

Case No. 2,448. CARRINGTON V. FLORIDA R. CO. ET AL. [9 BLATCHF. 468.]<sup>1</sup>

Circuit Court, E. D. New York.

March 5, 1872.

REMOVAL OF CAUSES—INJUNCTION PREVIOUSLY GRANTED BY STATE COURT—MOTION TO DISSOLVE.

Before the removal of a cause into this court, from a state court, as against two of the defendants, under the act of July 27, 1866 (14 Stat. 306), an injunction was granted in it, by the state court, on a full hearing, on notice, against such defendants. After the removal, they moved, in this court, to dissolve the injunction, on the same papers on which it was granted. *Held*, that leave to make such motion must be applied for and obtained, before it could be made.

[In equity. Bill by Daniel N. Carrington against the Florida Railroad Company and Albert A. Drake. Defendants move to dissolve an injunction granted by the state court. For denial of prior motion to remand the cause to the state court, see Case No. 2,447, next preceding.]

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. While the cause was before the state court, all the defendants having appeared therein, a motion for an injunction was made on the part of the plaintiff, which was opposed, on affidavits, by the defendants, and, after hearing all parties, the state court granted the injunction asked for by the plaintiff. Shortly after the decision of the state court upon the motion for an injunction, two of the defendants, who are citizens of another state, took proceedings under the act of congress of July 27, 1866 (14 Stat. 306), to have the cause, as to such defendants, removed into this court. By virtue of such proceedings, a record of removal was filed in this court, and the appearance of the said two defendants was here entered, whereupon the plaintiff pleaded anew in this court, in order to conform the proceedings to the chancery practice of the court. In this stage of the case, the defendants now move, in this court, to dissolve the injunction granted by the state court, and such motion is made upon the same papers upon which the injunction was granted by the state court.

I entertain no doubt of the power of this court, in a cause duly removed from the state court, to dissolve an injunction granted in the cause while it was in the state court. But I am of the opinion that, where it is

desired to make a motion like the present, which is, in effect, an application for a reargument of the motion made before the state court, leave to make such application should be first applied for and obtained.

The motion to dissolve the injunction is, therefore, denied, upon the ground that no leave to make the same had been previously obtained.

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