This view is strengthened by the fact that there is territory within the exterior bounds of the United States to which the language of the 107th section of the recent act can apply, without applying it to the Indian territory, to wit, the territory of Alaska. And it does not appear by the record that there are not other districts within the general territory of the United States which are in like predicament.

The judgment, according to these views, ought to be reversed.

The CHIEF JUSTICE, and NELSON and FIELD, JJ., did not hear the argument.

BANK v. CARROLLTON RAILROAD.

1. A party coming into the right of a partner, whether by purchase from such partner (no matter how broad the language of the conveyance may be) or as his personal representative, or under an execution or commission of bankruptcy, comes into nothing more than an interest in the partnership, which cannot be tangible, made available, or be delivered but under an account between the partnership and the partner.
2. Where a complainant's right is thus only an equity to share in the surplus, if any, of the firm property after settlement of the partnership accounts, the proper bill is a bill for such a settlement. Such bill will not lie unless all the partners are made parties defendant.
3. Although in general a bill in chancery will not be dismissed for want of proper parties, the rule resting as it does upon the supposition that the fault may be remedied, and the necessary parties supplied, does not apply when this is impossible, and whenever a decree cannot be made without prejudice to one not a party. In such a case the bill must be dismissed. Hence in a case where if all the partners were made parties to the bill, the court in which the bill was filed would, from the character of its jurisdiction (which was confined to persons resident within particular districts, which one of the partners here was not), be without any jurisdiction of the controversy, the bill must be dismissed.
4. A bill for a settlement of partnership accounts which, without charging fraudulent confederacy, shows that it is filed not against all the original partners, but against one of them (yet remaining in the administration of the firm concerns), and persons who have succeeded to the rights

Statement of the case.

(not to the obligations), of one or more of the others, presents not only a want of indispensable parties but a misjoinder of the defendants—a misjoinder apparent upon the face of the bill. It must be dismissed.

APPEAL from the Circuit Court for the District of Louisiana.

The Fourth National Bank of New York filed a bill in December, 1867, in the court below against the New Orleans and Carrollton Railroad Company, Beauregard, Hernandez, Binder, and Bonneval. The court dismissed the bill and this case was an appeal by the bank. The case was thus:

The railroad company just mentioned was a corporation in Louisiana, which had made a railroad from New Orleans to Carrollton. On the 12th April, 1866, this corporation made a lease to the defendant, Beauregard, of the road, for twenty-five years, from the 16th of that month, at a rent of $20,000 a year, under covenants to make large improvements and changes in its condition and operation. The lease contained this provision:

"The said lessee (Beauregard) shall not have the right of transferring this lease or of underletting the premises leased without the consent of the directors of the said railroad company."

A certain May and one Graham signed the lease as sureties for Beauregard, the lessee. Immediately after the execution of this lease, that is to say, on the 18th April, Beauregard, May, and Graham entered into an agreement for the equipment of the road for their common advantage. Beauregard was to have charge and direction of the road, appointing his own assistants; to have for himself an annual salary of $5000. All was to be in his name, but for the common benefit. The arrangement was to continue for twenty-five years. The whole amount of the money necessary to carry out the enterprise was to be furnished by May and Graham—$20,000 by each immediately after the lease was obtained, and $20,000 by each every month after, for

four months, and then $10,000 each, per month, for five months. The money advanced, with 8 per cent. interest, was to be repaid from the annual net profits and the remainder of the profits was to be divided between the partners; all losses being borne equally. Books were to be kept showing the moneys received and expended, and the purchases made on account of the copartnership, and monthly statements of the amounts received and expended were to be furnished by Beauregard to May and Graham. On the 8th May, 1867, Graham, in consideration of one dollar, assigned all his estate, right, and title to the lease which he derived from the partnership articles, and all his right and interest in any property and effects of the partnership, and all debts due to him by the said partnership or any partner, to the complainant, and it was in virtue of this assignment that the bill was filed. It will be observed that neither May nor Graham, the partners, were parties to the bill. The purpose of the bill, which did not charge any fraudulent confederacy, was to enforce the transfer made by Graham. The bill charged that the defendants had taken possession of the lease and partnership, and would not recognize the partnership or the interest of the plaintiff; that they claim under the copartner, May, and claim independently of the plaintiff. In point of fact, they claimed two-thirds of the partnership, in virtue of an assignment from May, made on the 14th and 16th of May, 1867, and denied that when Graham assigned to the bank he had any interest to assign; asserting that he was but a trustee for May. The prayer of the bill was that the defendants might be ordered to recognize the interest of the complainant, the bank, in the copartnership and in the business carried on under the lease, and to pay them the capital advanced by Graham and his share of profits.

Issue being joined and evidence being taken, the question as to the true interest of Graham in the partnership, whether indeed he had any as against May, and how far he had a right to make the assignment which he did, to the bank, were matters to which testimony was largely directed.

Argument for the appellant.

The court below dismissed the bill, with leave to the complainant to bring a suit against Beauregard, *Graham*, and May, for a settlement of whatever partnership existed between them prior to the transfer of May, on the 14th and 16th of May, 1867.

Graham at the time when the lease was made was a resident of New Orleans, but in 1866 removed to New York, and was a citizen of that place when the bill was filed in 1867.

Mr. P. Phillips, *for the bank*, *appellant*, recapitulating the evidence, contended that on it the *bona fides* of the assignment by Graham to the complainant on the 8th May, 1867, could not be successfully impeached; that Graham having thus assigned his interest to the complainant, and May *his* interest to Hernandez, Binder, and Bonneval, the bill was well filed against the latter and Beauregard, one of the original partners, to have an account of the profits of the concern under the prayer for general relief; that as the assignment by Graham to the complainant was absolute, Graham was not a necessary party; this, especially, as to have made him a defendant (being a citizen of the same State with the complainant) would have ousted the jurisdiction; that the decree dismissing the bill with leave to institute a suit against Beauregard, May, and Graham for a settlement of whatever partnership existed between them prior to the transfer by May, on the 14th and 16th May, 1867, was palpably erroneous, as it was through May that Bonneval, Binder, and Hernandez had come into the possession and control of the partnership effects; that the real defendants were thus protected from a suit and parties who had divested themselves of all possession and interest were to be substituted as defendants; this in an equity proceeding which deals always with those who have the real interest.

But admitting that May and Graham were necessary parties, Mr. Phillips contended that their absence did not deprive the court of jurisdiction over the cause; that the objection could only be urged against granting the relief

sought without bringing them in, and that this did not warrant an absolute dismissal of the bill as to those properly before the court; that in such a case an amendment of the bill would be ordered. And that, if necessary to maintain the jurisdiction, Graham might have been made a coplaintiff.*

Messrs. J. A. and D. Campbell, contra.

Mr. Justice STRONG delivered the opinion of the court.

The effect of Graham's assignment to the complainant was undoubtedly to dissolve the partnership which had existed between Beauregard, May, and himself, but it did not make his assignee a tenant in common with the other two partners in the property of the firm. It seems to be assumed on behalf of the complainant, that in succeeding to Graham's rights, the bank acquired an ownership of the effects of the firm jointly with Beauregard and May, and that, as Graham had been an equal partner with them, his assignee of course became the owner of one undivided third of the railroad lease and other property of the firm. But this assumption is based upon a misapprehension of the effect of the assignment. It has repeatedly been determined, both in the British and American courts, that the property or effects of a partnership belong to the firm and not to the partners, each of whom is entitled only to a share of what may remain after payment of the partnership debts and after a settlement of the accounts between the partners; consequently that no greater interest can be derived from a voluntary sale of his interest by one partner, or by a sale of it under execution.† In *Taylor* v. *Fields*,‡ it was said that "a party coming into the right of a partner" (in any mode, either by purchase from such partner, or as a personal representa-

* Harrison *v.* Rowan, 4 Washington's Circuit Court, 202; Carneal *v.* Banks, 10 Wheaton, 181; Milligan *v.* Milledge, 3 Cranch, 220.

† West *v.* Skip, 1 Vesey, 239; Nicoll *v.* Mumford, 4 Johnson's Chancery, 522; Doner *v.* Stauffer, 1 Pennsylvania, 198.

‡ 4 Vesey, Jr., 396.

tive, or under an execution, or commission of bankruptcy, "comes into nothing more than an interest in the partnership, which cannot be tangible, cannot be made available, or be delivered but under an account between the partnership and the partner, and it is an item in the account that enough must be left for the partnership debts."

When, therefore, the bank obtained from Graham the assignment, which is the foundation of its claim in this suit, it obtained thereby no ownership of the lease made by the railroad company to Beauregard, and which he agreed to hold for the benefit of the firm, nor did it obtain any aliquot part of it, or of any of the effects of the firm. The utmost extent of its acquisition was an interest in the surplus, if any, which might remain after all debts of the firm should be paid, and after the liabilities of Graham to his copartners, as such, should be discharged. It was not in the power of Graham, by retiring from the firm in violation of the articles of copartnership, either to introduce another partner or to deprive the partners who remained of their right to have all the partnership property held for partnership purposes. Incident to the right of the bank to share in the surplus was a right to enforce a settlement of the partnership accounts in order to ascertain whether there was any surplus. It is true the words of the assignment were very broad. It purported to transfer all the estate, right, title, and interest in the lease made by the New Orleans and Carrollton Railroad Company to Beauregard, to which the assignor might be entitled by virtue of the articles of copartnership, and also all his right and interest in any property and effects of the partnership, and all debts due to him from the partnership or any member thereof. But no matter what its language, it is clear no more could pass under it than the right of the assignor; and if, as we have said, that was not a right to the specific articles of property belonging to the firm, the bank obtained no such right. We are not now speaking of the fact that, under his contract with the railroad company, Beauregard had no right to transfer the lease either to the partnership or its members. The case does not require us

to consider that inability. It is sufficient that the complainant's right was only an equity to share in the surplus, if any, of the firm property after settlement of the partnership accounts, and that this is a bill for such a settlement. Manifestly, then, it is incurably defective, because neither Graham nor May are made parties defendant. It is too plain for discussion that to such a bill all the members of the firm are indispensable parties, for they are all directly affected by any decree that can be made. How utterly impossible it is to ascertain what the equity of the complainant is, with the present state of the record, will appear more distinctly, if the provisions of the articles of copartnership be considered. When it was formed, Beauregard had obtained from the New Orleans and Carrollton Railroad Company a lease of its railroad, with all its rolling stock, and with its corporate privileges, for the term of twenty-five years. Though the sole lessee, and prohibited by his contract from assigning or underletting, it was nevertheless agreed between him and his copartners that the lease should be for their common benefit; that May and Graham should each advance one hundred and fifty thousand dollars to carry on the enterprise of running the road, and that Beauregard should take charge of, manage, and direct the undertaking for the mutual advantage of the parties, at a fixed annual salary, selecting and appointing his own assistants. It was agreed that the money advanced, with eight per cent. interest, should be repaid from the annual profits of the enterprise, and that the remainder of the net profits should be equally divided between the partners, and that all losses should be equally borne by them. The contract evidently contemplated that the property of the firm and the management of its affairs should be in the hands of Beauregard. Books were to be kept showing not only all money received and expended, but also all purchases made on account of the copartnership, and monthly statements of amounts received and expended were required to be furnished by Beauregard to May and Graham. It was also agreed that the partnership should continue twenty-five years from the date

of the lease, which was April 12th, 1866. Now, it is quite possible that, on settlement of the accounts, Graham may be found indebted to the firm, or to his copartners, and that the court would be required thus to decree. How can such a decree be made when he is no party to the record? Or it might appear that May is a large debtor to the firm. How can any decree be made against him? How can any decree be made that will not prejudice one or the other of these partners? And yet, whether the bank complainant has any interest or not—whether it acquired anything under Graham's assignment, can be determined only by a final and conclusive settlement of the partnership accounts between all the partners, two of whom are not parties to this suit.

It is argued, however, on behalf of the appellant, that even if May and Graham were necessary parties, the bill should not have been dismissed, but that the complainant should have been allowed to bring in new parties by a supplemental bill. It is, doubtless, the general rule that a bill in chancery will not be dismissed for want of proper parties; but the rule is not universally true. It rests upon the supposition that the fault may be remedied, and the necessary parties supplied. When this is impossible, and whenever a decree cannot be made without prejudice to one not a party, the bill must be dismissed. Nothing is to be gained by retaining it, when it is certain that the complainant can never be entitled to a decree in his favor.* In the present case, we have seen that no decree for an account can be made, until all the partners are made parties. But if both May and Graham had been made parties defendant, the Circuit Court would have had no jurisdiction of the case. It is said Graham might have been made a co-plaintiff. Perhaps he might, and had application been made in due season for such an amendment of the bill, it might have been the duty of the Circuit Court to grant it. But no such application was made. The complainants chose to stand upon their case as they presented it. Possibly they never would have

* Note 5, § 541, Story's Equity Pleadings; Shields *v.* Barrow, 17 Howard, 130.

sought to bring in the necessary parties. The defendants could not bring them in. New parties cannot be brought into a cause by a cross-bill,* and had the bill not been dismissed, it must have been left at the option of the complainants whether the case should ever be brought to a final decree. Under these circumstances, there was no reason for retaining the bill.

It is insisted, however, that the court erred in dismissing the bill, reserving only a right to sue Beauregard, May, and Graham, for a settlement of the partnership between them prior to the 14th and 16th of May, 1867. Yet if the right acquired by Graham's assignment was, as the authorities show, not an ownership of the specific effects of the partnership, but only a right to share in the surplus remaining after the settlement of the partnership accounts and the payment of all its debts, as well as the just claims of the several partners, it is clear there can be in the complainant no equity against the railroad company, or against Hernandez, Binder, or Bonneval, who have succeeded to May's rights (not his obligations), if they have not to Graham's. No fraudulent confederacy is charged in the bill. At most, according to the complainant's own showing, they are purchasers of property that belonged to the firm. There was, therefore, not only a want of indispensable parties, a want which cannot be supplied without ousting the jurisdiction of the court, but a misjoinder of the defendants, a misjoinder apparent upon the face of the bill. Hence the decree of the Circuit Court was correct.

AFFIRMED.

UNITED STATES *v.* LYNDE.

1. Under the treaty of cession of Louisiana, made with France, April 30th, 1803, the United States Government always claimed to the Perdido River on the east, although the Spanish authorities kept possession of, and claimed sovereignty over, the territory between that river and the

* Shields *v.* Barrow, *supra.*