

Morgan's L. & T. R. & S. S. Co. v. Texas Cent. Ry. Co., 137 U. S. 171, 201, 11 Sup. Ct. 61; Wiswall v. Sampson, 14 How. 52; Minnesota Co. v. St. Paul Co., 2 Wall. 609, 634.

Neither of the parties mentioned in the demurrer is a necessary defendant. Neither, as disclosed by the bill, has any interest in the controversy.

The ninth clause of the bill is sufficiently explicit to be sustained as against this demurrer.

The demurrer is overruled; the defendant to answer within 20 days.

SMITH v. WESTERN UNION TEL. CO.

(Circuit Court, D. Indiana. March 15, 1897.)

No. 9,286.

REMOVAL OF CAUSES—AMOUNT IN CONTROVERSY—CORRECTION OF MISTAKE IN RECORD.

On a motion to remand, the removing party cannot sustain the jurisdiction of the federal court by contradicting the record sent up from the state court by *ex parte* affidavits as to the amount in controversy. If the record does not speak the truth, its correction should be sought elsewhere.

On Motion to Remand.

Pickens & Cox, for plaintiff.

Chambers, Pickens & Moore, for defendant.

BAKER, District Judge. The transcript of the record filed in this court shows that the complaint was filed in the office of the clerk of the Lawrence county circuit court on November 15, 1894. The complaint alleges that the plaintiff was damaged by the wrongs complained of in the sum of \$1,500, for which judgment is demanded. The transcript next sets out the summons, which is made returnable November 28, 1894, which summons is shown to have been served more than 10 days before the return day. The transcript then recites that on December 3, 1894, the parties came into court, and the defendant filed a petition and bond for the removal of the cause into the circuit court of the United States for the district of Indiana. There were other proceedings in the cause in the state court, which are immaterial.

The defendant has filed a motion to remand, and, in support and in opposition thereto, a number of affidavits have been filed by the parties respectively. These affidavits show that, as originally drafted and filed, the damages claimed in the complaint were \$15,000. Whether the complaint was amended as it now appears in the transcript before the petition and bond were filed in the office of the clerk of the state court is a controverted question; but there is no material dispute that the amendment was made before the attention of the court was called to the filing of such affidavit and bond.

Can the removing party sustain the jurisdiction of this court by contradicting the record sent up from the state court by *ex parte* affidavits? I think it inadmissible, for the purpose of conferring

or supporting jurisdiction here, to contradict, by affidavits, the record of the state court transmitted here, authenticated by the signature of the clerk and the seal of the court. If the record does not speak the truth, its correction should be sought elsewhere. It would be inconvenient and unseemly to try the truth of a record brought here from a state court upon the affidavits, and especially the conflicting affidavits, of the parties. The cause will be remanded to the Lawrence county circuit court, at the costs of the defendant.

WHITE v. TOLEDO, ST. L. & K. C. R. CO.

(Circuit Court of Appeals, Second Circuit. March 19, 1897.)

CONSTITUTIONAL LAW—EQUITY RULE 67—EXAMINERS—TAKING TESTIMONY OUTSIDE DISTRICT—COMPULSORY ATTENDANCE OF WITNESSES.

The power conferred upon the supreme court by the act of August 23, 1842 (5 Stat. 518; Rev. St. § 862), to prescribe the forms and modes of taking and obtaining evidence, is valid and constitutional, and under the amendment to the sixty-seventh equity rule, adopted pursuant to such power, the courts of the United States are authorized to appoint examiners to take testimony orally beyond the limits of the district in which a suit is pending, and the attendance of witnesses before such an examiner may be compelled by the courts in the district to which the examiner is sent.

In Error to the Circuit Court of the United States for the Southern District of New York.

J. Tredwell Richards, for plaintiff in error.

Joseph King, for defendant in error.

Before PECKHAM, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is a writ of error to set aside an order of the circuit court for the Southern district of New York which adjudged the plaintiff in error to have been guilty of contempt.

Irvin Belford was appointed special master by the circuit court of the United States for the Northern district of Ohio, in a bill in equity for the foreclosure of a railroad mortgage which was pending in that court, and was directed to take testimony in the suit in the city of New York. Upon the petition of one of the parties, an order was granted by the circuit court for the Southern district of New York which directed the clerk of that court to issue a subpoena addressed to Isaac W. White, then of said city, and directing him to appear before said master at a named time and place in said city and testify in that suit. The subpoena was duly issued and duly served upon White, who refused to obey and did not obey it. Upon an order requiring him to show cause why he should not be punished for contempt, he appeared before the circuit court, and upon hearing he was adjudged guilty of a contempt of court by reason of his disobedience to the order of the subpoena.

The questions presented upon the writ of error are whether the circuit court for the Northern district of Ohio had power to appoint an examiner or a special master to take testimony in the city of New