

SOUTHERN PACIFIC COMPANY *v.* STEWART.ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT.

No. 348. Petition for rehearing. Granted and former dismissal vacated  
January 28, 1918.

The dismissal (*ante*, 359), having resulted from a misunderstanding, due to an incomplete printed record and to statements in the briefs, rehearing is granted, the dismissal set aside and the cause restored to the docket.

*Mr. Henley C. Booth, Mr. William F. Herrin, Mr. A. A. Hoehling, Jr., Mr. William R. Harr and Mr. Charles H. Bates* for plaintiff in error, in support of the petition.

Memorandum opinion by direction of the court, by MR. JUSTICE DAY.

The opinion in this case was handed down on December 17, 1917 (*ante*, 359). The cause was submitted on a motion to dismiss which was sustained. The printed record did not contain the proceedings upon the application to remove the cause from the state court. The briefs of counsel upon both sides, upon which the case was submitted, stated that the case was removed because of diversity of citizenship. Treating these statements as the equivalent of a stipulation the court decided the case and rendered judgment. It now appears by a certified copy of the record on removal, filed by the plaintiff in error, that the removal petition contained an allegation that the complaint alleged a cause of action arising under the Interstate Commerce Act, and this fact, as well as diversity of citizenship, was made a ground of removal.

562.

Syllabus.

In this view it follows that as our order of dismissal rested upon the assumption that the removal was because of diversity of citizenship only, the petition for rehearing must be granted, the order of dismissal set aside, and the cause restored to the docket.

*So ordered.*

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UNITED STATES *v.* SWEET, ADMINISTRATOR  
OF SWEET.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT.

No. 99. Argued December 19, 1917.—Decided January 28, 1918.

Section 6 of the Utah Enabling Act of July 16, 1894, c. 138, 28 Stat. 107, purports to grant to the State upon her admission sections 2, 16, 32 and 36 in every township, reserving lands embraced in permanent reservations, etc., but making no mention of mineral lands. Section 10 provides that land granted by the act for educational purposes "shall not be subject to preëmption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only." *Held*, that the school section grant was not intended to embrace land known to be valuable for coal.

It is the settled policy of Congress to dispose of mineral lands only under laws specially including them. This is evinced by very numerous enactments, beginning even with the Ordinance of May 20, 1785. It was expressed in its application to all grants, whether to a State or not, by the particular acts whence came the general and permanent provisions on the subject found in §§ 2318 and 2346 of the Revised Statutes, and was even more firmly established by the mining laws as a whole.

Taken collectively, the mining laws (including the coal land laws), constitute a special code upon the subject of mineral lands, intended not only to establish particular modes of disposing of such lands,