WATERLOO MIN. CO. v. DOE.

(Circuit Court of Appeals, Ninth Circuit. February 28, 1895.)

No. 144.

Appeal from the Circuit Court of the United States for the Southern District of California.

A. H. Rickets, for appellant.

R. E. Houghton, for appellee.

Dismissed, pursuant to stipulation of counsel.

WILLIAMS v. SNYDER.

(Circuit Court of Appeals, Ninth Circuit. July 15, 1895.)

No. 241.

Appeal from the Circuit Court of the United States for the District of Idaho.

W. W. Woods, for appellant.

C. W. Beale, for appellee.

Dismissed, pursuant to stipulation of counsel.

YEE LUNG v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. May 23, 1894.)

No. 177.

Appeal from the District Court of the United States for the Northern District of California.

T. D. Riordan, L. I. Mowry, and H. C. Dibble, for appellant.

Charles A. Garter, U. S. Atty.

No opinion. Submission of appeal vacated, and judgment of dismissal entered by consent.

FIRST LITTLETON BRIDGE CORP. v. CONNECTICUT RIVER LUMBER CO.

(Circuit Court, D. New Hampshire. September 24, 1895.)

No. 404.

REMOVAL OF CAUSES.

In this case the petition for removal to a federal court was not filed until after the time allowed by the state court for filing pleas in abatement, and it was *held* that the circumstances did not show a waiver of the matter of time, and the case must be remanded.

Action by the First Littleton Bridge Corporation against the Connecticut River Lumber Company. On motion to remand to the state court.

James W. Remick and Harry Bingham, for plaintiff.
Drew, Jordan & Buckley and Geo. H. Bingham, for defendant.

PUTNAM, Circuit Judge. I find that the writ was returnable to the term of the supreme court of the state held on the third Tuesday of September, 1894, and that at that time the following rule of that court was in force:

"Pleas in abatement shall be delivered to the counsel of the adverse party or filed with the clerk, and notice thereof put upon the docket within the first four days of the term."

I find that there is no claim that this rule is not peremptory, with reference to the period named in it, or that the court has power to extend it. I find that the petition for removal was not filed in the state court until after the expiration of the period of four days named in the rule, so that, on the authority of Martin's Adm'r v. Railroad Co., 151 U. S. 673, 684, 14 Sup. Ct. 533, it was not seasonable. I find that there was no actual waiver of the defect, with any intention to waive. I find the petitioner did not serve the plaintiff with a copy of the removal papers, or notify it that the petition had been filed. I find that no appearance has been entered in this court by the plaintiff, as provided by rule 5, which was in force on and after September 1, 1894, and that no appearance by the plaintiff, in any form, has been actually made in this court, except for the purpose of making the motion to remand. I find that the attorneys for the plaintiff intended to enter their appearance, wrote the clerk to make the entry for them, and that the clerk called their attention to the necessity of a formal entry under rule 5, but that, as already said, no appearance was in fact entered. I find that certain conversations and correspondence have taken place between the attorneys of the plaintiff and those of the defendant touching this case and its trial on the merits; but I am unable to find, from the facts submitted, that the plaintiff or its attorneys knew, or were bound to know, before these conversations and correspondence, either with the clerk or the defendant's attorneys, or until about the time when the petition to remand was filed, that the removal papers were not seasonable. Therefore I do not find that the plaintiff has, by unreasonable delay or otherwise, waived, as a matter