

## GOLDWORTHY v. CHICAGO, M. &amp; ST. P. RY. CO.

(Circuit Court, N. D. Iowa, W. D. May 23, 1889.)

## REMOVAL OF CAUSES—LOCAL PREJUDICE—PLEADING.

A petition for the removal of a cause under the local prejudice clause, which alleges that petitioner cannot obtain justice in the trial court, nor any other in the state to which the case could be removed, is insufficient in not alleging prejudice against the party seeking removal, or influence exerted by the adverse party, and the affidavit accompanying it should state the facts supporting such averments.

At Law.

SHIRAS, J. The defendant seeks an order for the removal of this cause from the district court of Clay county into this court, under what is known in common parlance as the "local prejudice clause" of the statute. The petition sets forth the citizenship of the respective parties, the nature of the suit, and then avers that "your petitioner cannot obtain justice in the said district court of Clay county, nor in any state court in the state of Iowa to which said cause could be removed." The affidavits filed with the petition simply state that "from prejudice and local influence said defendant will not be able to obtain justice," etc. The showing thus made is insufficient. In the petition itself it is not averred that there exists either prejudice or local influence; the averment being only that the defendant cannot obtain justice in the state court. While it may be said that by reading the petition and affidavits together it may be fairly inferred that it is intended to allege that prejudice or local influence exists, and by reason thereof the party cannot obtain justice in the state courts, still I think that the averment should be clear and positive, and not a matter of inference. The petition is filed as the basis for the action of the court. If the court should now grant an order for the removal of the cause for the reasons assigned in the petition, it would not appear upon what ground the court proceeded. The statute contains two grounds of removal, *i. e.*, prejudice, local influence. If by reason of the existence of either ground, or both, justice cannot be had in the state courts, then the right of removal exists. The petition, however, should directly aver the existence of prejudice against the party seeking the removal, or of local influence exerted by the adversary party, and, as a consequence thereof, an inability to obtain justice in the state court. Furthermore, the affidavits submitted with the petition should state facts supporting the averments of the petition, and not merely the conclusion stated in the language of the statute, as is the case in the present application. For the reasons stated the petition presented in this cause must be held insufficient, and the order of removal cannot be granted.

MAY v. ST. JOHN *et al.*

(Circuit Court, N. D. Iowa, E. D. May 22, 1889.)

**REMOVAL OF CAUSES—SEPARABLE CONTROVERSY—NOMINAL PARTIES.**

Complainant, a citizen of Iowa, filed a bill charging that a judgment had been fraudulently obtained against the city of Cedar Rapids, Iowa, in favor of defendant S., a non-resident, by means of a combination between him and others not made parties to the bill. The relief sought was to have the judgment declared void. The mayor, treasurer, and recorder of the city were made defendants, that they might be restrained from paying the judgment *pendente lite*, but it was not charged that they participated in the fraud, or that they had any interest adverse to complainant. *Held* that, though there was no separable controversy between complainant and S., the other defendants were only nominal parties, their interest being in fact adverse to S., and their joinder as defendants could not affect the right of S. to have the cause removed.

In Equity. Bill to cancel judgment.

*Henry Rickel*, for complainant.

*Chas. A. Clark*, for defendants.

SHIRAS, J. This suit was originally commenced in the district court of Linn County, Iowa, and was thence removed to this court upon the petition of the defendant St. John. The original bill charged that a judgment against the city of Cedar Rapids had been fraudulently obtained upon certain illegal warrants issued by said city, and that a tax for the payment thereof had been levied and was being collected, and the complainant, as a resident property owner and tax-payer, prayed an injunction restraining the collection of such tax, and also for a decree setting aside the judgment against the city. To this bill St. John, the owner of the judgment, the mayor, recorder, and treasurer of the city, were made defendants, and upon motion in the state court a preliminary injunction was granted. Upon the removal of the cause into this court, a motion to dissolve the injunction and demurrers to the bill were filed, and thereupon the complainant filed an amended and substituted bill of complaint, to which H. W. St. John is alone made a defendant, and which prays that the judgment against the city of Cedar Rapids be canceled and set aside, and that a judgment in favor of the complainant for the use of said city of Cedar Rapids be entered against the defendant St. John for the amount of money which he has heretofore collected on said judgment. The motion to dissolve the preliminary injunction and the demurrer to the amended bill coming up for hearing, the court suggested the query whether the cause was one properly removable from the state court, and counsel for defendant has submitted a brief on that question. The complainant, May, was when the suit was brought, and now is, a citizen of Iowa, and the defendant St. John was and is a citizen of Connecticut, and the amount of the judgment sought to be set aside is over \$2,000. To the original bill filed in the state court there were made defendants the mayor, recorder, and treasurer of the city of Cedar Rapids,