

Statement of the Case.

enforcement in the Federal courts of any rights created by state law which impair the separation there required between actions for legal demands and suits for equitable relief.

In the subsequent case of *Whitehead v. Shattuck*, 138 U. S. 146, *Holland v. Challen* was referred to and explained; and it was said that a suit in equity for real property against a party in possession would not be sustained, because there would be a plain, adequate and complete remedy at law for the plaintiff, and that it was only intended to uphold the statute so far as suits in the Federal courts were concerned, in authorizing such suits against persons not in possession.

It follows from the views expressed that the court below could not take jurisdiction of this suit, in which a claim properly cognizable only at law is united in the same pleadings with a claim for equitable relief. Its decree must therefore be

Reversed, and the cause remanded with directions to dismiss the bill, without prejudice to an action at law for the demand claimed, and it is so ordered.

MR. JUSTICE LAMAR did not sit in this case nor take any part in its decision.

BIRDSEYE v. SCHAEFFER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF TEXAS.

No. 920. Submitted April 20, 1891. — Decided April 27, 1891.

It is again decided that an order remanding a cause from a Circuit Court of the United States to the state court from which it was removed, is not a final judgment or decree which this court has jurisdiction to review.

THIS cause was removed to the Circuit Court of the United States for the Western District of Texas prior to the passage of the act of March 3, 1887, providing that no appeal or writ of error from the decision of the Circuit Court remanding a cause to a state court from which it had been removed, should be allowed. The order remanding the cause to the state court

Syllabus.

from which it had been removed was made subsequent to that act, but prior to the act of February 25, 1889; the writ of error was allowed on the 7th of June, A.D. 1889, subsequent to the act of February 25, 1889.

A motion was made to dismiss the writ on the grounds: (1) That there was no jurisdiction to issue the same and no jurisdiction to take cognizance of the record filed herein; (2) Because the judgment of the Circuit Court complained of, remanding the cause to the District Court of Nueces County, Texas, from which it had been removed for trial, was not a final judgment and cannot be reviewed by this court.

Mr. Philip B. Thompson and *Mr. J. M. Vale* for the motion.

Mr. Bethel Coopwood and *Mr. John Hancock* opposing.

PER CURIAM. The writ of error is dismissed upon the authority of *Gurnee v. Patrick County*, 137 U. S. 141; *Richmond & Danville Railroad Co. v. Thouron*, 134 U. S. 45.

Dismissed.

BALL v. UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF TEXAS.

No. 1351. Argued April 10, 1891. — Decided April 27, 1891.

On the 4th of December, 1888, the clerk of the District Court of the United States for the Eastern District of Texas, at Galveston, certified to the Circuit Judge for the fifth circuit that the District Judge of that district was "prevented by reason of illness from continuing the holding of the present November term of the District and Circuit Courts of the United States for the Eastern District of Texas, at Galveston; and also the coming terms of said courts at Tyler, Jefferson and Galveston, in the year 1889." Thereupon the Circuit Judge issued an order designating and appointing "the judge of the Western Judicial District of Louisiana to conclude the holding of the present November term of the District and Circuit Courts for the Eastern District of Texas, at Galveston, and also to hold the coming terms of the District and Circuit Courts in said Eastern District of Texas, during the year 1889, and during the disability of the judge of said district, and to have and exercise within said district during said period, and during such disability, the powers that are vested