

Statement of Facts.

KING BRIDGE COMPANY v. OTOE COUNTY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA.

Submitted January 7, 1887. — Decided January 31, 1887.

An order drawn upon a county treasurer by county officials in favor of A or order unindorsed, and a like order in favor of A, both assigned by A to B for a valuable consideration, constitute no cause of action in B's favor on which B can maintain an action in a Circuit Court of the United States on the ground of citizenship, if A could not maintain the action there on the same ground; and if, in such action in B's favor A's necessary qualification of citizenship does not affirmatively appear in the record in this court, the judgment below will be reversed whether the question of jurisdiction be made or not, and plaintiff in error adjudged to pay costs in this court.

THIS action was brought, November 10, 1885, by the King Iron Bridge and Manufacturing Company, a corporation of Ohio, against Otoe County, in the State of Nebraska, to recover the amount of two county warrants or orders, each signed by the chairman of the county commissioners of the county and countersigned by the county clerk. One was dated October 9, 1878, and directed the "Treasurer of Otoe County to pay to Z. King, or order, sixteen hundred and five dollars, and charge to account of special bridge fund," and the other, dated January 9, 1879, directed the "Treasurer of Otoe County to pay to Z. King, sixteen hundred and five dollars, and charge to account of special bridge fund." The first one being presented for payment on the 23d of October, 1878, was indorsed by the treasurer, "Presented and not paid for want of funds." The other was presented on the 15th of January, 1879, and received a like indorsement. The petition stated, in respect of each warrant, that it had been for a valuable consideration "sold, transferred and delivered" by Z. King to the plaintiff, who sues as the holder and owner thereof.

Judgment was asked for \$3210, with ten per cent. interest on \$1605 thereof from October 23, 1878, and for \$1605 with like interest from January 15, 1879.

Opinion of the Court.

The defence was the limitation of five years prescribed by the local law for an action "upon a specialty, or any agreement, contract, or promise in writing or foreign judgment." The court below overruled a demurrer to the answer and dismissed the action.

Mr. N. S. Harwood and *Mr. John H. Ames* for plaintiff in error.

Mr. John C. Watson for defendant in error.

MR. JUSTICE HARLAN, after stating the case as above reported, delivered the opinion of the court.

This case was argued upon the question of limitation. But we have no occasion to consider that question; for it does not appear that the Circuit Court had jurisdiction of the action. Unless the contrary appears affirmatively from the record, the presumption, upon writ of error or appeal, is that the court below was without jurisdiction. *Robertson v. Cease*, 97 U. S. 646; *Grace v. American Central Ins. Co.*, 109 U. S. 278, 283; *Börs v. Preston*, 111 U. S. 252; *Continental Life Ins. Co. v. Rhoads*, 119 U. S. 237. That the point as to jurisdiction was not made here by either party is immaterial, because, as said in *Mansfield, &c., Railway Co. v. Swan*, 111 U. S. 379, 382, "the rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes." See also *Hancock v. Holbrook*, 112 U. S. 229, 231.

The act of March 3, 1875, § 1, excludes from the cognizance of a circuit or district court of the United States "any suit founded on contract in favor of an assignee, unless a suit might

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have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange." One of the warrants is payable to Z. King, and the other to Z. King, or order. The latter is not indorsed by him in blank or to the order of the plaintiff. Plainly, therefore, upon any view of the statute, the plaintiff, as the holder or owner of the warrants, could not maintain a suit in the court below, unless King could have sued in that court, had he not sold the warrants. But it does not appear that King could have maintained the suit. There is no averment as to his citizenship, nor does his citizenship otherwise appear from the record. We must, therefore, presume, on this writ of error, that the Circuit Court was without jurisdiction.

It will be for the court below to determine whether an amendment of the pleadings upon the point of jurisdiction will be proper.

The plaintiff in error must pay the costs in this court. *Peper v. Fordyce*, 119 U. S. 469; *Everhart v. Huntsville College*, ante, 223.

Reversed.

UNITED STATES *v.* PACIFIC RAILROAD.PACIFIC RAILROAD *v.* UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

Submitted January 10, 1887. — Decided January 31, 1887.

The United States are not responsible for the injury or destruction of private property caused by their military operations during the late civil war; nor are private parties chargeable for works constructed on their property by the United States to facilitate such operations.

Accordingly, where bridges on the line of a railroad were destroyed during the civil war by either of the contending forces, their subsequent rebuilding by the United States as a measure of military necessity, without the request of, or any contract with, the owner of the railroad, imposes no liability upon such owner.