

On the one hand, the state statute does not extend the equitable jurisdiction of the circuit court of the United States, nor does it create or vest in the state a new cause of action in equity, such as can be entertained in this court, or in the circuit court of the United States in New Jersey, for instance, or in any court of general jurisdiction in a state other than Illinois. On the other hand, the suit is not one of a civil nature. The first section of the act gives definitions of a trust; but said section does not, in terms, prohibit any person or corporation from entering into any one of the combinations so defined. The remaining sections are worded to meet "violations" of the first. If, for this reason, no offense is, in fact, made by the statute, then this information, since it avowedly rests on the statute, necessarily fails. In that event, no further question of any kind arises. If I should here hold that the statute, by reason of the omission referred to, is left meaningless and ineffectual, and thus retain the case here as a civil suit, then, by the selfsame ruling, there would be nothing left but to dismiss the information for want of equity. The cause is remanded to the state court.

---

SCHIPPER et al. v. CONSUMER CORDAGE CO., Limited.

(Circuit Court, S. D. New York. November 23, 1895.)

**REMOVAL OF CAUSES—TIME FOR REMOVAL.**

An extension of the statutory time to answer by mere stipulation, and not by order of court, does not extend the time for removal. *Rycroft v. Green*, 49 Fed. 177, distinguished.

This suit was brought in a state court by Charles W. G. E. Schipper and another against the Consumer Cordage Company, Limited, and was removed to this court by defendant. A motion is now made to remand it, on the ground that the removal was too late, being after the expiration of the 20 days allowed for answer by the Code of Civil Procedure. The time for answering had been extended by stipulation, but not by order of court.

E. A. Bigelow, for libelants.

Charles L. Atterbury, for defendant.

LACOMBE, Circuit Judge. In *Rycroft v. Green*, 49 Fed. 177, it is stated to be the settled practice in this circuit to hold that extension of time to answer by order of court extends the time for removal. Such construction is within the language of the act of 1887, "before the defendant is required by the laws of the state or the rule of the state court \* \* \* to answer." But an extension of time to answer by stipulation only cannot be held to be an extension by rule of court. Motion to remand is granted.

**LAKE STREET EL. R. CO. v. FARMERS' LOAN & TRUST CO. et al.**

(Circuit Court, N. D. Illinois. March 16, 1896.)

**REMOVAL OF CAUSES—SEPARABLE CONTROVERSY—RAILROAD MORTGAGE.**

A railroad company which had given a mortgage to two trustees, one of which was a corporation of another state, brought suit to have such trustee removed, and also to restrain it from foreclosing the mortgage against the wishes of the other trustee and of a majority of the bondholders, *Held*, that the controversy between the railroad company and the former trustee was a separable one, to which the other trustee and the bondholders were not necessary parties.

**In Equity.** On motion to remand.

Knight & Brown and Chas. H. Aldrich, for complainant.

Runnells & Burry and J. J. Herrick, for defendant.

Dupee, Judah, Willard & Wolf, for Northern Trust Co.

**GROSSCUP**, District Judge. The bill is by the Lake Street Elevated Railroad Company, a corporation under the laws of Illinois, against the Farmers' Loan & Trust Company, a corporation under the laws of New York, the American Trust & Savings Bank, a corporation under the laws of Illinois, and the Northern Trust Company, a corporation under the laws of Illinois. The bill shows that the complainant is owner and operator of an elevated railroad, and as such has authorized the issue of \$10,000,000 of bonds, consisting of 100,000 bonds of the par value of \$100 each, to secure which complainant executed and delivered to the American Trust & Savings Bank and the Farmers' Loan & Trust Company, defendants, as trustees for the bondholders, its trust deed upon its property and appurtenances, situated in Cook county, Ill., which trust deed was duly accepted by the trustees therein named. The trust deed confers upon the trustees the usual power contained in such instruments, including the power, in case of default of interest for a period of six months, and upon the request of one-fourth in interest of said bondholders, to declare all the bonds immediately due and payable; also, upon a request of a majority of the bondholders, to enter upon and take possession of the road, and to foreclose the mortgage by the sale of the railway lands, franchises, etc., of the mortgagor. It is also provided that every holder of bonds secured by the mortgage accepts the same subject to the agreement that every right of action, whether at law or in equity, under the mortgage, is vested exclusively in the trustees. There is also a provision that in case either trustee shall resign or be removed, or otherwise cease to act, or become incapable of acting, the successor shall be appointed by the surviving trustee, or, in case no such appointment shall be made within 30 days, then by any judge of the United States circuit court for the Seventh circuit, upon the application of the holders of not less than \$1,000,000 of the principal of the bonds.

The bill avers that the Farmers' Loan & Trust Company has not complied with the laws of Illinois requiring a deposit with the auditor of public accounts of the sum of \$200,000 in securities, and