

WOLFF and others v. ARCHIBALD.

(Circuit Court, D. Minnesota. December Term, 1882.)

1. REMOVAL OF CAUSE—PETITION.

The allegations of the petition for removal are jurisdictional, and they must be positive and certain; and the allegation that the defendant is an alien, "as plaintiff is informed and verily believes," is insufficient.

2. SAME—CITIZENSHIP.

Children of citizens of the United States who are born in foreign countries are citizens of the United States.

3. SAME—JURISDICTION—REMANDING CAUSE.

In all cases where there is doubt as to the jurisdiction, in a cause removed, the safer practice is to remand the cause to the state court.

Motion to Remand.

Brown & Chew, for plaintiff.

A. E. Bowe and Geo. N. Baxter, for defendant.

MCCRARY, C. J., (*orally*.) We have considered the motion to remand. This cause was removed here by the plaintiff on the ground that the defendant is an alien. The allegation of the petition for removal is that the defendant is an alien, as plaintiff is informed and verily believes. This, we think, is insufficient; the allegations of the petition for removal are jurisdictional, and they must be positive and certain, because the court cannot well proceed to take jurisdiction of a case and try the same as long as there is any doubt upon the question of jurisdiction, and it has, we think, been held that a petition for removal in this form is not good. Besides, it appears by the affidavits filed here that, to say the least, it is a question of grave doubt whether the defendant is an alien or not. His father was a native-born citizen of the United States, born in the state of Vermont. He removed to Canada and spent some of his time in Canada, and the remainder in the United States, and it seems he was sometimes on one side of the line and sometimes on the other. This defendant was born in Canada, and came with his father to this country before he reached his majority. The law is that children of citizens of the United States, who are born in foreign countries, are citizens of the United States. We think it is probable that this defendant is a citizen of the United States. That is so unless the father became a citizen of Great Britain. Of that there is no proof, and it is, to say the least, doubtful. In all cases where there

is doubt in a case of removal as to the jurisdiction of this court, it is safer to remand, because there is no doubt about the jurisdiction of the state court.

The motion to remand is sustained.

SUTRO and others v. SIMPSON and others.*

(Circuit Court, D. Colorado. November 14, 1882.)

1. SUIT BY NON-RESIDENT—BOND FOR COSTS.

Under the statutes of Colorado, a suit brought by a non-resident of the state must, on motion by defendant in apt time, be dismissed, unless bond for costs was executed and filed at the time of the commencement of the suit. To execute the bond two days after the action is instituted will not avail.

2. SAME—REMOVAL TO FEDERAL COURT.

Though no bond for costs is required in case of suit originally brought in the United States court, yet when a cause is removed from the state court to the federal court, the latter begins where the former left off; and motion to dismiss for want of bond for costs having been entered in the state court, and pending at the time of removal, will be heard in the federal court, and determined in accordance with the law applicable to the motion when made.

On Motion to Dismiss.

Sleeth & Liddell, for plaintiffs.

M. J. Waldheimer, for defendants.

HALLETT, D. J. This action was brought in the district court of Arapahoe county, on the twenty-seventh day of May last, to recover the sum of \$4,500. Concurrently with the summons, plaintiffs took out a writ of attachment, which was levied on defendants' goods, and, together with the summons, was served on defendants on that day. It is conceded that plaintiffs then were, and still are, citizens and residents of the state of New York, and that at the time of bringing the suit no bond for costs was filed, as required by chapter 20 of the Revised Statutes of the state. Two days later, and on the twenty-ninth day of the same month, such a bond was filed and approved by the clerk, and on the same day, but whether before or after the filing of the cost bond is not shown, defendants entered a motion to dismiss for want of a bond. On the first of June following, the cause was removed into this court on plaintiffs' petition, setting up the necessary facts as to the citizenship of the parties; and defendants, not having otherwise appeared, now urge their motion before the court.

Numerous cases are cited from the reports of this state and from

*From the Colorado Law Reporter.