

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

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them, to wit, a controversy between said petitioner and said John F. Vinal.”

The cause being docketed as requested, plaintiff immediately moved to remand it. After hearing the parties this motion was granted, and thereupon the defendants sued out this writ of error. The cause being docketed here the defendant in error moved to advance it under Rule 32. This was granted, and the cause was then submitted.

No appearance for plaintiffs in error.

Mr. C. C. Cole for defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. The order remanding this cause is affirmed. The petition for removal was not filed in time and the suit was not removable. *Pirie v. Tvedt*, 115 U. S. 41; *Sloane v. Anderson*, ante 275, decided at this term.

Affirmed.

MACKIN & Another v. UNITED STATES.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Argued March 2, 3, 1886.—Decided March 22, 1886.

A crime punishable by imprisonment in a State prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the Fifth Amendment of the Constitution, that “No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.”

This was an information filed by the District Attorney on January 20, 1885, in the District Court of the United States for the Northern District of Illinois, on § 5440 of the Revised Statutes, which is as follows:

“If two or more persons conspire, either to commit any