

Case No. 4,403.

ELLIS v. JARVIS.

{3 Mason, 457.}¹

Circuit Court, D. Massachusetts.

Oct. Term, 1824.

REMOVAL OF CAUSES—RECOVERY LESS THAN
\$500—COSTS—LIMITATIONS—MUTUAL UNLIQUIDATED ACCOUNTS.

1. Where a cause is removed from a state court into the circuit court, under the act of congress, the plaintiff is entitled to recover his costs, although he has a verdict for less than 500 dollars.

[Cited in *Burnham v. Rangeley*, Case No. 2,177; *Coggill v. Lawrence*, Id. 2,957; *Wolff v. Connecticut Mut Life Ins. Co.*, Id. 17,929; *Scripps v. Campbell*, Id. 12,562; *Kreager v. Judd*, 5 Fed. 28.]

2. An admission of mutual, unliquidated accounts, on which each party claims a balance to be now due to him, takes a case out of the statute of limitations.

At law. This was an action of assumpsit [by Jonathan Ellis against Charles Jarvis] brought in the state court, and removed from thence into the circuit court on the application of the defendant, under the provision or the 12th section of the judiciary act of 1789 [1 Stat. 79]. On the trial the plaintiff recovered a sum less than five hundred dollars; and thereupon Harrington, for the defendant, objected, that under the 20th section of the act of 1789, the plaintiff was not entitled to any costs.

W. Sullivan, for plaintiff, è contra, contended, that the statute did not apply, this; not being an original, but a removed suit in, the circuit court.

STORY, Circuit Justice. I am of opinion, that the present case is not within the judiciary act of 1789. The 20th section declares, that “where, in a circuit court a plaintiff, in an action originally brought there, &c. recovers less than the sum or value of 500 dollars, &c. he shall not be allowed, but at the discretion of the court may be adjudged to pay costs.” The present suit was originally brought in the state court, and removed into the circuit court by the defendant. It is not therefore within the words or the reason of the act. In the state court the plaintiff, upon the recovery, would have been entitled to his full costs; and I think, that this court in this suit is bound to administer the same law, as the party was entitled to in the state court Costs for the plaintiff.

In the same case one plea was the statute of limitations; but it appearing, that the parties had admitted, that there was an unliquidated account between them, on which each claimed a balance to be due to him, THE COURT ruled, that this took the case out of the statute of limitations within the equity of the case of *Catling v. Skoulding*, 6 Term R. 189.

¹ [Reported by William P. Mason, Esq.]