

rent jurisdiction with the court of claims as to all matters named in section 1 of the act of 1887, cases brought to recover fees, salaries, or compensation for official services of officers of the United States were to be excepted. To them the jurisdiction should no longer extend. It is a withdrawal of authority for the courts to consider cases within the class to which it is provided the jurisdiction shall no longer extend, and as to them is a repeal of the act by which the jurisdiction was originally conferred. *Insurance Co. v. Ritchie*, 5 Wall. 541; *Assessor v. Osbornes*, 9 Wall. 567. The law of 1898 contains no saving clause, and its effect, therefore, is to divest the court of authority over pending cases. As was said by Mr. Justice Clifford, speaking in the supreme court in *Assessor v. Osbornes*, supra: "Jurisdiction in such cases was conferred by an act of congress, and when that act of congress was repealed the power to exercise such jurisdiction was withdrawn, and, inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely on the act of congress." This doctrine has recently been reaffirmed by the supreme court in *Re Hall*, 167 U. S. 38, 17 Sup. Ct. 723, where the court uses this language: "The effect of the passage of the repealing act was to take away the jurisdiction of the court of claims to proceed further in those cases which were founded upon the act thus repealed. This, congress had power to do." I am of the opinion that the jurisdiction of the circuit court over cases of the class which embraces the one at bar has been taken away by the act of 1898, above cited, and that the court cannot proceed further therein. The case must be dismissed, for want of jurisdiction.

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MILLER v. PENNSYLVANIA R. CO.

(Circuit Court, D. New Jersey. January 11, 1899.)

JURISDICTION OF FEDERAL COURTS—DISTRICT OF PLAINTIFF'S RESIDENCE—SUFFICIENCY OF ALLEGATION.

Where the only ground of jurisdiction of a federal court is the diversity of citizenship of the parties, and it is shown that the defendant is a citizen and resident of another state, under the judiciary act of 1888 it must appear from the declaration, not only that the plaintiff is a citizen of the state, but that he is a resident of the district, in which the suit is brought.

On Demurrer to the Declaration.

Erwin E. Marshall, for plaintiff.

Alan H. Strong, for defendant.

KIRKPATRICK, District Judge. The court is asked to take jurisdiction in this case solely upon the ground of the diverse citizenship of the parties. The defendant is a corporation organized under the laws of the state of Pennsylvania, and has its principal office in that state. For the purposes of this suit, it may be regarded as a citizen and resident of that state. The plaintiff is described in the declaration merely as a citizen of the state of New Jersey. Act 1888, c. 866, provides: "Where jurisdiction is founded only on the fact that action is only between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or defendant."

The supreme court, in *Smith v. Lyon*, 133 U. S. 315, 10 Sup. Ct. 303, held this statute to be a restriction on taking away the privilege of bringing suit against defendant in any district where he might be found at the time of service of process, and substituting permission to bring suit in any district where either the plaintiff or defendant resides. In *Machine Co. v. Walthers*, 134 U. S. 41, 43, 10 Sup. Ct. 487, the same court, in construing this portion of the statute, say: "But where jurisdiction is founded solely upon the fact that the parties are citizens of different states, the suit may be brought in the district in which either the plaintiff or defendant resides." So, too, in *Shaw v. Mining Co.*, 145 U. S. 444, 449, 12 Sup. Ct. 937, the court, in giving interpretation of the same clause of the statute, states its effect to be a restriction on the "jurisdiction of the courts of the district in which one of the parties resides, within the state of which he is a citizen." It is apparent that one may be a resident of a state of which he is not a citizen, and in like manner he may be a citizen of a state of which he is not a resident. To give this court jurisdiction in this cause, it should appear that the plaintiff is not only a citizen of the state of New Jersey, but a resident of the district of New Jersey. The declaration does not contain these necessary averments. Judgment will therefore be for the defendant on the demurrer.

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ROGERS v. NASHVILLE, C. & ST. L. RY. CO. et al.

(Circuit Court of Appeals, Sixth Circuit. November 9, 1898.)

No. 550.

1. CORPORATIONS—SUIT BY STOCKHOLDER—FORMAL REQUISITES OF BILL.

A bill by a minority stockholder of a railroad corporation against the corporation and the majority stockholders, which seeks to set aside as detrimental to the interests of the corporation a contract by which it leased certain lines of road from another company, and which in all other respects conforms to the requirements of equity rule 94, need not allege a demand upon the directors to bring the suit, and a refusal, where it shows that the lessor in the lease sought to be canceled holds a majority of the stock of the lessee corporation, and elected in its own interest a majority of the directors of such corporation, by whose action the lease was fraudulently made in the interests of the lessor.

2. SAME—RAILROADS—RIGHTS OF ANOTHER CORPORATION AS STOCKHOLDER.

Under the special charter granted by the legislature of Tennessee to the Nashville, Chattanooga & St. Louis Railway Company, which provides that "any state or any citizen, corporation or company of this or any other state or country may subscribe for and hold stock in said company with all the rights and subject to all the liabilities of any other stockholder," a railroad company of another state, authorized thereto by its own charter, may become a holder of stock in such Tennessee company, with the right to vote the same for directors and upon all other questions.

3. SAME—AMENDMENT OF CHARTER—VOTING POWER OF STOCK.

Where the special charter of a railroad company reserved to the legislature the right of amendment on the unanimous petition of the president and directors of the company, and the legislature afterwards, by general law amended all such charters by making a uniform rule as to the voting power of stock, differing from that fixed in the charter, an acceptance of such amendment by the unanimous vote of the president and directors