

## GUTWILLIG, Ex'x, v. ZUBERBIER and others.

(Circuit Court, S. D. New York. October 6, 1886.)

## REMOVAL OF CASE TO FEDERAL COURT—BOND—ACT OF 1875.

The provisions of the act of 1875, relative to the bond to be given upon the removal of a cause into a federal court, apply only to cases removed under that act.

## Motion to Remand.

*Hall & Blandy*, for plaintiff.

*De Witt C. Brown*, for defendant.

WHEELER, J. This cause was removed from the state court on an affidavit of local prejudice, pursuant to section 639, Rev. St. U. S., on behalf of the defendants. It has now been heard on a motion to remand because the bond does not conform to the act of 1875; because the amount in dispute does not exceed \$500; because the affidavit does not show that both defendants had reason to and did believe there was local prejudice; and because the affidavit was not sufficiently verified.

The bond does conform to the provisions of section 639, under which the cause was removed. The provisions of the act of 1875, relative to the bond, only apply to cases removed under that act. The bond is therefore such as is required by the law under which the cause was removed, and is sufficient.

The amount sought to be recovered, and for which judgment is demanded, is \$633.58. The defendants admitted, for the purposes of the trial had in the state court, that there was \$200 of the amount claimed due the plaintiff. That, however, did not affect the amount for which judgment was claimed, and which was to be adjudicated upon in the action.

The petition for removal, which is sworn to, reads: "And your petitioners further allege and state that they have reason to believe, and do believe, that from prejudice and local influence they will not be able to obtain justice in such state court." This shows belief, and grounds of belief, on the part of both, and obviates the objection made.

This petition is shown to be sworn to before an officer—a notary public—authorized to administer oaths. This constitutes it an affidavit, and that is all which is required by section 639. Motion denied.

NEW YORK EXHAUST VENTILATOR CO. v. AMERICAN INSTITUTE OF THE CITY OF NEW YORK and another.<sup>1</sup>

(Circuit Court, S. D. New York. September 1, 1886.)

1. AWARDS—RIGHTS OF PARTIES TO.

Where one of two parties who had submitted machines to the American Institute for an award of a medal for superiority, filed a bill to restrain the Institute from granting, and the other party from receiving, said medal, *held*, that prior to the time when the parties submitted themselves for the award there was no existing right of property or right of action in complainant adverse to either of the defendants.

2. SAME—EQUITY JURISDICTION.

A party who has submitted his machine for an award has no right to invoke the aid of a court of equity to compel the making of an award of superiority in his favor, nor to restrain the making or carrying out of an award in favor of his competitor.

In Equity.

*James A. Whitney*, for plaintiff.

*Charles B. Alexander* and *Allan McCulloh*, for the American Institute.

*J. Alfred Davenport* and *Edward C. Perkins*, for the Simonds Manufacturing Company.

BLATCHFORD, J. The plaintiff is a New Jersey corporation, and each of the defendants is a New York corporation. The allegations of the bill are, in substance, these: The plaintiff is engaged in making and selling ventilator wheels known as the "Blackman Wheel." The American Institute, in 1884, publicly offered "a medal of superiority and a medal of excellence for such ventilating apparatus as should, under certain tests and conditions, be proven, on trial, to produce the best results, and excel in certain respects." Thereupon the plaintiff entered into a contract with the American Institute that a competitive test should take place between the "Blackman Wheel," as made by the plaintiff, and another ventilating fan, known as the "Wing Disk Fan," as made by the Simonds Manufacturing Company; that in December, 1884, the American Institute sent to the plaintiff a statement of the conditions on which the competitive test should take place, the same, as signed by the president of the plaintiff, being as follows:

"I hereby agree to the following as the conditions for the competitive test of exhaust fans to be made by direction of the American Institute: Fans 4 ft. in diameter to be used. One test to be made with 30 ft. of suction pipe, of same diameter as fan. With Blackman fan, the 30 ft. to be in addition to the enlarged chamber. One test with 30 ft. of discharge pipe, without any suction pipe, and without enlarged chamber on Blackman. These tests to be repeated with cloth stretched across the pipe. The power required to operate the fans is to be measured by a dynamometer; the quantity of air

<sup>1</sup> Edited by Charles C. Linthicum, Esq., of the Chicago bar.