount of money whatever. As a bill in equity, it is defective in several respects,—among others, that it does not show that the plaintiff has no clear, speedy, or adequate remedy at law. Moreover, the law is well settled that, before a plaintiff can maintain a suit in equity to subject property in the possession of one party to the payment of a debt due from another party, he must first bring his action at law against the debtor to establish and enforce his claim. Scott v. Neely, 140 U. S. 106, 11 Sup. Ct. 712; Tube-Works Co. v. Ballou, 146 U. S. 517, 523, 13 Sup. Ct. 165; Hollins v. Iron Co., 150 U. S. 371, 379, 14 Sup. Ct. 127. It is, however, unnecessary to discuss the merits or demerits of the averments in the complaint. It is enough to say that the real objection to the complaint is that the plaintiff has attempted to unite an action at law with a suit in equity, as under the state practice in the state courts he is permitted to do, but that practice does not prevail in this court. The plaintiff may bring his action at law against the Sullivan-Kelly Company to recover the sum of money alleged to be due, and it may also bring a suit against the defendant corporation and Devlin to subject the assets in the possession of Devlin to the payment of any judgment that may be recovered against the corporation; but it cannot unite a suit in equity with an action at law, in the same complaint. The distinction between law and equity must be observed in all actions or suits brought in the United States courts. The equity jurisdiction of the courts of the United States is derived from the constitution and laws of the United States. The practice is regulated by the various courts and by the rules established by the supreme court, unaffected by any state legislation. In the United States courts, the union of equitable and legal causes of action are not allowed. These general principles are too well settled to require an extended discussion. Bennett v. Butterworth, 11 How. 669; Fenn v. Holme, 21 How. 481, 484; Thompson v. Railroad Co., 6 Wall. 134, 137; Payne v. Hook, 7 Wall. 425, 430; Hurst v. Hollingsworth, 100 U. S. 100, 103; Railroad Co. v. Paine, 119 U. S. 561, 7 Sup. Ct. 323; Ridings v. Johnson, 128 U. S. 212, 217, 9 Sup. Ct. 72; Scott v. Neely, 140 U. S. 106, 11 Sup. Ct. 712; Scott v. Armstrong, 146 U. S. 499, 513, 13 Sup. Ct. 149. The demurrers are sustained, and plaintiff given 20 days in which to amend his complaint.

McCAIN et al. v. CITY OF DES MOINES et al.

(Circuit Court, S. D. Iowa, C. D. January 11, 1898.)

No. 2,355.

1. FEDERAL COURTS—JURISDICTION—FEDERAL QUESTIONS.
A suit by property owners to enjoin city officials from exercising any jurisdiction over annexed territory, on the ground that the statute extending the corporate limits is void under the state constitution, cannot be maintained in a federal court, on the theory that the assessment of taxes, etc., by the city, being without warrant of any valid law, will be a taking of property without due process of law, and a denial of the equal protection of the laws. The real issue in such case is whether the statute enlarging the corporate limits is invalid under the state constitution, and no federal question is involved.

2. CONSTITUTIONAL LAW—FEDERAL JURISDICTION—DECISIONS OF STATE BINDING UPON FEDERAL COURTS.
The determination of a question involving the construction of a state constitution by the highest court of a state is absolutely binding upon the courts of the United States, where no question affecting the constitution of the United States is involved. State v. City of Des Moines (Iowa) 65 N. W. 818, approved.

This was a suit in equity by Walter M. McCain and others against the city of Des Moines and its officials to enjoin them from exercising any jurisdiction over certain territory included in the recently extended limits of the city. The cause was heard on motion for a preliminary injunction and demurrer to the amended bill.

Wishard & Clark, for complainants.
N. T. Guernsey, for defendants.

SHIRAS, District Judge. In the year 1890 the general assembly of the state of Iowa passed an act entitled "An act to extend the limits of cities and for other purposes incident thereto" (Laws 1890, p. 3), which by its terms was limited to cities which by the census of 1885 were shown to have a population of 30,000 or more. Acting under the provision of this act, the city of Des Moines exercised corporate jurisdiction over the territory which had formerly been included within the limits of the incorporated town of Greenwood Park; and the board of public works of the city entered into contracts with third parties for the paving of streets extending through the town of Greenwood, and the city also refunded its public debt by the issuance of bonds under the provisions of an act of the state legislature approved March 25, 1890. In March, 1894, there was brought in the district court of Polk county, Iowa, a proceeding by quo warranto, in the name of the state of Iowa, ex rel. A. G. West, against the city of Des Moines, in which it was claimed that the act of the general assembly extending the city limits was in its nature special legislation, and therefore void under the provisions of the state constitution, which forbid the enactment of special laws for the incorporation of towns and cities, and a judgment of ouster was prayed against the city of Des Moines for the purpose of preventing it from further exercising governmental authority over the territory added to the city under the act of March,