

SMALL v. KING.

[5 McLean, 147.]¹

Circuit Court, D. Ohio.

Oct. Term, 1850.

COURTS—FEDERAL
JURISDICTION—CITIZENSHIP—NOTES.

1. This court can exercise no jurisdiction in a case where the maker and indorser of a note, at the time of the assignment, resided in the state where the action is brought.
2. If the indorser be an accommodation indorser, and the note never went into his possession or ownership, it can make no difference.

{This was an action on a promissory note by William Small against Thomas W. King.}

Mr. _____, for plaintiff.

Mr. King, for defendant.

OPINION OF THE COURT. This action is founded on a promissory note given by Thomas W. King, payable to Rufus King, who assigned it to the plaintiff. The defendant filed a plea to the jurisdiction of the court, on the ground that the assignor and maker both lived in Ohio, at the time the note was given and indorsed. The plaintiff replied that Rufus King was an accommodation indorser, and that the note never passed to him. To this plea a demurrer was filed. The court sustained the demurrer to the replication, and held that there was a want of jurisdiction, under the 11th section of the judiciary act of 1789 [1 Stat. 78].

¹ [Reported by Hon. John McLean, Circuit Justice.]