BENEDICT, District Judge. This is a motion to remand the cause to the state court, on the ground that the removal to this court was too late. It appears that in the state court, on some application before the state court, it was stated by Mr. Sturges, the attorney, to the court, that the time to answer must be extended, to which it is said the judge assented. No order to extend the time was presented to the judge, or signed by him. On the next day, the plaintiff's attorney signed a stipulation, extending the time to answer and to move, and, before the extension of the time to answer fixed by the stipulation had expired, the cause was removed to this court.

It seems to me that, under the practice of the supreme court of this state, the time to answer did not expire until the date fixed by the stipulation, which was June 10th, and the removal before that date was in time. It has been so held by Judge Wallace. Winberg v. Lumber Co., 29 Fed. 721. But, if this were otherwise, I am of the opinion that, under the circumstances above stated, the plaintiff should not be heard in this court to say that the time to answer had expired. Motion to remand is denied.

ALLMARK v. PLATTE S. S. CO., Limited.

(Circuit Court, E. D. New York. November 2, 1896.)

REMOVAL OF CAUSES—MOTION TO QUASH SERVICE—RULING BY STATE COURT. Where defendant has removed a case from a state court after denial by the state court of a motion to set aside the service of summons, he cannot renew such motion in the federal court without having obtained leave to do so, either from the state or federal court.

This was an action by John Allmark against Platte Steamship Company (Limited). The defendant moved to set aside service of summons.

Magner & Hughes, for plaintiff.
Owen & Sturges, for defendant.

BENEDICT, District Judge. This is a motion to set aside the service of the summons in a case removed to this court from a state court. It appears that, while the case was in the state court, the defendant made a motion to the state court to set aside the service, which was denied. Thereafter it removed the said case to this court, and, after its removal, now moves here to set aside the service, upon the same grounds urged in the state court. In my opinion, the defendant is concluded by the decision of the state court made upon its own request, before the cause was removed. This court takes the cause in the condition in which it was left by the state court. A similar motion had been made in the state court and denied, and no leave was obtained in such court to renew it; nor was any leave obtained in this court. Brooks v. Farwell, 4 Fed. 166; Loomis v. Carrington, 18 Fed. 97. Motion to set aside the service of summons denied.

JOHNSON v. F. C. AUSTIN MANUF'G CO.

(Circuit Court, D. Kansas, First Division. October 29, 1896.)

1. REMOVAL OF CAUSES—DIVERSE CITIZENSHIP—JURISDICTION—AMENDMENT.
A general averment, in a petition for removal, that the controversy is between citizens of different states, is sufficient to authorize the federal court to allow an amendment of a defective allegation, in a subsequent part of the petition, that the plaintiff is a "resident" of a state named. Carson v. Dunham, 7 Sup. Ct. 1032, 121 U. S. 427; Glover v. Shepperd, 15 Fed. 833, followed.

2. SAME—BOND.
While the removal bond should, properly, state a penal sum, yet its failure to do so is not material on a motion to remand.

This was an action at law by Charles Johnson against the F. C. Austin Manufacturing Company to recover damages for personal injuries. The case was heard on a motion to remand to the state court, from which it had been removed by the defendant

Poehler & Peairs, for plaintiff.
Alford & Savage, for defendant.

FOSTER, District Judge. The plaintiff commenced his suit against the defendant in the district court of Douglas county, Kan., to recover damages for personal injuries. At the proper time, the defendant filed its petition in the state court to remove the case to this court on the ground of diverse citizenship, at the same time presenting a bond for removal. On hearing, the state court declared the petition and bond sufficient, and ordered the case removed. The plaintiff now moves the court to remand the case by filing the following motion:

"Now comes this plaintiff and moves this court to remand the above entitled cause to the district court of Douglas county, Kansas, on the ground that this court is without jurisdiction to hear and determine the cause."

The specific grounds of the motion are these: (1) That the petition alleges that the plaintiff is a "resident" of the state of Kansas, instead of a citizen; (2) that the bond for removal names no penal sum of money.

That the first objection is well taken is so well settled by adjudicated cases that it is unnecessary to cite authorities. The defendant interposes an application to amend its petition in this respect. It has been repeatedly held by the supreme court of the United States that, when there is a want of jurisdictional averments in the record, this court gets no jurisdiction, and no amendment can be allowed. Crehore v. Railway Co., 131 U. S. 242, 9 Sup. Ct. 693; Jackson v. Allen, 132 U. S. 27, 10 Sup. Ct. 9; Stevens v. Nichols, 130 U. S. 230, 9 Sup. Ct. 518; De Loy v. Insurance Co., 59 Fed. 320; Railway Co. v. Twitchell, 8 C. C. A. 237, 59 Fed. 727. On the other hand, when the averments are sufficient to confer jurisdiction, but are imperfectly stated, an amendment may be allowed. Carson v. Dunham, 121 U. S. 427, 7 Sup. Ct. 1032; Glover v. Shepperd, 15 Fed. 833. In the first part of this petition for removal, is this averment: