

made in accordance with it, would seem to obviate all objections to the change, even if the plaintiff were in a position, as he is not, to contest its validity.

The mortgages, upon the foreclosure of which the land was sold and the grantor of the plaintiff acquired his title, were executed after this dedication had become irrevocable, and the purchaser at the mortgage sale took whatever rights he acquired in subordination to the interest of the public, represented since the incorporation of the town by its authorities.

As to the defence that the statute of limitations of the state has barred the action, it is sufficient to refer to the decisions of the supreme court of California in *Hoadley v. The City of San Francisco*, 50 Cal. 265, and *People v. Pope*, 53 Cal. 437. According to them, no one can acquire by adverse occupation as against the public the right to a street or square dedicated to public uses. The construction given by the supreme court of the state to the local statute is conclusive upon this court. It follows that the finding of the court upon the issues presented must be for the defendant, and judgment will accordingly be entered in its favor.

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### BROOKS and others v. FARWELL and others.

(Circuit Court, D. Colorado. October 20, 1880.)

1. REMOVAL—REVIEW.—Questions passed upon in a state court cannot be reviewed upon the removal of the cause to the circuit court.
2. PRACTICE—SERVICE OF PROCESS—NON-RESIDENT.—A party going into another state as a witness, or as a party under process of a court, to attend upon the trial of a cause, is exempt from process in such state while he is necessarily attending there in respect to such trial.

*Parker v. Hotchkiss*, 1 Wall. Jr. 269.

*The Juneau Bank v. McSpedan*, 5 Biss. 64.

\_\_\_\_\_, for plaintiffs.

\_\_\_\_\_, for defendants.

HALLETT, D. J. Brooks and the Purdy Silver Mining Company brought suit in the district court of Arapahoe county,

against John V. Farwell and another, in March last. Farwell appeared and filed a motion to quash the summons, or service of the summons, alleging in an affidavit accompanying the motion that he had been in attendance upon court in another suit brought by one of the plaintiffs, and that he was a resident and citizen of the state of Illinois, and had come here necessarily for that purpose, and so was exempt from service while in attendance on the court. Upon hearing that motion the court denied it, but gave leave to the defendant to set up the same facts in an answer in the nature, it is said, of a plea in abatement. Thereafter the cause was removed into this court, and the plaintiff now asks for judgment, claiming that the answer cannot be received; that it is not according to the course of pleading under the Code; that any answer that may be filed must go to the complaint, and that nothing can be averred against the summons, or service of the summons, by way of answer. As to that question, it must be assumed that that was passed upon in the district court of Arapahoe county, in overruling the motion to quash the service of the summons. In allowing the defendant to file an answer setting up the same matters, the court must have held that that was the proper practice—the proper course of procedure. That being decided there, cannot be reviewed or in any manner set aside in this court. We do not, on the removal of a cause from a court of the state, review or attempt to reverse any proceedings that may have been had there before the removal of the cause into this court. As to all questions that are passed upon in the state court before the removal of the cause, they are fully and finally determined so far as this court is concerned, and can only be reviewed in the supreme court of the United States, if there be error in them; so that this plea is to be received as well pleaded here, and as to the matter of the plea there can be no doubt as to its sufficiency. The authorities are clear to the point that a party going into another state as a witness, or as a party under process of a court, to attend upon the trial of a cause, is exempt from process in such state while he is necessarily attending there in respect to such trial. Having been brought into such foreign

state by process of law, he cannot, while there, be called to answer in another action. *Parker v. Hotchkiss*, 1 Wall. Jr. 269; *The Juncau Bank v. McSpedan*, 5 Biss. 64.

The motion will be denied.

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### HOYT and others v. WRIGHT.

(Circuit Court, D. Colorado. October 14, 1880.)

1. REMOVAL—JURISDICTION—PLEADING.—Want of jurisdiction must be pleaded, where an objection to the removal of a cause is made upon that ground, and such defect is not apparent upon the face of the record in the state court, or the petition for removal.
2. SAME—SAME—CONVEYANCE BY PARTY TO SUIT.—A *bona fide* conveyance of the property in controversy, by a party to the suit, for the express purpose of conferring jurisdiction upon the federal court, will furnish no ground for remanding a cause to a state court.

Petition to Remand.

———, for plaintiffs.

———, for defendant.

HALLETT, D. J. In cases removed from a court of the state, if there is in the record, either in the state court or in the petition for removal, anything showing want of jurisdiction in this court, the party objecting to the removal may rely upon that by motion to have the cause remanded. If, taking the facts appearing in the record and petition to be true, this court has jurisdiction, the party objecting to the jurisdiction must make his objection by plea to the jurisdiction,—that is, he must allege the facts in a manner in which issue may be joined, and according to the course and practice of the court, so that they may be properly determined,—and it has been determined by the supreme court that the method of doing that is by plea to the jurisdiction, and in that way only. Upon such a plea we know what course is to be pursued; we know how to consider it, how to ascertain its sufficiency, and how, if issue be joined upon it, to reach a conclusion as to the matter of fact.