

"And when in any suit there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the plaintiffs or defendants, actually interested in such controversy, may remove said suit into the circuit court of the United States for the proper district."

The court, in *Barney v. Latham*, found that there "was more than one controversy in the suit" before it, and that as to that "entirely separate controversy, * * * with which the defendant in the other controversy had no necessary connection," the citizenship of the parties to it was such as to warrant removal. The facts shown in that case were substantially these, (omitting all mention of minor details, such as changes of interest by death or otherwise:) Latham and six associates built a railroad under an agreement by which, in consideration of its construction, the railroad company engaged to transfer to them the lands which it might receive from time to time as grants from the state. To the expense of construction Latham contributed one thirty-seventh, becoming thus entitled to one thirty-seventh of the land and its proceeds. The five other associates subsequently created a land company, to which the railroad company conveyed the greater part of the lands, and which managed and sold the same. Prior to the creation of the land company, there had been sales of which Latham's five associates received the proceeds. Latham sued the land company, praying to be adjudged the owner of his share of the unsold lands, and to have an accounting for his share of the proceeds of sales already made by the land company. He did not stop there, however, but also sued his five associates for an accounting as to the proceeds of such sales as they had made before the land company was formed. The court held that these were causes of action which, under the settled rules of pleading, need not have been united in one suit, and that there was a separable controversy. Since this decision, the second clause of the act, or section 2 of the act of 1872, has been repeatedly before the supreme court. In no cause, however, has that court found the facts such as to warrant the holding that there was a separable controversy in the particular case, while it has affirmed and repeatedly reaffirmed the proposition that, to entitle a party to removal under that clause, there must exist in such suit a separate and distinct cause of action; that the case must be one capable of separation into parts. *Ayers v. Chicago*, 101 U. S. 184; *Blake v. McKim*, 103 U. S. 336; *Hyde v. Ruble*, 104 U. S. 407; *Corbin v. Van Brunt*, 105 U. S. 576; *Fraser v. Jennison*, 106 U. S. 191, 1 Sup. Ct. Rep. 171; *Winchester v. Loud*, 108 U. S. 130, 2 Sup. Ct. Rep. 311; *Shainwald v. Lewis*, 108 U. S. 158, 2 Sup. Ct. Rep. 385; *Ayres v. Wiswall*, 112 U. S. 187, 5 Sup. Ct. Rep. 90; *Railroad Co. v. Ide*, 114 U. S. 52, 5 Sup. Ct. Rep. 735; *Railroad Co. v. Wilson*, 114 U. S. 60, 5 Sup. Ct. Rep. 738; *Pirie v. Tvedt*, 115 U. S. 41, 5 Sup. Ct. Rep. 1034, 1161; *Crump v. Thurber*, 115 U. S. 56, 5 Sup. Ct. Rep. 1154; *Insurance Co. v. Huntington*, 117 U. S. 280, 6 Sup. Ct. Rep. 733; *Laidly v. Huntington*, 121 U. S. 179, 7 Sup. Ct. Rep. 855; *Hedge Co. v. Fuller*, 122 U. S. 535, 7 Sup. Ct. Rep. 1265; *Mining Co. v. Canal Co.*, 118 U. S. 264, 6 Sup. Ct. Rep. 1034; *Little v. Gibbs*, 118 U. S. 596,

7 Sup. Ct. Rep. 32; *Brooks v. Clark*, 119 U. S. 502, 7 Sup. Ct. Rep. 301.

Viewed in the light of these decisions, this suit presents no such distinct and separable causes of action as were found in *Barney v. Latham*. There is here but a single controversy, viz.: Is the will of John Anderson valid as a will of real estate? and its character is not changed merely by rearranging the parties to it. It does not become separable into parts because some of the defendants are interested jointly, and others are interested severally, in its determination. There may be a controversy as to its validity between any one of the plaintiff's grantees and the heirs at law; but such controversy is, in all respects, identical with the one between the plaintiff and the heirs at law.

The controversy here is not separable, under the decisions, and the motion to remand is therefore granted.

WELLER v. J. B. PACE TOBACCO Co. and others.

(Circuit Court, S. D. New York. December 14, 1887.)

1. REMOVAL OF CAUSES—CITIZENSHIP—ACT OF MARCH 3, 1887.

Under the act of congress March 3, 1887, § 2, providing that a suit brought in any state court, wherein the controversy is between citizens of different states, and the amount in dispute exceeds, exclusive of interest and costs, the sum of \$2,000, "may be removed to the circuit court of the United States for the proper district by the *defendant or defendants* therein, being non-residents of that state," defendants who are residents of the state in which suit is brought cannot remove the cause, though plaintiff is a resident of another state.

2. SAME—CITIZENSHIP—ACT OF MARCH 3, 1887—SEPARABLE CONTROVERSY.

Action was brought by a non-resident assignee of an insolvent debtor to compel the assignment, by a corporation, of stock belonging to the debtor. Purchasers at a sale on execution levied on the stock subsequent to the debtor's assignment, intervened, were made parties defendant, and asked for a removal of the cause as to them, under act of congress March 3, 1887, § 2, providing that, "when there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants may remove said suit," etc. *Held* that, the cause of intervenors being inseparable from that of the corporation, it could not be removed.

Reynolds & Harrison, for plaintiff.

North, Ward & Wagstaff, for defendants.

LACOMBE, J. The plaintiff, a resident and citizen of California, is, under decree of a California court, the receiver of the late firm of Esberg, Bachman & Co. All the defendants are citizens and residents of New York. The firm of which plaintiff is receiver held and owned 273 shares of stock of the J. B. Pace Tobacco Company. The original certificate of stock is now held by plaintiff, with an assignment and power of attorney from the assignor. He brought this action in the state court against the company, as sole defendant, to compel the transfer of these shares