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Brown Vs. Keene

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Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 112

Appellant : Brown

Respondent : Keene

Judgement :

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Brown v. Keene

33 U.S. (8 Pet.) 112

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

A petition filed in the District Court of Louisiana averred that the plaintiff, Richard Raynal Keene, is a citizen of the State of Maryland and that James Brown, the defendant, is a resident of the State of Louisiana, holding his fixed and permanent

domicile in the Parish of St. Charles.

The decisions of this Court require that the averment of jurisdiction shall be positive and that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.

A citizen of the United States may become a citizen of that state in which he has a fixed and permanent domicile, but the petition does not aver that the plaintiff is a citizen of the United States.

The Constitution extends the judicial power to "controversies between citizens of different states," and the Judicial Act gives jurisdiction "in suits between a citizen of the state where the suit is brought and a citizen of another state."

The cases of *Bingham v. Cabot,* 3 Dall. 382, 1 Cond. 170; *Abercrombie v. Dupuis,* 1 Cranch 343 [omitted]; *Wood v. Wagnon,* 2 Cranch 9; 1 Cond. 335; *Capron v. Vanorden,* 2 Cranch 126, cited.

In the district court, the defendant in error, Richard R. Keene, filed a petition, in which he stated himself to be a citizen of the State of Maryland, against James Brown, a citizen or resident of the State of Louisiana, holding his fixed and permanent domicile in the Parish of St. Charles in the district aforesaid, claiming damages for an alleged nonperformance of a contract relating to the conveyance of a lot of ground, part of the batture at New Orleans.

To this petition Mr. Brown filed an answer by his attorney, Isaac T. Preston, Esq., in which he objects to the jurisdiction of the district court on the ground that the plaintiff as well as the respondent is a citizen of the State of Louisiana. The answer then proceeds to deny all the material allegations in the petition.

The district court made a decree in favor of the petitioner, from which the respondent prosecuted a writ of error to this Court.

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

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The first error assigned in the proceedings is that the petition, which, in the practice of Louisiana, is substituted for a declaration, does not show with sufficient certainty that the parties were with the jurisdiction of the Court. If this objection be well founded, it is undoubtedly fatal.

The petition avers that the plaintiff, Richard Raynal Keene, is a citizen of the State of Maryland and that James Brown, the defendant, is a citizen or resident of the State of Louisiana, holding his fixed and permanent domicile in the Parish of St. Charles. The petition, then, does not aver positively that the defendant is a citizen of the State of Louisiana, but in the alternative, that he is a citizen or a resident. Consistently with this averment, he may be either.

The additional words of description "holding his fixed and permanent domicile in the Parish of St. Charles" do not aid this defective description. A citizen of the United States may become a citizen of that state in which he has a fixed and permanent domicile, but the petition does not aver that the plaintiff is a citizen of the United States. The question is whether the jurisdiction of the court is sufficiently shown by these averments.

The Constitution extends the judicial power to "controversies between citizens of different states," and the Judicial Act gives jurisdiction, "in suits between a citizen of the state where the suit is brought and a citizen of another state."

The decisions of this Court require that the averment of jurisdiction shall be positive and that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.

In *Bingham v. Cabot,* 3 Dall. 382, 1 Cond. 170, the Court held clearly that it was necessary to set forth the citizenship (or alienage, when a foreigner was concerned) of the respective parties in order to bring the case within the

jurisdiction of the Court, and that the record was in that respect defective.

In *Abercrombie v. Dupuis,* 1 Cranch 343, the plaintiffs below aver "that they do severally reside without

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the limits of the District of Georgia, to-wit, in the State of Kentucky." The defendant is called "Charles Abercrombie, of the District of Georgia, aforesaid." The judgment in favor of the plaintiff below was reversed on the authority of the case of *Bingham v. Cabot.*

In *Wood v. Wagnon,* 2 Cranch 9, the judgment in favor of the plaintiff below was reversed because his petition did not show the jurisdiction of the Court. It stated the plaintiff to be a citizen of the State of Pennsylvania and James Wood, the defendant, to be "of Georgia, aforesaid."

Capron v. Vanorden, 2 Cranch 126, was reversed, because the declaration did not state the citizenship or alienage of the plaintiff in the circuit court.

The same principle has been constantly recognized in this Court.

The answer of James Brown asserts that both plaintiff and defendant are citizens of the State of Louisiana.

Without indicating any opinion on the question whether any admission in the plea can cure an insufficient allegation of jurisdiction in the declaration, we are all of opinion that this answer does not cure the defect of the petition. If the averment of the answer may be looked into, the whole averment must be taken together. It is that both plaintiff and defendant are citizens of Louisiana.

The decree of the court for the District of Louisiana is to be

Reversed, that court not having jurisdiction, and the appeal to be dismissed.

The cross-appeal, *Keene v. Brown,* is to be

Dismissed, the Court having no jurisdiction.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana and was argued by counsel, on consideration whereof it is the opinion of this Court that the said district court could not entertain jurisdiction of this cause, and that consequently this Court has not jurisdiction in this cause but for the purpose of reversing the judgment of the said district court entertaining said jurisdiction, whereupon it is ordered and adjudged by this Court that the judgment of

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the said district court be and the same is hereby reversed, and that this writ of error be and the same is hereby dismissed for the want of jurisdiction. All of which is hereby ordered to be certified to the said district court under the seal of this Court.

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