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Tredway Vs. Sanger

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Court : US Supreme Court

Decided On : Apr-23-1883

Appeal No. : 107 U.S. 323

Appellant : Tredway

Respondent : Sanger

Judgement :

Tredway v. Sanger - 107 U.S. 323 (1883)
U.S. Supreme Court Tredway v. Sanger, 107 U.S. 323 (1883)

Tredway v. Sanger

Decided April 23, 1883

107 U.S. 323

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF CALIFORNIA

SYLLABUS

The endorsee 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 payee are citizens of the same state.

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

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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. 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 endorsee 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 endorsee 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

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under consideration, and cannot support this action in the circuit court of the United States where his assignor could not."

P. 49 U. S. 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 endorsee 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.

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