

v.38F, no.10-49 GOLDWORTHY v. CHICAGO, M. & ST. P. RY. CO.

*Circuit Court, N. D. Iowa, W. D.*

May 23, 1889.

REMOVAL OF CAUSES—LOCAL PREJUDICE—PLEADING.

A petition for the removal of a cause under the local prejudice clause, which alleges that petitioner cannot obtain justice in the trial court, nor any other in the state to which the case could be removed, is insufficient in not alleging prejudice against the party seeking removal, or influence exerted by the adverse party, and the affidavit accompanying it should state the facts supporting such averments.

At Law.

SHIRAS, J. The defendant seeks an order for the removal of this cause from the district court of Clay county into this court, under what is known in common parlance as the "local prejudice clause" of the statute. The petition sets forth the citizenship of the respective parties, the nature of the suit, and then avers that "your petitioner cannot obtain justice in the said district court of Clay county, nor in any state court in the state of Iowa to which said cause could be removed." The affidavits filed with the petition simply state that "from prejudice and local influence said defendant will not be able to obtain justice," etc. The showing thus made is insufficient. In the petition itself it is not averred that there exists either prejudice or local influence; the averment being only that the defendant cannot obtain justice in the state court. While it may be said that by reacting the petition and affidavits together it may be fairly inferred that it is intended to allege that prejudice or local influence exists, and by reason thereof the party cannot obtain justice in the state courts, still I think that the averment should be clear and positive, and not a matter of inference. The petition is filed as the basis for the action of the court. If the court should now grant an order for the removal of the cause for the reasons assigned in the petition, it would not appear upon what ground the court proceeded. The statute contains two grounds of removal, *i. e.*, prejudice, local influence. If by reason of the existence of either ground, or both, justice cannot be had in the state courts, then the right of removal exists. The petition, however, should directly aver the existence of prejudice against the party seeking the removal, or of local influence exerted by the adversary party, and, as a consequence thereof, an inability to obtain justice in the state court. Furthermore, the affidavits submitted with the petition should state facts supporting the averments of the petition, and not merely the conclusion stated in the language of the statute, as is the case in the present application. For the reasons stated the petition presented in this cause must be held insufficient, and the order of removal cannot be granted.