

not parties to the suit originally, make themselves parties thereto by going before the *master*, on the reference, and proving their debts under the decree. * * * The only other way in which a creditor can make himself a party to a suit is by the filing of a supplemental bill, and making the previous parties to the suit defendants in such bill. It could not have been the intention of the legislature to require each creditor of an insolvent corporation to file a supplemental bill against its directors and stockholders, or be forever barred from having any claim against them or against the corporate fund. And as each creditor of the corporation has the right to contest the validity of the claims of the others, it would be improper to compel them all to join in one bill, which might deprive them of that right. Besides, the joining of all the creditors in the same suit, and carrying on a litigation in their joint names, would, in nine cases out of ten, be found wholly impracticable."

All that was done in the case at bar in the court below was, an order was made that all creditors, including the present creditor, the bank who brought this suit, and had removed it to this court, should become parties to the suit, and the only manner in which the bank could become a party was by a supplemental complaint. In the papers, which are very voluminous, there is a paper claiming that the defendant is a debtor to the plaintiff, and asking leave to file the same. This paper seems to be rather in the nature of a bill of particulars, although there is a short plea for relief at the end; that is, it has nothing about it that would indicate that it is intended to be a supplemental complaint; because, in a supplemental complaint, one who seeks to become a party to the suit must make all the rest of the parties, both plaintiff and defendant, parties to the supplemental bill. If I am right in my view of the case as it stands, the bank, having by order of the court obtained leave to become a party to the suit in the state court, should have taken steps by supplemental bill or supplemental complaint to become such a party. In doing so, the proceeding is not a new suit; it is a dependency upon the original suit. It is an ancillary and auxiliary proceeding and as such the original suit, being between the citizens of the same state, cannot be removed here by one seeking to become a party thereto. The motion to remand is granted.

COLGLAZIER *v.* LOUISVILLE, N. A. & C. RY. CO.

(Circuit Court, D. Indiana. 1884.)

REMOVAL OF CAUSE—CORPORATION CREATED IN SEVERAL STATES—CITIZENSHIP.

A railroad corporation organized under the laws of Indiana and of Kentucky is a citizen of both states, and an action instituted against it in a state court in Indiana by a citizen of that state cannot be removed to the United States circuit court on the ground of citizenship.

Law. Motion to remand.

Saml. B. Voyles, for plaintiff.

Geo. W. Friedley, for defendant.

Woods, J. The action was commenced in a state court,—the circuit court of Washington county. The complaint charges that the defendant was, on the twenty-fourth day of December, 1883, "the owner of a certain railroad known as and called the Louisville, New Albany & Chicago Railway; that said railway extended from the city of Louisville, in the state of Kentucky, to the city of Chicago, in the state of Illinois;" and that on that day, at the town of Salem, Washington county, Indiana, through which town, county, and state said road passes, the plaintiff, as a passenger, entered one of the cars of said railway company to be carried from Salem to Louisville, and that by reason of a defective bridge the car was precipitated into Blue river, in said county, whereby the plaintiff suffered injury, etc. Process was served upon an agent of the defendant at Salem, Indiana. The defendant appeared and moved for a transfer of the cause to this court, for the reason, as stated in the petition for removal, that the defendant "is, and was at the commencement of the action, a corporation, duly created such by an act of the general assembly of the commonwealth of Kentucky, and doing business, and has now and had then its chief office, in the state of Kentucky, and is a citizen of said state of Kentucky; and that the plaintiff is, and was at the commencement of this action, a citizen of the state of Indiana; and that the matter and amount in controversy exceeds," etc.

The motion to remand is made upon three grounds: (1) The cause was certified to this court before the issues were formed; (2) the cause was removed upon a petition which does not affirmatively state that the defendant was and is not a citizen of Indiana; (3) that at the time of the removal the defendant was and still is a corporation duly organized under the laws of Indiana, and was then and still is a citizen of both the states of Kentucky and Indiana by reason of its organization in said states respectively.

The third cause is supported by proof of its truth, and brings the case within the authority of the decision in *Chicago & W. I. R. Co. v. Lake Shore & M. S. Ry. Co.* 10 BISS. 122; S. C. 5 FED. REP. 19. See, also, *Copeland v. Memphis, etc., Co.* 3 Woods, 651; *Chicago & W. I.*