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Fowler Vs. Lindsey

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Court : US Supreme Court

Decided On : 1799

Appeal No. : 3 U.S. 411

Appellant : Fowler

Respondent : Lindsey

Judgement :

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SYLLABUS

A case which belongs to the jurisdiction of the Supreme Court on account of the interest a state has in the controversy must be a case in which a state is either nominally or substantially a party. It is not sufficient that a state may be consequentially affected.

Where a question of jurisdiction exists between different states of the union, one state may file in this Court a bill against the other praying to be quieted as to the

boundaries of the disputed territories, and the Court, in order to effectuate justice, may appoint commissioners to report those boundaries. There being no redress at law would be a sufficient reason for the interposition of the equitable powers of the Court.

A certiorari is not a proper proceeding to issue from a superior to an inferior court to remove a cause merely from a defect of jurisdiction.

If a state is really a party to a suit in an inferior court, a plea to the jurisdiction may be put in there, or perhaps without such a plea this Court would revise the judgment on a writ of error.

A decision between individuals upon the right of soil cannot affect the right of a state to jurisdiction over the same.

A certiorari can only issue as original process to remove a cause and change the venue where the superior court is satisfied that a fair and impartial trial will not otherwise be obtained, and it is sometimes used as auxiliary process where, for instance, diminution is alleged on a writ of error, but in such cases the superior court must have jurisdiction of the controversy.

A rule had been originally obtained in these actions (which were depending in the Circuit Court for the District of Connecticut) at the instance of the defendants requiring the plaintiff to show cause why a venire should not be awarded to summon a jury from some district other than that of Connecticut or New York, but it was changed by consent into a rule to show cause why the actions should not be removed by certiorari into the Supreme Court as exclusively belonging to that jurisdiction. On showing cause, it appeared that suits in the nature of ejectments had been instituted in the Circuit Court for the District of Connecticut to recover a tract of land, being part of the Connecticut gore which that state had granted to Andrew Ward and Jeremiah Hasley, and by whom it had been conveyed to the plaintiffs. The defendants pleaded that they were inhabitants of the State of New York; that the premises for which the suits were brought lay in the County of Steuben in the State of New York, and that the Circuit Court for the District of New

York or the courts of the state, and no other court, could take cognizance of the actions. The plaintiffs replied that the premises lay in the State of Connecticut, and issue being joined, a venire was awarded. On the return, however, the defendants challenged the array because the Marshal of the District of Connecticut, a resident and citizen of that state, had arrayed the jury by his deputy, who was also a citizen of Connecticut and interested as a purchaser or claimant in the Connecticut gore under the same title as the plaintiffs. The plaintiffs prayed oyer of the record and return, averred that the deputy marshal was not interested in the question in issue, and demurred to the challenge for being double and contrary to the record, which does not show that the jury was returned by the deputy marshal. The defendants joined in demurrer. The court overruled the challenge as it respected the general interest of the marshal and his deputy owing to their being citizens of Connecticut, but allowed it and quashed the array on account of the particular

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interest of the deputy, he being interested in the same tract of land under color of the same title as the plaintiffs.

That amended rule was argued, by Lewis and Hoffman (the Attorney General of New York), in favor of its being made absolute, and by Hillhouse of Connecticut against it, on the question, whether the suits ought to be considered as virtually depending between the States of Connecticut and New York. And the following opinions were delivered by the Court, THE CHIEF JUSTICE, however, declining, on account of the interest of Connecticut, to take any part in the decision, and CHASE and IREDELL, JUSTICES, being absent on account of indisposition.

WASHINGTON, JUSTICE.

The first question that occurs from the arguments on the present occasion respects the nature of the rights that are contested in the suits depending in the circuit court. Without entering into a critical examination of the Constitution and laws in relation to the jurisdiction of the Supreme Court, I lay down the following as a safe rule: that a case which belongs to the jurisdiction of the Supreme Court on

account of the interest that a state has in the controversy must be a case in which a state is either nominally or substantially the party. It is not sufficient that a state may be consequentially affected, for in such case (as where the grants of different states are brought into litigation) the circuit court has clearly a jurisdiction. And this remark furnishes an answer to the suggestions that have been founded on the remote interest of the state in making retribution to her grantees upon the event of an eviction.

It is not contended that the states are nominally the parties; nor do I think that they can be regarded as substantially the parties to the suits -- nay, it appears to me that they are not even interested or affected. They have a right either to the soil or to the jurisdiction. If they have the right of soil, they may contest it at any time in this Court, notwithstanding a decision in the present suits, and though they may have parted with the right of soil, still the right of jurisdiction is unimpaired. A decision, as to the former object between individual citizens can never affect the right of the state as to the latter object -- it is *res inter alios acta.* For suppose the jury in some cases should find in favor of the title under New York, and in others it should find in favor of the title under Connecticut, how would this decide the right of jurisdiction? And on what principle can private citizens, in the litigation of their private claims, be competent to investigate, determine, and fix the important rights of sovereignty?

The question of jurisdiction remaining, therefore, unaffected by the proceedings in these suits, is there no other mode by which it may be tried? I will not say that a state could sue at law for such an incorporeal right as that of sovereignty and jurisdiction, but even if a court of law would not afford a remedy, I can see no reason why a remedy should not be obtained in a court of equity. The State of New York might, I think, file a bill against the State of Connecticut praying to be quieted as to the boundaries of the disputed territory, and this Court, in order to effectuate justice, might appoint commissioners to ascertain and report those boundaries. There being no redress at law would be a sufficient reason for the

interposition of the equitable powers of the Court, since it is monstrous to talk of existing rights without applying correspondent remedies.

But as it is proposed to remove the suits under consideration from the circuit court into this Court by writs of certiorari, I ask whether it has ever happened in the course of judicial proceedings that a certiorari has issued from a superior to an inferior court to remove a cause merely from a defect of jurisdiction? I do not know that such a case could ever occur. If the state is really a party to the suit in the inferior court, a plea to the jurisdiction may be there put in, or perhaps without such a plea this Court would reverse the judgment on a writ of error. And if the state is not a party, there is no pretense for the removal.

A certiorari, however, can only issue as original process to remove a cause and change the venue when the superior court is satisfied that a fair and impartial trial will not otherwise be obtained, and it is sometimes used as auxiliary process where, for instance, diminution of the record is alleged on a writ of error. But in such cases the superior court must have jurisdiction of the controversy. And as it does not appear to me that this Court has exclusive, or original jurisdiction of the suits in question, I am of opinion that the rule must be discharged.

PATERSON, JUSTICE.

The rule to show cause why a venire should not be awarded to summon a jury from some district other than that of Connecticut or New York cannot be supported. It has indeed been abandoned. The argument proceeds on the ground of removing the cause into this Court, as having exclusive jurisdiction of it because it is a controversy between states. The Constitution of the United States and the act of Congress, although the phraseology be somewhat different, may be construed in perfect conformity with each other. The present is a controversy between individuals respecting their right or title to a particular tract of land, and

cannot be extended to third parties or states. Its decision will not affect the State of Connecticut or New York, because neither of them is before the Court, nor is it

possible to bring either of them, as a party, before the Court in the present action. The state, as such, is not before us. Besides, if the cause should be removed into this Court, it would answer no purpose, for I am not able to discern by what authority we could change the venue or direct a jury to be drawn from another district. As to this particular there is no devolution of power either by the Constitution or law. The authority must be given; we cannot usurp or take it.

If the point of jurisdiction be raised by the pleadings, the circuit court is competent to its decision, and therefore the cause cannot be removed into this Court previously to such decision. To remove a cause from one court to another on the allegation of the want of jurisdiction is a novelty in judicial proceedings. Would not the certiorari to remove be an admission of the jurisdiction below?

Neither of the motions is within the letter or spirit of the Constitution or law.

How far a suit may with effect be instituted in this Court to decide the right of jurisdiction between two states, abstractedly from the right of soil, it is not necessary to determine. The question is a great one, but not before us.

I regret the incompetency of this Court to give the aid prayed for. No prejudice or passion, whether of a state or personal nature, should insinuate itself in the administration of justice. Jurymen especially should be above all prejudice, all passion, and all interest in the matter to be determined. But it is the duty of judges to declare, and not to make, the law.

CUSHING, JUSTICE.

These motions are to be determined rather by the Constitution and the laws made under it than by any remote analogies drawn from English practice.

Both by the Constitution and the Judicial Act, the Supreme Court has original jurisdiction where a state is a party. In this case, the state does not appear to be a party by anything on the record. It is a controversy or suit between private citizens only -- an action of ejectment in which the defendant pleads to the jurisdiction that the land lies in the State of New York, and issue is taken on that fact.

Whether the land lies in New York or Connecticut does not appear to affect the right or title to the land in question. The right of jurisdiction and the right of soil may depend on very different words, charters, and foundations. A decision of that issue can only determine the controversy as between the private citizens who are parties to the suit, and the event only

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give the land to the plaintiff or defendant, but could have no controlling influence over the line of jurisdiction, with respect to which, if either state has a contest with the other or with individuals, the state has its remedy, I suppose, under the Constitution and the laws, by proper application, but not in this way, for she is not a party to the suits.

If an individual will put the event of his cause in a plea of this kind on a fact which is not essential to his right, I cannot think it can prejudice the right of jurisdiction appertaining to a state.

I agree with the rest of the Court that neither of the motions can be granted.

By the court:

Let the rule be discharged.

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