

file separate answers and set up different defenses from the other defendants, and allege that they are not jointly liable with them, and that their own controversy with the plaintiff is a separable one; for, as the supreme court has often said: "A defendant has no right to say that an action shall be several which the plaintiff seeks to make joint. A separate defense may defeat a joint recovery, but it cannot deprive a plaintiff of his right to prosecute his suit to a final decision in his own way." *Pirie v. Tvedt*, 115 U. S. 41-43, 5 Sup. Ct. 1034, 1161; *Sloane v. Anderson*, 117 U. S. 275, 6 Sup. Ct. 730; *Little v. Giles*, 118 U. S. 596-601, 7 Sup. Ct. 32; *Railroad Co. v. Wangelin*, 132 U. S. 599, 10 Sup. Ct. 203; *Torrence v. Shedd*, 144 U. S. 527-530, 12 Sup. Ct. 726; *Connell v. Smiley*, 156 U. S. 335-340, 15 Sup. Ct. 353; *Powers v. Railway Co.*, 169 U. S. 92-103, 18 Sup. Ct. 264. This court has heretofore ruled differently in one or two instances, adopting the rule, which I now consider to be sound, and well supported by authorities, that when a master is made liable for a negligent or wrongful act of his servant, solely upon the ground of the relationship between them, and the application of the rule of respondeat superior, and not by reason of any personal participation in the negligent or wrongful act, he is liable severally, and not jointly with the servant. I have considered it a logical sequence from this rule that, although the master and his delinquent servant be named as co-defendants in such an action, the complaint shows affirmatively that there is no joint liability, and that either defendant may properly claim that there is a separable controversy between himself and the plaintiff. In the cases cited, the supreme court does not question the rule, and seems to take it for granted that it may be successfully interposed as a defense, but it denies the sequence, and holds to the idea that an action against several defendants jointly, where by the plaintiff's own showing there is no joint liability, may not be split into several controversies, but must necessarily fail entirely. This court must follow the decisions of the supreme court, rather than its own previous practice. An order will be entered on the court's own motion, remanding this case to the superior court for want of jurisdiction in this court to entertain it.

GREGORY v. BOSTON SAFE-DEPOSIT & TRUST CO.

(Circuit Court, D. Massachusetts. May 18, 1898.)

No. 948.

REMOVAL OF CAUSES—TIME FOR REMOVAL.

Under the act of 1887 (24 Stat. 554) it is too late to file a petition for removal after the answer day in the state court has passed.

This was an action commenced in a state court by Charles A. Gregory against the Boston Safe-Deposit & Trust Company, and subsequently removed to this court by the defendant. The case has now been heard on a motion to remand.

Francis A. Brooks, for complainant.

Solomon Lincoln and Thomas H. Talbot, for defendant.

COLT, Circuit Judge. The bill of complaint in this case was filed in the state court on March 22, 1895. By the eighth rule of chancery practice of the state court, a defendant is required to file his answer, plea, or demurrer within one month after the day of appearance, the day of the appearance being the return day of the subpoena. A subpoena was issued in this case returnable at the May rules, 1895, and was duly served on the defendants. The defendants appeared, and answered to the bill, and on July 3, 1895, the plaintiff filed his replication. The bill was subsequently dismissed as to all the defendants except the Boston Safe-Deposit & Trust Company. On April 10, 1897, the plaintiff obtained leave of court to amend his bill of complaint. The petition of the trust company for removal was filed June 14, 1897.

The act of congress of 1887 (24 Stat. 554) provides that any party entitled to remove a suit from a state court into the circuit court of the United States "may make and file a petition in such suit in such state court at the time, or any time before the defendant is required by the laws of the state or the rule of the state court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff." In construing this statute, the supreme court has repeatedly held that the defendant's right of removal can only be exercised before the time he is required to plead in the state court. In *Martin's Adm'r v. Railroad Co.*, 151 U. S. 673, 687, 14 Sup. Ct. 533, 538, the court, speaking through Mr. Justice Gray, observes:

"Construing the provision now in question, having regard to the natural meaning of its language, and to the history of the legislation upon this subject, the only reasonable inference is that congress contemplated that the petition for removal should be filed in the state court as soon as the defendant was required to make any defense whatever in that court, so that, if the case should be removed, the validity of any and all of his defenses should be tried and determined in the circuit court of the United States."

See, also, *Goldey v. Morning News*, 156 U. S. 518, 524, 15 Sup. Ct. 559; *Railway v. Brow*, 164 U. S. 271, 277, 17 Sup. Ct. 126; *Manley v. Olney*, 32 Fed. 708. Motion to remand is granted.

UNITED STATES v. EISENBEIS et al. (HOGG, Intervener).

(District Court, D. Washington, N. D. June 18, 1898.)

1. FEDERAL COURTS—FOLLOWING STATE DECISIONS.

Whether a mere equitable interest in lands becomes impressed with the lien of a judgment against the owner of such interest is a question of local law, in regard to which the federal courts will follow the state decisions.

2. JUDGMENT LIENS—EQUITABLE INTERESTS IN LANDS.

The equitable interest of one who has conveyed the legal title in his lands to third parties, for the purpose of defrauding his creditors, does not, in the state of Washington, become impressed with the lien of a judgment thereafter rendered against him.

3. DEPOSITS IN COURT—CONDEMNATION PROCEEDINGS—RIGHTS OF CREDITORS.

Money in court awaiting distribution to those in whose favor awards have been made in condemnation proceedings instituted by the govern-