

Statement of the Case.

with the local rules and customs of miners in force at the time of the location, and that, therefore, such location was recognized and protected by the general mineral laws of July 26, 1866, 14 Stat. 251, and that of May 10, 1872, 17 Stat. 91. This allegation, however, is denied by the defendants; but as these local rules and customs differ in the several mining districts as to the extent and character of the mine, the question cannot properly be determined on demurrer.

The Land Department of the government, and this court also, have always acted upon the rule that all mineral locations were to be governed by the local rules and customs in force at the time of the location, when such location was made prior to the passage of any mineral law by Congress. *Jennison v. Kirk*, 98 U. S. 453, 457; *Broder v. Water Co.*, 101 U. S. 274, 276; *Jackson v. Roby*, 109 U. S. 440, 441; *Chambers v. Harrington*, 111 U. S. 350, 352.

We are, therefore, of the opinion that the cause of action is plainly and fully set forth in the complaint, and that the judgment of the court below cannot be sustained on any ground presented by the record.

The judgment of the Circuit Court is therefore reversed, and the cause remanded to that court for such further proceedings as are consistent with this opinion. So ordered.

HEGLER *v.* FAULKNER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

No. 283. Submitted May 3, 1888. — Decided May 14, 1888.

There being nothing in the record to show that the Circuit Court had jurisdiction of the case, this court of its own motion reverses the judgment and remands the cause for further proceedings.

THE case is stated in the opinion.

Opinion of the Court.

Mr. J. W. Denver and *Mr. T. H. Broady* for plaintiff in error.

Mr. T. M. Marquett and *Mr. Isham Reavis* for defendants in error.

MR. JUSTICE MILLER delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Nebraska.

There is in the record presented here a transcript showing that the action was first brought October 4, 1878, in the District Court of Richardson County, in the State of Nebraska, in which the original petition or declaration was filed. The suit was to recover the possession of a tract of land situated in that county, containing 320 acres, and for rents and profits alleged to be of the value of \$2500. The defendants entered their appearance on May 6, 1879, and leave was granted them to answer in thirty days. The plaintiff was ruled to reply in fifty days, and the cause continued. An answer was filed May 17, 1879, and this appears to have been done in the Circuit Court of the United States for the District of Nebraska, in which all the subsequent proceedings in the progress of the cause were taken.

There is no evidence of any petition or order for the removal of the case into this latter court from the state court sitting in the county of Richardson, nor is there any statement anywhere of the citizenship of the parties. It appears that a trial was thereafter had and a verdict rendered for the defendants. The only attempt made to show any jurisdiction in the Circuit Court, in which that trial took place, is a short stipulation between the parties made in that court December 8, 1882, by which it was agreed that the amount in controversy in the action exceeded five thousand dollars.

A judgment in favor of the defendants was entered upon this verdict, to which the present writ of error is directed. It is very clear that this verdict and judgment must be set aside, because the Circuit Court had no jurisdiction of the case.

The judgment of the court below is reversed, and the case remanded for further proceedings.