

SMITH v. FIFIELD.

(Circuit Court of Appeals, Seventh Circuit. January 3, 1899.)

No. 503.

JURISDICTION OF FEDERAL COURTS — ALLEGATIONS OF CITIZENSHIP — SUIT BY ASSIGNEE.

A circuit or district court is without jurisdiction of a suit brought on a nonnegotiable contract by an assignee, where the declaration fails to show that the suit might have been prosecuted in that court if no assignment had been made.

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

Ray S. Reid, for plaintiff in error.

M. G. Jeffries, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

PER CURIAM. The plaintiff in error, claiming title as assignee, brought this action in the circuit court of the United States for the Western district of Wisconsin to recover upon a nonnegotiable contract or chose in action; but the declaration, while alleging the diverse citizenship of the parties, fails to show that the suit might have been prosecuted in that court if no assignment had been made. If we may treat the averment of the complaint that the assignor of the plaintiff in error was at the date of the contract "of the city of Janesville, county of Rock, in the state of Wisconsin," to be an averment that he was a citizen of the state of Wisconsin, he could not have brought an action on the contract in a court of the United States. The court below, therefore, had no jurisdiction of the case. *Railroad Co. v. Davidson*, 157 U. S. 201, 15 Sup. Ct. 563. The judgment is reversed, at the cost of the plaintiff in error.

Judge SHOWALTER did not participate in the decision of this case.

GRAND TRUNK RY. CO. v. CENTRAL VERMONT R. CO.

(Circuit Court, D. Vermont. January 27, 1899.)

RAILROAD RECEIVERSHIP—INTERVENTION BY CREDITORS CLAIMING PREFERENCE—PLEADING.

Holders of claims against a railroad in the hands of receivers, who do not come within the terms of a general order requiring the receivers to pay claims for labor and supplies accruing within six months, have no standing to file a motion for payment of their claims in full, and can only be heard upon a petition of intervention setting out the facts on which their claim to preferential payment is based in accordance with the rules of pleading.

Hearing on petitions of intervention of the Ashton Valve Company and others, as creditors, asking preferential payment.

Henry G. Newton, for petitioners.

Chas. M. Wilds and Wm. A. Sargent, for petitionees.

WHEELER, District Judge. The intervening petition of the Ashton Valve Company and others, as individual creditors of the defendants, has been heard upon its face. It sets forth the respective names, residences, and amounts said to be due the petitioners; that a large amount of rolling stock, worth much more than the amount of these claims, went into the hands of the receivers, and is liable for these claims; and that—

"(8) All the facts necessary to sustain this petition, including the amount of indebtedness of said railroad corporation to these petitioners, and the amount and value of said furniture, cars, engines, and rolling stock, appear upon the books of said corporation, and upon the reports made by the receivers in said action to this court; and if in any cases the indebtedness to any of your petitioners, as stated in this petition, differs from that shown by the reports of the receivers, your petitioners are ready to adjust the same with said receivers, and to accept the final report of said receivers after such adjustment thereof."

It prays that the receivers may be ordered to pay to the petitioners severally and respectively the full amount of their respective claims. The facts are not otherwise set forth. The allegations of the petition, besides those quoted as to what the books of the corporation and reports of the receivers show, fall far short of showing a valid claim upon this property in the hands of the receivers. The allegations as to what is so shown are allegations of what might be evidence of facts when alleged; but they are not such allegations of facts as good pleading requires, and cannot supply the place of such allegations. The petition amounts only to a motion in behalf of those not parties, or in any way entitled to proceed in this way.

Upon the appointment of the receivers, they were ordered to pay claims for labor and supplies that accrued within six months. That order has been the foundation of motions for payment of those claims. These petitioners are not within that order, and have no such foundation for a mere motion. They must set forth in an orderly way, so as to be subject to traverse, what is necessary for the relief sought. For want of this, the petition fails to show any right of intervention. Petition denied.

AMERICAN WATERWORKS CO. OF ILLINOIS et al. v. FARMERS' LOAN & TRUST CO.

(Circuit Court of Appeals, Eighth Circuit. January 3, 1899.)

No. 884.

FORECLOSURE SALE—INSUFFICIENCY OF MASTER'S REPORT.

The report of a master after a sale of the property of a corporation, under a decree of foreclosure, to a trustee for certain bondholders, where bonds were receivable in payment on certain terms, merely stating that the purchaser had complied with its bid in all respects, without stating the facts, is too general and indefinite to afford a proper basis for judicial