

CONNELL, ADM'R, ETC., V. UTICA, U. & E. R.
CO. AND OTHERS.

Circuit Court, N. D. New York. July 28, 1882.

1. REMOVAL OF CAUSE—ON GROUND OF
CITIZENSHIP.

A cause is not removable under the first clause of section 2 of the act of March 3, 1875, unless all the parties on one side are citizens of different states from those on the other, and all the defendants must join in the petition.

2. SAME—SEPARATE CONTROVERSY.

A suit is not removable under the second clause of that section unless it is a separate controversy, wholly between citizens of different states.

3. REPEAL OF ACT OF 1866.

The second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

S. H. Wilcox, for plaintiff.

J. H. Choate, for defendant King.

BLATCHFORD, Justice. This suit was not removable under the first clause of section 2 of the act of March 3, 1875, because all the parties on one side of the controversy were not citizens of different states from those on the other, and also because all the defendants did not petition for removal. Nor was the suit removable under the second clause of that section, because there was not in the suit a separate controversy wholly between citizens of different states. To entitle a party to a removal under the second clause there must exist in the suit a separate and distinct cause of action, in respect to which all the necessary parties on one side are citizens of different states from those on the other. *Hyde v. Ruble*, 3 Morr. Trans. 516. The present case does not fall within that of *Barney v. Latham*, 103 U. S. 205. The decision of the state court, at the special and general terms, that the cause of action is entire, is a decision which it is proper

for this court to follow, and it leads to the conclusion that there is but a single controversy in the suit, and that parties to the suit who are citizens of the same state with the plaintiff, are necessary parties to the controversy to which the plaintiff and the defendant King are parties.

The case of *Hyde v. Ruble, supra*, decides that the second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

The motion to remand is granted, with costs, to be taxed.

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