

CASES

ARGUED AND DETERMINED

IN THE

United States Circuit and District Courts.

CUDAHY *et al.* v. MCGEOCH *et al.*

(Circuit Court, E. D. Wisconsin. December 12, 1888.)

REMOVAL OF CAUSES—ALIENS—SUIT IN STATE OF RESIDENCE.

An alien sued in the state of his residence by citizens of another state upon an ordinary debt cannot remove the action to the circuit court of the United States under the provisions of act Cong. March 3, 1887, authorizing removal of causes "by the defendant or defendants therein not being residents of that state," and also the removal of a cause in which there is a controversy "wholly between citizens of different states."

On motion to remand to state court.

Shepard & Shepard, for plaintiffs.

Finches, Lynde & Miller, for defendants.

GRESHAM, J. This suit was commenced in the circuit court of Milwaukee county to recover a debt due the plaintiffs from the defendants jointly, as copartners. The plaintiffs are citizens of Illinois, McGeoch is an alien residing in Wisconsin, and some, if not all, of the other defendants are citizens of Illinois. The suit was removed to this court on the application of McGeoch, who was, and still is, the only defendant served with process.

It is provided by a Wisconsin statute that in a suit on a joint contract against two or more defendants, when one or more, but not all, are served with process, judgment may be rendered in form against all, including the defendants not served, and bind the joint property of all, and the individual property of the defendant served. Rev. St. § 2884. A single controversy exists between the plaintiffs and McGeoch, and the case may proceed to trial and judgment against him, although his co-defendants are not before the court. Not being citizens of Wisconsin, the

absent defendants may never be served with process, and, as the record now stands, they are not to be treated as parties.

Section 1 of the act of March 3, 1887, confers upon the circuit courts of the United States original jurisdiction (1) of suits arising under the constitution and laws of the United States, and treaties made in pursuance thereof; (2) of suits in which the United States are plaintiff; (3) of suits between citizens of different states; (4) of suits between citizens of the same state claiming lands under grants from different states; and (5) of suits between citizens of a state and foreign states, citizens and subjects. In suits of the first, second, third, and fifth classes the matter in dispute, exclusive of interest and costs, must exceed the sum or value of \$2,000. So much of section 2 as calls for notice reads:

"That any suit of a civil nature, at law or in equity, arising under the constitution or laws of the United States, or treaties made or which shall be made under their authority, of which the circuit courts of the United States are given original jurisdiction by the preceding section, which may now be pending, or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the circuit court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the circuit courts of the United States are given jurisdiction by the preceding section, and which are now pending, or which may hereafter be brought, in any state court, may be removed into the circuit court of the United States for the proper district, by the defendant or defendants therein, being non-residents of that state; and when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy, may remove said suit into the circuit court of the United States for the proper district."

This is not a suit arising under the constitution or laws of the United States. It is a suit between citizens of Illinois and an alien, and is not, therefore, a suit between citizens of different states; and if it were, when the jurisdiction depends upon the citizenship of the parties, the suit cannot be removed by a defendant who is sued in the district of his residence. It is not a suit between citizens of the same state claiming lands under grants from different states; and it is not a suit within the meaning of the third clause of the second section of the act, involving a controversy wholly between citizens of different states, and which can be fully determined as between them. That clause limits the right of removal to a citizen of a state who is sued out of the state of his residence, and who is one of two or more defendants in a suit involving two or more controversies, one of which is separable as between him and the plaintiffs. An alien who is sued in a state in which he resides, as here, is not authorized by the act of 1887 to remove the suit. The motion to remand is sustained.

KANSAS CITY & T. R. CO. v. INTERSTATE LUMBER CO.

(Circuit Court, W. D. Missouri, W. D. December 10, 1888.)

1. **REMOVAL OF CAUSES—JURISDICTION OF COURT—NON-RESIDENTS OF DISTRICT.**
Under the act of March 3, 1887, providing that the circuit courts shall have original cognizance of actions between citizens of different states; that no suit shall be brought by original process in any district other than that whereof defendant is an inhabitant, but that where jurisdiction is founded only on diverse citizenship suit may be brought in the district of the residence of either party; and that any suit of which the circuit courts are thereby given jurisdiction may be removed,—an action pending in a state court may be removed by defendant to the federal court, though neither party is a resident of the district; the restriction as to the place of bringing suit being in the nature of a personal privilege, which defendant may waive. Overruling *Harold v. Mining Co.*, 83 Fed. Rep. 529.
2. **SAME—ACTIONS AT LAW—EMINENT DOMAIN.**
A proceeding by a railroad company for the condemnation of land, is an action at law, and removable to the federal court. Following *Searl v. School-Dist.*, 124 U. S. 197, 8 Sup. Ct. Rep. 460.
3. **SAME—MOTION TO REMAND—HEARING AT SPECIAL TERM.**
Where an act changing the time of holding a term of court is passed, but too late to permit the holding of a term at the substituted time, and a special term in lieu thereof is called, proceedings for the removal of a cause, the petition and bond in which were filed before the time for holding the regular term as fixed either by the act or the former law, are before the special term for the purposes of a motion to remand; the act providing that process from the clerk's office shall be returnable at the substituted term, and Rev. St. §§ 669, 670, enabling a special term to transact all business that may be transacted at a regular term.

On Motion to Remand.

For opinion on a previous motion to remand, see 36 Fed. Rep. 9.

Crittenden, McDougal & Stiles, for plaintiff.

Brumback & Brumback and Kagy & Brennerman, for defendant.

BREWER, J. This case now stands on a motion to remand. The proceeding in the state court was one for the condemnation of a right of way. It was commenced on the 5th day of June, 1888, by the filing in the office of the clerk of the circuit court of Jackson county, Mo., of a petition. On the 16th day of June the defendant filed its petition and bond for removal, and on August 27th the plaintiff took a copy of the record from the state court, filed it in this, and with it a motion to remand. Defendant objected to the hearing of that motion, on the ground that it was prematurely filed; that by the terms of its application for removal it had until the first day of the next succeeding term of the federal court in which to file the record; and that, while the plaintiff might undoubtedly at once take and file a copy of the record here, yet the case was not thereby so fully transferred to this court as to justify it in making such a final order as is involved in the decision of a motion to remand. It was conceded that the jurisdiction of the state court ceased on the filing of the petition and bond, and that, when the record was filed here, this court had jurisdiction for any provisional remedies and orders necessary to preserve the rights of the parties *ad interim*, and only the right to make