

rule of the United States supreme court. There are in two cases some intimations to the contrary; so far, at least, as the matter is affected by the recording acts. In *Hoyt v. Schuyler*, 19 Neb. 652, 28 N. W. Rep. 306, there was a claim under a quitclaim deed, but the supreme court held that, upon the facts, the claimant was not a *bona fide* purchaser. In *Snowden v. Tyler*, 31 N. W. Rep. 661, while there was a quitclaim deed in the chain of title, claimants held under a warranty deed; which, of course, presents a different question. While, in the first case cited, that court uses this language: "A party who claims title under a quitclaim deed from one who had formerly conveyed his title to another, and the effect of which will be to deprive the first grantee of his title, must make a clear case of *bona fides* on his part before his title will be sustained,"—in the second, it says: "The fact that the grantor will only give a quitclaim deed is notice of defect in his title, sufficient to put the grantee on his inquiry as to the rights of other persons in the land in question." From the language in these opinions, as well as from the facts of the cases, I do not know what that court will hold when the question is distinctly and definitely presented; hence, until then, I must follow the ruling of the supreme court of the United States; and in one of the cases cited from that court, that in 12 Wall., the question arose of a title as against an unrecorded mortgage.

Again, the grantors of plaintiff never had any title to this land. Their ancestor in his life-time had deeded it away. They were not, therefore, of record the owners. The deeds which they executed are not only "quitclaim" in the granting clause, but specially recite that they, as "heirs," shall never make further claim to the property. The question, therefore, is not technically between parties claiming under two deeds from the same grantor. Judgment will be entered for the defendants.

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### CHURCH v. SPIEGELBURG and another.

(Circuit Court, S. D. New York. July 26, 1887.)

#### 1. COUNTER-CLAIM—ACTION UPON CONTRACT.

In an action for breach of a contract of partnership, defendant's answer set up a counter-claim, alleging that the plaintiff failed to bring to the firm the amount and kind of business he had agreed to. *Held*, that under section 501, Code Civil Proc. N. Y., the cause of action set forth in the complaint arising on contract, the counter-claim, which also arose on contract, might be set up.

#### 2. COURTS—FOLLOWING STATE PRACTICE—EQUITABLE COUNTER-CLAIM—ACTION AT LAW.

In such a case, a counter-claim set up in the answer was for an accounting and adjustment of the affairs of the partnership. *Held*, that an equitable defense, though admissible in a state court, cannot be interposed to an action at law, in an action at law in the United States courts, notwithstanding the provision of Rev. St. § 914, that, in causes other than those in admiralty and equity, the practice of the state courts shall be followed.

At Law. Action to recover damages for breach of contract. On motion to strike out counter-claims.

*J. K. Hayward*, for plaintiff.

*Seligman & Seligman*, for defendant.

LACOMBE, J. Plaintiff and defendant heretofore formed a copartnership for the purpose of carrying on the dry goods commission business in the city of New York. By the terms of their articles of copartnership, defendants were to furnish \$120,000 capital, and plaintiff was to bring to the firm what is known as "commission business," amounting to about \$1,000,000 per annum. The complaint avers that the plaintiff fulfilled his obligations under the articles, but that the defendants, "in violation of their duties to plaintiff and to said firm," wrote to certain manufacturers, whose business plaintiff had secured, repudiating existing contracts with them, and making false representations as to the inability of the firm to make advances on goods consigned to them, to the great damage of the firm and of the plaintiff. The amended answer of the defendants sets up, *inter alia*, two counter-claims, which plaintiff now moves to strike out. The complaint indicates that this is a common-law action on contract. As such, the sufficiency of the pleading is to be tested by the rules of the state courts. Rev. St. § 914. The first counter-claim is for a breach of the contract of partnership by the plaintiff, in that, as alleged, he failed to bring to the firm the amount and kind of commission business which he had agreed to. The cause of action set forth in the complaint arising on contract, the counter-claim, which also arises on contract, may be set up. Code, § 501. The second counter-claim is for an accounting and adjustment of the affairs of the partnership. This is an equitable cause of action, and section 914 of the Revised Statutes has been construed as not allowing the interposition of equitable defenses in a legal action. *Montejo v. Owen*, 14 Blatchf. 324; *Parsons v. Denis*, 7 Fed. Rep. 317.

The motion to strike out the *second* counter-claim is therefore granted, that to strike out the *first* counter-claim is denied.

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MCLEAN *v.* HAGER, Collector, etc.

(Circuit Court, N. D. California. July 25, 1887.)

CUSTOMS DUTIES—OPIUM IN TRANSIT.

Opium shipped on board a steam-ship at Honolulu, for Panama, by way of San Francisco, intended to be transferred, without landing, to another steamer at San Francisco, running to Panama, in connection with the steam-ship from Honolulu, and entered on the manifest and bills of lading, and reported to the collector, as being in transit for Panama, the owner having applied to the collector for a permit to make the transshipment, and offered to give the se-