

148 U. S. 663, 13 Sup. Ct. 706. A resident or citizen of the state has no right of removal. If he join in a petition, he cannot assert thereby his own right, nor can he confer on another a right. At best, he would merely waive objection to being deprived of a right to remain in the court of his own state. But it is apparent from the whole section, and especially from clause 3, that no such right has been regarded by congress as sufficient to prevent a removal. A further reason may be found in the fact that all other clauses of that section permit one of several defendants to remove a cause; the only limitation in such clauses being that there should exist a matter of federal cognizance, as a case arising under the laws of the United States, a controversy wholly between citizens of different states, or prejudice or local influence whereby a citizen of another state is unable to obtain justice. We should prefer a construction of the present act that attributes to congress an intention to deal consistently with the same subject-matter, rather than an intention to perpetuate unreasonable inconsistencies in previous acts, if such existed. I think that such cases as seem to hold that congress intended to establish a different rule for separable controversies from that for single controversies fail to duly consider the point so clearly presented in *Insurance Co. v. Champlin*, supra, or to meet the question, why should congress in one clause allow one of several defendants to remove a controversy wholly between citizens of different states, and in another deny such right? The reply, "Because of a difference between suits in which there are several controversies, and suits involving but a single controversy," is merely a verbal reply, that entirely fails to satisfy the inquiry, or to afford any ground for such a distinction. I am of the opinion that section 2 of the act of 1888, when construed as a whole, clearly shows that it was intended that whenever a controversy is wholly between citizens of different states, so that unmistakably it is within the constitutional term "controversies between citizens of different states," one of several defendants, being actually interested therein, a nonresident, and a citizen of another state, may remove it to a federal court. The motion to remand is therefore denied.

NORTH CHICAGO ST. R. CO. v. ST. JOHN.

(Circuit Court of Appeals, Seventh Circuit. March 5, 1898.)

No. 457.

APPEAL AND ERROR—BILL OF EXCEPTIONS.

An objection and exception to the admission of evidence are not available on error where the grounds of objection are not stated in the bill of exception. The omission is not cured by a statement of the grounds in the assignments of error.

In Error to the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

C. Le Roy Brown, for plaintiff in error.

Thomas S. McClelland, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This was an action against the plaintiff in error, the North Chicago Street-Railroad Company, for personal injuries suffered by the defendant in error, Susan H. St. John, by reason of a sudden and untimely start of the car from which she was stepping, whereby she was thrown prostrate upon the pavement. It was alleged in the declaration, as a special ground of recovery, that the plaintiff was a portrait painter, and suffered an impairment of her capacity to practice her art. The jury assessed the damages at \$25,000, but the court, on consideration of a motion for a new trial, having entered an order that, unless within the time stated the plaintiff should remit three-fifths of the amount, a new trial would be granted, the remittitur was duly entered, the motion for a new trial overruled, and judgment given for two-fifths of the amount of the verdict. The assignment of errors contains five specifications, but reliance is placed only upon the first, which is that "the court erred in the admission of evidence offered by the plaintiff in the following instances, to wit"; and following this is a statement of questions propounded to the plaintiff, and to other witnesses called in her behalf, showing that in more than 100 instances objection was made and overruled, and exception saved, sometimes to the question, sometimes to the answer, and sometimes to the overruling of a motion to exclude testimony already admitted, but in no instance showing any ground or reason for the objection or motion. In the assignment of errors, following a question to the plaintiff touching her capacity as an artist to earn money, is a statement that the question was objected to because "incompetent, immaterial, speculative, remote, and purely problematical"; but such a statement in an assignment of errors is out of place, and does not supply a failure to state in the bill of exceptions the grounds of objection. The proposition would seem to be an obvious one. It was expressly affirmed in *Railroad Co. v. Mulligan*, 34 U. S. App. 1, 14 C. C. A. 547, and 67 Fed. 569, and in *Railroad Co. v. Charless*, 7 U. S. App. 359, 375, 2 C. C. A. 380, and 51 Fed. 562. That an objection and exception to the admission of evidence, without specifying some ground of objection, is not available on appeal or writ of error, has been often decided by the supreme court, and by the circuit courts of appeals in a number of the circuits. *Camden v. Doremus*, 3 How. 530; *Burton v. Driggs*, 20 Wall. 125; *Noonan v. Mining Co.*, 121 U. S. 400, 7 Sup. Ct. 911; *Patrick v. Graham*, 132 U. S. 627, 10 Sup. Ct. 194; *Railway Co. v. Charless*, 7 U. S. App. 359, 2 C. C. A. 380, and 51 Fed. 562; *U. S. v. Shapleigh*, 12 U. S. App. 26, 4 C. C. A. 237, and 54 Fed. 126; *Manufacturing Co. v. Joyce*, 8 U. S. App. 309, 4 C. C. A. 368, and 54 Fed. 332; *Railway Co. v. Reese*, 15 U. S. App. 92, 5 C. C. A. 510, and 56 Fed. 288; *Ward v. Manufacturing Co.*, 12 U. S. App. 295, 5 C. C. A. 538, and 56 Fed. 437; *Railway Co. v. Henson*, 19 U. S. App. 169, 7 C. C. A. 349, and 58 Fed. 531; *Railroad Co. v. Soper*, 21 U. S. App. 24, 8 C. C. A. 341, and 59 Fed. 879; *Mitchell v. Marker*, 22 U. S. App. 325, 10 C. C. A. 306, and 62 Fed. 139; *Tabor v. Bank*, 27 U. S. App. 111, 10 C. C. A. 429, and 62 Fed. 383; *Supreme Council Catholic Knights v. Fidelity & Casualty Co.*, 22 U. S. App. 439, 11 C. C. A. 96, and 63 Fed. 48. Aside, therefore, from any question of the assignment of error not conforming to rule 11 of this court (21 C. C. A.

cxii., 78 Fed. cxii.), as interpreted in *Vider v. O'Brien*, 18 U. S. App. 711, 10 C. C. A. 385, and 62 Fed. 326, and *Railroad Co. v. Mulligan*, supra, it is evident that this record presents no question for our consideration. The judgment below is therefore affirmed.

WEBER v. GRATTON et al.

(Circuit Court, D. Washington, N. D. March 11, 1898.)

EQUITY—KNOWLEDGE OF FACTS—INTERVENING RIGHTS—LACHES.

In 1874 complainant's husband informed her that he intended to obtain a divorce, and marry another, and they separated, she going to a distant state. Soon after, he did obtain a divorce, married a woman who believed the divorce valid, and children were born to them. He acquired title to valuable timber land, which he incumbered by mortgages securing \$10,500. In 1886 his second wife obtained a divorce from him, and in 1889 he was killed. After his death, half of the land was decreed to his second wife, as community property, and the owner of the mortgages obtained title to the other half by foreclosure and sale. In June, 1891, complainant first had actual notice of the divorce, and, over four years thereafter, began a suit in equity to establish her title to the land, alleging that the divorce was fraudulently obtained, and that the court, because of defective notice, had no jurisdiction to grant it. *Held* that, if complainant ever had any rights to equitable relief, they were all forfeited by her laches.

W. M. Gregory, Ralph R. Duniway, and W. A. Williams, for complainant.

James Kiefer and Richard Williams, for defendants.

HANFORD, District Judge. This is a suit in equity, by Selona Weber, to establish her title to unoccupied timber lands, in the aggregate 3,400 acres, situated in Jefferson and Clallam counties, in this state. The story of this case, and the grounds upon which the complainant bases her claim to ownership of the property, as disclosed by the pleadings, evidence, and stipulations of the parties, are as follows: The complainant was lawfully married to Emil Weber, in the state of Ohio, September 11, 1871. At that time Weber was a young man, living with his parents, and without means to support his wife. In about one year after the marriage, he left the complainant to shift for herself, and went to Wyoming, where he became acquainted with Mary J. Fuhr, who is now Mary J. Gratton, one of the defendants. In 1874 he returned to Ohio, and, meeting the complainant there, represented to her that he had prospered in business in the West, so that he was able to support her, and induced her to go with him to live in the state of Indiana. A few days afterwards he informed her that he did not intend to live with her, and had removed to Indiana for the reason that it would be easier to obtain a divorce in that state than in Ohio, and he also informed her that he intended to marry Mary J. Fuhr. Pursuant to a suggestion from her husband, and with money which he gave her for expenses of the trip, the complainant then went to visit her sister in Iowa, and she subsequently removed to New York City, where she has since resided. At the time of leaving her husband, in Indiana, the complainant un-