

STOUGH v. HATCH.

[16 Blatchf. 233;<sup>1</sup> 8 Reporter, 7; 20 Alb. Law J. 78.]

Circuit Court, E. D. New York. May 1, 1879.

REMOVAL OF CAUSES—WHEN REMOVABLE.

A cause was noticed for trial by the plaintiff, at a term of the state court, and a note of issue for that term was filed by the plaintiff. Both parties consented that the cause go off for the term, and it was not tried. After the term expired the defendant removed the cause into this court, under the act of March 3, 1875, (18 Stat. 470:) *Held*, that the removal was not in time, not having been made before or at “the term at which said cause could be first tried.”

[Cited in *Forrest v. Edwin Forrest Home*, 1 Fed. 462; *Wheeler v. Liverpool, L. & G. Ins. Co.*, 8 Fed. 198; *Johnson v. Johnson*, 13 Fed. 193.]

[Cited in *Eldred v. Becker*, 60 Wis. 45, 18 N. W. 642; *First Nat. Bank v. Conway*, 67 Wis. 218, 30 N. W. 218.]

[This was a motion by Charles J. Stough against Asa. L. Hatch. Heard on motion to remand.]

Theodore Hinsdale, for plaintiff.

Turner, Lee & McClure, for defendant.

BENEDICT, District Judge. This cause was upon the calendar of causes for trial, at the circuit of the supreme court of the state, at the January term, 1879. It was noticed for trial at that term, by the plaintiff, and a note of issue for that term was filed by the plaintiff. It was not tried at that term, both sides having consented that the cause go off for the term. After the expiration of that term, application was made to the state court to remove the cause to this court, which application was granted. The plaintiff now moves this court to remand the cause to the state court, on the ground that the application to remove was made too late. This motion must be granted. The January term, 1879, was “the term at which said cause could be first tried,” within

the meaning of the act of March 3, 1875 (18 Stat. 470,) for the cause was at issue, duly noticed for trial, and subject to be tried on its merits at that term. That the parties were not prepared for a trial at that term, and consented that the cause go off the calendar for that term, are facts that do not affect the question here.

Motion granted.

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

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 