

CLOUD v. CITY OF SUMAS.

(Circuit Court, D. Washington, N. D. September 7, 1892.)

FEDERAL COURTS—JURISDICTION—ACTION BY ASSIGNEE.

The statutory rule that an assignee of a chose in action cannot sue thereon in the federal courts, unless a suit would have been cognizable therein if no assignment had been made, applies to an assignee, by indorsement, of a city warrant.

At Law. Action by J. A. Cloud against the city of Sumas on city warrants, of which plaintiff was assignee. Defendant demurred, on the ground that the United States court has no jurisdiction. Sustained.

Smith & Littell, for plaintiff.

Chambers & Lambert, for defendant.

HANFORD, District Judge. The complaint in this case alleges that the town of Sumas, a municipal corporation of this state, made and issued certain warrants payable to the order of a firm doing business in said town under the name of the "First Bank of Sumas;" that the said firm thereafter "duly sold, indorsed, and transferred said warrants to plaintiff," who is a citizen of the state of New York. There is no allegation as to the citizenship of the persons composing said firm; presumably, therefore, they are citizens of the state in which the firm was located. The first section of the statute defining the jurisdiction of United States circuit courts is in two parts. The first, in a long involved sentence, prescribes what is essential in a case to bring it within the jurisdiction of a circuit court of the United States; and the second part of the section is another long involved sentence, which specifies a variety of different circumstances which may create exceptions, and prevent jurisdiction from attaching. In this case there is a controversy between citizens of different states, and the amount involved exceeds the sum of \$2,000; therefore it belongs to one of the classes of cases described in the first part of said section, and is within the jurisdiction of this court, unless it also belongs to one of the classes of excepted cases described in the second part of said section. The defendant has filed a demurrer denying the jurisdiction of the court, and claims that the case falls within the exceptions, because it is brought by an assignee upon a chose in action, and an action in this court could not be maintained upon it, if there had been no assignment. The plaintiff insists that the fact of the warrant sued on having been made and issued by a corporation saves the case from falling within the exception.

It is my opinion that, as the warrants are not made payable to bearer, and as the plaintiff alleges a transfer of the property in the same to him by written indorsement thereon, and not by mere delivery, only that portion of the clause which is applicable to suits by an assignee, upon a chose in action, not payable to bearer, need be considered. For the purposes of this case, the clause in question should be read thus:

"Nor shall any circuit or district court have cognizance of any suit except upon foreign bills of exchange, to recover the contents of any promissory

note or other chose in action in favor of any assignee, * * * unless such suit might have been prosecuted in such court to recover the said contents, if no assignment * * * had been made."

By omitting all portions of the statute not applicable, we find the questions concerning instruments payable to bearer, actions by subsequent holders, and instruments made by corporations to be eliminated. This reading of the statute gives a rule which is clear and unambiguous; it fits the case under consideration, and excludes it from the jurisdiction of the United States circuit courts.

The demurrer is sustained, and the action will be dismissed, without prejudice to a new action in any other court.

CHICAGO, ST. P. & K. C. RY. CO. *et al.* v. KANSAS CITY, ST. J. & C. B. R. CO.

(Circuit Court, W. D. Missouri, St. Joseph Division. December, 1890.)

MUNICIPAL CORPORATIONS—ORDINANCES—USE OF RAILROAD TRACKS:

A city ordinance giving a railroad a right of way on condition that it allow other roads the use of its tracks within the city limits, does not bind it to allow another road the use of tracks, laid since the ordinance went into effect, beyond the right of way granted thereby, but is binding in respect to tracks on such right of way.

In Equity. Bill by the Chicago, St. Paul & Kansas City Railway Company to compel the Kansas City, St. Joseph & Council Bluffs Railroad Company to allow the plaintiff the use of the defendant's tracks within the limits of the city of St. Joseph. A preliminary mandatory injunction was denied. 38 Fed. Rep. 58. The case is now on final hearing. Decree for plaintiff as to a part of its claim.

Pratt, Ferry & Hagoman, for plaintiff.

J. M. Woolworth and Strong & Mossman, for defendant.

BREWER, Circuit Judge. This case was before us last spring upon an application for a preliminary mandatory injunction. That application was refused. 38 Fed. Rep. 58. The case is now presented on pleadings and proof for final hearing. We intimated in the opinion then filed that the limit of right under the city ordinance, as against the defendant, was that portion of the track through the city limits to which the right of way had been given by ordinance. After the very careful, elaborate arguments by counsel on both sides, the intimation then given was strengthened into conviction. As noticed then, there were two ordinances. The first provided that, upon conditions named, other railroad companies should have the right "to run their cars, locomotives, and trains over and upon the said St. Joseph & Council Bluffs Railroad." And the second, passed four days thereafter, added these four words: "Within such city limits." The ordinance gave the right of way down to George alley. This right was given in relinquishment of a subscrip-