

BALLIN and others v. LEHR and others.

(Circuit Court, S. D. New York. April, 1885.)

REMOVAL OF CAUSE—ACT OF 1875—CITIZENSHIP—ALIENS.

A., a citizen of New York, and B., a citizen of New Jersey, sued C., a citizen of Maryland, and D., a subject of Prussia, in the state court. *Held*, that the suit was removable to the United States circuit court.

Motion to Remand.

David Leventritt, for plaintiffs.

Samuel W. Weiss, for defendants.

WHEELER, J. One of the plaintiffs is a citizen of New York, and the other of New Jersey; one of the defendants is a citizen of Maryland, and the other a subject of Prussia. The act of 1875, (Supp. Rev. St. 174,) makes suits removable in which there is a controversy between citizens of different states, or between citizens of a state and foreign citizens or subjects. There are no citizens of the same state, nor citizens or subjects of the same foreign country, on opposite sides of the controversy in this suit. Each person on one side is a citizen of a state, and each person on the other is a citizen of another state or country. The statute uses the plural number only, but this includes the singular, and does not imply that there must be more than one citizen of the same state on one side of every controversy to make the suit removable. A suit in favor of one citizen of one state against one citizen of another state, or an alien, would be none the less removable, because there were not more than one of each class. There is no person here, as a party to this controversy or suit, who is not within the description of the statute as to all of his opponents. There is no occasion for any severance of causes of action or parties; the statute covers the whole. *Removal Cases*, 100 U. S. 457.

Motion to remand denied.

MAIRER v. OLMSTEAD and others.

(Circuit Court, S. D. New York. April, 1885.)

REMOVAL OF CAUSE—TIME OF REMOVAL—REPEAL OF REV. ST. § 639, CL. 2.

The second clause of section 639 of the Revised Statutes was repealed by the act of 1875.

Motion to Remand.

J. D. McClelland, for plaintiff.

F. W. Angell, for defendant.

WHEELER, J. The removal of this cause from the state court being after a term at which it could have been tried, and therefore too late

under the act of 1875, is sought to be sustained by the act of 1866, (subdivision 2 of section 639, Rev. St. U. S.) But that clause is held to be repealed by the act of 1875, (*Hyde v. Ruble*, 104 U. S. 407,) although it had been held otherwise previously, by various state and circuit courts.

Motion to remand granted.

DAVIES, Receiver, etc., v. MARINE NAT. BANK.

(Circuit Court, S. D. New York. April, 1885.)

REMOVAL OF CAUSE—ACTION AGAINST RECEIVER OF NATIONAL BANK—TIME OF REMOVAL.

A receiver of an insolvent bank commenced an action against the receiver of a national bank in the state court by summons, without any complaint setting out his cause of action, at a time early enough to make it triable at the April term of the court, if the pleading had been promptly put in; but the time of filing the complaint was extended to the April term, when plaintiff moved for an order for the examination of the officers of the national bank, to enable him to make complaint; and, in support of the motion, filed an affidavit stating that his cause of action arose out of the fact that the bank, of which plaintiff was receiver, had paid to defendant's bank illegal interest, and that by the statutes of the United States defendant became indebted to his bank for twice the amount so paid. If the examination had been had instantly, and a complaint been framed at once, the cause would not have been triable in due course until the May term, and at that term it was removed to the United States court. *Held*, that the cause was removable, and that the application for removal was made in time.

Motion to Remand.

William B. Hornblower, for plaintiff.

Charles W. Bangs, for defendant.

WHEELER, J. This suit appears to have been commenced in the state court by summons, without any declaration or complaint showing for what cause of action, at a time early enough to make it triable at the April term of that court, if the pleadings had been promptly put in. But the time of filing the complaint was extended until into the time of the April term. Then the plaintiff moved for an order for the examination of the officers of the defendant bank to enable him to make a complaint, and, in support of that motion, filed his affidavit setting forth what his cause of action was, as appears to be required in such proceedings. At that time, if the examination had been had instantly, and a complaint had been framed at once, the cause would not have been triable in due course until the May term of the state court, and at that term it was removed to this court. The affidavit stated that the cause of action arose out of the fact that the firm of which the plaintiff is receiver had paid to the defendant bank various sums of money as interest, in excess of the rate allowed by the laws of New York, and of that limited for the banks of the state