SCOBEL *v.* GILES.[1]

(*District Court, E. D. New York.* September 21, 1883.)

INTERROGATORIES — TIME FOR PROPOUNDING — ADMIRALTY RULES 23 AND 32 — RULES 99 AND 100 OF THE SOUTHERN DISTRICT OF NEW YORK.

In the eastern district of New York, interrogatories to a party are not permitted in admiralty unless propounded in accordance with the admiralty rules of the supreme court. Rules 99 and 100 of the southern district of New York have never been adopted by this court.

In Admiralty.

The libelant propounded certain interrogatories to be answered by the claimant. These interrogatories were not attached to the libel, and were not propounded until after the claimant had filed his answer.

H. D. Hotchkiss, for libelant.

Benedict, Taft & Benedict, for claimant.

BENEDICT, J. The time for propounding interrogatories on the part of a libelant is fixed by the twenty-third admiralty rule of the United States supreme court, according to which rule interrogatories are required to be put at the close or conclusion of the libel. See, also, rule 27. So, interrogatories propounded by the claimant are by the thirty-second rule required to be made at the close of the answer. The admiralty rules promulgated by the United States supreme court supersede any rule of a district court fixing a different time for propounding interrogatories; and for this reason the 99th and 100th rules of the district court of the southern district of New York, adopted many years prior to the promulgation of the admiralty rules by the United States supreme court, have never been adopted as rules of this court. In this court, interrogatories are not permitted unless propounded in accordance with the admiralty rules of the United States supreme court.

[1] Reported by R. D. & Wyllys Benedict, of the New York bar.

BELL v. NOONAN and others.

(*Circuit Court, N. D. Iowa, C. D.* January Term, 1884.)

REMOVAL OF CAUSE—ACTION BY ASSIGNEE.

Though the assignee of a chose in action cannot sue originally in the federal courts unless his assignor could have done so, he can accomplish the same result by bringing his action in the state court and removing it thence to the federal court.

Motion to Remand.

Duncombe & Clarke and *Harrison & Jenswold,* for plaintiff.

Soper, Crawford & Carr and *Geo. E. Clark,* for defendants.

SHIRAS, J. On the twenty-seventh of December, 1882, the defendants M. F. Noonan and Patrick Nolan entered into a written contract with one W. H. Godair, whereby defendants agreed to deliver to the order of said Godair, on the second or third day of April 1883, 300 head of cattle, at Emmettsburg, Iowa. The cattle were not delivered and Godair sold and assigned the contract to James Bell, the present plaintiff, who was then and is now a citizen of the state of Illinois. Godair, the assignor, and the defendants were at the date of the contract, and are now, citizens of Iowa. Bell brought an action against the defendants in the district court of Palo Alto county, Iowa, to recover the damages alleged to have been caused by the failure to deliver the cattle according to the terms of the contract. Defendants filed an answer denying that there had been a breach of contract upon their part, and averring that Godair had failed to perform the conditions of the contract upon his part, and that thereby they were excused from performance upon their part. Thereupon plaintiff filed a petition for the removal of the case into this court, upon the ground that he was a citizen of Illinois and the defendants were citizens of Iowa, and that by reason of local prejudice he could not obtain a fair trial in the state court. The proper petition, affidavit, and bond conforming to the requirements of the act of 1867 were filed, and the state court ordered the case to be removed. The record having been filed in this court, the defendants move to remand the same to the state court, on the ground that the plaintiff is seeking to maintain an action upon a contract as an assignee thereof, and that as his assignor, Godair, could not himself have brought the action originally or by removal into the federal court, therefore his assignee could not do so, and in support of this position defendants cite the case of *Berger* v. *Co. Com'rs,* 2 McCrary 483; [S. C. 5 FED. REP. 23.] In that case the right of removal was asserted under the act of 1875, and his honor, the circuit judge, held that the provision found in the first section of the act, which declares that neither the circuit nor district court shall "have cognizance of any suit founded on contract in favor of an assignee, unless a suit might be prosecuted in such court to recover thereon, in case no assignment had been made, ex-