

## FRISBIE v. CHESAPEAKE &amp; O. RY. CO.

(Circuit Court, D. Kentucky. January 10, 1894.)

## REMOVAL OF CAUSES—REMAND—AMENDED PETITION.

When a cause is remanded for defects in the petition, after the time when an answer is required by the state practice, it is then too late to again remove it on an amended petition. *Brigham v. Lumber Co.*, 55 Fed. 881, followed, and *Freeman v. Butler*, 39 Fed. 4, disapproved.

At Law. Action by H. D. Frisbie, administrator of William Falconer, against the Chesapeake & Ohio Railway Company to recover damages for personal injuries. Heard on motion to remand to the state court. Granted.

C. B. Simrall, Alfred Mack, and J. T. Simon, for plaintiff.  
W. H. Jackson and Hallam & Myers, for defendant.

TAFT, Circuit Judge. This is a motion to remand. On the 1st day of March, 1893, the plaintiff, Frisbie, filed his petition against the Chesapeake & Ohio Railway Company in an action for damages for personal injury. On the 15th day of March—the day when the answer to the petition was required under the laws of Kentucky—the defendant filed a petition for removal. The case was removed and the transcript filed in this court. Judge Lurton, on the ground that the petition was defective in not making the proper allegations as to residence and citizenship, remanded the case. 57 Fed. 1. Thereupon, on the 9th day of October, 1893, the plaintiff made a motion to file an amended petition for the removal of this cause to the United States circuit court. This was filed, the bond was accepted and approved, and the transcript was filed in this court.

Motion is now made to remand on the ground that no removal was effected by the amended petition and bond. I think that the motion to remand must be granted. It seems to me clear that under the statute, unless there is filed in the state court a proper petition for removal, at or before the time when the defendant is required to plead, all power is gone to oust the jurisdiction of the state court. The time within which the necessary petition should be filed is fixed by the statute. It cannot be extended in the discretion of either the federal or the state court. For the state court to allow an amendment to the petition for removal which shall relate back to the time when the original petition was filed is merely an indirect mode of extending the time within which a removal can be effected. I very much regret to differ with my colleague, Judge Barr, in this matter, but, after an examination of his opinion in the case of *Freeman v. Butler*, 39 Fed. 4, and a weighing of the arguments therein contained with the opposing arguments contained in the subsequent opinion of Judge Bunn in the case of *Brigham v. Lumber Co.*, 55 Fed. 881, I find myself unable to concur with Judge Barr's reasons.

For these reasons the motion to remand will be granted.

## CHAPMAN v. ALABAMA G. S. R. CO.

(Circuit Court, N. D. Georgia. January 20, 1894.)

## REMOVAL—CITIZENSHIP OF CORPORATION.

Act Ga. 1853, which authorized a railroad company incorporated in Alabama to extend its road into Georgia, and made it subject to suit in Georgia by citizens of that state, did not deprive the company of the right to remove such a suit to a United States court.

At Law. Action by Phoebe L. Chapman against the Alabama Great Southern Railroad Company, brought in the superior court of Dade county, Ga., and removed therefrom by defendant. Heard on motion to remand. Denied.

C. D. McCutcheon, for plaintiff.

Dorsey, Brewster & Howell, for defendant.

NEWMAN, District Judge. This is a motion to remand. Suit was brought by Phoebe L. Chapman against the Alabama Great Southern Railroad Company, in the superior court of Dade county, in this state and district, to recover damages for personal injuries alleged to have been received on a railroad operated by said company in Dade county, in this state. The petition for removal filed by the defendant alleges, and the same is not controverted, that the plaintiff is a citizen of this state and district, and that the defendant corporation is a citizen of the state of Alabama. The removal was on the ground of diverse citizenship. The motion to remand is based on the ground that the defendant corporation, while conceded to be a corporation and citizen of Alabama, is also a corporation and citizen of the state of Georgia. The Alabama Great Southern Railroad Company is operating, so far as material here, a railroad which was originally known as the Wills Valley Railroad. The legislature of Georgia in 1853 passed an act, the title of which is as follows:

"An act to authorize the Wills Valley Railroad Company, incorporated by the legislature of the state of Alabama, and any railroad company incorporated by the legislature of the state of Alabama, that may be associated with the Wills Valley Railroad Company, to construct a railroad, through the county of Dade, to some point on the Nashville & Chattanooga Railroad, in said county of Dade and state of Georgia, and for other purposes therein specified."

The act then proceeds to give to the Wills Valley Railroad Company, chartered by the legislature of the state of Alabama, the right of extending and constructing its railroad through the county of Dade, and gives it all the privileges, rights, and immunities which had been granted to the Wills Valley Railroad Company, and subjects it to the same restrictions imposed by the general assembly of the state of Alabama. Right is given to acquire land, and then the act provides that it shall be subject to suit by citizens of this state in the counties through which the road passes, without having to go to the state of Alabama to sue. The act then requires it to keep up bridges and ways of passage across the railroad, makes it liable for killing stock, for injuring persons or property, and for