

UNITED STATES v. L. HUFFMASTER. (No. 4,998.)

(Circuit Court, N. D. California. May 21, 1888.)

COURTS—FEDERAL CIRCUIT COURTS—JURISDICTIONAL AMOUNT.

Under the act of March 3, 1887, (24 St. at Large, 552,) the United States circuit courts have no jurisdiction of an action to recover money or property wherein the United States are plaintiffs, unless the amount or value of the matter in controversy exceeds the sum of \$2,000, exclusive of costs.

(Syllabus by the Court.)

J. C. Carey, U. S. Atty., for plaintiff.

Wm. H. Cook, for defendant.

Before SAWYER, Circuit Judge.

SAWYER, J. This is an action to recover the possession of 60 cords of wood cut upon the public lands, alleged to be of the value of \$372. The suit was commenced on July 12, 1887, and it therefore falls under the provisions of the act of March 3, 1887, amendatory of the act of 1875, to determine the jurisdiction of the circuit courts of the United States, etc., (24 St. 552.) The provision of section 1, conferring jurisdiction, is, in all respects affecting the question of jurisdiction in this case, substantially the same as in the act of 1875, except that it raises the value of the matter in controversy in order to give jurisdiction from \$500 to \$2,000. The value of the wood sought to be recovered being much less than \$2,000, the court has no jurisdiction, and, as in the preceding case, (No. 3,704,) and for the reasons therein given, the suit must be dismissed, without prejudice, for want of jurisdiction, and it is so ordered.

UNITED STATES v. C. HUFFMASTER. (No. 4,997.)

(Circuit Court, N. D. California. May 21, 1888.)

J. C. Carey, U. S. Atty., for plaintiff.

Wm. H. Cook, for defendant.

Before SAWYER, Circuit Judge.

SAWYER, J. This is an action similar to the last, to recover 150 cords of wood cut upon public lands, of the alleged value of \$960, commenced on July 12, 1887. For reasons given in the two preceding cases, (Nos. 3,704 and 4,998,) the suit must be dismissed, without prejudice, for want of jurisdiction, and it is so ordered.

D. M. OSBORNE & Co. v. MISSOURI PAC. RY. Co.

(Circuit Court, E. D. Missouri, E. D. May 26, 1888.)

EMINENT DOMAIN—RIGHTS OF ABUTTERS—INJUNCTION.

Equity will not entertain a bill of an abutting proprietor to enjoin a railroad company from operating its trains over a track laid in a public street under legislative authority, on the ground that he has not been compensated for the incidental damages, where complainant's property has not been actually taken, and he has made no effort to arrest the work, nor given notice that he claims damages, until after the track has been laid, though the constitution of the state (Const. Mo. art. 2, § 21) requires compensation in advance for the taking or damaging of property for public use. In such case he must be left to his remedy at law.

In Equity. Bill for injunction. On demurrer and exceptions to amended answer.

Mills & Flatcraft, for complainant.

T. J. Portis and *Bennett Pike*, for defendant.

THAYER, J. For the purposes of this decision I shall assume (without examining the question fully) that the damages described in the bill of complaint are of the kind contemplated by that clause of the constitution of the state of Missouri which prohibits property from being taken or damaged for public use without just compensation first ascertained and paid. Article 2, § 21. It may be further conceded as an elementary proposition that if defendant has damaged complainant's property in the sense of the constitution, (article 2, § 21, *supra*,) it cannot justify its act either at law or in equity under a municipal ordinance or under an act of the legislature. In Missouri, however, for many years railroad companies have been authorized by a general law to use the streets of cities or villages for the purpose of laying their tracks, provided they are granted such privilege by the municipality. *Vide* section 765, Rev. St. Mo. 1379. That portion of the answer in this case that is demurred to alleges that the city of St. Louis had passed an ordinance permitting the defendant to lay a side track along Gratiot street for a certain distance, and furthermore that, acting under the ordinance in question, it had actually laid its track along the street in question before complainant filed its bill in this case to restrain it from so doing. The question that arises on the demurrer therefore is, whether a court of equity will entertain a bill at the suit of an abutting proprietor to enjoin a railroad company from operating its trains over a track laid in a public street under legislative authority, in a case where none of complainant's property has been taken and the complainant has taken no action to arrest the work, and so far as appears has given no notice that damages will be claimed, until after the track is completed and the road is in operation or ready for operation? As I had occasion to suggest, when this case was formerly before me on a motion to strike out parts of the answer, other courts have decided this question in the negative under statutes substantially the same as that which is in force in Missouri, holding in effect that in such cases the com-