

under Order III, r. 1a, of the County Court Rules, which was added in consequence of this decision.

17. Removal of actions to higher courts.—To induce the High Court in England to grant a writ of certiorari to remove an action from the County Court something more is necessary than an affidavit, which merely alleges in substance that the sufficiency of the notice, and other questions upon which the liability of the defendant depended are of considerable complexity and legal difficulty. Special circumstances such as are not likely to arise in cases of this type, but which may arise in exceptional instances must be averred in order to justify a removal. Under any other doctrine the intention of the legislature that the County Court should be the regular tribunal for the trial of these actions might be frustrated in the great majority of cases (a).

As to the power of removal generally under the Judicature Acts and its amendments, and the County Court Acts (see Ruegg on Empl. L., p. 138, et seq.).

18. Joinder of employer and negligent co-employé as parties defendant.—In an action brought under these statutes for an injury caused by the culpable act of any of the employé's for whose negligence the employer is declared liable, that act obviously constitutes a breach both of a duty owed by the employer and of a duty owed by the employé himself. The injured person, therefore, may maintain an action against the employer and the delinquent employé jointly (a).

19. Within what period the action must be brought.—In all the Acts reviewed in this series of articles, except those of Alabama and Indiana, there are express provisions of which the effect is that the injured servant's right to maintain the statutory suit is conditional upon its being instituted within a specified period.

(a) *Munday v. Thames Iron-works & Shipping Co.* (1882) 47 L.T.N.S. 351, 10 Q.B.D. 59. See also *McEvoy v. Waterford S. Co.* (1885) 16 Ir. R.L.R. (Exch. D.) 291. In *Reg. v. City of London Court, (Judge of)* or *Claxton v. Lucas*, 14 L.R. Q.B.D. (C.A.) 905, 53 L.J.Q.B. Div. 330, 52 L.T.N.S. 537, 33 W.R. 700, aff'g 14 L.R.Q.B. Div. 818, 54 L.J.Q.B. Div. 301, 33 W.R. 521, 49 J.P. 407, it was held that sec. 39 of the County Courts Act, 1856, providing for a stay of the proceedings on certain conditions was intended to apply to actions which could be brought either in one of the superior courts or a county court, and was therefore not applicable to an action brought under the Employers' Liability Act, since by sec. 6 of that Act the action must be brought in the county court.

(a) *Charman v. Lake Eric & C. Co.* (1900) 105 Fed. 449. [Removal of cause from the State to the Federal Court was denied on this ground.]