

SHEDD v. FULLER *et al.**(Circuit Court, N. D. Illinois. November 5, 1888.)***REMOVAL OF CAUSES—PROCEDURE—FILING PETITION AND BOND WITH CLERK.**

Under the act of congress for the removal of causes, (March 3, 1887,) providing that a party desiring to remove a suit from a state court to a circuit court of the United States shall file his petition and bond in the state court, a filing of the petition and bond with the clerk of the state court is not sufficient, as the court itself has a right to pass upon them, and the cause will be remanded.

On Motion to Remand.

Action by Charles B. Shedd against J. Ensign Fuller and others, commenced in the state court, and removed by defendants to the circuit court of the United States, by filing a petition and bond with the clerk of the state court. Motion by plaintiff to remand.

Capt. Prescott, for plaintiff.

G. Driggs, for defendant.

GRESHAM, J., (*orally.*) The counsel for one of the defendants in this suit presented to the clerk of the state court, in which the suit was pending, a petition and bond in the usual form, for its removal to this court, and upon the request of the counsel he was furnished by the clerk with an authenticated copy of the record, which was filed in this court. It is admitted that the petition and bond were not presented to the state court for its action. The removal act of March 3, 1887, as well as the prior acts upon the same subject, provides that a party desiring to remove a suit from a state court to a circuit court of the United States shall file his petition and bond in such suit in the state court, when it shall be the duty of that court, if the petition and bond be sufficient to satisfy the statute, to accept both, and proceed no further in the case. The right of removal is purely statutory, and the jurisdiction of the state court remains undisturbed until a proper petition and bond are presented to that court for its judicial action. It is not sufficient to present the petition and bond to the clerk, who is the court's mere ministerial officer. While it is clear that the right of removal does not depend upon the action or non-action of the state court, it is equally clear that the state court cannot be deprived of its right to decide for itself upon the sufficiency of the petition and bond. The presentation of a proper petition and bond to the state court for its action is a jurisdictional prerequisite. *Stone v. South Carolina*, 117 U. S. 430, 6 Sup. Ct. Rep. 799. Motion to remand sustained.

SIoux CITY & St. P. R. Co. v. UNITED STATES.

(Circuit Court, N. D. Iowa, November 23, 1888.)

COURTS—FEDERAL COURTS—SUITS AGAINST UNITED STATES—PUBLIC LANDS—OFFICERS—INJUNCTION ACT OF MARCH 8, 1887.

Act Cong. March 8, 1887, which confers upon the court of claims jurisdiction to hear and determine all claims founded on the constitution of the United States, or any law of congress, or on any regulation of an executive department, or on any contract, express or implied, with the government of the United States, and gives the United States circuit courts concurrent jurisdiction with the court of claims, simply removes the exemption of the United States from suit in those cases, and does not confer upon the circuit court jurisdiction to restrain the public land department officials from allowing land to be entered as a portion of the public domain, which is claimed by a railroad company to have been earned under its grant.

In Equity. On demurrer to bill.

Bill by the Sioux City & St. Paul Railroad Company against the United States to have complainant declared the owner of certain lands, and to have the officers of the United States enjoined from disposing of the same, or allowing entries to be made of the same under the homestead, timber culture, or pre-emption laws.

J. H. & C. M. Swan, for complainant.

S. P. Murphy, U. S. Dist. Atty., for the United States.

SHIRAS, J. Complainant in its bill herein filed avers that by the terms of the act of congress of May 12, 1864, there was granted to the state of Iowa, for the purpose of aiding in the construction of a line of railway from Sioux City to the Minnesota state line, every alternate section of land designated by odd numbers for 10 sections in width on each side of the proposed line of railway; that the state of Iowa in 1866 accepted said grant, and by an act of the legislature conveyed the lands to the complainant company, and that the complainant, by the construction of a line of railway from the Minnesota line to Le Mars, Iowa, and by the building of a short line in Sioux City, earned and became entitled to 320,000 acres of land; that a large part thereof was duly selected and patented to the state of Iowa by the secretary of the interior, but that the state of Iowa refused to convey the legal title of said lands to complainant, and on or about March 24, 1884, wrongfully relinquished and conveyed said lands to the United States; that the officers of the United States, to-wit, the secretary of the interior, commissioner of the general land-office, and the officers of the local land-office at Des Moines have wrongfully declared the said lands to be a part and parcel of the public domain, and as such to be open and subject to settlement and entry under the homestead, timber culture, and pre-emption laws of the United States. The bill further avers that certain named individuals have been permitted to make application for the purchase of certain named parts of sections, amounting in all to 720 acres, which it is averred in fact belong to the complainant as part of the lands by it earned under the grant