

Opinion of the Court.

DUNPHY *v.* SULLIVAN.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

Argued March 16, 1886.—Decided March 22, 1886.

Possession of land in Montana under claim of title for more than three years prior to August 1, 1877, perfected title as against adverse claimants.

Ejectment for a town lot in Montana. Defendant in error as plaintiff below claimed under a deed from the Probate Judge as trustee and mesne conveyances, and relied on a continued possession under claim of title from August, 1870, to October, 1877. The defendant below also claimed title from the Probate Judge as trustee through mesne conveyances. Judgment for plaintiff, which was affirmed by the Supreme Court of the Territory. The defendant brought this writ of error.

Mr. M. F. Morris for plaintiff in error.

Mr. Joseph K. Toole for defendant in error. *Mr. Edwin W. Toole* was with him on the brief.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This judgment is affirmed. The jury has found as a fact that Mrs. Sullivan, the defendant in error, was in the actual possession of the property, under a claim of title, from August 2, 1870, until October 4, 1877. This, of course, includes the time from the 22d of February, 1873, when it is claimed the adverse title of Dunphy began, to October 4, 1877. It sufficiently appears that the court directed the jury to find upon the special issues submitted, and no complaint is made of the charge as to what was necessary to create a title by adverse possession. We are not permitted to inquire whether the evidence was sufficient to support the verdict. From a time prior to February 22, 1873, until August 1, 1877, a title could be acquired, under the statutes of Montana, by three years' adverse possession. After that it required five years. It follows that

Statement of Facts.

Mrs. Sullivan's title to the property was perfected by her adverse possession before Dunphy entered into actual possession, and that the judgment in her favor on the special findings, as well as on the general verdict, was right.

Affirmed.

CORE & Another v. VINAL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WEST VIRGINIA.

Submitted March 15, 1886.—Decided March 22, 1886.

After trial of a cause in a State court, reversal of the judgment by the State Appellate Court, and remand of the same to the trial court for retrial, it is too late to remove it to the Circuit Court of the United States on the ground of a separable controversy.

A separable controversy under the acts regulating removals from State courts to Circuit courts cannot arise when defendants are sued jointly in trespass on the case and plead jointly the general issue.

Trespass on the case. Plaintiffs in error, Core and Compton, were defendants below. The action was commenced July, 1876, in the Circuit Court of Woods County, West Virginia. Defendants pleaded jointly in abatement that Compton was a resident in Michigan and had no estate in Woods County. This being overruled, they filed a joint plea of not guilty, in 1878, on which issue was joined. Trial was had in March, 1879. Verdict and judgment for plaintiff. The judgment was reversed by the Supreme Court of West Virginia, and the case remanded for a new trial in May, 1881. In August, 1881, the defendant Compton applied to the State court for a removal of the cause to the Circuit Court of the United States, and the application being refused, applied to the Circuit Court of the United States to docket the cause, alleging as follows: "Your petitioner further states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between