

Statement of the Case.

to be retained by clerks of the District Courts in Utah, for personal compensation, than is by the provisions of chapter 16 of the title mentioned prescribed to be allowed to be retained by the clerks of the District Courts named in § 839, for personal compensation. Section 1883 is in the same language in both editions of the Revised Statutes, but, in the 2d edition, a marginal reference is made to § 7 of the act of June 23d, 1874, hereinbefore quoted, passed after the Revised Statutes were enacted.

The judgment of the Supreme Court of the Territory of Utah is reversed, and the case is remanded to that court, with a direction to reverse the judgment of the Third Judicial District Court of the Territory of Utah, dismissing the complaint, and to take such further proceedings as may be conformable to law and not inconsistent with the opinion of this court.

MR. CHIEF JUSTICE FULLER was not a member of the court when this case was argued, and took no part in its decision.

BROCK v. NORTHWESTERN FUEL COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF IOWA.

No. 210. Argued and submitted March 19, 1889. — Decided April 8, 1889.

When it does not appear, affirmatively, from the record that the Circuit Court had jurisdiction, the judgment below will be reversed and the cause remanded for further proceedings in accordance with law.

THE Northwestern Fuel Company, a Minnesota corporation, brought this action, February 18, 1882, to recover from the plaintiffs in error, citizens of Iowa, the sum of \$1309.50, alleged to be due under a written contract, made July 21, 1881, between the latter and the What Cheer Land and Coal Company, a corporation alleged to be "doing business in the State of

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Iowa;" the benefits of which contract were assigned by that company to the plaintiff. The contract related to coal to be mined by the What Cheer Land and Coal Company at its mine in Iowa, and which Brock & Co. agreed to receive and pay for at certain specified rates. The defendants, Brock and McKenzie, in their answer, asserted a counter claim of \$20,000 against the plaintiff. There was a verdict against the defendants for \$1402.47. The case was brought here for review in respect to numerous errors of law alleged to have been committed by the court below, to the prejudice of the defendants.

Mr. Charles A. Clark for plaintiffs in error.

Mr. C. D. O'Brien submitted for defendant in error.

MR. JUSTICE HARLAN stated the case as above reported and delivered the opinion of the court.

The act of 1875 declares that no Circuit or District Court shall have "cognizance of any suit founded on contract in favor of an assignee, unless a suit might 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." 18 Stat. 470. It does not appear that the What Cheer Land and Coal Company, the plaintiffs' assignor, could have brought suit on the contract in question, if no assignment had been made. The record does not show of what State it is a corporation. The allegation that it was "doing business in the State of Iowa" does not necessarily import that it was created by the laws of that State. But if that allegation were held sufficient to show it was an Iowa corporation, the result would be the same, because, in that case, it would appear that the parties to the original contract were all citizens of Iowa, and consequently that the assignor could not have sued the defendants in the Circuit Court of the United States.

The judgment is reversed upon the ground that it does not

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appear, affirmatively, from the record that the Circuit Court had jurisdiction, *Metcalf v. Watertown*, 128 U. S. 588, and the cause is remanded for further proceedings in accordance with law.

Reversed.

GON-SHAY-EE, Petitioner.

ORIGINAL.

No. 7. Original. Argued March 18, 1889. — Decided April 15, 1889.

The act of March 3, 1885, 23 Stat. 385, c. 341, § 9, was enacted to transfer to Territorial Courts, established by the United States, the jurisdiction to try the crimes described in it (including the crime of murder), under territorial laws, when sitting as and exercising the functions of a Territorial Court; and not when sitting as or exercising the functions of a Circuit or District Court of the United States under Rev. Stat. § 1910.

PETITION for a writ of *habeas corpus*. The case is stated in the opinion of the court.

Mr. W. H. Lamar for the petitioner. *Mr. Samuel Field Phillips* and *Mr. J. G. Zachry* were with him on the brief.

Mr. Solicitor General opposing.

MR. JUSTICE MILLER delivered the opinion of the court.

This is a petition for a writ of *habeas corpus* to be directed to the marshal of the United States for the Territory of Arizona, who, it is alleged, holds the petitioner under a judgment of the District Court of the United States for the Second Judicial District of that Territory, which condemned him to death for the crime of murder. This crime is alleged in the indictment to have been committed by the defendant, an Apache Indian, within said district, naming no county or other location.

The allegation of the petitioner is that the court which tried him had not at that time, and in the mode of trial which was pursued, any jurisdiction of the case against him. It is argued