

ROGERS v. LINN.

{2 McLean, 126.}¹

Circuit Court, D. Illinois.

June Term, 1840.

PARTIES—ASSIGNEE—RIGHT OF ASSIGNOR TO BRING SUIT.

1. The assignee, who sues in his own name, must show, to give jurisdiction to the circuit court, that his assignor, at the time of the assignment might have brought the suit in his own name.

{Criticised in Chamberlain v. Eckert, Case No. 2,577. Cited in Varner v. West, Id. 16,885.}

2. The circuit court having only a limited jurisdiction, it must be shown in the pleadings.

{This was an action by Moses Rogers against William Linn. Heard on demurrer.}

Cowles & Krum, for plaintiff.

Davis & Forman, for defendant.

OPINION OF THE COURT. A demurrer is filed to the declaration in this case, on the ground that the plaintiff has brought the action as assignee, and does not aver or state, in his declaration, that his assignor might have brought suit in his own name, in this court; at the time of the assignment. This is a fatal defect in the declaration. The jurisdiction of this court is limited; and it has often been decided that the plaintiff must show, in his pleadings, that the case is within their jurisdiction. By the 11th section of the judiciary act of 1789 [1 Stat. 78], the assignee of a negotiable instrument can not maintain a suit in the federal court in his own name, unless the assignor could also have sued, at the time of the assignment, in the same court. And this must appear in the pleadings, or the exception will be fatal if raised by demurrer, on a motion in arrest of judgment, or on a writ of error. In a suit by the indorsee of a promissory note against

the drawer, it must appear on the record, that the circuit court would have had jurisdiction, as between the original parties to the instrument, or it will have none over the case. Turner's Adm'rs v. Bank of North America, 4 Dall. [4 U. S.] 8; Montalet v. Murray, 4 Cranch [8 U. S.] 46. The demurrer is sustained; but on motion, leave is given to amend the declaration.

¹ [Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.]

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