

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Section 2928 of the Revised Statutes, a re-enactment of sect. 21 of the act of March 1, 1823, c. 21, relates alone to merchandise taken from a wreck, and does not in any manner affect the proceedings under sect. 2927, a re-enactment of sect. 52 of the act of March 2, 1799, c. 22, to obtain an appraisement for an abatement of duties on account of damages to goods during the voyage of importation. What was said in *Shelton v. The Collector*, 5 Wall. 113, 118, to the contrary of this is disapproved. The subject is so fully and carefully considered in the opinion of the court below, that we deem it unnecessary to do more than to refer to the report of the case in 20 Blatchf. 129.

*Judgment affirmed.*

---

TREDWAY v. SANGER.

The indorsee of "a promissory note negotiable by the law merchant," which the maker secured by a mortgage of land to the payee, is not precluded from maintaining a foreclosure suit in a court of the United States by the fact that the maker and the payee are citizens of the same State.

APPEAL from the Circuit Court of the United States for the District of California.

Tredway and Kettelman, citizens of California, having made two negotiable promissory notes to McLaughlin, a citizen of that State, executed, to secure the payment of them, to him a mortgage upon lands there situate. The notes were assigned to Sanger, a citizen of Pennsylvania, who filed in the court below his bill of foreclosure against Tredway and Kettelman. They set up by plea that the assignment of the notes was merely colorable, in order to give that court jurisdiction. The court found that the plea was untrue and insufficient. A decree was rendered in favor of the complainant, reciting that there was due to him the amount of the note, ordering a sale of the mortgaged premises to satisfy the same, and providing that if the proceeds of the sale be insufficient to pay the debt, interest, and

costs, that "the clerk should docket a judgment for the amount of such deficiency," and execution be issued against the defendants therefor. They thereupon appealed.

*Mr. A. Chester* for the appellants.

It appears by the record that the appellants and McLaughlin are citizens of the same State. The foreclosure of a mortgage, to use the language of this court in *Sheldon v. Sill*, 8 How. 441, "is the pursuit by action of one debt in two instruments or securities, — the one general, the other special." The act of March 3, 1875, c. 137, upon which the appellee relies, relates solely to an action to recover the contents of a negotiable security, whereas this suit is brought to sell the land and foreclose the mortgagors' equity of redemption. A mortgage is a chose in action; and where the parties to it are citizens of the same State, an assignee is not entitled to maintain suit thereon in a court of the United States.

*Mr. Henry Beard* and *Mr. Charles H. Armes* for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

There is but a single question presented by this appeal, to wit, whether, if a promissory note, negotiable by the law merchant, is made by a citizen of one State to a citizen of the same State, and secured by a mortgage from the maker to the payee, an indorsee of the note can, since the act of March 3, 1875, c. 137, sue in the courts of the United States to foreclose the mortgage, and obtain a sale of the mortgaged property.

It was held in *Sheldon v. Sill*, 8 How. 441, that such a suit could not be maintained under the eleventh section of the Judiciary Act of 1789, because in equity the mortgage was but an incident of the debt, and as the indorsee could not sue on the note, he could not sue to enforce the mortgage. The language of Mr. Justice Grier, speaking for the court in that case, is this: "The complainant in this case is the purchaser and assignee of a sum of money, a debt, a chose in action, not of a tract of land. He seeks to recover by this action a debt assigned to him. He is, therefore, the 'assignee of a chose in action,' within the letter and spirit of the act of Congress

under consideration, and cannot support this action in the Circuit Court of the United States, where his assignor could not." p. 450. This clearly implies that if a suit could be brought on the note, it could for the foreclosure of the mortgage, should there be no other objection to the jurisdiction than the citizenship of the payee and maker.

In the Judiciary Act of 1789 it was expressly provided that the Circuit Courts could not take cognizance of a suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the contents, if no assignment had been made, except in cases of foreign bills of exchange. The act of 1875, however, removes this restriction in suits on "promissory notes negotiable by the law merchant;" and now the jurisdiction in such suits is made to depend on the citizenship of the parties, as in other cases.

Since, therefore, the indorsee could have sued in the Circuit Court on the note now in question, it follows that, as there is no objection to the jurisdiction other than the citizenship of the original payee, the suit to foreclose the mortgage was properly brought.

*Decree affirmed.*

---

OIL COMPANY v. VAN ETTEN.

1. Unless objected to within a reasonable time,—and what constitutes such a reasonable time is a question of law,—an account rendered becomes an account stated, and cannot be impeached except for fraud or mistake.
2. A witness was, on cross-examination, asked if he had not stated to different parties that he wished the plaintiffs to recover, as he would then get his pay. An objection to the question was made, and the defendant's counsel then declared that he did not propose to impeach the witness. *Held*, that the objection was properly sustained.
3. A. made a contract with B. to deliver a specified number of matched barrel-headings, to be properly piled on the land of B., who was to furnish a man to count them, as they were from time to time piled, in order to obtain an approximate estimate of the quantity piled, and thus to determine the amount of advances to A. under his contract; but the inspection and final count was to be made by an inspector appointed by B. at a point to which the latter shipped them. The property in the headings was to pass to B. on the delivery of them on his land. In a suit to recover the contract price of