

same day upon which the petition for removal was presented, the petitioner took some other steps in the cause, upon which no action was taken by the court. I think these steps must also be taken as having no force or effect, as either having been taken after the petition was presented, or completely annulled and superseded by it.

In this state of the pleadings, and the record sent from the state court, I think it best to give the parties opportunity to perfect and present, if they desire to do so, the case it appears to have been their purpose to have done, and in doing so I do not mean that they must present the same or even similar papers or pleadings, but such as they may deem proper and necessary to present the issues raised, or to be raised. Until opportunity has been given to do this I think it best to postpone action on the application of Miss Whiteside for an injunction, so that we may have the whole case in a tangible and perfect shape. The exception made by Sharp's solicitors in this state of the case will be without force.

Leave is now given to Miss Whiteside to file the bill, she having given bond and surety for costs, but no new process and copy need issue.

WALSER and others v. MEMPHIS, C. & N. W. RY. Co.¹

(*Circuit Court, E. D. Missouri. December 3, 1883.*)

1. JOINDER OF PARTIES—CORPORATIONS.

A corporation is a necessary party defendant to a bill to enforce a judgment against it by compelling contribution from its stockholders.

2. JURISDICTION—SUIT NOT WHOLLY BETWEEN CITIZENS OF DIFFERENT STATES.

Where there are two or more plaintiffs and two or more defendants, and one of the plaintiffs and one of the defendants are citizens of the same state, this court has no jurisdiction.

3. SAME—REMOVAL OF CAUSES FROM STATE TO FEDERAL COURT—AMENDMENTS.

Where a case has been brought here from a state court, no change of pleadings or in the relationship of the parties, by amendments in this court, can give jurisdiction not disclosed by original proceedings in the state court.

Motion to remand, on the ground that this court has not jurisdiction of this case and the same was illegally removed because the claims and demands of the complainants are several and not joint, and some of them do not exceed the sum of \$500, and because the controversy herein is not wholly between citizens of different states, but on the contrary is between citizens of the same state, and the controversy cannot be severed. For a report of the opinion of the court on a former motion to remand, and a fuller statement of facts, see 6 FED. REP. 797.

Joseph Shippen and John P. Ellis, for motion.

Broadhead, Slayback & Hauessler, for petitioning defendant.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

TREAT, J. A similar motion was made and decided by this court at the March term, 1881, by Judge McCrARY, in which I concurred. Since then many proceedings and orders have been improvidently had. It may be that in the recent case of *Barney v. Latham*, 103 U. S. 205, it was supposed that opposite views to those expressed by this court had been established. It seems, however, that after the order of this court to remand the case to the state court and an appeal allowed, a subsequent order was entered vacating said appeal, and leaving open the motion to remand for further consideration. The right to vacate said appeal is questionable. Since that order, an amended bill, a demurrer, and a new motion to remand have been filed. The right to remove the cause was dependent solely upon the condition thereof at the time of the motion made in the state court; and no change of pleading or relationship of the parties, by amendments thereafter in this court, could give jurisdiction not disclosed by the original proceedings in the state court. The opinion by Judge McCrARY, in 1881, has been fully confirmed by the many decisions of the United States supreme court since rendered. It is obvious, therefore, that the cause must be remanded, and all orders made since the original order to remand vacated.

An order will be entered accordingly.

DINSMORE v. CENTRAL R. Co. and others.

(Circuit Court, D. New Jersey. December 7, 1883.)

1. JURISDICTION—COLLUSIVE SUIT—OBJECTION, HOW RAISED.

The objection to a bill that it was not exhibited in good faith, but collusively and in the interests of others, goes to the jurisdiction of the court, and should be raised by plea in abatement and not by answer.

2. SAME—EVIDENCE NOT SUFFICIENT TO ESTABLISH COLLUSION.

The fact that some of the officials of a rival corporation, with which complainant has close business relations, have been friendly and active in giving him aid in the preparation of his case, will not sustain a charge of bad faith and render his suit collusive.

3. SAME—PRELIMINARY INJUNCTION REFUSED.

Upon examination of the bill, answer, and affidavits, no circumstances entitling complainant to a preliminary injunction appearing to exist, the motion, therefore, is denied.

In Equity. Motion for preliminary injunction.

Roscoe Conkling, Clarence A. Seward, Barker Grummere, and Edward T. Green, for plaintiff.

1. Neither the act of March 3, 1875, nor the common law gives this court or any court jurisdiction of a suit which is simulated and fictitious, or in which the *reus* on either side is not the real party in interest. Such suits are called "collusive," (*Gardner v. Goodyear*,