Case No. 4,668. FARMERS' LOAN & TRUST CO. v. MAQUILLAN.

{3 Dill. 379;[1] 8 West. Jur. 501; 1 Cent. Law J. 315.}

Circuit Court, D. Kansas. June Term, 1874.

REMOVAL OF SUITS—ACT MARCH 2, 1867—CORPORATIONS.

1. Corporations are within the act of March 2, 1867 (14 Stat. 558), in respect to the removal of causes from state to federal courts, and on a petition, and the making by the proper officer of the corporation of the required affidavit, are entitled to the benefit of the act.

{2. Cited in Fisk v. Henarie, 32 Fed. 424, to the effect that controversies between citizens of different states are properly removed to the circuit court, although some of the parties plaintiff and defendant are citizens of the same state.}

The plaintiff is a New York corporation and commenced this suit in one of the state courts of Kansas, and afterwards made an application in the state court to remove the same to this court. The petition and affidavit for removal were made under the act of congress of March 2, 1867. The state court ordered the removal; and in this court the defendant {Samuel Maquillan} moves to remand the cause to the state court. The ground of the motion is that corporations are not within the act of March 2, 1867.

Doniphan & Reed, for plaintiff.

Nathan Price, for defendant.

Before MILLER, Circuit Justice, and DILLON, Circuit Judge.

MILLER, Circuit Justice (orally), in substance said:

I think this motion must be denied. A great proportion of causes in the federal courts are those in which corporations are parties, and which come by transfer from the state courts, and it was never before claimed to me that they were not within the acts of congress on that subject, or within the act of March 2, 1867. My impression in favor of the jurisdiction in this particular class of cases was so strong that I should have overruled the motion at once but for the circumstance that a decision of the court of appeals of New York, and a decision of the supreme court of Minnesota, were produced, the former doubtfully, the latter positively, denying to corporations the right to remove cases under the act of March 2, 1867 (14 Stat. 550).

I have considered the opinions in those cases, and with great respect for the courts whose judgments they pronounce, I think their views upon the subject are not sound, and that, not unnaturally, perhaps, they incline too much to narrow and cripple the federal jurisdiction. The history of the state court decisions on the subject of federal jurisdiction from the case of Cohens v. Virginia, 6 Wheat {19 U. S.} 264, shows that, if the state courts could have defined the limits of that jurisdiction, the fabric of federal jurisprudence, as it exists to-day in this country, would have been shorn of its beauty and symmetry, and the system of its efficacy and usefulness.

I am not impressed with the soundness of the argument that because corporations cannot make an affidavit, except through the proper officers, they were not within the contemplation of congress. I think that the proper officers of corporations may make the necessary affidavit to procure the removal.

I do not join in the condemnation of the act of 1867. It does not allow the removal solely on the ground of citizenship. It requires the requisite citizenship to exist, and in addition thereto requires the existence of prejudice or local influence to be shown by affidavit. In this respect the policy of that act is not unlike that which prevails in perhaps all the states in regard to the change of venue from one county, or one judicial district, to another. Johnson v. Monell {Case No. 7,399}. The object in each case is to secure an impartial tribunal, and the federal courts are not courts for non-residents more than for residents, and no injustice is done to the latter to be compelled there to litigate controversies which they may have with citizens of other states. Motion denied.

NOTE. See Minnett v. Milwaukee & St. P. Ry. Co. {Id. 9,636}.

[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.}