

Case No. 17,551.
[3 Dill. 378.]¹

WHITE v. LEAHY.

Circuit Court, D. Kansas.

1874.

JUDICIARY ACT—CHOSE IN ACTION—RIGHTS OF ASSIGNEE—SUIT IN FEDERAL COURT.

Under the 11th section of the judiciary act [1 Stat. 78] the assignee of a chose in action may sue in the federal court if the assignor might at the time suit was brought have there prosecuted the suit if no assignment had been made; and this, although the assignor was at the time the assignment was made, a citizen of the same state with the maker.

[Cited in *Jones v. Shapera*, 57 Fed. 461.]

Bill to foreclose mortgage brought by the plaintiff as an assignee of the note and mortgage in suit. The plaintiff is a citizen of Missouri. The maker of the note secured by the mortgage, and who is the mortgagor, and is also the present defendant, is a citizen of Kansas, and was at the time the note and mortgage were made and assigned to the plaintiff. The payee at the time the note was made and the mortgage executed was also a citizen of Kansas, and he was also a citizen of that state when he indorsed the note and assigned the mortgage and delivered the same to the plaintiff in Missouri. But at the time this suit was brought he (the payee) was a citizen of another state (Texas) than Kansas. The question was, whether this court had jurisdiction of the suit.

N. C. McFarland, for plaintiff.

McComas & McKeighan, for defendant.

DILLON, Circuit Judge. The judiciary act (section 11) provides that no district or circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no such assignment had been made," etc.

If no assignment of this note had been made, the assignor might, being at the time when suit was brought a citizen of Texas, have then commenced it; and under the statute his assignee has the same right. If the restriction on the assignee does not exist at the time suit is commenced, the court has jurisdiction if the case involves the requisite amount and is between a citizen of the state where the suit is brought and a citizen of another state. The plea to the jurisdiction is overruled. Plea overruled.

See *Thaxter v. Hatch* [Case No. 13,866], and the change in the 11th section of judiciary act by the act of March 3, 1875 [18 Stat. 470].

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]