

SCHOFIELD *v.* DEMOREST.

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

July 10, 1889.

REMOVAL OF CAUSES—CITIZENSHIP.

Under removal act Cong. 1888, § 2, cl. 3, providing for the removal of causes where the controversy is between citizens of different states, a defendant sued in a court of his own state cannot remove the cause to a federal court.

At Law. Application to remand cause.

This cause was removed from the state court under the third clause of section 2 of the removal act of 1888, which provides as follows:

“When in any suit mentioned in this section there shall be a controversy between citizens of different states which can be fully determined as between them, either one or more of the defendants actually interested in such controversy may remove said suit into the circuit court of the United States for the proper district.”

The plaintiff is a citizen of Connecticut; the defendant a citizen of New York. The plaintiff moves to remand.

*Rabe & Keller*, for plaintiff.

*Carlisle Norwood, Jr.*, for defendant.

LACOMBE, J. If anything seems plain in the removal act of 1887 it is that a defendant sued in a court of his own state cannot remove the cause into the federal courts, and to that effect are the cases cited on the argument. The motion to remand is granted.