

this court has not appellate jurisdiction in this class of cases, then the larger part of causes pending in the territorial courts cannot be appealed either to the supreme court of the United States or to the circuit courts of appeal, but in that respect the residents of the territories are only placed on an equal footing with the citizens of the several states. In the larger number of cases brought in the courts of the state, the only appeal is to the supreme court of the state, and in the territory of New Mexico there is a supreme court to which an appeal lies the same as in the several states. On the other hand, if it should be held that this court can take jurisdiction in this class of cases over the decrees and judgments of the supreme court of the territory of New Mexico, the judgment of this court would not be final, under the provisions of section 6 of the act of March 3, 1891, and thus a case not involving any question arising under the constitution or laws of the United States could be carried first to the supreme court of the territory, thence to the circuit appellate court, and thence to the supreme court of the United States. Certainly it was not the intent of congress, in adopting the act of March 3, 1891, to thus enlarge the right of appeal on behalf of the residents of the several territories.

According to the plain reading of section 6 of said act of March 3, 1891, the case at bar does not fall within any of the classes of cases in which this court is given appellate jurisdiction over the judgments or decrees of the supreme court of the territory of New Mexico, and the motion to dismiss for want of jurisdiction is therefore sustained.

UNITED STATES v. NATIONAL EXCH. BANK OF MILWAUKEE.

(Circuit Court of Appeals, Seventh Circuit. October 11, 1892.)

CIRCUIT COURT OF APPEALS—JURISDICTION—WRIT OF ERROR.

The United States circuit court of appeals has no jurisdiction to review a judgment rendered before the act creating that court (26 St. at Large, c. 517) was passed, where the amount claimed was too small to give jurisdiction to the supreme court, since there is nothing in said act giving it a retrospective effect.

Error to the Circuit Court of the United States for the Eastern District of Wisconsin. Dismissed.

Elihu Colman, for plaintiff in error.

Van Dyke & Van Dyke, for defendant in error.

Before GRESHAM, Circuit Judge, and BLODGETT and JENKINS, District Judges.

JENKINS, District Judge. This case was brought in the court below to recover of the defendant bank the sum of \$1,259.05, and upon the trial, and on the 2d day of February, 1891, judgment was rendered in favor of the defendant bank, (45 Fed. Rep. 163,) and writ of error to this court was sued out on the 29th day of July, 1891. The act creating this court was approved March 3, 1891, (26 St. c. 517.) At the time of the rendition of this judgment there existed no right to a review

thereof by an appellate court. The amount claimed was less than the minimum amount necessary to give the supreme court power to entertain such review. We are of opinion that this court is without jurisdiction to review this judgment. We find no language in the act indicating an intention to make it retroactive. Such statutes should be given only a prospective operation, unless a contrary intent is expressed in the act. *U. S. v. Heth*, 3 Cranch, 399; *Mayor v. Schermerhorn*, 1 N. Y. 423, 426; *Burch v. Newbury*, 10 N. Y. 374; *In re Eager*, 46 N. Y. 100; *Railway Co. v. Judge*, 10 Bush, 564; *Rowell v. Railway Co.*, 59 N. H. 35; *Vansittart v. Taylor*, 4 El. & Bl. 910; *In re Phoenix Bessemer Steel Co.*, 45 Law J. Ch. 11. Writ of error dismissed.

CARNEGIE, PHIPPS & CO., Limited, v. HULBERT et al.

(Circuit Court of Appeals, Eighth Circuit. October 31, 1892.)

No. 134.

FEDERAL JURISDICTION—DIVERSE CITIZENSHIP—LIMITED PARTNERSHIP.

A limited partnership organized under the laws of Pennsylvania, and empowered thereby to sue in its partnership name, is neither a corporation nor a citizen of that state, within the meaning of the statute requiring diverse citizenship to give jurisdiction to a federal circuit court; and it can only maintain such a suit by averring the proper citizenship of the partners.

In Error to the Circuit Court of the United States for the District of Nebraska.

Action by Carnegie, Phipps & Co., Limited, against J. H. Hulbert, E. A. Blum, H. P. Drexel, Albert Foll, and E. J. Refregier, sureties on a bond given to prevent the filing of mechanics' liens, pursuant to section 4 of the act of the general assembly of Iowa, approved April 7, 1884, entitled "An act to protect subcontractors for labor performed and material furnished for public buildings and improvements." Judgment for defendants. Plaintiff brings error. Reversed.

Westel W. Morsman, J. M. Junkin, and Smith McPherson, for plaintiff in error.

B. G. Burbank, for defendants in error Drexel and Foll.

C. H. Breck and A. A. McClanahan, for defendant in error Refregier.

Brome, Andrews & Sheean filed brief for defendants in error Hulbert and Blum.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

CALDWELL, Circuit Judge. This action was brought in the circuit court of the United States for the district of Nebraska. A demurrer to the complaint was sustained, and judgment rendered for the defendants, and thereupon the plaintiff sued out this writ of error. The case has been argued upon its merits, but, upon looking into the record, it appears the following is the only jurisdictional averment in the complaint relating to the citizenship of the plaintiff:

"The plaintiff, Carnegie, Phipps & Co., Limited, a copartnership organized under and created by the laws of the state of Pennsylvania, and by the laws of said state of Pennsylvania authorized and empowered to sue and be sued in its copart-