

New Jersey Vs. New York

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Court : US Supreme Court

Decided On : 1830

Appeal No. : 28 U.S. 461

Appellant : New Jersey

Respondent : New York

Judgement :

New Jersey v. New York - 28 U.S. 461 (1830)

U.S. Supreme Court New Jersey v. New York, 28 U.S. 3 Pet. 461 461 (1830)

New Jersey v. New York

28 U.S. (3 Pet.) 461

SYLLABUS

The subpoena issued on the filing of a bill in which the State of New Jersey were complainant and the State of New York was defendant was served upon the Governor and Attorney General of New York sixty days before the return day, the day of the service and return inclusive. A second subpoena issued which was served on the Governor of New York only, the attorney general being absent. There was no appearance by the State of New York.

By the Court:

"This is not like the case of several defendants, where a service on one might be good, though not on another. Here, the service prescribed by the rule is to be on the governor and on the attorney general. Service on one is not sufficient to entitle the Court to proceed."

Upon an application by the counsel for the State of New Jersey that a day might be assigned to argue the question of the jurisdiction of this Court to proceed in the case, the Court said it had no difficulty in assigning a day. It might be as well to give notice to the State of New York, as it might employ counsel in the interim. If, indeed, the argument should be merely *ex parte*, the Court could not feel bound by its decision if the State of New York desired to have the question again argued.

A notice was given by the solicitors for the State of New Jersey to the Governor of the State of New York, dated 12 January, 1830, stating that a bill had been filed on the equity side of the supreme Court by the State of New Jersey against the people of the State of New York, and that on 13 February following, the Court would be moved in the case for such order as the Court might deem proper, &c.; Afterwards, on the day appointed, no counsel having appeared for the State of New York on the motion of the counsel for the State of New Jersey for a subpoena to be served on the Governor and Attorney General of the State of New York, the Court said:

"As no counsel appears to argue the motion on the part of the State of New York, and the precedent for granting it has been established upon very grave and solemn argument, the Court does not require an *ex parte* argument in favor of its authority to grant the subpoena, but will follow the precedent heretofore established. The State of New York will be at liberty to contest the proceeding at a future time in the course of the cause if it shall choose so to do."

A bill was filed on the equity side of the Court by the State of New Jersey on 20 February, 1829, against the people of the State of New York, and on motion of Mr. Wirt for the complainants, a subpoena was awarded by the Court on 16 March,

1829. The writ issued on 26 May, 1829. A copy of the subpoena and of the bill

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was served on the Attorney General of New York personally on 5 June, 1829, by the Marshal of the Southern District of New York and on the acting governor of the state by transmitting the same to him by letter. The acting governor acknowledged "due service of the same" by an endorsement on the subpoena, signed by him on 5 June, 1829.

The subpoena was returnable on the first Monday in August, 1829, being the third day of that month and fifty-nine days after the service. And no appearance having been entered for the defendants, on 6 October, 1829, an alias subpoena was issued returnable to January term, 1830. This writ was served on the Acting Governor of New York on 9 November, 1829, sixty-one days before the term, by delivering a true copy of the same to him. The Marshal of the Southern District of New York returned, as to the Attorney General of New York, "the Attorney General of New York, Green C. Bronson, Esq. not found, being absent, and not within my district."

Together with the alias subpoena, there was served on the Acting Governor of the State of New York in the manner before stated, a notice signed by the solicitor for the complainants in the following terms:

"To Enos T. Throop, Esquire, Governor of the State of New York."

"By virtue of a writ of subpoena to you directed and herewith shown, you are required to be and appear, on behalf of the people of the State of New York, before the Supreme Court of the United States holding pleas in equity on the second Monday in January next at the City of Washington in the District of Columbia, being the present seat of the national government of the United States, to answer concerning those things which shall be objected to the said state in a bill in equity now depending in the said Court, wherein the State of New Jersey is complainant and the people of the State of New York are defendants, to do and receive on behalf of the said State of New York what further the said Court shall

have considered in this behalf.

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And this you may in no wise omit, under the penalty of \$500, dated the first Monday of August, in the year of our Lord 1829."

A similar notice was issued directed to the Attorney General of New York, but was not served upon him.

No appearance having been filed on 12 January, 1830, Mr. Southard, Attorney General of New Jersey, and Mr. Wirt, solicitors for the complainants, addressed to the governor of the state and the Attorney General of New York the following letter:

"A bill having been filed on the equity side of the Supreme Court of the United States by the State of New Jersey against the people of the State of New York, a copy whereof, with the usual and regular process of subpoena to appear and answer the said bill, having been duly served upon you, and you having failed to appear on the return day of the said process, notice is hereby respectfully given to you, that we, as solicitors for the State of New Jersey, complainant in the said bill, will move the said Supreme Court of the United States, on Saturday, 13 February next, to proceed *ex parte* in the said cause, and to take the said bill *pro confesso*, and render a decree in conformity with the prayer thereof according to the rules of practice established in the said Court or for such other order as to the said Court may seem meet, unless on or before the said 13 February next, you shall have appeared and answered the said bill or shall show sufficient cause to the contrary."

The subpoena issued on the filing of a bill in which the State of New Jersey was complainant and the State of New York was defendant was served upon the Governor and Attorney General of New York sixty days before the return day, the day of the service and return inclusive. A second subpoena issued which was served on the Governor of New York only, the attorney general being absent. There was no appearance by the State of New York.

By the Court:

"This is not like the case of several defendants, where a service on one might be good though not on another. Here the service prescribed by the rule is to be on the governor and on the attorney general. A service on one is not sufficient to entitle the Court to proceed."

Upon an application by the counsel for the State of New Jersey that a day might be assigned to argue the question of the jurisdiction of this Court to proceed in the case, the Court said it had no difficulty in assigning a day. It might be as well to give notice to the State of New York, as it might employ counsel in the interim. If indeed the argument should be merely *ex parte*, the Court could not feel bound by its decision if the State of New York desired to have the question again argued.

A notice was given by the solicitors for the State of New Jersey to the Governor of the State of New York, dated 12 January, 1830, stating that a bill had been filed on the equity side of the Supreme Court by the State of New Jersey against the people of the State of New York, and that on 13 February following the Court would be moved in the case for such order as the Court might deem proper, &c.; Afterwards, on the day appointed, no counsel having appeared for the State of New York, on the motion of the counsel for the State of New Jersey for a subpoena to be served on the Governor and Attorney General of the State of New York, the Court said:

"As no counsel appears to argue the motion on the part of the State of New York, and the precedent for granting it has been established upon very grave and solemn argument, the Court does not require an *ex parte* argument in favor of its authority to grant the subpoena, but will follow the precedent heretofore established. The State of New York will be at liberty to contest the proceeding at a future time in the course of the cause if it shall choose so to do."

This letter was delivered to the Attorney General of New York, then in the City of Washington, on 13 January, 1830, and to the Governor of the state on 21 January, 1830.

The motion of the solicitors for the plaintiffs coming on for argument, on 13 February, 1830, Mr. Wirt said that there are two questions to be presented: the first whether there had been a sufficient service of the subpoena, supposing the Court to have jurisdiction to issue it without an act of Congress. The second was whether such jurisdiction existed.

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The first subpoena was served upon the governor and attorney general sixty days before the return day, the day of the service and of the return inclusive. Whether this was sufficient according to the course of the Court he was desirous to know. The second subpoena was served on the governor only, the attorney general being absent. Was it necessary, to make the service good that it should be served upon both? Mr. Wirt referred to the rules of the Court on this subject, particularly the rule adopted in August term 1796.

MR. CHIEF JUSTICE MARSHALL said that this was not like the case of several defendants, where a service on one might be good, though not on another. Here the service prescribed by the rule was to be upon the governor and upon the attorney general. A service on one was not sufficient to entitle the Court to proceed against the state.

Mr. Wirt then said that he should be glad to have a day assigned to argue the point of jurisdiction, if the Court chose, before another subpoena issued, as it might, if decided against the plaintiffs, prevent unnecessary expenses. He would be willing that it should be at so distant a day as to enable the State of New York to appear and employ counsel. He mentioned three weeks from the day of the application.

MR. CHIEF JUSTICE MARSHALL said the Court had no difficulty in assigning that day for the motion. It might be as well to give notice to the State of New York, as they might employ counsel in the interim. If indeed the argument should be merely *ex parte*, the Court would not feel bound by its decision if the State of New York afterward desired to have the question again argued. *

Motion granted, and notice directed.

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In conformity with the direction of the Court, notice of the day appointed for hearing the motion for a subpoena was

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forthwith served on the Governor and on the Attorney General of the State of New York, and on the day assigned by the Court, 6 March, 1830, Mr. Southard, Attorney General of the State of New Jersey, and Mr. Wirt attended as counsel for the complainants. No counsel appeared for the State of New York.

The counsel for the State of New Jersey inquired of the Court if it would hear an argument on the motion that a subpoena might issue to be served on the Governor and Attorney General of the State of New York, stating that they were willing and prepared to go into the same.

MR. CHIEF JUSTICE MARSHALL said, as no one appears to argue the motion on the part of the State of New York, and the precedent for granting the process has been established upon very grave and solemn argument in the case of [Chisholm v. Georgia](#), 2 Dall. 419, and [Grayson v. Virginia](#), 3 Dall. 320, the Court did not think it proper to require an *ex parte* argument in favor of their authority to grant the subpoena, but will follow the precedent heretofore established.

The Court is the more disposed to adopt this course as the State of New York will still be at liberty to contest the

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proceeding at a future time in the course of the cause if it shall choose to insist upon the objection.

On consideration of the motion made by Messrs. Southard and Wirt, solicitors for the complainant in this cause, on Saturday, 13 February, of the present term of

this Court, praying the Court to postpone the consideration of this cause until Saturday, 6 March, of the present term of this Court, with leave to the counsel for the said complainant on that day either to argue the point of jurisdiction or to move the Court for a decree in pursuance of the notice therein recited, or for new process in case the Court should determine that the service of the process in this case was not sufficient to entitle the Court to proceed against the State of New York, or for such other order as to the Court may seem meet, it is considered by the Court that as no one appears to argue this motion on the part of the State of New York, and the precedent has been established in the case of *Chisholm v. Georgia*, the Court does not consider it proper to require an *ex parte* argument, but will follow the precedent so established after grave and solemn argument. The Court is the more disposed to adopt this course as the State of New York will be at liberty to contest this proceeding at any time in the course of the cause. Whereupon it is ordered by the Court that as the service of the former process in this cause was defective inasmuch as it was not served sixty days before the return day thereof as required by the rules of this Court, process of subpoena be, and the same is hereby awarded as prayed for by the complainant.

* The following letters, addressed by the Attorney General of New York to the Clerk of the Court, dated July 27, 1829, and to THE CHIEF JUSTICE and the Associate Justices dated January 8, 1830, were read during the discussion.

"Utica, N.Y. July 27, 1829"

"William Thomas Carroll, Esquire, Clerk of the Supreme Court of the United States."

"SIR:"

"The Governor and Attorney General of the State of New York were recently served with the copy of a bill in equity, said to have been exhibited in the Supreme Court of the United States, by 'The State of New Jersey v. The People of the State of New York,' and with a subpoena in that cause to appear on the first Monday of August next."

"I beg leave respectfully to say that such service is regarded on the part of the State of New York as utterly void, because the mode adopted is unknown to the common law, is not authorized by any statute of the United States, nor warranted by any existing rule or order of the Court out of which the process issued. A rule on the subject of the service of process was adopted in August term, 1796, 3 Dall. 320, 335, but this rule, so far as I have observed, has been omitted in every subsequent publication of the rules of the Supreme Court, and is no doubt obsolete."

"Entertaining this view of the subject, it is supposed that no proceeding will be had in the cause, either in vacation or at term, until the Court shall have directed the mode of serving such process and the prescribed course shall have been pursued."

"Whether the Court has been clothed with power to compel the appearance of a state as defendant in an original suit or proceeding is a question, among others, which will no doubt receive from that high tribunal all the consideration that its importance demands before any order shall be made in the premises."

"I will thank you to hand this to the Court if the subject shall ever be presented to its consideration, and should any rule or order be made in, or affecting this cause, please send a certified copy, addressed to me at Albany."

"I am, Sir, with great respect,"

"Your obedient servant,"

"GREEN C. BRONSON"

"Attorney General of New York"

"Washington City, January 8, 1830"

"To the Honorable THE CHIEF JUSTICE and his Associate Justices of the Supreme Court of the United States."

"A bill has been exhibited in this Court by the State of New Jersey against the people of the State of New York concerning the boundary line between the two states, and a subpoena to appear and answer, with a copy of the bill, has been served upon the Governor of the State of New York. A notice has recently been served that on the 18th instant, the Court would be moved to take the bill *pro confesso* and proceed to a decree for the want of an appearance."

"I beg leave respectfully to say that the opinion is entertained on the part of the State of New York that this Court cannot exercise jurisdiction in such a case without the authority of an act of Congress for carrying into execution that part of the judicial power of the United States which extends to controversies between two or more states."

"The Governor of the State of New York has made a communication upon the subject of this suit to the legislature now in session, but it has not yet been acted upon so far as I have been advised. Whether the legislature will authorize any person to appear and discuss the question of jurisdiction or whether, for the purpose of obtaining a judicial decision upon the merits of an unfortunate controversy, it will order an appearance, waiving the question of jurisdiction, I am at this time unable to determine."

"I have deemed it proper to make this communication to explain what might otherwise be supposed a want of respect for this Honorable Court on the part of the executive of New York."

"GREEN C. BRONSON"

"Attorney General of New York"

* The following is a copy of the subpoena awarded by the Court:

"The President of the United States to the Governor and the Attorney General of the State of New York, greeting:"

"For certain causes offered before the Supreme Court of the United States, holding jurisdiction in equity, you are hereby commanded and strictly enjoined,

that, laying all matters aside and notwithstanding any excuse, you personally be and appear on behalf of the people of the said State of New York before the said Supreme Court, holding jurisdiction in equity, on the first Monday in August next, at the City of Washington in the District of Columbia, being the present seat of the national government of the United States, to answer concerning the things which shall then and there be objected to the said state, and to do further and receive on behalf of the said state what the said Supreme Court, holding jurisdiction in equity, shall have considered in this behalf, and this you may in no wise omit, under the penalty of \$500."

"Witness, the honorable John Marshall, Esquire, Chief Justice of the said Supreme Court at Washington City, the second Monday in January, being the 11th day of said month, in the year of our Lord 1830, and of the independence of the United States the fifty-fourth."

"WILLIAM THOMAS CARROLL"

"Clerk of the Supreme Court of the United States"

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