

several defendants, and one of them is a citizen of a different state from that of the plaintiff and the others are not, the citizen of a different state can remove the case on the ground that the controversy is solely between him and the plaintiff, and can be fully determined as between them.

It is not necessary to decide what would be the effect of a joint plea by all the defendants in such a case. In this there is a several plea by the defendant, a citizen of Wisconsin, and under the declaration of the plaintiff and the plea of the citizen of Wisconsin the issue is solely between them, and therefore constitutes a controversy which can be fully determined as between them.

In all of the cases which have been decided where one or more of the defendants were citizens of the same state as the plaintiff, and one or more were not, and it has been held that the cause could not be removed, it was for the reason that all of the defendants were indispensable parties, as where the controversy grew out of a contract. This is a tort where each person is severally liable, and I think the court can take jurisdiction of the case; and, although the controversy is several, still there is such a union in the case that the whole cause must necessarily be removed, and therefore the motion to remand will be overruled.

HARLAN and BLODGETT, JJ., concurring.

See *State v. Lewis*, 12 FED. REP. 1, and note, 7; *Deford v. Mehaffy*, 14 FED. REP. 181, and note, 182.

PEOPLE OF THE STATE OF ILLINOIS v. CHICAGO, B. & Q. R. Co.

(Circuit Court, N. D. Illinois. June 14, 1883.)

REMOVAL OF CAUSE — CASE ARISING UNDER CONSTITUTION OF UNITED STATES—
ACT 1875, § 2.

Where a railroad corporation sets up as a defense that its charter was a grant by the state, giving to the railroad company, without any qualification, the right to prescribe upon what terms and at what rates freight should be transported on the road, and that this grant was protected by the constitution of the United States, and that a subsequent statute of the state upon the subject impairs the validity of such grant in violation of the constitution, such defense involves a question arising under the constitution of the United States, and the case is removable from a state court under the second section of the act of 1875.

Motion to Remand.

Mr. McCartney, Atty. Gen. of Illinois, for plaintiff.

Mr. Dexter, for defendant.

DRUMMOND, J. This was an action brought by the state in a state court against the railroad company for unjust discrimination in the carriage of freight in violation of a law of the state.

A petition and bond were filed in the state court to remove the cause to this court, under the second section of the act of 1875, on the ground that it involved a question arising under the constitution of the United States. The controversy arises upon that part of the line of road covered by the Peoria & Oquawka charter of October 12, 1849, the second section of which contains the following clause:

"The said corporation shall have the right to prescribe the manner in which said railroad shall be used, by what force the carriages to be used thereon may be propelled, to regulate the time and manner in which goods, effects, and passengers shall be transported and carried on the same, and the rate of toll on the transportation of property thereon."

The defendant claims that this was a grant by the state giving to the railroad company, without any qualification, the right to prescribe upon what terms and at what rates freight should be transported on the road, and that this grant was protected by the constitution of the United States, and that the statute of the state of 1873 upon the subject impairs the validity of that grant in violation of the constitution. A motion is now made to remand the case to the state court, because, as the attorney general of the state insists, there is no constitutional question in the case. The motion is founded, mainly, on the recent decisions of the supreme court of the United States in *Ruggles v. People*, and *Illinois Cent. R. Co. v. Same*, 15 Chi. Leg. News, 301, 302; S. C. 2 Sup. Ct. Rep. 832, 839.

The only point we can consider here is whether there appears to be such a question in the case, not whether the immunity claimed by the defendant can be sustained. Even if we admit, for the sake of the argument, that by a decision of the supreme court of the United States in another case, which should be regarded as settling the law upon the subject, under similar facts to those of this case, no constitutional question could arise, and therefore that this court ought not to take jurisdiction of the case, yet the ground upon which the decision in the two cases referred to was placed by the supreme court was that the charters of the respective companies declare that the board of directors should have power to establish such rates of toll for the conveyance of persons and property as they should, by the by-laws, from time to time establish, and that the charter of the com-