

proceed according to law, and that use was made, or attempted to be made, of the means which the law prescribes. After the writs were issued in this case, not a step was taken in the line of lawful procedure. Sending the writs without the district in which only they could be served, and to persons who were without power to serve them, were vain and futile acts. The delivery of copies of the subpoenas to the defendants at their offices in Illinois and New York, while it was sufficient to give them actual notice that a bill had been filed against them, was neither a service nor an attempted service upon them, and was of no greater effect than any other notice which they might have received of the same fact. In short, it may be said that up to the 5th day of March, 1896, nothing had been done to begin the suit except to file the bill, and to cause subpoenas to issue, which subpoenas were subsequently returned to the clerk's office.

It is argued that the court should construe liberally, in favor of the United States, a self-imposed statute of limitations, and the case of *U. S. v. American Bell Tel. Co.*, 159 U. S. 548, 16 Sup. Ct. 69, is cited. The doctrine of that case, and of the precedents on which it is sustained, is confined in its application to cases in which uncertainty exists as to the intention of the legislature to impose the limitation. In the present case no doubt is suggested by the language of the statute, and there is no room for construction. It is clear that congress has said that all suits by the United States to vacate patents shall be brought within the period limited by the act. The only question we are called upon to decide is whether this suit has been begun within that period. In determining at what point in the proceedings a suit shall be deemed to be commenced, we have no warrant for holding that the rule applicable to a suit on behalf of the United States shall differ from that applicable to other cases. When the United States, through its congress, has said that suits in its favor shall be brought only within a stated period, we have no criterion for determining whether a given suit was commenced within that period, except to apply the rules and principles applicable to all suitors. The decree of the circuit court will be affirmed.

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KENNEDY v. ELLIOTT. CRAINE v. SAME. LAMONT v. SAME.

(Circuit Court, D. Washington, W. D. February 23, 1898.)

1. QUIETING TITLE—ALLEGATIONS OF COMPLAINTS—LEGAL TITLE.

Plaintiffs had not acquired the legal title to the lands they claimed. They did not allege that they were entitled to possession, nor that defendant claimed the title or interest therein adversely to them, or had done or threatened to do any act which may cast a cloud on their title, and there was no prayer for a decree to quiet title or remove a cloud. *Held*, that plaintiffs were not entitled to equitable relief quieting title, either under 2 Ballinger's Codes & St. Wash. § 5500, or on general equitable principles.

2. SAME—DISPUTED BOUNDARY LINE BETWEEN STATES—RELIEF IN EQUITY.

While there is a controversy between two states as to the location of the boundary line between them, one whose title to tide lands is derived from one of the states, and depends upon the location of such line, cannot maintain a suit to quiet his title against one who claims by grant from the other state.

**3. INJUNCTION—INTERFERENCE WITH PLAINTIFF'S BUSINESS—EVIDENCE.**

Before restraining defendant from interfering with plaintiffs' business operations, the court must find that defendant has interfered or threatened to interfere therewith in a manner to cause plaintiffs irreparable injury.

**4. TRESPASS—REMEDY AT LAW.**

For a mere naked trespass by going upon land without license, where no injury is being done to the premises, an action at law for damages affords an adequate and complete remedy.

These were suits in equity brought by Ferguson Kennedy, Thomas Craine, and John Lamont, respectively, against J. G. Elliott.

Carey & Mays, for plaintiffs.  
Fulton Bros., for defendant.

HANFORD, District Judge. The parties to these suits are all citizens of the state of Washington. The suits were originally commenced in the superior court of the state of Washington for Wahkiakum county, and were removed into this court by the defendant, on the ground that in each of the cases there is a controversy between citizens of the same state, claiming lands under grants from different states. The land in controversy is a sand island, called "Miller Sands," situated in the lower Columbia river, the river being the boundary between the states of Oregon and Washington. In his answer the defendant sets up a claim to the whole of said island by virtue of an alleged grant from the state of Oregon, and each of the complainants claims a part of said island by virtue of contracts to purchase the same from the state of Washington. This island is classed as tide land, being a mere deposit of sediment and sand, entirely submerged when the river is at the stage of ordinary high tide. Neither of the parties have any improvements, or other evidence of actual possession of the island, except a floating house, placed there by one of the complainants since these suits were commenced. The parties are all fishermen, engaged during each fishing season in catching salmon in the Columbia river, and this island is valuable to them as a place for drawing seines. The complainants aver that the defendant has interfered with them in their use of the island by going there and taking fish by the use of seines, and that he threatens to continue such interference, and on that ground they each ask for relief by injunction, to restrain the defendant from trespassing.

The Columbia river, from the Oregon shore to the Washington shore, opposite Miller Sands, is more than five miles wide, and it is divided by a number of islands, and has three channels. Miller Sands is south of the northernmost channel, which at present, and since the year 1882, has been the route of all ships and large vessels navigating the Columbia river. The middle channel, which is south of Miller Sands, is the widest channel, and was traveled by all large vessels from the year 1851 until 1882. It is still used by steamboats and small vessels, but, by reason of sand bars forming therein, ocean-going vessels have been compelled to take the northernmost channel. The third channel, which is nearest to the Oregon shore, is, and has been, navigable for only light-draft steamers and small boats. The cases have been argued upon the theory that the ultimate determination of the right of the parties depends upon the location of the boundary line between the two

states; for, if the middle of the main ship channel which was known and used at the date of the act of congress setting off Washington territory from Oregon, and defining the boundary between the two territories, and at the date of the adoption of the constitution of the state of Oregon, in which the boundary of that state is defined, is the true and permanent boundary between the two states, the defendant has no lawful or just claim to the land in controversy; and, on the other hand, if the middle of the main ship channel known and used since the year 1882 has become and is the present boundary between the two states, the plaintiffs have no lawful or just claim. The defendant, however, has raised a question as to the right of the complainants to relief in a court of equity, and claims that, as he has not done or threatened any destruction of the property, or permanent injury thereto, the complainants have an adequate remedy at law, by actions to recover damages, if there is, or shall be, any just ground for charging him with the commission of a trespass.

The main question in dispute between the parties, as to which channel of the Columbia river is the boundary, and which state could lawfully sell the island, and the able arguments of counsel, have been considered; but the issues in the pleadings are too narrow to call for a decision of that question. The complainants aver that they are in possession, only equitable relief is prayed for, and the cases have been tried in conformity with the practice in equity; therefore, they cannot be regarded as actions to recover possession of real property. Nor can they be viewed as proceedings under the statute of this state, authorizing any person having a valid, subsisting interest in real property, and a right to the possession thereof, to maintain an action against any person claiming adversely the title, or some interest therein, for the purpose of obtaining a declaratory judgment quieting the plaintiffs' title, or removing a cloud therefrom (vide 2 Ballinger's Codes & St. Wash. § 5500), because the bills of complaint do not aver that the complainants are entitled to possession, nor charge that the defendant claims the title, or any interest therein, adversely to them, nor that he has done or threatened any act which may cast a cloud upon their title, and there is no prayer for a decree quieting their titles or to remove any cloud. The same objections are obvious, and fatal, if the cases are to be considered as suits to quiet title, under the rules and practice of courts of equity, irrespective of any remedy or procedure provided by statute.

Besides the objection that the issues in the pleadings are too narrow, there is an additional obstacle in the way of obtaining equitable relief, independently of the statute; for the complainants have not acquired legal titles to the land which they claim. They show only executory contracts to purchase from the state of Washington, whereby the state has covenanted to convey to each a particular tract, in consideration of full payments of the purchase price in annual installments, with interest. And if there is a controversy between the states of Oregon and Washington as to the location of their common boundary (the arguments assume that there is such a controversy between the two states), then, while that controversy remains undetermined, there is such uncertainty as to the validity of any title which the complainants can

acquire from the state of Washington as to preclude them from establishing their rights conformably to the rules of procedure in courts of equity. If their titles were complete, as they can be made by the issuance of patents pursuant to their contracts with the state of Washington, the complainants would still be barred from suing in equity, independently of the statute, by the rule which requires a plaintiff in a bill to quiet title to show by incontestable evidence that he has the legal title. 1 Pom. Eq. Jur. §§ 252, 253; *Holland v. Challen*, 110 U. S. 15-26, 3 Sup. Ct. 495; *Frost v. Spitley*, 121 U. S. 552-558, 7 Sup. Ct. 1129; *Whitehead v. Shattuck*, 138 U. S. 146-156, 11 Sup. Ct. 276; *Wehrman v. Conklin*, 155 U. S. 314-333, 15 Sup. Ct. 129. The only cases which I have found in which the supreme court has adjudicated adverse claims of individuals to real estate, where the location of a boundary line between adjoining states had to be ascertained in order to determine the rights of the litigants, are *Handly v. Anthony*, 5 Wheat. 374-385, and *Howard v. Ingersoll*, 13 How. 381-429. Both were actions at law in the form appropriate for the trial of questions of title. In *Fowler v. Miller*, 3 Dall. 411-415, and in *Rhode Island v. Massachusetts*, 12 Pet. 657-754, the supreme court expressed the opinion that United States circuit courts have power to decide questions as to the boundary of adjoining states in suits between individuals, when it is necessary to decide such questions in order to determine the rights of parties. But these opinions do not intimate that disputes between individuals as to questions concerning state boundary lines can be cognizable in equity while there is any controversy between the states involving like questions.

The complainants having prayed only for preventive relief, by injunction, to restrain the defendant from interfering with them in their fishing operations upon the island, and having failed to show sufficient grounds for any other or different relief, the cases must be dismissed for lack of evidence. As a basis for an injunction against interference on the part of the defendant with the operations of the complainants in their business of fishing, it is absolutely necessary for the court to find, from the evidence, that the defendant has interfered or threatened to interfere in a manner to cause the complainants irreparable injury; and there is no evidence to justify such a finding. Each of the complainants has given testimony as a witness in his own behalf. Their testimony does not prove interference, but the contrary; for, by the admission of two of them, they have used the land which they claim in their fishing operations for years past, without interruption or interference, and the other complainant is silent as to the only issue presented by the pleadings. There is no other evidence in the case tending in any way to support the charge.

I hold, also, that for a mere naked trespass by going upon land without license from the owner, where no injury is being done to the premises, an action at law for damages affords an adequate and complete remedy, and the owner can have no ground for relief in equity. *Meeker v. Gilbert*, 3 Wash. T. 369, 19 Pac. 18. A decree of dismissal will be entered in each case.

## BAKER v. BEACH et al.

(Circuit Court, D. Washington, N. D. February 3, 1898.)

## NATIONAL BANKS—ASSESSMENTS ON STOCKHOLDERS—LIABILITY OF ESTATES.

The widow of a deceased stockholder of an insolvent national bank, who by authority of the will undertook to settle the estate as executrix without judicial proceedings, but failed to transfer such stock to herself or other person, cannot, on the ground that the estate is fully settled, escape liability as executrix for assessments on such stock to the extent of assets of the estate under her control.

This was a suit in equity by Charles H. Baker, as receiver of the Merchants' National Bank of Seattle, against A. I. Beach, Mary L. Macdonald, as executrix of the last will and testament of James Reid Macdonald, deceased, and others, to enforce a liability for assessments on national bank stock.

Stratton, Lewis & Powell, for complainant.  
Ira Bronson, for defendants.

HANFORD, District Judge. The question to be decided in this case is as to the liability of the defendant Mary L. Macdonald, in her capacity as executrix of the last will of her husband, for an assessment upon shares of stock of the Merchants' National Bank, of which he was owner at the time of his death. The will authorizes the executrix to settle up the estate without judicial proceedings. The executrix has paid all claims against the estate and liabilities of her husband which existed at the time of his death, and now claims the estate and all property rights of the deceased in her own right as the widow of the deceased and as guardian of her minor child. The shares of stock being personal property, ownership thereof passed to her as legal representative of the deceased,—that is, as executrix of the will,—and the estate in her hands was liable for assessment thereon. As executrix, she could have transferred the title to herself individually, or to any other person. But, having failed to make such transfer, she cannot be said to have completely settled up the estate, so as to claim exemption from liability in her capacity as executrix to the extent of the value of any assets of the estate remaining subject to her control. As the law makes no provision for discharging an executrix who assumes to carry out the provisions of a will in settling up the estate of a deceased person without other authority than the will itself, exemption from liability incident to ownership of any property which belonged to the deceased in his lifetime cannot be claimed until the title to all personal property of the deceased has been transferred, and until the heirs have obtained possession of all real property. A decree will be entered according to the prayer of the bill.