

AMERICAN LAW REGISTER.

JANUARY, 1870.

THE REMOVAL OF CAUSES FROM STATE TO FEDERAL COURTS.

The classes of cases in which a cause commenced in a court of one of the States may be removed, at the instance of a party, to a court of the United States, have been very largely increased by recent legislation. We propose in the present article to review the Acts of Congress conferring and defining the right, and to enumerate the cases in which it may be exercised as the law at present stands.

For this purpose it will perhaps be most instructive to the reader to trace the course of legislation historically.

The judicial power of the United States is declared by the Constitution to extend to a variety of subjects, and to several classes of parties. These provisions are, however, in general, declaratory of the power of Congress rather than of the actual existing jurisdiction of the courts. The *existence* of judicial power depends upon the provisions of the Constitution; its *exercise* depends upon Acts of Congress made in conformity to the Constitution. The Acts of Congress define the limits up to which the jurisdiction of the courts actually extends. The provisions of the constitution define ulterior limits, beyond which their jurisdiction cannot be extended.

Thus, by the Constitution it is declared that the judicial power shall extend to "controversies between citizens of different States," but a considerable part of this jurisdiction is dormant;

for the Acts of Congress which provide for its exercise, practically exclude many cases in which the amount in controversy is not sufficient to make it necessary to allow the jurisdiction of the Federal courts to be invoked.

The cases, therefore, in which a party may invoke the jurisdiction of the Federal courts to supersede that of the State court, by a removal of the cause from the latter to the former, are to be sought for in the Acts of Congress. If it appeared that such an act assumed to provide for a case which was not within the judicial power of the United States, as defined in the Constitution, a question of constitutional law would arise in which the courts would hold the application of the statute to be controlled by the limits fixed by the Constitution.

THE JUDICIARY ACT.

The first instance in which authority was given to remove causes from the courts of the States to the courts of the United States was by the statute under which the courts of the United States were originally organized, known as the Judiciary Act. Act of September 24, 1789; Stat. at L. 79. § 12. It was provided by section 12 of that statute, that if a suit be commenced in any State court

against any alien, or

by a citizen of the State in which the suit is brought against a citizen of another State,

and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, or

if a cause involved a claim of title to land exceeding five hundred dollars in value, arising under a grant from a State other than that in which the suit is pending,

the defendant might claim a removal of the cause to the courts of the United States.

To justify the removal of a suit under this provision, the matter in dispute must be made to appear to exceed the limit of five hundred dollars. This may appear by the writ or process, if the declaration or complaint discloses no precise sum, or by the declaration or complaint in preference to the writ, if a specific sum is claimed therein, and if doubt exists as to

what is the real amount in dispute, the court, upon the application for removal, may inquire into the amount by evidence. Although, if the court be satisfied that the plaintiff intends to recover no more than that amount, it ought not to allow the case to be removed, yet, on the other hand, it ought not by amendment or permitting the release of damages, to allow the plaintiff to defeat the right of removal, if at the time of the application it clearly appears that the plaintiff intended or sought to recover more than that amount: *Ladd v. Tudor*, 3 Woodb. & M., 325; *Kanouse v. Martin*, 15 How., 198. And see *Wright v. Wells*, 1 Pet. C. Ct., 220.

REVENUE CAUSES. (ACT OF 1833.)

This was for many years the only provision for the removal of causes, but in 1833, by the Act of March 2d: 4 Stat. at L., 633; the case of actions against revenue officers was provided for.

By that statute it was enacted that in any case where suit or prosecution should be commenced in a court of any State against any officer of the United States or other person,

for or on account of any act done under the revenue laws of the United States,

or under color thereof;

or for or on account of any right, authority or title set up or claimed by such officer or other person under such law of the United States,—

a similar removal should be allowed.

This statute differs from the preceding, in that it gives the right of removal in any cause falling within its provisions, independently of the amount in controversy. No objection can be raised in these cases to proceeding in the courts of the United States on account of the trifling value of the property or subject of action: *Wood v. Matthews*, 2 Blatchf., 370; S. C., 23 Vt., 735.

MILITARY ARREST, &c.

During the war of the rebellion in 1861-5, Congress made provision for removal from State to Federal courts of suits and prosecutions commenced

against any officer, civil or military, or against any other person,

for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or any act omitted to be done at any time during the rebellion, by virtue or under color of any authority derived from the United States, under the President of the United States, or any Act of Congress: Act of March 3, 1863, § 5, 12, Stat. at L., 756; 2 Bright, 198; amended by Act of May 11, 1866, 14 Stat. at L., 46.

An officer acting in good faith under a warrant purporting to come from his superior, whom he is bound to obey, is acting under "*color of authority*," within the meaning of section 5 of the act of March 3, 1863 (above-mentioned),—providing for the removal to the Circuit Court of actions against officers for torts in arrests, whether the superior transgresses his power, or the warrant be irregular or not: *Hudgson v. Millward*, 3 Grant's Cases, 418.

CASES UNDER THE CIVIL RIGHTS BILL OR FREEDMAN'S BUREAU.

By the Civil Rights Bill; April 9, 1866, 14 Stat. at L., 27; the District courts were given jurisdiction of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be, the right secured to them as citizens by the first section of the Act. And it was provided that if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court,

against any such person, for any cause whatever, or

against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses or wrongs done or committed by virtue or under color of authority derived from this Act or the Act establishing a bureau for the relief of freedmen and refugees, and all Acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this Act, such defendant shall have the right to remove such cause for trial to the proper District or Circuit courts.

INTERNAL REVENUE CASES. (ACT OF 1866.)

In 1866 the Internal Revenue law was revised and re-enacted by chapter 184 of the laws of that year. In reference to suits against revenue officers or persons acting under them, the act contains a similar provision to that above stated in reference to revenue causes, under the Act of 1833. This provision: 14 Stat. at L., 171, § 67; enacts "that in any case, civil or criminal, where suit or prosecution shall be commenced in any court of any State,

against any officer of the United States, appointed under or acting by authority of the act, entitled 'An Act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' passed June thirtieth, eighteen hundred and sixty-four, or of any act in addition thereto or in amendment thereof, or

against any person acting under or by authority of any such officer on account of any act done under color of his office, or

against any person holding property or estate by title derived from any such officer, concerning such property or estate and affecting the validity of this act or acts of which it is amendatory,"

the proceedings may be removed.

CAUSES WHERE CITIZENSHIP OF DEFENDANTS IS DIFFERENT.

Under the 12th section of the Judiciary Act (the one first above cited) it was settled that a cause could not be removed at the instance of one of several defendants; that to bring the case within the act all the plaintiffs must be citizens within the State in which the suit is brought, and all the defendants must be citizens of some other State or States: *Beardsley v. Torry*, 4 Wash. C. Ct., 286; *Ward v. Arredondo*, 1 Paine, 410, *Hubbard v. Northern R. R. Co.*, 3 Blatchf., 84; *Wilson v. Blodget*, 4 McLean, 363.

The Act of July 27, 1866 (44 Stat. at L. 306), extends the provisions of the original Act in this respect. It provides as follows: "That if in any suit already commenced, or that may hereafter be commenced, in any State or court,

against an alien, or

by a citizen of the State in which the suit is brought against a citizen of another State,

and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court,

a citizen of the State in which the suit is brought is or shall be a defendant,

and if the suit so far as relates to the alien defendant or to the defendant who is the citizen of a State other than that in which the suit is brought, is or has been instituted or prosecuted for the purpose of restraining or enjoining him, or

if the suit is one in which there can be a final determination of the controversy, so far as it concerns him, without the presence of the other defendants as parties in the cause ;

then and in every such case the alien defendant, or the defendant who is a citizen of a State other than that in which the suit is brought, may at any time before the trial or final hearing of the cause, file a petition for the removal of the cause as against him."

The new provision is indicated above by italics.

By this statute, then, one of several defendants who is an alien or citizen of a State, other than that in which the suit is brought, may have it removed, if it is instituted for the purpose of restraining or enjoining him, or if the suit is one in which the controversy can be finally determined as to him without the presence of the other defendants.

By a subsequent clause of the statute this does not prejudice the right of the plaintiff to proceed in the State court as against the other defendants. The effect of this statute, therefore, is to authorize a severance of the suit at the instance of an alien or foreign defendant, who would have been entitled to remove the cause had he been sued alone, but would not have been entitled to remove it under the former statute because sued together with other defendants, who are not within the act.

REMOVAL ON ACCOUNT OF LOCAL PREJUDICE.

There is a subsequent statute of the following year (Act of March 2, 1867, 14 Stat at L., 558), which in form is an amend-

ment of the last mentioned act. We regard it, not as a substitute for the act, but an amendment by way of addition, and consider that the statute, as amended, contains the provisions of the Act of 1866, in their original form, with the addition of those of 1867, extending the right to another class of cases, and allowing removal on a wholly different ground. Both statutes stand together.

The provision which defines this new ground of removal, is as follows: "Where a suit is now pending, or may hereafter be brought in any State court, in which there is controversy between a citizen of a State in which the suit is brought and a citizen of another State,

and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs,

such citizen of another State, whether he be plaintiff or defendant,

if he will make and file, in such State court, an affidavit stating that he has reason to and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court, may, at any time before the final hearing or trial of the suit, file a petition in such State court for the removal of the suit." As to whether a petition filed after a judgment in an inferior State court which has been reversed by the Supreme Court of the State is in time, and whether an order of removal, made by an inferior State court is reviewable by an appellate court of the State, see *Akerly v. Vilas*, 8 Am. Law Reg., N. S. 229, and *contra* S. C., Id. 558.

SUITS AGAINST CORPORATIONS OR MEMBERS THEREOF.

The removal of actions against corporations organized under the laws of the United States is provided for by the Act of July 27, 1868.

This Act provides "that any corporation, or any member thereof, other than a banking corporation, organized under a law of the United States, and against which a suit at law or in equity has been or may be commenced in any court other than a Circuit or District Court of the United States, upon filing a petition therefor, verified by oath, either before or after issue

joined, stating they have a defense arising under or by virtue of the Constitution of the United States, or any treaty or law of the United States, and offering good and sufficient surety, may have the cause removed: 16 Stat. at L. 227, § 2.

A question may arise as to what corporations are within the purview of this act. It may be thought that the language of the first line is ambiguous; if the words "organized under a law of the United States" qualify the words "banking corporation" in immediate contiguity to which they come, then this statute applies to all corporations except national banks. But if they qualify the first member of the sentence "any corporation or any member thereof," then the statute applies only to national corporations, and banks are excepted. The former construction would be the proper one if the comma after the words "banking corporation" were struck out, and the word "and," which commences the next following qualifying clause, were also struck out. In this case the provision would read thus,—any corporation, or any member thereof, other than a banking corporation organized under a law of the United States, against which a suit at law or in equity has been commenced, &c. These changes would be necessary, clearly to give the language that more extended application. And although it may be a nice question of construction, dependent upon slender tests, it is clear that the statute, so far as the interpretation is to be gathered from its mere language, should be applied only to corporations and members of corporations, organized under a law of the United States, banking corporations being excepted.

RECAPITULATION.

These complex provisions, recapitulated in the order of their practical importance to practitioners, may be indicated or enumerated as follows: The right is given—

An alien defendant or defendants, if the matter in dispute is over five hundred dollars;

An alien defendant or defendants, joined with a defendant who is a citizen of the State in which the suit is brought, if the suit is to restrain or enjoin the alien, or if there can be a final determination of the controversy as to him, without the citizen

defendant, and if the matter in dispute exceeds five hundred dollars.

A citizen or citizens of one or more States, sued in a State court in a State whereof none of them are citizens, and whereof the plaintiff or all the plaintiffs are citizens, if the amount exceeds five hundred dollars ;

A citizen of a State other than that in which the suit is brought, sued in a State court, by a plaintiff or plaintiffs who are citizens of that State, although a defendant who is also a citizen of the plaintiff's State is joined, if the suit, so far as relates to the foreign defendant, is brought to restrain or enjoin him, or if there can be a final determination of the controversy as to him, without the other defendants ; if the amount exceeds five hundred dollars ;

Either party to a suit, between a citizen of a State in which the suit is brought and a citizen of another State, where the amount exceeds five hundred dollars, and from prejudice or local influence such party will not be able to obtain justice in the State court ;

Any national corporation, other than banks, sued in any State court, if their defense turns on the Constitution, laws or treaties of the United States ;

The defendant in a cause involving a claim of title to land, exceeding five hundred dollars in value, arising under a grant from a State other than that in which the suit is pending ;

Any person sued or prosecuted in a State court on account of acts under the revenue laws or under color thereof ;

Any person sued or prosecuted in a State court and holding property or estate by title derived from revenue officers, or claiming under them in various cases specified in the statute, whatever may be the amount ;

Any person sued or prosecuted for alleged wrongs, under color of authority derived from the Civil Rights Bill or Freedman's Bureau Act, or for refusing to do any act on the ground that it would be inconsistent with the Civil Rights Bill ;

Any person sued or prosecuted for alleged wrongs under color of government authority during the rebellion.

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