

BOWERS v. SUPREME COUNCIL AMERICAN LEGION OF HONOR.

(Circuit Court, N. D. California. January 26, 1891.)

REMOVAL OF CAUSES—TIMELY APPLICATION—REMAND.

Where a petition for removal is not filed at the time or before defendant is required by the state practice to plead to the declaration or complaint, as provided in Act Cong. March 3, 1875, (25 St. at Large, p. 435, § 3,) the case must be remanded to the state court, whether motion to that effect be made or not.

At Law.

Campbell & Campbell, for complainant.*Wm. C. Flint*, for defendant.

Before SAWYER, Circuit Judge.

SAWYER, J. This action was commenced in the superior court of the city and county of San Francisco, state of California, by filing a complaint verified October 30, 1889, but it does not appear when the complaint was filed. Notice of appearance was served on plaintiff's attorney, dated November 12, 1889, filed November 14, 1889. On the same day, November 12, 1889, a stipulation was entered into by the parties bearing date November 12, 1889, whereby defendant "may have ten days' additional time from this date in which to appear and plead in the above-entitled action." Stipulation filed November 15, 1889. This gave defendant till November 22d in which to plead, and consequently, November 22d was the day upon which defendant was required to answer in the regular course of proceedings under the laws of California, and on that day an answer was due. On January 4, 1890, defendant filed a demurrer, and on the same day, January 4, 1890, a petition was filed to remove the cause to the United States circuit court. The petition was required by the statute to be filed—

"At the time, or any time before, the defendant is required by the laws of the state, or the rule of the state court in which such suit is brought, to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the circuit court to be held in the district where such suit is pending." 25 St. at Large, p. 435, § 3.

The answer was due on *November 22d*. The petition not having been filed till January 4, 1890, was, therefore, too late, and the cause was not lawfully removed. *Dixon v. Telegraph Co.*, 14 Sawy. 17, 38 Fed. Rep. 377; *Austin v. Gagan*, 14 Sawy. 151, 39 Fed. Rep. 626.

It must be remanded to the state court, whether motion to that effect be made or not, under the requisites of section 5 of the act of 1875, and it is so ordered.

DEY *et al.*, Railroad Commissioners, *v.* CHICAGO, M. & ST. P. RY. CO.

(Circuit Court, N. D. Iowa, El. D. February 12, 1891.)

REMOVAL OF CAUSES—JURISDICTION—RAILROAD COMMISSION.

A suit brought by the state railroad commissioners to compel a railway company to obey the regulations of the commissioners cannot be removed to the federal courts, even though the parties are citizens of different states, and the answer raises a federal question, since such a suit, being in effect an attempt by the state to execute its laws, could not have been originally brought in a federal court.

In Equity. On motion to remand.

Bill to enforce orders of the railroad commissioners of Iowa.

John Y. Stone, Atty. Gen., and *Fouke & Lyon*, for complainants.

John W. Carey, for defendant.

SEIRAS, J. The statutes of the state of Iowa provide for the election of three persons to constitute "the board of railroad commissioners of the state of Iowa," and among other powers and duties conferred upon them it is provided that "said commissioners shall have the general supervision of all railroads in the state operated by steam, and shall inquire into any neglect or violation of the laws of this state by any railroad corporation doing business therein," etc. It is further enacted that any person, firm, or corporation complaining of anything done or omitted to be done by any common carrier, subject to the provisions of the statute, may apply to the commissioners by petition, setting forth the wrongs complained of; and it is made the duty of the board to investigate such complaint, and to make a report in writing thereon of the facts in the premises, and the order made thereon by the board, a copy of which is required to be served upon the common carrier, and if the carrier refuses or neglects to obey the order or requirement of the board, then it is made the duty of the commissioners to apply, by petition, to the district or superior court in the county wherein the principal office of the common carrier is kept, or of any county in which the road is operated, for the entry of a decree against the carrier for the enforcement of the order of the board. Provision is made for giving notice to the company of such application, for the taking testimony and hearing in a summary way, and for the issuance of writs of injunction or other process for compelling obedience to the order of the board, in case the same is affirmed, and for the imposition of fines, in case of disobedience to the injunction issued, which fines, upon order of the court, are to be paid into the county treasury, and one-half thereof is then to be paid by the county treasurer to the state treasurer.

Acting under the provisions of this statute, one E. J. Little, of Lima, Ohio, representing the Niagara Fuel Company of that place, filed a complaint before the board of commissioners of Iowa, alleging that the defendant company had wrongfully refused to transport certain tanks of oil from the station of the Chicago, St. Paul & Kansas City Railway Company in Dubuque to Eagle Point, where was situated the place of busi-