

Case No. 2,447. CARRINGTON V. FLORIDA R. CO. ET AL.
[9 Blatchf. 467.]¹

Circuit Court, E. D. New York.

March 4, 1872.

REMOVAL—MOTION TO REMAND AFTER ISSUE JOINED.

An action was removed into this court, from a state court, as against two of the defendants, under the act of July 27, 1866 (14 Stat. 306). After the record of removal was filed in this court, the plaintiff pleaded anew, setting up, in his bill, the removal of the cause. After issue, the plaintiff moved to remand the cause to the state court, on the ground that it was not within the act. *Held*, that it was too late for the plaintiff to ask that the cause be remanded, on motion.

[See *Davies v. Lathrop*, 13 Fed. 565.]

[In equity. Bill by Daniel N. Carrington against the Florida Railroad Company and Albert A. Drake. The cause was removed from the state court by defendants, and plaintiff now moves to remand the same.]

John L. Hill, for plaintiff.

Edward N. Dickerson, for defendants.

BENEDICT, District Judge. This action was originally commenced in the supreme court of the state of New York, and is now upon the docket of this court, by virtue of proceedings taken to remove it, as against two of the defendants, from the state court to this court, in pursuance of the act of congress of July 27, 1866 (14 Stat. 306). It now comes before the court upon a motion made by the plaintiff to remand the cause to the state court, upon the ground that it is of such a nature as not to be within the scope of the act of 1866, it being, however, admitted, that the defendants are citizens of another state.

It appears to me a sufficient answer to this motion to say, that it is made to appear, that, after the record of removal was filed in this court, the plaintiff pleaded anew in this court, and, in his bill, set up the removal of the cause into this court, as having been effected by the proceedings taken by these defendants, without any suggestion that the case was not removed, and properly so. The case is now at issue in this court, upon the plaintiff's bill filed here, and the answer and demurrer of the defendants; and it is too late now for the plaintiff to ask that the cause be remanded, on motion. The motion to remand is denied.

[NOTE. For the denial of a subsequent motion to dissolve an injunction granted by the state court, see next following case, No. 2,448.]

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]