and does believe, that such local prejudice exists, is not sufficient for this purpose. Hakes v. Burns, 40 Fed. 33; Short v. Railway Co., 34 Fed. 226. In this case Judge Brewer seemed to think that a positive affirmation of the existence of such local prejudice would be sufficient. But the great preponderance of authority is against this latter conclusion. Southworth v. Reid, 36 Fed. 451; Amy v. Manning, 38 Fed. 536; Hall v. Agricultural Works, 48 Fed. 599; Niblock v. Alexander, 44 Fed. 306; Schwenk & Co. v. Strang, 8 C. C. A. 92, 59 Fed. 209, and 19 U. S. App. 300; Malone v. Railroad Co., 35 Fed. 625 (a case in this circuit by Justice Harlan). And this is evidently the opinion of the supreme court as announced by Bradley, J., in Re Pennsylvania Co., supra: "Legal satisfaction requires some proof suitable to the nature of the case; at least an affidavit of a credible person, and a statement of facts in such affidavit which sufficiently evince the truth of the allegation." So, if this matter came up for the first time before this court, presented and sustained only with what is in this record, the petition and affidavit, the course indicated by the cases quoted would be followed, and the removal, probably, would be refused. But that is not the question. The matter has been already before this court, presented to it, considered by it, and acted upon. And it was made to appear to the court then that local prejudice does exist, justifying removal. The term having expired during which the order of removal was granted, this order cannot be reviewed or canceled by the judge then presiding, even were he sitting here. Nor can the court now review and reverse his decision. The amount and manner of the proof required in each case, says Mr. Justice Bradley, must be left to the discretion of the court itself. In re Pennsylvania Co., supra. In the present case the court exercised this discretion, and distinctly declares that it appears to the court that the petitioner, the Southern Railway Company, cannot, on account of prejudice and local influence, obtain justice" in the state court. Were this cause now to be remanded, the court could do so only because of error in the former order of this court. It has no such supervising power.

It has been urged that the removal in this cause was granted ex parte, without any notice whatever to the plaintiff. No such notice was necessary. Reeves v. Corning, 51 Fed. 774; Adelbert College v. Toledo, W. & W. Ry. Co., 47 Fed. 836. The case of Schwenk & Co. v. Strang, supra, is, on this point, obiter dictum. The motion to remand is refused.

PARKS v. SOUTHERN RY. CO.

(Circuit Court, W. D. North Carolina. October 19, 1898.)

REMOVAL OF CAUSES—LOCAL PREJUDICE—DISCRETION OF COURT.

After the expiration of the term at which an order for removal was made by the circuit court on the ground of local prejudice, such order cannot be reviewed on a motion to remand on the ground that the evidence on which it was based was insufficient.

On Motion to Remand.

D. Schenck, Jr., for plaintiff.

Charles Price, for defendant.

SIMONTON, Circuit Judge. Alice Parks, administratrix of Frank Parks, instituted a suit against the Southern Railway Company in the superior court of Wilkes county, N. C. Thereupon the defendant filed in this court its petition to remove the cause because of prejudice and local influence. The affidavit not only swears to the fact of prejudice and local influence, but it also gives facts as the reasons for the affidavit. This circuit court of the United States, hearing the petition and affidavit, made the following order:

"It appearing to the court from the petition filed in this cause, which petition has been duly sworn to as an affidavit, and also from an affidavit in the cause, that from prejudice or local influence the Southern Railway Company will not be able to obtain justice in the superior court of Wilkes county, in the state of North Carolina, or any other state court to which the said petitioners would or could, under the laws of the state of North Carolina, have the right, on account of such prejudice or local influence, to remove this cause, and that as this local prejudice does exist, they are therefore entitled to have the removal which they seek, it is accordingly ordered that this cause be, and the same is hereby, removed from the superior court of Wilkes county to this court, at Greensboro. That, the bond offered by the petitioner being examined and approved, the clerk of the superior court of Wilkes county is hereby ordered to send a transcript of the record in this cause to the said circuit court, to the October term, 1898, at Greensboro."

A motion is made at this term to remand the cause because of the insufficiency of the affidavit. This case varies from that of Crotts v. Railway Co. (just decided) 90 Fed. 1, in that the facts are stated upon which the affidavit is based. The sufficiency of these facts to sustain the affidavit was within the discretion of the court granting the order. It cannot be reviewed here. The learned counsel for plaintiff with eloquence appealed to the court not to cast a slur on the people or the courts of North Carolina by refusing to remand the cause for their decision. No such question exists to embarrass the court. "The prejudice and local influence mentioned in the statute is not merely a prejudice or influence primarily existing against the party seeking a removal. It includes as well that prejudice in favor of his adversary which may arise from the fact that he is long resident and favorably known in the community. * * * And this implication is no unusual reflection on any particular community or persons. On the contrary, it is such a well understood and recognized frailty of human nature that jurisdiction of controversies between citizens of different states was expressly given by the constitution to the national government, and this not only as a means of doing justice, but of facilitating trade and intercourse between the people of the several states, which the constitution, more than for any other purpose, was formed to protect and promote." Neale v. Foster, 31 Fed. 53. The motion to remand is refused.

ALLEN B. WRISLEY CO. v. GEORGE E. ROUSE SOAP CO. et al.

(Circuit Court of Appeals, Seventh Circuit. November 11, 1898.)

No. 515.

1. JURISDICTION OF FEDERAL COURTS—SUIT FOR INFRINGEMENT OF TRADE-MARKS—DIVERSE CITIZENSHIP.
   To confer jurisdiction on the courts of the United States of a suit for the infringement of a trade-mark at common law, or for unfair trade, there must exist diverse citizenship between the parties, which must appear on the record.[1]
2. SAME—SUFFICIENCY OF ALLEGATION.
   An allegation that defendants are "inhabitants" of a state is not a sufficient allegation of their citizenship.
3. SAME—NECESSARY ALLEGATIONS.
   Where, in a bill to restrain the infringement of a trade-mark at common law, and unfair competition, and also the infringement of a registered trade-mark, there is neither an allegation of the diverse citizenship of the parties, nor a showing that the trade-mark is used upon goods intended to be transported to a foreign country, or used in lawful trade with Indian tribes, a federal court is without jurisdiction.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

This bill is brought to restrain the alleged unlawful use of a trade-mark. It comprehends (a) the case of an infringement of a trade-mark at common law; (b) the case of unfair competition in trade; (c) the case of the infringement of a trade-mark registered under the act of congress of March 3, 1881 (21 Stat. 502). The bill sets out that the complainant is a corporation organized and existing by virtue of the laws of the state of Illinois, and that the George E. Rouse Soap Company, which was originally the sole defendant, is a corporation organized under the laws of the state of Wisconsin. Upon the coming in of the answer of the George E. Rouse Soap Company declaring itself a co-partnership, composed of Nicholas Meyer and George E. Rouse, the bill was amended by inserting "and against George E. Rouse and Nicholas Meyer, as proprietors of said company, and residing and doing business in Green Bay, in the county of Brown and state of Wisconsin, and inhabitants of said district." These persons were thereupon subpœnaed, and appeared to the suit.

The complainant's trade-mark, which is alleged to have been in use since the year 1876, consisted of the words "Old Country," which were stamped upon an ordinary cake of laundry soap, inclosed in a manila wrapper of buff color, with the words "Allen B. Wrisley's (Trade-Mark) Old Country Soap" printed thereon in blue letters, except that the words "Old Country" were in white letters upon a blue ground. The defendants made and sold a laundry soap, using as a trade-mark the words "Our Country Soap," the paper covering having the words "Our Country Soap" printed upon an American shield, the word "Our" being in white letters upon a blue ground, the word "Country" being printed in white and blue lettering transversely upon the shield on red ground, and the word "Soap" in blue letters upon the red and white bars of the shield. The covering which inclosed the soap also had displayed the American flag, and a streamer, with the words "E Pluribus Unum," and the name of the George E. Rouse Soap Company printed in white letters, and "Green Bay, Wis.," in black letters, both upon a red ground. At the hearing upon a motion for preliminary injunction, affidavits were presented pro and con upon the question whether confusion in the sale of the soaps existed, and whether the use of the words "Our Country" upon the soap of the defendants gave opportunity for, and had resulted

[1] As to diverse citizenship as ground for federal jurisdiction generally, see note to Mason v. Dullagham, 27 C. C. A. 298.