

## Case No. 11,040a.

PETRIE v. PENNSYLVANIA R. CO.

[3 N. J. Law J. 204.]

## ELECTION OF ISSUES—REMOVAL.

On petition to remove cause from New Jersey supreme court Before August 6, 1879, plaintiff had filed three replications to three pleas. August 6, before issue, plaintiff gave notice of trial at September term in Hudson county. August 29 the supreme court judge ordered that plaintiff make election as to issues. The case was noticed for December term. December 2, a petition for removal was presented by defendant; the judge declined to make the order and tried the cause. This petition, verifying these facts, asks advice as to course to be pursued.

NIXON, District Judge, said no advice or order is necessary; the case will go on if properly removed. He remarked upon the general inattention of counsel to the provisions of the act of 1875. [18 Stat. 470.] This act, he said, goes to the full length. Since that act the orderly way is to find out whether a cause is removable; file the papers and go on, leaving the other party to apply to remand. The case comes itself—no order is necessary. If the state judge feels that it is not removable he goes on; but an application may be made to the federal court and then, if the cause is removable, it will be removed.

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