

v.30F, no.13-56

WOOLF V. CHISOLM AND OTHERS.

*Circuit Court, S. D. New York.*

May 27, 1887.

REMOVAL OF CAUSES—PRACTICE—PETITION—TIME FOR FILING.

Under the act of congress of March 3, 1887, which restricts the right of removal of an action from a state court to the United States circuit court, as it then existed, a defendant must file his petition within the time in which, by the laws of the state or the rules of the state court, he is required to file his original answer or plea, and not within the time When he is required or may elect to file an amended answer.

On Motion to Remand. At law.

*Van Duzer & Taylor*, for plaintiff.

*Dos Passos Bros.*, for defendants.

WALLACE, J. It was the obvious purpose of the act of March 3, 1887, to restrict tie right of removal of an action from a state court to the circuit court, as it then existed. The right is restricted as to the parties who can exercise it, as to the classes of actions in which it may be exercised, and as to the time at which an election to exercise the privilege must be made. The defendants now invoke this act to give them the privilege of removal under circumstances in which it did not exist previously. They had elected not to remove, and had waived their privilege before the new act was passed, by waiting until after the February term of the state court the term at which the action could have been tried within the meaning of the former removal act. Subsequently, the pleadings were amended, and the defendants filed a petition for removal with their amended answer.

By the true construction of the new act, a defendant must file his petition within the time in which by the laws of the state or the rules of the state court he is required to serve or file his original answer or plea, not within the time when he is required or may elect to file an amended of supplemental answer. The defendants, therefore, have not complied with the conditions upon which their right to remove depends. Much less can they rely upon the language of the new act to revise a lost right of removal. The motion to remand is granted.