

BOSTON SAFETY & DEPOSIT CO. v. CITY OF PLATTSMOUTH et al.

(Circuit Court, D. Nebraska. November 28, 1896.)

No. 343.

FEDERAL COURTS—JURISDICTION—DIVERSE CITIZENSHIP—ASSIGNED CAUSE OF ACTION.

A mortgagee, holding by assignment a contract made between two corporations of the same state, cannot sue in a federal court for the specific performance of such contract, though itself a corporation of another state.

This was a suit in equity brought by the Boston Safety & Deposit Company against the city of Plattsmouth and others. The cause was submitted on a motion filed by the city of Plattsmouth to dismiss for want of jurisdiction.

Samuel M. Chapman, for complainant.

Charles Grimes and Matthew Gering, for defendant city of Plattsmouth.

A. N. Sullivan, for defendant Plattsmouth Waterworks Co.

SHIRAS, District Judge. From the record in this case it appears that on the 11th of March, 1886, the city of Plattsmouth, a municipal corporation created under the laws of the state of Nebraska, entered into a contract with one George B. Inman, his successors and assigns, for the erection of a system of waterworks to supply water for the use of the city of Plattsmouth and its inhabitants; the city agreeing on its part to pay for a certain number of hydrants, and to levy and collect a tax to provide the means for meeting such payment on its part. To carry out the contract for the erection of the waterworks, a corporation was created under the laws of the state of Nebraska known by the name of the Plattsmouth Waterworks Company, and, to secure the money needed to construct the works, bonds in the sum of \$125,000 were issued by the waterworks company, secured by a mortgage deed covering the property of the company, including all contracts for payment of water rentals. By the terms of the mortgage the Boston Safety & Deposit Company, the complainant herein, was made trustee in such mortgage, with the right to act for the protection and enforcement of the rights of the bondholders, said company being a corporation created under the laws of the state of Massachusetts.

In the bill filed in this case, it is averred, in substance, that the city of Plattsmouth has for some time past failed to make due payment of the water rentals to the water company as it had agreed to do, and that, by reason of such failure to make payment on part of the city, the water company had been rendered unable to meet its payments of interest on the bonds secured by the mortgage, it being also averred that the water company had failed to enforce such payments; and therefore the Boston Safety & Deposit Company, as the trustee for the bondholders, prays the aid of the court to enforce payment on part of the city. In effect, the purpose of the bill is to obtain the specific performance on part of the city of the obligations by it assumed in the contract between the city of Plattsmouth and George B. Inman and his assigns. The right of the complainant, as the trustee for the

bondholders, to obtain such relief, is based upon the fact that the mortgage deed assigns to the complainant, as trustee, the contract entered into by the city of Plattsmouth and Inman and his assigns. In other words, the complainant seeks to maintain this suit as the assignee of the contract in question, and, under the express provisions of the acts of congress of 1887-88, this court cannot take jurisdiction on behalf of complainant unless the jurisdiction would exist if no assignment had been made, and the suit was instituted in the name of the assignor. It is clear, beyond question, that this court could not take jurisdiction of a suit brought by the Plattsmouth Waterworks Company against the city of Plattsmouth, based upon the contract in question, for these companies are corporations created under the laws of the state of Nebraska, and therefore the requisite diversity of citizenship does not exist; and, if the jurisdiction does not exist in favor of the waterworks company, it does not exist in favor of its assignee, the present complainant. The motion to dismiss for want of jurisdiction is therefore granted on behalf of city of Plattsmouth.

CONCORD COAL CO. et al. v. HALEY et al.

(Circuit Court, D. New Hampshire. October 20, 1896.)

REMOVAL OF CAUSES—FEDERAL JURISDICTION.

A claimant upon a fund in controversy sought to remove the cause on the ground of diverse citizenship. He had been permitted to become a party long after the lapse of time in which the original parties would have been entitled to removal, and by the statute under which he was proceeding it was doubtful whether he was plaintiff or defendant, and also doubtful whether the cause was separable from the main controversy. *Held*, that federal jurisdiction was doubtful, and the case should be remanded.

This was a suit by the Concord Coal Company and others against John J. Haley and others. A claimant upon the fund in controversy sought to remove the case into the United States circuit court on the ground of diverse citizenship.

Joseph S. Matthews, for plaintiffs.

H. G. Sargent and Edward C. Niles, for King.

ALDRICH, District Judge. Upon the law and facts, as this case strikes me, federal jurisdiction is at least doubtful. Cases in which our jurisdiction is in doubt should be remanded to the court from which they are removed. It is only where jurisdiction is clear that we hold cases under the removal acts. This rule results naturally enough from a system which contemplates that the great majority of rights shall be established and regulated in the state courts, and provides only for federal jurisdiction in special and limited instances. A suitor, in order to avail himself of the federal system, must present a situation bringing his case clearly within the limits of such special jurisdiction. The claimant, a citizen of Massachusetts, who seeks to remove this case upon the ground of diverse citizenship, became a party to the proceeding in the state court for the purpose of claim-