

PATTERSON AND OTHERS V. MATER AND
OTHERS.

Circuit Court, D. Colorado. December 31, 1885.

1. REPLEVIN—PROCESS FROM STATE
COURT—GOODS IN POSSESSION OF MARSHAL.

Goods in possession of a marshal cannot be taken in replevin by process from a state court.

2. SAME—SUIT ON BOND—JURISDICTION.

Where such a proceeding is attempted, the marshal may sue on the bond in his own name, in the federal court, irrespective of the citizenship of himself and the obligors in the bond, and so may any one beneficially interested in the bond.

3. SAME—CITIZENSHIP—ASSIGNMENT.

Where the parties beneficially interested are citizens in a state other than that of the obligors, they may sue in the federal courts, with, and probably without, an assignment.

Motion for New Trial.

F. M. Hardbrook, for plaintiff.

C. I. Thomson, for defendant.

BREWER, J. I see nothing in the motion for a new trial that calls for hesitation or admits of doubt. The replevin proceedings by De Walt were unwarranted. Goods in possession of a marshal of the United States cannot be taken in replevin by process from a state court. *Freeman v. Howe*, 24 How. 450.³² Where such a proceeding is attempted, an undertaking given for the return of the goods may properly be treated as nothing more than a forthcoming bond,—a mere incident to the action in which possession of the goods was taken by the marshal. In such a case the marshal may maintain an action in his own name in the federal court; and this, irrespective of the question of the citizenship of himself and the obligor in the bond. So may any one beneficially interested in the bond. Jurisdiction in

these subordinate and ancillary proceedings rests upon the jurisdiction acquired in the original action.

Further, the marshal is a mere nominal party, having no pecuniary interest. The plaintiffs, citizens of a state other than that of the obligors, are alone beneficially interested. As such they may sue in the federal courts, with, and probably without, an assignment. *Browne v. Strobe*, 5 Cranch, 303; *Irvine v. Lowry*, 14 Pet. 293; *McNutt v. Bland*, 2 How. 9; *Coal Co. v. Blatchford*, 11 Wall. 172; *Huff v. Hutchinson*, 14 How. 586; *Walden v. Skinner*, 101 U. S. 588.

The motion for a new trial will be overruled.

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