

And referring to the case before them: "There the whole controversy was as to the right of the petitioner to appropriate the land in question."

I do not suppose that a state can, by making special provisions for the trial of any particular controversy, prevent the exercise of the right of removal. If there was no statutory limitation, the legislature could provide for the trial of many cases by less than a common-law jury, or in some other special way. But the fact that it had made such different and special provisions would not make the proceeding any the less a trial, or such a suit as, if between citizens of two states, could not be removed to the federal courts. If this were possible, then the only thing the legislature of a state would have to do to destroy the right of removal entirely, would be to simply change and modify the details of procedure. Courts have always looked beyond the mere form,—tried to go down to the substance; and if it is apparent that there is a controversy between citizens of two states, involving a mere question of money, they will hold that there is a removable suit; and no mere matter of detail in procedure established by the legislature can abridge that right to remove.

The motion to remand will be overruled.

TANNER, Sr., *v.* VILLAGE OF ALLIANCE and others.

(Circuit Court, N. D. Ohio, E. D. October Term, 1886.)

COURTS—UNITED STATES CIRCUIT COURT — JURISDICTION — INTOXICATING LIQUORS—INJUNCTION—CONSTITUTIONAL LAW—CONST. U. S. AMEND. 14.

A citizen of Ohio, engaged in the business of selling liquors, applied for an injunction against a village in the same state, to restrain it from enforcing an ordinance "to prohibit ale, beer, and porter houses, and other places where intoxicating liquors are sold at retail," which was passed under the provisions of an act of the legislature called the "Dow Law," on the ground that it was in violation of the constitution of the state, and of the United States. *Held*, (1) that the court had no jurisdiction to afford the relief asked, the bill and the affidavits not making a federal question, and all the parties being citizens of the state of Ohio; (2) that the ordinance does not conflict with the fourteenth amendment of the constitution of the United States; (3) that the ordinance does not deprive complainant of his property; (4) that the ordinance is only a police regulation, in the interest of the public morals, and for the common good.¹

In Equity. Application for an injunction to restrain the enforcement of an ordinance of the village of Alliance, Ohio, prohibiting the sale of intoxicating liquors.

The complainant alleged that for the last 20 years he had been engaged in the business of selling distilled, malt, and vinous liquors, lawfully, in the village of Alliance, in Ohio, and in pursuance of said business he had acquired property, a part of which was real estate, in said village, upon which he had made extensive improvements,

¹See *Kessinger v. Hinkhouse*, 27 Fed. Rep. 883; *State v. Walruff*, 26 Fed. Rep. 178; *Weil v. Calhoun*, 25 Fed. Rep. 865.

in the way of fitting it for the purpose of carrying on said business; that he had placed there, at great expense, fixtures and furniture, and had placed therein a stock of liquor; in so doing, he had acquired an extensive business in the lawful sales of liquor, as stated; that the good-will of the business was of large pecuniary value to him; that said property so acquired would be worth \$15,000 if he was permitted to carry on the business as it had always been provided by the laws of Ohio, and under which laws his money was invested, and his business built up; and that, if he is deprived of carrying on said business, his property will not be worth more than \$7,500; that the said village of Alliance, on the twentieth of August, 1886, enacted an ordinance, taking effect on the seventh of September, 1886, "to prohibit ale, beer, and porter houses, and other places where intoxicating liquors are sold at retail," and sets out the ordinance; this ordinance was passed under the provision of an act of the legislature called the "Dow Law;" that under this law he had paid the tax required to be paid to carry on his said business in said village. He states, in substance, that this ordinance prevents him, with severe penalties, from carrying on his business, and disposing of his stock; that thereby his property is taken for public use, and no provision is made for compensation therefor, and in that way his property is taken without due process of law. He asks an injunction to restrain the village from enforcing the law, and also to have it declared to be in violation of the constitutions of the state and of the United States.

Miller & Pomerine and Estep, Dickey & Squire, for complainant.
Fording & Hoover, for respondents.

WELKER, J., refused the injunction, and held: (1) That the court had no jurisdiction to afford the relief asked, the bill and the affidavits not making a federal question, and the parties being citizens of the state of Ohio. (2) That the ordinance does not conflict with the fourteenth amendment of the constitution of the United States, which provides that "no state shall deprive any person of life, liberty, or property without due process of law." (3) That the ordinance does not deprive complainant of his property. It only undertakes to prevent him from "keeping," within the limits of the village, an ale, beer, or porter house, or a place where intoxicating liquors are sold at retail. He may, under it, sell his stock in trade in any way he can, except in such a way as will make him such "keeper." (4) That the ordinance is only a police regulation, in the interest of the public morals, and for the common good; and, although it may in some measure affect the value of his property, or interfere with its use in the purposes for which it was obtained, it does not thereby "deprive" him of his property to any greater extent than a large class of legislation, both state and national, that has not been questioned in our public laws. (5) That, there being no federal question involved, the other grounds of relief claimed by the complainant are not con-

sidered by the court, leaving the same to the state courts for adjudication.

JACKSON, J., concurs.

KEELS v. MUTUAL RESERVE FUND LIFE ASS'N.

(Circuit Court, D. South Carolina. December 8, 1886.)

1. LIFE INSURANCE—SUICIDE—EVIDENCE—STATEMENT IN PROOFS.

In an action on a life insurance policy, if there be a doubt whether the death of the insured was the result of accident or of suicide, the doubt should be solved in favor of the theory of accident; but if the plaintiff has, in her proof of death, stated that the death was by suicide, it is incumbent on her to satisfy the jury that she was mistaken in this statement, and that the death was caused by accident.

2. SAME—ACCIDENTAL KILLING.

A condition in a life-insurance policy that it shall be void if the insured shall die by suicide, whether the act be voluntary or involuntary, does not apply where the death is the result of accident, or unintentional self-killing.

Motion for New Trial.

Action on a life insurance policy. Judgment for plaintiff. Defendant appealed. The facts are stated in the opinion.

J. T. Sloan and Pope & Shand, for plaintiff.

J. T. Seibels, for defendant.

SIMONTON, J. The action was on a policy upon the life of Isaac Keels in the sum of \$10,000. The complaint set out the policy in general terms, stating the death, averring that it did not occur within any of the exceptions of the policy, and that all the conditions thereof had been complied with. The answer admitted the policy; set out its requirements that proof of death should be made fully and under oath; that such proof of death had been made, stating that suicide was the proximate cause of death, and that the remote cause was softening of the brain, inducing *dementia*, during which the suicide was committed. The answer relied upon the ninth condition of the policy, which is in these words. "Death of a member by his own hand, whether voluntary or involuntary; sane or insane, at the time, is not a risk assumed by the association in this contract." The answer had, as exhibits, the proofs of death, signed and sworn to by plaintiff; and the proceedings of the coroner's jury, with their verdict that Isaac Keels came to his end by suicide, which proceedings had been attached to the proof of death by the plaintiff. The reply of the plaintiff admitted that she had given suicide as the cause of death, but averred that this was on information, and not from personal knowledge; and also that she did not mean technical "suicide" by the use of this word.