

on the question here raised. The conclusion in that case was that the clause here relied on is "an independent temporary provision, intended to apply to suits which had then been removed" under a former act, and "has no application to a removal had under the act, and which did not take place before the passage of the same," under the act formerly in force which gave the right of removal to the plaintiff. *Fisk v. Henarie*, 32 Fed. 417. Independently of the weight of authority, this construction seems to me to be clearly correct. The clause in question otherwise would serve no purpose. It cannot be intended to give jurisdiction to examine into the grounds on which the allegations of the petition are founded, for the reason that it would thus, by implication, restrict the power of the court to inquire into the grounds of the petition to cases in which the plaintiff had removed the cause. Such a construction, being a derogation of the right to inquire into the substance of an allegation, should be adopted only in case of absolute necessity. The interpretation of the words by Judge Deady shows that here is no such necessity. The power to inquire into the merits of the application under the act now in force doubtless exists by virtue of the general power of the court, on proper application or pleading, and is extended, and not curtailed, by the proviso that the cause may be remanded in proper cases as to defendants not affected by prejudice or local influence.

The petitioner cites the case of *Hills v. Railroad Co.*, 33 Fed. 81, in which it is said that, "even as to plaintiffs, the right to remove by affidavit, as formerly practiced, still exists." This case, however, does not decide that the right exists, but rather assumes that it exists, and refers to the practice thereunder for purposes of comparison with the practice in case of removal by a defendant.

The petition will therefore be denied and dismissed.

COLLINS v. CAMPBELL.

(Circuit Court, D. Rhode Island. August 3, 1894.)

No. 2,506.

REMOVAL OF CAUSES—LOCAL PREJUDICE — SUFFICIENCY OF PETITION AND AFFIDAVIT.

It is not sufficient to merely allege in the petition and affidavit that petitioner "has reason to believe, and does believe," that, from prejudice and local influence, he will be unable to obtain justice in the state courts. The existence of prejudice and local influence must be alleged as matter of fact. *Short v. Railway Co.*, 33 Fed. 114, followed.

This was an action at law, brought in a state court by John E. Collins against Edward T. Campbell. Defendant petitioned for a removal of the cause to this court, on the ground of prejudice and local influence.

James E. Denison, for petitioner.

CARPENTER, District Judge. This is a petition by the defendant, in an action at law now pending in the common pleas division

of the supreme court of Rhode Island, to remove the same into this court. The petition alleges that the plaintiff, at the beginning of the suit, was, and still is, a citizen of the state of Rhode Island, and that the defendant and petitioner here, at the beginning of the suit, was, and still is, a citizen of the state of Maine, and further alleges that he has filed an affidavit from which he asks the court to find that, from prejudice and local influence, the petitioner will not be able to obtain justice in the said state court, or in any other state court to which he may, under the laws of the state, have the right, on account of such prejudice or local influence, to remove said cause. The petition is accompanied by the affidavit of the petitioner's counsel that the statements and allegations of the petition are true, as he verily believes, and by the affidavit of the petitioner that he has reason to believe, and does believe, that, from prejudice and local influence, he will not be able to obtain justice in the state court. On this petition a citation to show cause was issued and served. The plaintiff has made no appearance.

The question which arises is as to the sufficiency of this petition to remove the cause. It may perhaps be taken as well settled for the present that the petition and affidavit need not set out the facts and circumstances from which the existence of the prejudice may be inferred, or on which the belief in the existence of the prejudice is founded (*Fisk v. Henarie*, 32 Fed. 417; *Short v. Railway Co.*, 33 Fed. 114); but upon the question whether the existence of the prejudice must be alleged as matter of fact I agree with the opinion in *Short v. Railway Co.*, rather than with that in *Fisk v. Henarie*. Indeed, in the latter-named case the distinction here adverted to does not seem to have been suggested to the court in argument. The opinion says that "it is sufficient that they have made oath that they so believe, without setting forth the facts or circumstances on which such belief is founded." The stress of the question seems to have been whether a general allegation be sufficient, and not as to the proper and necessary form of that general allegation. On the other hand, in the case decided by Mr. Justice Brewer (then circuit judge) the question of the form of the averment came up for decision, and it is therein plainly pointed out, as it seems to me, that, in the absence of a specific averment of the prejudice, there is no evidence whatever in the papers to bring the case within the act providing for removal. In other words, it does not appear on the face of these papers that there is any case for removal.

The petition will therefore be denied and dismissed.

THE LINDRUP.

INMAN v. THE LINDRUP.

(District Court, D. Minnesota, Fifth Division. August 14, 1894.)

JURISDICTION OF FEDERAL COURTS—WATERS OF LAKE SUPERIOR—SEIZURE OF VESSEL.

The marshal of the district court for the district of Minnesota has authority, under proper process, to arrest a vessel on the open waters of