

to them by Owens, one of the makers thereof, for money then loaned to him? I can conceive of none, nor has any been suggested in the argument.

The jurisdiction of this court is presumably a beneficial one, and therefore the law conferring it is not to be strictly construed, but rather the exception to it. The exercise of this jurisdiction tends to promote confidence and commercial intercourse between the citizens of the several states of the Union, by furnishing them a comparatively impartial tribunal wherein to adjudicate and enforce the controverted and unsatisfied claims growing out of such intercourse.

The facts showing the true relations between the parties to this note may, as between themselves, be alleged and proven by parol, for any purpose affecting either of their rights or liabilities thereon. The right of the plaintiffs "to recover the contents" of this note from the defendants by an action in this court, and the liability of the defendants therein, are among these rights and liabilities. Therefore when it is necessary, to maintain the jurisdiction of the court in such an action, to show that the plaintiff, who upon the face of a note is in form an indorsee or assignee thereof, is in fact the payee of the same, it may be done.

On the facts stated in the complaint, the plaintiffs are the payees and first holders of this note. There never was any assignment of it; and the case does not come within the restriction of the judiciary act, nor the reason of it. The demurrer is overruled.

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GIBSON v. PETERS, (two cases.)

(Circuit Court, E. D. Virginia. October 30, 1888.)

These cases were reported in 35 Fed. Rep. 721. The opinion and supplemental opinion (page 729) there given by HUGHES, J., were followed by the entry of judgments for the plaintiff on the 18th day of July, 1888. As stated in the supplemental opinion filed by the district judge on that day, Judge BOND, the circuit judge who had presided at the trial, was still absent in Europe. On his return, and upon opening the court, the circuit judge, not concurring in the opinion of the district judge, nor in the judgments entered thereon, directed that the same be set aside and annulled. By sections 614, 650, U. S. Rev. St. the opinion of the circuit judge prevails, and the following order of BOND, J., is for the time being the law of the cases.

*Robert M. Hughes and Legh R. Page*, for plaintiff.  
*T. S. Garnett*, for defendant.

BOND, J. In this action, wherein argument was fully heard by the circuit judge and district judge, together sitting and holding the said circuit court, the parties thereto having by their written stipulation filed

herein waived a trial by jury, and submitted the whole matter of law and fact to the judgment of the court on the 10th day of January, 1888, and the court having taken time to consider of its judgment, it appearing now to the court that an opinion in writing by the district judge was filed herein on the 2d day of July, 1888, and in accordance therewith the district judge directed a judgment for the plaintiff to be entered by the clerk of this court, and that such judgment was so entered of record by the clerk on the 18th day of July, 1888, without the concurrence of the circuit judge in the said opinion, or in the judgment so entered thereon, in which said opinion, and judgment the circuit judge does not concur, it is ordered by the court that the said judgment so entered for the plaintiff on the 18th day of July, 1888, as aforesaid, be, and the same is hereby, set aside; and the court, upon the request of counsel for the plaintiff asking the benefit of a certificate of division of opinion, doth continue this cause for the entry of final judgment for the defendant until the next term of this court.

A similar order was entered in the equity case.

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**AMERICAN BELL TEL. Co. v. CUSHMAN TEL. & SERVICE Co. et al.**

(Circuit Court, N. D. Illinois. October 29, 1888.)

**PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.**

A telephone patentee, who has put his device into extensive use, and is receiving an income therefrom, is entitled to an injunction against its infringement, though he has withdrawn it from a particular state because of legislative interference limiting the rate of charges.

*In Equity.* On motion for injunction *pendente lite*.

Bill by American Bell Telephone Company against Cushman Telephone & Service Company, for infringement of letters patent.

*West & Bond, Geo. L. Roberts, and Chauncey Smith, for complainant.*  
*W. C. Goudy and C. A. Knight, for defendants.*

**BLODGETT, J.** This is a motion for an injunction *pendente lite* by reason of the alleged infringement of patent No. 174,465, granted to Alexander Graham Bell, March 7, 1876, and patent No. 186,787, granted to said Bell, January 30, 1877. The validity of the claims of these patents, of which infringement is charged, was sustained by the supreme court of the United States in what is known as the *Telephone Cases*, decided at the October term, 1887, and reported at length in 126 U. S. 1, 8 Sup. Ct. Rep. 778. Defendants admit that they use what is known as the "Cushman Telephone;" and the telephones made by that company were held by this court to infringe the complainant's patent, and the claims now in controversy, in the case of *American Bell Telephone Co. v. Cushman Telephone Co.*, decided in July last, (35 Fed. Rep. 734.) De-