

BERRIAN v. CHETWOOD.*

Circuit Court, S. D. New York. December 14, 1881.

1. REMOVAL OF CAUSE AFTER DEFAULT IN PLEADING.

Where the petition for removal was presented after defendant's time to answer had expired, and he was in default, *held*, that there was no controversy between him and plaintiff, within the meaning of the statute, so as to make a case for removal.

Motion to Remand.

BLATCHFORD, C. J. Even conceding that there were proper written extensions of time to answer till November 1st, nothing that then or before or afterwards occurred in oral conversation between the attorneys amounted to a consent by the plaintiff's attorney to extend the time to answer beyond November 1st. So, on November 3d, when the petition for removal was presented and the bond approved, the defendant's time to answer had expired, he was in default, and there was no controversy between him and the plaintiff, within the meaning of the statute, so as to make a case for removal.

The motion to remand the cause is granted, with costs.

* Reported by S. Nelson White, Esq., of the New York bar.