

## PENROSE v. PENROSE.

[17 Blatchf. 332.]<sup>1</sup>

Circuit Court, E. D. New York. Nov. 29, 1879.

## REMOVAL OF CAUSES—REFUSAL OF STATE COURT TO MAKE ORDER—INJUNCTION.

1. An injunction will not be granted to restrain a defendant from proceeding in the state court in a cause which the plaintiff claims has been removed into this court, although the jurisdiction of this court over the cause is clear, and the state court has refused to make an order for the removal of the cause, and the defendant has noticed the cause for trial in the state court.
2. Such injunction is not required to uphold the jurisdiction of this court over the cause.

[This was a proceeding by Edward Penrose against Thomas B. Penrose. Heard on motion for an injunction.]

Henry C. Place, for plaintiff.

Peckham & Tyler, for defendant.

BENEDICT, District Judge. This is a motion for an injunction to restrain the defendant from taking further proceedings in this cause in the state court, where, as it appears, the defendant has noticed the cause for trial at the November term. The facts stated in the affidavit read in opposition to this motion afford no ground upon which to deny the jurisdiction of this court. No defect in the proceeding taken to remove the cause has been called to my attention, nor do the facts stated in regard to what has occurred in the cause afford any ground upon which to deny that jurisdiction of this court over the cause is complete. It appears, from the moving papers, that the state court has denied the application of the defendant for an order directing the removal of the cause, but no copy of the opinion of the judge assigning his reasons for refusing the order of removal has been furnished me. I am, therefore,

without information as to any fact upon which to determine that the cause has not been removed to this court. It is well settled, that no order of the state court directing the removal is necessary, and, as before stated, no defect in the proceedings taken to effect the removal has been pointed out I cannot, therefore, deny this motion upon the ground of want of jurisdiction over the cause. I must, however, deny it upon the ground that the injunction asked for is not required to uphold the jurisdiction of this court over the cause. The practice in cases like this has been settled for this court, in the case of *Fisk v. Union Pacific R. Co.* [Case No. 4,827], where an application similar to the present was denied. Upon the authority of that case the present motion must be denied.

[NOTE. The defendant subsequently obtained an order from the state court directing the removal of the cause and taxing the costs of the motion in his favor. The costs not being paid, he moved in this court for a stay of proceedings until the costs should be paid. This motion was denied upon the ground that the state court had lost all jurisdiction over the case, and therefore could not award costs. *Penrose v. Penrose*, 1 Fed. 479.]

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

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