STURGEON RIVER BOOM CO. v. W. H. SAWYER LUMBER CO.

(Circuit Court, W. D. Michigan, N. D.   September 10, 1898.)

REMOVAL OF CAUSES—AMOUNT IN CONTROVERSY—HOW SHOWN.
    To authorize a removal it must appear from the pleadings at the time
    of removal that the requisite sum is in controversy. Where such fact
    does not appear from the declaration which is then the only pleading on
    file, it cannot be supplied by averments as to a set-off in the petition for
    removal, nor by pleadings filed after the removal is made.

On Motion to Remand.

Gray & Looney, for plaintiff.
Chadbourne & Rees, for defendant.

SEVERENS, District Judge.   In this case the petition for removal
was filed, and the case removed, before the defendant had filed its
plea.   At that time the only pleadings in the case were the declara-
tion and bill of particulars in explanation of it.   In respect to the
amount claimed, the ad damnum was limited by the bill of particulars,
and this was for a sum less than $2,000.   If the plea and notice had
been filed before the petition for removal was presented, it may be
that the set-off could have been taken into account in determining
what sum was in controversy.   From the petition it may be gathered
that the defendant intended to plead a set-off large enough to bring
up the amount in controversy to a sum more than $2,000.   But it was
not certain that the set-off would be set up and claimed.   That would
depend on the subsequent election of the defendant.   If it shoul' not
do so, the jurisdiction of this court would not exist.   The grounds for
jurisdiction cannot be established or defeated after removal.   Riggs
v. Clark, 18 C. C. A. 242, 37 U. S. App. 626, and 71 Fed. 560; Hayward
v. Manufacturing Co., 29 C. C. A. 438, 85 Fed. 4.   I think it is neces-
sary that it should appear from the pleadings at the time of the re-
moval that the requisite sum is in controversy, and that the averment
in the petition is not competent to show such fact in the absence of
proper pleadings to support it.   In the case of State of Tennessee v.
Union & Planters' Bank, 152 U. S. 454, 14 Sup. Ct. 654, it was
held that, in order that a case should be removable as one arising
under the constitution, laws, or treaties of the United States, it must
appear from the statement of the plaintiff's own claim that the case is
such, and that it is not competent for the defendant to supply the
ground for removal by averring in the petition therefor that the contro-
versy involves such a question.   A previous decision in Metcalf v.
Watertown, 128 U. S. 586, 9 Sup. Ct. 173, had been rendered to the
same effect.   There would seem to be the same reason for requiring
that it should appear from the existing state of the pleadings that the
sum necessary for jurisdiction is in controversy.   For the foregoing
reasons, I conclude that the case was improperly removed, and should
be remanded to the state court.

    89 F.—8

MECKE v. VALLEY TOWN MINERAL CO. et al.

(Circuit Court, W. D. North Carolina. September 20, 1898.)

1. APPEARANCE—FILING PETITION FOR REMOVAL.
    Filing a petition for removal is not a general appearance, and does not preclude a motion to dismiss for want of service of process, or other defect of jurisdiction.

2. FEDERAL COURTS—JURISDICTION OVER FOREIGN CORPORATIONS.
    To give a federal court jurisdiction over a corporation of another state, three things are essential: (1) It must appear that such corporation, as a matter of fact, is carrying on business in the district in which the court is sitting; (2) such business must be transacted by some agent or officer appointed by and representing the corporation in that district, or at least in the state; (3) the existence of some local law making the foreign corporation generally amenable to suits in the state as a condition precedent to its doing business therein.

8. APPEARANCE—DENIAL OF PETITION FOR REMOVAL—ANSWERING IN STATE COURT.
    Defendant, a foreign corporation, filed a petition and bond for the removal of the cause, which was ordered by the state court. Defendant thereafter caused a transcript to be filed in the federal court, which denied a motion to remand. On appeal the supreme court of the state reversed the order for removal, and defendant thereafter answered in the state court. *Held*, that the filing of such answer did not constitute an appearance and waiver of process affecting the case in the federal court, and was without prejudice to the right to move for dismissal in that court for want of proper service.

Motion to dismiss for want of proper service on the moving defendant, a foreign corporation.

J. H. Dillard and Davidson & Jones, for plaintiff.

F. P. Axley and Merrimon & Merrimon, for defendants.

SIMONTON, Circuit Judge. The Roessler & Hasslacker Chemical Company, a defendant in this case, having filed its petition with bond for removal into this court, a motion was made to remand its cause. This motion was heard and refused. When this motion was made, this defendant also moved to dismiss the cause, as against it, by reason of the absence of proper service of process. The complaint alleges that this Roessler & Hasslacker Chemical Company is a corporation of the state of New York. It further alleges that it has no office, officer, or agent in the state of North Carolina. The indorsement on the summons shows its service on a director of the company. The affidavit shows that this director was casually within the state of North Carolina on a transient visit. The petition for removal does not amount to a general appearance, nor does it preclude a motion to dismiss for want of service of process, or for any other defect of jurisdiction. The case being in this court, and the motion to remand having been refused, which motion is not the subject of immediate review (25 Stat. 433), the cause proceeds under the rules and practice of this court. This question of service must be decided under these rules and this practice. In order to give a federal court jurisdiction over a corporation organized under the laws of a state other than that in which the federal court sits, three conditions must concur or co-exist: (1) It must appear that such corporation, as a