

AMERICAN F. L. M. CO. V. BENSON *ET AL.*

*Circuit Court, D. Nebraska.*

1887.

WRITS—SERVICE BY PUBLICATION—ACT OF 1875—ACT OF MARCH 3, 1887.

By the act of March 3, 1887, the right given by the eighth section of the act of March 3, 1875, to bring in non-residents by publication in certain cases is expressly continued.

Motion to Dismiss, and suppress service by publication.

In December, 1886, this bill was filed for the foreclosure of a mortgage, in which the mortgagor and subsequent incumbrancers were impleaded as defendants. Subpoena was issued, and return served upon the subsequent incumbrancers, but not upon the mortgagor. In March, 1887, after the passage of the act of March 3d of that year, the usual affidavit was filed, showing a proper case for an order for the publication of notice of the suit to the mortgagor. The publication was accordingly made, and the proof thereof filed in the court. There upon the mortgagor filed his motion to set aside the order for publication. The parties plaintiff and the parties defendant were citizens of different states. In support of the motion to discharge the order for publication, it was insisted that under the act of March 3, 1887, a non-resident defendant could not be brought into court by publication.

*L. Q. C. Dosh*, for complainant.

*J. M. Woolworth*, for defendants.

BREWER, J. The motion to dismiss this cause for want of jurisdiction, and suppress the service by publication, is overruled. The right to proceed against a non-resident defendant in certain cases is given by section 8 of the act of 1875. The act of 1887, § 5, expressly provides that nothing in this act shall repeal or affect any jurisdiction or right mentioned in said section 8; hence the same right exists now as before said act of 1887 to bring in non-residents by publication in cases mentioned in said section 8 of the act of 1875. That right is all that is attempted to be enforced in this case.