

Conolly Vs. Taylor

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Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 556

Appellant : Conolly

Respondent : Taylor

Judgement :

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27 U.S. (2 Pet.) 556

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

When there is no change of the parties to a suit during its progress, a jurisdiction depending on the condition of the parties is governed by that condition as it was at the commencement of the suit.

If an alien should sue a citizen and should omit to state the character of the parties in the bill, though the court could not exercise jurisdiction while the defect in the bill remained, yet it might, as is every day's practice, be corrected at any time before the hearing, and the court would not hesitate to decree in the cause.

The suit was originally instituted by aliens and a citizen of the United States as complainants against the defendants, citizens of the United States. In the progress of the cause and before the final hearing, the name of the citizen of the United States who was one of the plaintiffs was struck out and he was made a defendant by the court. It was held the substantial parties, plaintiffs, those for whose benefit the decree is sought are aliens, and the court has original jurisdiction between them and all the defendants. But they prevented the exercise of this jurisdiction by uniting with themselves a person between whom and one of the defendants the court could not take jurisdiction strike out his name as a complainant, and the impediment is removed to the exercise of that original jurisdiction which the court possessed between the alien parties and all the citizen defendants. There is no objection founded on convenience or law to this course.

In the Circuit Court of Kentucky, on 20 February, 1818, Thomas Conolly, James Conolly, Margaret Conolly, David David, and Francis Badley, *aliens and subjects of the King of the United Kingdoms of Great Britain and Ireland*, and Samuel Mifflin, *a citizen of the State of Pennsylvania*, filed their bill against certain defendants, claiming to have an equitable title to a large tract of lands in right of Colonel John Conolly deceased, situated at the Falls of Ohio in the State of Kentucky. The defendants in the bill were Richard Taylor, Fortunatus Cosby and Henry Clay, citizens of Kentucky, and *William Lytle, described in the subpoena as a*

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citizen of Kentucky, but who was in fact a citizen of the State of Ohio. The subpoena was served on all the defendants, Mr. Lytle having been found by the process in Kentucky.

The answer of Mr. Lytle protests against the jurisdiction of the circuit court, he being a citizen of the State of Ohio.

In the further progress of the suit before the circuit court at May term, 1823, on motion on the part of the complainants, the name of Samuel Mifflin was struck out of the bill as a plaintiff, and he was made a defendant, after which he answered an amended bill filed against him.

When, therefore, the case came on to a hearing in the circuit court at May term, 1826, the parties complainants were all aliens and subjects of the King of Great Britain and Ireland; two of the defendants were citizens of the State of Kentucky, one of them was a citizen of the State of Ohio, and Samuel Mifflin was a citizen of the State of Pennsylvania.

The cause was argued upon an objection to the jurisdiction of the case in the Circuit Court of Kentucky and upon its merits. This Court being divided upon the merits, and no opinion having been expressed upon any other question in the cause but that of jurisdiction, the reporter does not consider himself permitted to state any of the facts of the case, or the arguments of counsel, other than those connected with that point.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

As an objection was made to the jurisdiction of the Court in this case, it may be proper, in order to prevent a possible misunderstanding of the principle on which jurisdiction is sustained, briefly to state it.

The bill is filed in the Court of the United States sitting in Kentucky by aliens and by a citizen of Pennsylvania. The defendants are citizens of Kentucky, except one who is a citizen of Ohio, on whom process was served in Ohio. The jurisdiction of the court cannot be questioned so far as respects the alien plaintiffs. As between the citizen of Pennsylvania and of Ohio, neither of them being a citizen of the state in which the suit was brought, the court could exercise no jurisdiction. Had the

cause come on for a hearing in this state of parties, a decree could not have been made in it for the want of jurisdiction. The name of the citizen plaintiff, however, was struck out of the bill before the cause was brought before the court, and the question is whether the original defect was cured by this circumstance, whether the court, having jurisdiction over all the parties then in the cause, could make a decree.

The counsel for the defendants maintain the negative of

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this question. They contend that jurisdiction depends on the state of the parties at the commencement of the suit, and that no subsequent change can give or take it away. They say that if an alien becomes a citizen pending the suit, the jurisdiction which was once vested is not divested by this circumstance. So if a citizen sue a citizen of the same state, he cannot give jurisdiction by removing himself and becoming a citizen of a different state.

This is true, but the Court does not understand the principle to be applicable to the case at bar. Where there is no change of party, a jurisdiction depending on the condition of the party is governed by that condition, as it was at the commencement of the suit. The court in the first case had complete original jurisdiction; in the last, it had no jurisdiction either in form or substance. But if an alien should sue a citizen, and should omit to state the character of the parties in the bill, though the court could not exercise its jurisdiction while this defect in the bill remained, yet it might, as is every day's practice, be corrected at any time before the hearing, and the court would not hesitate to decree in the cause.

So in this case. The substantial parties plaintiffs, those for whose benefit the decree is sought, are aliens, and the court has original jurisdiction between them and all the defendants. But they prevented the exercise of this jurisdiction by uniting with themselves a person between whom and one of the defendants the court cannot take jurisdiction. Strike out his name as a complainant, and the impediment is removed to the exercise of that original jurisdiction which the court

possessed between the alien plaintiffs and all the citizen defendants. We can perceive no objection founded in convenience or in law to this course.

Upon examining the record, the judges are divided in opinion on the question whether the defendants, who are purchasers, have taken the lands charged with the equity which was attached to it while in possession of Campbell and his heirs or are to be considered as purchasers without notice. It would be useless to state the arguments and facts in support of each opinion. The decree is

Affirmed by a divided Court.

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