

It is first contended that the instrument is not a promissory note, but is an attempt to make a testamentary disposition of property, and is destitute of legal efficacy as the foundation of a cause of action. I cannot concur in this view. There is no attempt to make a testamentary disposition of property, for the instrument contains no provisions resembling those of a will. It is an absolute promise to pay money. It differs from an ordinary promissory note in the single particular that it fixes the time of payment at a period subsequent to the promisor's death. It is nevertheless a promise to pay money absolutely, and at all events, to a person named, and at a time certain, because that is certain which may be rendered certain; and it has, therefore, every essential feature of a promissory note. All the modern authorities agree that such instruments as the one in question are to be deemed promissory notes of the persons by whom they are executed. The text writers and adjudications supporting this view are too numerous for citation.

It is next insisted that the demurrer ought to be sustained because this court is without jurisdiction for the reason that the statute of this state requires that all claims against the estates of decedents shall be filed with the clerk of the court having jurisdiction of the administration of the estate. This proposition has been often asserted, and has been as often denied by the courts of the United States. It is firmly settled by the decisions of this court, as well as by the decisions of the supreme court of the United States, that the jurisdiction of the courts of the United States cannot be impaired by the laws of the states which prescribe particular modes of redress in their courts, or which regulate the distribution of judicial power. The question here made was made in the cases of *Hess v. Reynolds*, 113 U. S. 73, 5 Sup. Ct. 377, and *Clark v. Bever*, 139 U. S. 96, 11 Sup. Ct. 468, and was decided adversely to the party assailing the jurisdiction of the courts of the United States. In each case it was decided that the courts of the United States had jurisdiction to entertain suits upon claims against the estates of decedents brought against executors and administrators, where the requisite diversity of citizenship existed, and the amount in controversy was sufficient to give the court jurisdiction.

For the foregoing reasons, the demurrer to the complaint must be overruled, to which the defendant excepts.

YELLOW ASTER MIN. & MILL. CO. v. WINCHELL et al.

(Circuit Court, S. D. California. June 12, 1899.)

No. 776.

MINERAL LANDS—SUIT TO ESTABLISH ADVERSE CLAIM—JURISDICTION—AMOUNT INVOLVED.

In a suit brought in a circuit court, under Rev. St. § 2326, by an adverse claimant to establish his right of possession to a mining claim, it is essential that the bill should show the value of the property in controversy to be sufficient to bring the suit within the requirements of the general

statute prescribing the jurisdiction of the court. It is better practice, also, to show affirmatively in the bill whether the ground in controversy is a lode or placer claim.

On Demurrer to Bill.

White & Monroe and J. S. Chapman, for complainant.
Nathan Newby, for defendants.

ROSS, Circuit Judge. The fact that this suit was brought under and by virtue of section 2326 of the Revised Statutes of the United States does not, I think, exempt the complainant from the necessity of showing that the value of the property in controversy is sufficient to bring it within the requirement of the general statute prescribing the jurisdiction of the circuit courts of the United States. *Mining Co. v. Rutter*, 31 C. C. A. 223, 87 Fed. 801; *Chambers v. Harrington*, 111 U. S. 350, 4 Sup. Ct. 428; *Strasburger v. Beecher*, 44 Fed. 213; *Burke v. Concentrating Co.*, 46 Fed. 644. Whether necessary or not, I think it is also better, in order to save any question in regard to the matter, that the bill show affirmatively, and not by inference only, whether the ground in controversy between the parties is a lode or placer claim. An order will be entered sustaining the demurrer, with leave to the complainant to amend the bill within the usual time, if it shall be so advised.

ANGLE et al. v. CHICAGO, P. & S. RY. CO. et al.

(Circuit Court, W. D. Wisconsin. July 21, 1897.)

FEDERAL COURTS—RULES OF DECISION—OPINION OF SUPREME COURT AS PRECEDENT.

Where the questions arising in a suit in a circuit court are the same as those involved in a suit between other parties which has been determined by the supreme court, and the evidence material to such questions is substantially the same, the decision of the supreme court, while it does not render the questions *res judicata*, constitutes a precedent which should be followed by the inferior court.

This was a suit in equity, in the nature of a creditors' bill, brought by Sarah R. Angle, administratrix, and Thomas M. Nelson, administrator, of the estate of H. G. Angle, deceased, against the Chicago, Portage & Superior Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and the Farmers' Loan & Trust Company. On final hearing.

Burr W. Jones and F. J. Lamb, for complainants.
Thomas H. Wilson, for defendants.

BUNN, District Judge. It has not been, and is not now, my purpose to write an opinion in this case, but only to indicate very briefly, and in a general way, the conclusions reached, with the grounds on which they are based. Each party on the hearing having indicated a purpose of taking an appeal in the event of an adverse decision by this court, the case, when it goes up, will stand for hearing *de novo* in the appellate court upon the same allegations and the same evidence