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Opinion of the court.

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## MASON v. ROLLINS ET AL.

Three appeals in equity against collectors and the Commissioner of Internal Revenue dismissed, the pleadings not showing the citizenship required by the Judiciary Act; and the bills having been all filed subsequently to the 13th July, 1866, when the act of 1833, which gave jurisdiction to the courts of the United States of suits under the Internal Revenue Acts against collectors and others, without regard to citizenship, was repealed.

MOTION by *Mr. C. H. Hill, Assistant Attorney-General (Mr. Edward Roby, opposing)*, to dismiss three appeals from the Circuit Court for the Northern District of Illinois; the appeals being from decrees in equity dismissing the cases for want of jurisdiction.

The first bill described the complainant as a citizen of the State of Illinois, and one defendant (Rollins) as of the District of Columbia, and a citizen of the State of —, and other defendants (Allen and Ferguson) as citizens of the State of Illinois.

The second bill described the plaintiff as a citizen of the State of Illinois, and three defendants (Mann, Allen, and Ferguson) as citizens of the State of Illinois, and one defendant (Delano) as Commissioner of Internal Revenue, without averring that he was a citizen of any State.

The third bill described the plaintiff as a citizen of the State of Illinois, and did not aver that any of the defendants were citizens of any other State.

All the bills were filed subsequently to the 13th July, 1866, when the act of 1833, which gave jurisdiction to the courts of the United States of suits under the Internal Revenue Acts against collectors and others, without regard to citizenship, was repealed.\*

The CHIEF JUSTICE delivered the opinion of the court.

It is manifest that the averments of citizenship in neither

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\* *Insurance Co. v. Ritchie*, 5 Wallace, 544; 13 Stat. at Large, 241; 14 Id. 172

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Statement of the case in the opinion.

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of the bills are sufficient to give the Circuit Court jurisdiction under the Judiciary Act of 1789; and all were filed subsequent to the 13th of July, 1866.

When these suits were brought, therefore, there was no act in force giving jurisdiction, in cases such as those made by the records, to the courts of the United States. The Circuit Court was obliged, therefore, to dismiss the bill in each case for want of jurisdiction, and the judgment of that court in the several cases must be

AFFIRMED.

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INSURANCE COMPANY v. BARTON.

The granting or refusing to grant a motion for a new trial resting wholly in the discretion of the court where it is made, the action of such court is not ground for error.

ERROR to the Circuit Court for the District of Missouri.

*Mr. M. H. Carpenter, for the plaintiff in error; Mr. F. A. Dick, contra.*

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

The suit was brought by Barton upon a policy of insurance. Upon looking into the record we find that the case was tried by a jury; that evidence was adduced by both parties; that the court instructed the jury, and that they found a verdict for the plaintiff, upon which judgment was duly entered. All this was done without any exception being taken by the defendant. The assurers then moved the court to set aside the verdict and grant a new trial upon the following grounds:

That the verdict was against the evidence; that it was against the law and the instructions of the court; because the verdict was uncertain and insufficient. The court over-