

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.*

R. Co. v. Lake Shore & M. S. Ry. Co. 5 FED. REP. 19; *Uphoff v. Chicago, St. L. & N. O. R. Co.* Id. 545; *Nashua & L. R. Co. v. Boston & L. R. Co.* 8 FED. REP. 458; *Johnson v. Philadelphia, W. & B. R. Co.* 9 FED. REP. 6; *Horne v. Boston & M. R. Co.* 18 FED. REP. 50; *St. Louis, A. & T. H. R. Co. v. Indianapolis & St. L. R. Co.* 9 BISS. 144; *Muller v. Dows*, 94 U. S. 444.

Cause remanded.

HENDRICKSON v. CHICAGO, R. I. & P. RY. CO.¹

WESSINGER v. SAME.

WHITNEY v. SAME.

(Circuit Court, D. Minnesota. December Term, 1884.)

REMOVAL OF CAUSE—APPEARANCE IN STATE COURT—WAIVER OF JURISDICTION
—MOTION TO DISMISS.

Under the act of 1875 a special appearance in the state court for the purpose of removal is not a waiver of jurisdiction, and after removal to the circuit court a motion to dismiss the case for want of jurisdiction may be made.

On Motion to Dismiss.

A. B. Jackson and *C. K. Davis*, for plaintiffs.

J. D. Springer, for defendant.

NELSON, J., (orally.) In the cases of *Hendrickson*, *Whitney*, and *Wessinger* against *Chicago, Rock Island & Pacific Railway Company*, three separate cases against the same defendant, a motion is made on the part of counsel for the railroad company to dismiss, on the ground that the court has no jurisdiction. These suits were instituted in the county of Hennepin, and were brought to recover damages for personal injuries by the respective plaintiffs. The injuries were inflicted in the state of Missouri, and the defendant corporation has no place of business in this state, and transacts no business therein. Service was obtained by a writ of attachment, attempting to attach a debt under the statute, but there was a failure to make proper affidavits, on the part of the plaintiffs, to obtain an order legally for service of process by publication; this is conceded. The suits were brought in the state court of the county of Hennepin, and a motion was filed in that court to dismiss for want of jurisdiction, and immediately petitions were filed and bonds given to remove the cases to this court. The motion is renewed to dismiss the cases here for want of jurisdiction. The claim is made on the part of the plaintiffs, that the defendant, having appeared in the state court, for the purpose of removing the cases and filing a petition, etc., waived all irregularities, and cannot take ad-

¹ Reported by Robertson Howard, Esq., of the St. Paul bar.