

Grayson Vs. Virginia

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Court : US Supreme Court

Decided On : 1796

Appeal No. : 3 U.S. 320

Appellant : Grayson

Respondent : Virginia

Judgement :

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3 U.S. (3 Dall.) 320

BILL IN EQUITY

SYLLABUS

The general rule for the government of the proceedings of the court prescribes an adoption of that practice which is founded on the custom and usage of courts of admiralty and equity, constituted on similar principles, but the courts are authorized to make such deviations as are necessary to adapt the process and rules of the court to the peculiar circumstances of the country, subject to the

control of the legislature.

Mode of service of process at common law or equity in a suit against a state.

The service of the subpoena in this case being proved, Lewis moved at the last term that a *distringas* might be awarded in order to compel the state to enter an appearance, arguing from the analogy between a state and other bodies corporate that this was the proper mode of proceeding. The Court, however, postponed a decision on the motion in consequence of a doubt whether the remedy to compel the appearance of a state should be furnished by the Court itself or by the legislature. And, in the present term Lewis argued that the Court was competent to furnish all the necessary means for effectuating its own jurisdiction.

On 12 August, THE CHIEF JUSTICE delivered the following opinion.

By the Court:

After a particular examination of the powers vested in this Court in causes of equity as well as in causes of admiralty and maritime jurisdiction, we collect a general rule for the government of our proceedings, with a discretionary authority, however, to deviate from that rule where its application would be injurious or impracticable. The general rule prescribes to us an adoption of that practice, which is founded on the custom and usage of courts of admiralty and equity constituted on similar principles, but still it is thought that we are also authorized to make such deviations as are necessary to adapt the process and rules of the court to the peculiar circumstances of this country, subject to the interposition, alteration, and control of the legislature.

We have therefore agreed to make the following general orders, and the counsel in the present case will take his measures accordingly.

1. Ordered that when process at common law or in equity shall issue against a state, the same shall be served upon the governor or chief executive magistrate and the attorney-general of such state.

2. Ordered that process of subpoena issuing out of this Court in any suit in equity shall be served on the defendant sixty days before the return day of the said process, and further that if the defendant, on such service of the subpoena, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*.

Lewis then observed that the subpoena in this case had been issued on the same principles, but as the orders could only operate *in futuro*, he thought it best to withdraw his motion for a *distringas* and to pray that an alias subpoena might be awarded, which was accordingly done.

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