

BENJAMIN v. CITY OF NEW ORLEANS.

(Circuit Court of Appeals, Fifth Circuit. April 28, 1896.)

No. 466.

CIRCUIT COURTS—JURISDICTION—ALLEGATIONS OF CITIZENSHIP.

An allegation, in a bill of complaint brought by an assignee of claims against a Louisiana corporation, that "each of said persons in whose favor said claims accrued * * * are now, and were on the 9th day of February, 1891, citizens, respectively, of states other than the state of Louisiana, and competent, as such citizens, to maintain suit in this honorable court against the defendants, * * * if no assignment or transfer had been made," is insufficient to confer jurisdiction on the circuit court, but the state or states of which the assignors were citizens should be specifically designated.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

This was a suit by H. W. Benjamin against the city of New Orleans. A demurrer to the amended bill was sustained by the circuit court. 71 Fed. 758. Complainant appealed. Affirmed.

J. D. Rouse and Wm. Grant, for appellant.

Branch K. Miller, for appellee.

Before McCORMICK, Circuit Judge, and BOARMAN and SPEER, District Judges.

SPEER, District Judge. In this cause the averments upon which plaintiff relied to maintain the jurisdiction of the court are made in the following amendment:

"By leave of court first had and obtained, the complainant comes now and amends his bill herein by inserting at the end of the sixteenth paragraph, and before the seventeenth paragraph, thereof, on page 14 of said bill, the following averment, viz.: 'And your orator avers that each of said persons in whose favor said claims accrued, and to whom said certificates were issued, are now, and were on the 9th day of February, 1891, citizens, respectively, of states other than the state of Louisiana, and competent, as such citizens, to maintain suit in this honorable court against the defendants for the recovery of said indebtedness represented by said certificates, if no assignment or transfer thereof had been made.' Wherefore complainant prays as he hath already prayed, and that said defendants be required to answer this amendment on or before the next rule day, and for general relief.

"[Signed]

Rouse & Grant, Solicitors for Comp't."

The circuit court, upon demurrer to the bill, held that the proper diversity of citizenship to give jurisdiction was not properly alleged, and held, further, that the plaintiff's bill was defective for want of equity. We do not think that the jurisdiction of the circuit court was made to appear. It must affirmatively and plainly appear. The defendant being a corporation of the state of Louisiana, the plaintiff, the assignee of a number of claims transferred to him by persons who were members of the late metropolitan police of this city, may not sue in the circuit court unless the assignors themselves could have sued if no assignment or transfer had been made. The assignors could not have sued unless they had been at the time of the transfer, in fact, citizens of states other than

Louisiana, and it was essential to the jurisdiction of the court that such other state or states be specially designated. The defendant is entitled to actual and definite notice in the plaintiff's pleading of the citizenship, or alleged citizenship, of each assignor. No fact in the pleadings of the plaintiff, in these courts, can be more material, for the authority of the court to act depends upon it. It was not sufficient, then, to say that the assignors were "citizens, respectively, of states other than the state of Louisiana, and competent, as such citizens, to maintain suit in this court." Jurisdiction cannot be inferentially averred. *Bradley v. Rhines*, 8 Wall. 393; *Metcalf v. Watertown*, 128 U. S. 586, 9 Sup. Ct. 173; *Parker v. Ormsby*, 141 U. S. 83, 11 Sup. Ct. 912; *New Orleans v. Benjamin*, 153 U. S. 411, 14 Sup. Ct. 905; *Hunt v. Howes* (C. C. A., 5th circuit, decided at this term) 74 Fed. 657. With relation to the decision of the circuit court that the plaintiff's bill was without equity, it is enough to say that, since the court had no jurisdiction whatever of the parties, that holding was, we think, superfluous. It was enough to sustain the demurrer because the necessary diversity of citizenship was not properly alleged. We therefore affirm the judgment of the circuit court, without prejudice to the right of plaintiff to sufficiently present his cause, if any he has, in a court having jurisdiction.

GORHAM MANUF'G CO. v. WATSON et al
(Circuit Court, D. Massachusetts. May 20, 1896.)

CIRCUIT COURTS—JURISDICTION OVER PARTIES—PATENT SUITS.

The provisions of the judiciary act of March 3, 1887, in relation to the districts in which parties may be sued, apply to patent infringement suits; and such a suit cannot be maintained in one district against a corporation which is a citizen and inhabitant of another district and state. *Donnelly v. Cordage Co.*, 66 Fed. 613, followed.

This was a suit by the Gorham Manufacturing Company against Clarence L. Watson, the Watson & Newell Company, and others, for infringement of a patent. The cause was heard on demurrer to the bill for want of jurisdiction.

William A. Jenner, for complainant.
Charles E. Mitchell, for defendants.

COLT, Circuit Judge. This is a suit brought in the district of Massachusetts for the enforcement of a patent right. The complainant is a citizen and inhabitant of Rhode Island. The defendant corporation is also a citizen and inhabitant of Rhode Island, and has appeared specially and demurred to the bill upon the ground of want of jurisdiction. This demurrer raises the question whether the act of March 3, 1887 (24 Stat. 552), as corrected by the act of August 13, 1888 (25 Stat. 433), is applicable to suits for the enforcement of a patent right, brought against a citizen or inhabitant of the United States. Until this precise question shall have been au-