

tiff in the state court and that of the defendant for removal differ, and on it the issue is joined. Says the supreme court in *Smith v. Adams*, 130 U. S. 168, 9 Sup. Ct. 569:

"By this phrase, 'matter in dispute,' as used in the statutes conferring jurisdiction on this court, is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue is one of fact, testimony is taken; and its pecuniary value may be determined, not only by the money judgment prayed, but in some cases by the increased or diminished value of the property directly affected by the relief prayed, as by the pecuniary result to one of the parties immediately from the judgment."

See, also, *Security Co. v. Gay*, 145 U. S. 127, 12 Sup. Ct. 815; *City of Clay Center v. Farmers' Loan & Trust Co.*, 145 U. S. 224, 12 Sup. Ct. 817.

In estimating the amount of the matter in controversy, the court is governed by the claim made, provided that there is no reason to believe that the claim has no bona fide existence, and is only made to secure jurisdiction. *Barry v. Edmunds*, 116 U. S. 550, 6 Sup. Ct. 501. Then this is the mode of ascertaining the amount of the matter in controversy, and it being claimed on the one side that it greatly exceeds \$2,000, and wholly denied on the other, the determination of this issue gives this court jurisdiction. The issue must be tried in accordance with the law of North Carolina in such case made and provided, and on the trial of the issue will come up the points so ably presented by counsel at bar. Let an order be entered in the equity cause continuing the restraining order until the further order of this court. Let an order be entered refusing to remand the cause removed.

WIDAMAN v. HUBBARD et al.

(Circuit Court, S. D. California. July 27, 1898.)

No. 772.

1. JURISDICTION OF FEDERAL COURT—CITIZENSHIP—ANCILLARY PROCEEDING.

A bill filed in a circuit court to enjoin the further prosecution of an action at law pending therein is ancillary to the law action, and the court has jurisdiction without regard to the citizenship of the parties.

2. INSURANCE—ASSIGNMENT OF LIFE POLICY—RIGHTS OF ASSIGNEE.

An assignment of a life policy, which purports to transfer all rights thereunder absolutely in consideration of a sum advanced to the insured and the payment of future premiums, is not wholly void for illegality, but vests the legal title to the policy in the assignee, who may, after the death of the insured, maintain an action thereon in his own name, though he will be accountable as trustee for all the proceeds above the amount of his advances, with interest.

3. SAME—ENJOINING ACTION BY ASSIGNEE.

An action on a life policy by an assignee will not be enjoined where it is admitted that he has a lien on the proceeds for advances made the insured, unless such lien is extinguished by the proceeds of another policy, also assigned to him, and that he has not as yet realized on such policy, which is in litigation in another court.

This was a bill filed by O. P. Widaman, as assignee in insolvency of George W. Meade, against Anthony G. Hubbard, to enjoin the

prosecution by the defendant of an action at law to collect a policy of insurance on the life of the deceased assignor. Heard on demurrer to the bill.

Cheney & Taylor and Anderson & Anderson, for complainant.

Page, McCutchen & Eells, E. R. Annable, and Brousseau & Montgomery, for defendants.

WELLBORN, District Judge. Complainant sues to enjoin further proceedings in an action entitled "Anthony G. Hubbard v. New York Life Insurance Company," pending on the law side of this court, and to have determined certain equitable claims to a fund of \$15,000, which said company has paid into court in said action in satisfaction of the liability therein sued on. The material allegations of the bill are these: Complainant, in November, 1896, was, by the superior court of the county of Los Angeles, state of California, appointed assignee in insolvency of one George W. Meade, whose petition in insolvency was filed in the month of October of the same year. The indebtedness of Meade's estate aggregates \$30,000, and the only property belonging to said estate is the fund above mentioned. The New York Life Insurance Company is a corporation created under the laws of the state of New York, and on April 22, 1884, for an annual premium of \$989.80, issued a tontine policy, numbered 186,405, for \$20,000, on the life of said Meade, payable to Anna Meade, April 17, 1899, or upon the death of the said George W. Meade, should he die before said date. On the 14th day of August, 1894, in consideration of the payment by said Hubbard to said company, at the request of said George W. and Anna Meade, of the quarterly premium then due on said policy of \$262.40, said policy was assigned to said Hubbard, and thereafter, on October 29, 1894, said parties entered into the following agreement:

"This article of agreement, made and entered into this 29th day of October, A. D. 1894, between George W. Meade, and his wife, Anna Meade, both of Redlands, San Bernardino county, California, parties of the first part, and Anthony G. Hubbard, of the same place, party of the second part, witnesseth: That, whereas, on the 22d day of April, in the year 1884, a policy of insurance on the life of George W. Meade, one of the parties of the first part, was issued and delivered to the said George W. Meade by the New York Life Insurance Co., of the state of New York, which policy was and is numbered 186,405; and whereas, on the 14th day of August, 1894, the said parties of the first part did assign unto the said party of the second part the said policy of insurance numbered 186,405, which assignment was made to the said party of the second part, and by the said party of the second part accepted as security for certain advances of money then made by the said party of the second part for the benefit of the said parties of the first part, and was also made and accepted, as aforesaid, to secure the said party of the second part for any further advances of money which he, the said party of the second part, may make to the said parties of the first part as the said parties of the first part and the said party of the second part may or should agree upon in the future; and whereas, the said party of the second part is now owner and holder of the mortgage upon certain real property located in the city of Redlands, county of San Bernardino, state of California, now owned by one or both of said parties of the first part, which said real property is described as follows, to wit: 'All of lots 1, 2, 3, 4, 5, and 6 of block 23, as laid down in a map entitled "Map No. 6" of a part of Redlands Heights, as recorded in the office of the recorder of said county of San Bernardino, state of Cali-

ifornia, in Book 7 of Maps, at page 40,' and also all that part of Crescent avenue heretofore vacated and not occupied as a public street, lying northwest of and adjoining lot 1, aforementioned, together with 23 shares of the capital stock of the Redlands Heights Water Company; and whereas, the said mortgage so held against the said real property by the said party of the second part was given to secure the payment of a certain promissory note for \$6,000, which said promissory note, with accrued and accumulating interest, now remains due and wholly unpaid; and whereas, said Anthony G. Hubbard, said party of the second part, is now the owner and holder of the said policy of insurance on the life of the said George W. Meade: Now, therefore, this article of agreement witnesseth that the said Anthony G. Hubbard shall be and remain the owner of the said policy of insurance hereinbefore referred to, and shall hold the same for the purpose of securing him, the said party of the second part, for any advances of money which he, the said party of the second part, may make to the said party of the first part, or either of them, and it is agreed that the said Anthony G. Hubbard may, at his option, hold the said policy of insurance as collateral security for the said promissory note hereinbefore referred to, and as additional security for the payment of the same, in addition to the mortgage which he now holds against the said real property hereinbefore referred to and described. But it is distinctly understood and agreed that the holding by the said party of the second part of the policy of insurance as further and additional security in connection with the said mortgage shall in no manner be construed as extending the time of payment of the promissory note, to secure the payment of which the said mortgage was given, and is now held by the said party of the second part, the object being to allow the said party of the second part the privilege or option of considering and holding the said policy of insurance as further security for the payment of the said promissory note in the said mortgage described and hereinbefore referred to, according to the terms of the said promissory note, as the same was originally drawn and as the same now exists. In witness whereof, the said parties have hereunto subscribed their names this 29th day of October, 1894.

"[Signed]
"[Signed]

George W. Meade.
Anna Meade."

On the day after said agreement was executed, to wit, October 30, 1894, said Hubbard advanced and paid the quarterly premium on said policy for said month of October, and thereafter, on January 17, 1895, advanced and paid the quarterly premium on said policy for said month of January. The promissory note mentioned in the agreement has been discharged. On the 13th day of March, 1895, said insurance company issued another policy of insurance,—No. 665,889,—for \$15,000, on the life of said George W. Meade, payable to himself; the annual premium on said last-named policy being \$562.50. On the 21st day of March, 1895, said Hubbard and Meade entered into the following agreement:

"This agreement, made and entered into this 21st day of March, A. D. 1895, by and between A. G. Hubbard, of the city of Redlands, San Bernardino county, party of the first part, and Geo. W. Meade, of the same place, the party of the second part, witnesseth: That whereas, the party of the second part now holds a policy of insurance on his life in the New York Life Insurance Company, of the state of New York, which policy is numbered 186,405; and whereas, the said party of the second part has had issued to him another policy of insurance on his life in the same company above mentioned for the sum of fifteen thousand dollars (\$15,000.00), which said second policy of insurance is numbered 665,889; and whereas, the said party of the second part is unable to pay and keep up the payment of premiums due and to become due on each of said policies according to the terms of the same and each of the same; and whereas, further, said party of the second part desires the said party of the first part to advance to him, the said party