

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

Lake Superior; for by section 1 of the act of February 26, 1857, that lake is made the common boundary between Minnesota and the states of Wisconsin and Michigan, and by section 2 the former state is given concurrent jurisdiction over all waters which form a common boundary between itself and any other state or states.

This was a libel by B. B. Inman against the steam tug Lindrup. The claimants of the tug moved to quash the proceedings for want of jurisdiction.

White & McKeon, for libellant.
John Jenswold, for respondent.

WILLIAMS, District Judge. As appears from the pleadings and affidavits and the return of the marshal, the steam tug Lindrup was seized by the marshal of this district by virtue of a warrant of arrest or monition duly issued and placed in his hands, commanding him to seize or arrest the steam tug Lindrup, her boilers, engines, machinery, etc., if found in his district; and the return of the marshal upon the warrant of arrest states that he did seize and arrest that boat in the open waters of Lake Superior. The owners of the steam tug filed their motion to have the proceedings herein quashed and set aside for want of jurisdiction in this court, alleging that the seizure and arrest were made outside of the court's jurisdiction.

The question to be determined then is, what is the extent of the jurisdiction of the United States district court for the district of Minnesota, in admiralty?

The act of congress passed February 26, 1857, described the boundaries of the state of Minnesota as follows:

"Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of Bois des Sioux river; thence up the main channel of said river to Lake Traverse; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its centre to its outlet; thence by a due south line to the north line of the state of Iowa; thence along the northern boundary of said state to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the state of Wisconsin until the same intersects the Saint Louis river; thence down the said river to and through Lake Superior on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river, and following said dividing line to the place of beginning."

Section 2 of the act of congress above cited contains the provision—

"That the state of Minnesota shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said state of Minnesota, so far as the same shall form a common boundary to said state, and any state or states now or hereafter to be formed or bounded by the same."

There is no question but that the jurisdiction of this court is co-extensive with the boundaries of the state of Minnesota, and, by the language of the second section of the act of congress above

cited, it is clear that such jurisdiction extends over all the rivers and waters bordering on the state of Minnesota, so far as the same shall form a common boundary to that state, and any state or states now or hereafter to be formed or bounded by the same. The waters of Lake Superior form a common boundary between the state of Minnesota and the states of Michigan and Wisconsin. So the contention of counsel for respondent, it seems to me, must fall to the ground, because the very language of section 2 of the act of congress fixes the jurisdiction of the state of Minnesota; and it is unnecessary to cite authorities that the jurisdiction of the United States court for the district of Minnesota, in admiralty, is coextensive with the boundaries of that state. To hold otherwise would leave a large portion of the open waters of Lake Superior outside of the admiralty district of any court, because there is nothing in the act defining the boundaries of the states of Michigan or Wisconsin bordering upon Lake Superior that would give the United States courts in those districts any exclusive jurisdiction over the waters of Lake Superior.

It follows that the motion of respondent must be overruled, with costs.

NATIONAL WATERWORKS CO. v. KANSAS CITY.

KANSAS CITY v. NATIONAL WATERWORKS CO.

(Circuit Court of Appeals, Eighth Circuit. July 2, 1894.)

Nos. 469, 470.

1. MUNICIPAL CORPORATIONS—CONTRACTS—MANDATORY STATUTE—PURCHASE OF WORKS OF WATER COMPANY.

An act empowering a city to grant by ordinance the right to erect and operate waterworks for the use of the city, for a period of 20 years, and to renew the grant for another such term, reserving the right to acquire the works (Act Mo. March 24, 1873), provided that at the expiration of the 20 years, if the grant should not be renewed, the city should purchase the works, and, if the price could not be fixed by agreement, pay therefor the fair and equitable value. The ordinance passed by the city pursuant to the act, and in effect the contract under which the works were erected by a water company, provided that on a failure to renew the grant at the expiration of 20 years the city should then be required to purchase the works. *Held*, that the provision for purchase was mandatory, vital, and controlling, and, on the expiration of the 20 years without renewal of the grant, pending a suit by the company against the city for performance of the contract, compelled a decree therein that the company should sell and the city buy.

2. SAME—SPECIFIC PERFORMANCE — DECREE RESPONSIVE TO ALLEGATIONS AND PRAYER.

The bill in such suit, filed by the company nearly 2 years before expiration of the 20 years, alleged performance on the part of the company of the terms of the contract, and a threatened violation of its obligations on the part of the city, and prayed a decree that the contract was binding on both parties, and that the city should perform it, so far as executory and unperformed. *Held*, that after the obligation of the city to purchase had arisen, on the expiration of the 20 years, this was sufficient foundation to decree completion of the sale and purchase, although the cross bill of the city, and amendments thereto, were inharmonious, and, if the only affirmative pleadings, might not have sustained such a decree, and although the