

Case No. 4,867.

{5 McLean, 468.}<sup>1</sup>

FLETCHER v. TURNER.

Circuit Court, D. Indiana.

May Term, 1853.

JURISDICTION—SUIT BY ASSIGNEE OF PROMISSORY NOTE—CITIZENSHIP OF ASSIGNOR.

Where the assignee was on a promissory note, the declaration must show that the assignor, by his citizenship, had a right to sue in this court. If this be not done, the declaration is demurrable.

At law.

Mr. Scoby, for plaintiff.

Walpole & Walpole, for defendant.

OPINION OF THE COURT. This action is brought by the assignee of the notes against the maker, payable to George Fletcher, sen., who assigned them to the plaintiff. In the declaration there is no allegation of the citizenship of the assignor of the plaintiff, and if he were a citizen of Indiana, at the time of the assignment, under the 11th section of the judiciary act of 1789 [1 Stat. 73], this court has no jurisdiction of the case. In such a case the assignee cannot sue in this court, unless the assignor could have brought suit in it on the note assigned, and this he could not have done, if the assignor was a citizen of Indiana. In the declaration, to give jurisdiction to the court, the citizenship of the assignor should have been alleged. The demurrer which has been filed to the declaration must, therefore, be sustained.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]