

## Statement of Facts.

ought to have known, that such a question was involved in the decision to be made."

The fact that on a petition for rehearing it was suggested that if the charter of the West Branch Company was so construed as to give it the right to maintain its sheer boom in the north half of the stream, that charter would impair the obligation of the contract of the State with the Susquehanna Company, is unimportant here, because our jurisdiction extends only to a review of the judgment as it stands in the record. We act on the case as made to the court below when the judgment was rendered, and cannot incorporate into the record any new matter which appears for the first time after the judgment, on a petition for rehearing. Such a petition is no part of the record on which the judgment rests.

*The motion to dismiss is granted.*

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HOLLAND *v.* CHAMBERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF MISSOURI.

Submitted December 17th, 1883.—Decided January 7th, 1884.

## Removal of Causes.

Under the act of March 3d, 1875, c. 137, 18 Stat. 470, a cause cannot be removed from a State court to a Circuit Court of the United States after a trial has been had in a State court, and judgment rendered and set aside, and new trial ordered, and the term passed at which this was done.

Motion to dismiss an appeal from the decision of a Circuit Court remanding a cause to a State court.

*Mr. James O. Broadhead* for defendant in error and mover.

*Mr. S. M. Smith* and *Mr. J. R. Sypher* attorneys of record for plaintiff in error. No brief filed.

## Opinion of the Court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is a writ of error brought under sec. 5 of the act of March 3d, 1875, ch. 137, 18 Stat. 470, to review an order of the Circuit Court remanding a cause which had been removed from a State court. The facts are as follows :

The suit was begun in the State court on the 19th of July, 1879, by Chambers, as plaintiff, against C. M. Swope and Joseph B. Holland, defendants, to recover damages for writing and publishing an alleged libel. An answer was filed by Holland on the 6th of October, 1879, and an amended answer on January 24th, 1880. A reply was filed February 5th. At the April term, 1880, a trial was had, which resulted in a verdict and judgment for \$20,000 in favor of Chambers. This judgment was afterwards set aside by the court and a new trial granted. On the 20th of January, 1882, Holland petitioned for the removal of the suit as against him to the Circuit Court of the United States for the Eastern District of Missouri. The petition set forth that Holland was a citizen of Illinois, and both Swope and Chambers citizens of Missouri :

“ That said suit is one in which there can be a final determination of the controversy, so far as it concerns your petitioner, without the presence of the said defendant Swope as a party in said cause, and that your petitioner desires to remove said suit as against your petitioner, and so far as concerns him, into the Circuit Court, . . . . in pursuance of the act of Congress in that behalf provided, to wit, the Revised Statutes of the United States, section 639, subdivision second.”

Upon these facts the order of the Circuit Court remanding the cause was clearly right. The second subdivision of sec. 639 was repealed by the act of March 3d, 1875, ch. 137. That was settled in *Hyde v. Ruble*, 104 U. S. 407, and *King v. Cornell*, 106 U. S. 395.

Under the act of 1875 the petition for removal must be filed in the State court before or at the term at which the cause could be first tried. This suit could not only have been tried, but it actually was tried once, nearly two years before the petition to remove. Such being the case, it is needless to in-

## Opinion of the Court.

quire whether there might have been a removal under that act if an application had been made in time and in proper form.

*The order remanding the cause is affirmed.*

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AMERICAN BIBLE SOCIETY & Others *v.* PRICE.

APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

Submitted December 14th, 1883.—Decided January 7th, 1884.

*Removal of Causes—Statutes.*

1. Under the third subdivision of § 639 Rev. Stat., a suit cannot be removed from a State court, unless all parties on one side of the controversy are different citizens from those on the other. *Sewing Machine Companies*, 18 Wall. 553, and *Vannevar v. Bryant*, 21 Wall. 41, adhered to.
2. Where a daughter of a testator commenced suit in a State court to set aside the will, and the executors were trustees of a small trust fund under the will, the use of which was to be enjoyed by the daughter during her life, and which was to go to her children on her decease: *Held*, That the executors were necessary parties to the suit, and if they were citizens of the same State as the daughter, the cause could not be removed into the Circuit Court of the United States, under the third subdivision of § 639 Rev. Stat. even though the legatees and devisees of the great mass of the estate were citizens of other States.

Motion to dismiss an appeal from an order of the court below remanding the cause to the State court.

*Mr. G. Kerner* for appellee and mover.

*Mr. George P. Strong* for appellants.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. This is an appeal from an order remanding a cause which had been removed from a State court. The case is as follows:

Isaac Foreman, a citizen of Illinois, died on the 28th of October, 1878, leaving a will by which, after devising certain property to his wife Rebecca Foreman for life, he appointed John J. Thomas, Frederick H. Pieper, and Theophilus Harrison, all cit-