GIER v. GREGG et al.

Case No. 5,406.

{4 McLean, 202.}[1]

Circuit Court, D. Illinois. June Term, 1847.

PRACTICE—STATUS OF CAUSE ON REMOVAL—AMENDATORY ANSWER.

1. A case removed from a state court, to the circuit court of the United States, stands, in the latter, as it did at the time of the removal in the former.

{Cited in Wolf v. Connecticut Mut. Life Ins. Co., Case No. 17,924; Moynahan v. Wilson, Id. 9,897.}

2. If an amendatory answer repeat what was said in the answer filed before, without varying the defense, it may be considered as impertinent, and will be referred to a master, etc.

In equity.

Mr. Butterfield, for plaintiff.

Mr. Chickering, for defendants.

OPINION OF THE COURT. This case was brought here from the circuit court of the state, and it is now before the court on exceptions to the answer. Leave was given at the last term to amend the answer. The counsel for the defendants {Gregg & Wald} contends that nothing is brought from the state court into this court, under the act of congress, but the process. The case, when removed from the state court to the circuit court of the United States, stands in the latter court as it stood in the former, before the removal. The objection to the answer to the amended bill is, that it repeats what was said in the answer previously filed. In Story, Eq. Pl. § 808, it is said, that an answer to an amended bill is considered a part of the answer to the original bill. Therefore, if a defendant, in a further answer, or in an answer to an amended bill, repeats any thing contained in a former answer, the repetition, unless it varies the defense, in point of substance, or is otherwise necessary or expedient, will be considered as impertinent; and on reference to a master, such parts will be struck out In section 875a the author says, "It may well be suggested whether the plaintiff has a right to dispense with the oath, and yet to make the answer evidence in his own favor as to all the facts which it admits, and exclude it as evidence as to all the facts which it denies." It would seem that the whole answer should be taken together, at least so far as one part may be explanatory of another, or have a direct bearing upon it The court referred the answer back to the master, to state what part of the former answer, if any, is a fuli answer to the interrogatories in the amended bill.

{See Case No. 5,799.}

[1] {Reported by Hon. John McLean, Circuit Justice.}