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Mcmicken Vs. Webb

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Court : US Supreme Court

Decided On : 1837

Appeal No. : 36 U.S. 25

Appellant : Mcmicken

Respondent : Webb

Judgement :

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McMicken v. Webb

36 U.S. (11 Pet.) 25

ERROR TO THE DISTRICT COURT FOR

THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

McMicken and Ficklin were in partnership, as merchants in the State of Louisiana, and at the dissolution of the connection, Ficklin agreed to purchase the half of the stock belonging to McMicken, and after the partnership was dissolved gave him, in

payment for the same, a promissory note, payable, after its date to the order of McMicken and Ficklin, which was executed by Ficklin, Jedediah Smith, and Amos Webb, by which they promised, jointly and severally, to pay the amount of the note. Although the note was made payable to the order of McMicken and Ficklin, the latter was in no wise interested in it as the payee

thereof. McMicken is a citizen of Ohio, and the drawers of the note were citizens of the State of Louisiana. Amos Webb resided in the Western District of Louisiana, but when the process in this suit was served upon him, he was in

New Orleans, in the Eastern District. The defendant, Webb, denied the jurisdiction of the District Court of the United States for the Eastern District of Louisiana, alleging that he was a citizen of the Western District. The defendants pleaded in abatement and to the jurisdiction that the suit should have been brought in the name of both the payees, and at the time it was given, Ficklin was a citizen of Louisiana; this suit could not, therefore, be brought in the district court of the United States.

The residence of a party in another district of a state than that in which the suit is brought in a court of the United States does not exempt him from the jurisdiction of the court. The division of a state into two or more districts, cannot affect the jurisdiction of the court on account of citizenship. If a party is found in the district in which he is sued, the case is out of the prohibition of the Judiciary Act, which declares that

"No civil suit shall be brought in the courts of the United States against a defendant by any original process in any other district than that whereof he is an inhabitant or in which he shall be found at the time of serving the writ."

The objection to the jurisdiction of the court on the ground that the note was given to Ficklin and McMicken, and as Ficklin was a citizen of Louisiana, the suit is interdicted by the prohibition of the Judiciary Act, which declares that the courts of the United States shall not have cognizance of a suit in favor of an assignee of a chose in action unless a suit could have been prosecuted in said court for the

same if no assignment had been made, except in cases of foreign bills of exchange, cannot be sustained. Ficklin never had any interest as payee in the note. Although the note had been given in the names of both persons, it was for the sole and individual benefit of McMicken, and there was no interest which Ficklin could assign.

The plaintiff in error filed his petition in the court below averring that he was a citizen of and resident of the State of Ohio, claiming

that the defendant, Amos Webb, who was also averred to be a citizen and resident of the State of Louisiana, with Mary Ann Smith, in her own capacity, and also as tutrix to Catharine Smith and Sarah Smith, minor children and heirs of Jedediah Smith, who was deceased and whom the said Mary Ann, as his widow, survived, having since his death intermarried with Ira Smith, who was therefore the tutor of said children, all of whom also were citizens of and resident in the State of Louisiana, were jointly and severally indebted to the plaintiff in the sum of $4,866.93 1/2, besides interest and costs. The plaintiff averred that said indebtedness depended upon the following facts:

In 1815, the petitioner, the plaintiff, and one James H. Ficklin, formed a co-partnership, and did business in the Parish of Feliciana, in the State of Louisiana, under the name of McMicken & Ficklin; that on or about 8 September, 1817, the partnership was dissolved by mutual consent and the stock of merchandise then on hand the said Ficklin agreed to take to his own account and to pay for one-half of the same to the petitioner at the original cost with the addition of five percentum, to conclude which agreement, the said Ficklin thereupon executed the note of which the following is a copy:

"$4,866.93 1/2 St. Francisville, Sept. 20, 1817"

"On 1 March 1819, we or either of us promise to pay, jointly or separately, unto McMicken & Ficklin or order four thousand eight hundred and sixty six dollars, ninety-three and one-half cents, being for value received, with ten percent interest,

after due until paid."

"JAMES H. FICKLIN"

"JED. SMITH"

"AMOS WEBB"

The petitioner then averred that the note was made payable to McMicken & Ficklin; that it was in fact and intended so to be for his (petitioner's) portion of said partnership property, the same having been made, after said firm had been dissolved, the joint name being used merely for the petitioner's sole benefit, the said Ficklin being in no wise a party thereto, except as one of the obligors. The petitioner further averred that said Mary Ann Smith and her two said minor children (Catharine and Sarah) owned and possessed

all the property and estate of said Jedediah Smith; the said Catharine, in right of her community, and the said children as heirs, and by reason of which they had become obligated, *in solido* to pay to the petitioner the amount of the note aforesaid. A citation was prayed for in the usual form.

Service was legally made, and on 11 February 1835, Webb, one of the defendants, appeared by his attorney and filed three pleas to the jurisdiction of the court. The other defendants, Mary Ann Smith and her children (Catharine and Sarah), appeared on the same day by attorney and filed two pleas to the jurisdiction. The pleas by all the defendants, with the exception of the first, were the same, and they presented the same questions for consideration.

The first plea by Webb was

"That while he admits he is a citizen of the State of Louisiana and that he was in New Orleans when the citation was served, he avers that he resides in the Parish of St. Landry, in the Western District of said Louisiana, wherefore he prays judgment and whether the court will take further cognizance of the cause, as

regards him, or that the suit may be transferred to said Western District of Louisiana, at the cost of the petitioner."

The second plea, which was common to all the defendants, averred that as the note stated in the petition was made payable to McMicken & Ficklin -- that as the petitioner could only bring suit thereon by virtue of some assignment thereof, and protesting that there was no such assignment, it did not appear by averment in the petition that said McMicken & Ficklin, comprising the payees of said note, could have prosecuted their suit against the makers thereof in this Court. To these statements was added the general prayer that the court will not take jurisdiction. The third plea averred that it did not appear by the petition that the payees, at the time said note was made, could have prosecuted, or that the makers could have been prosecuted, it in the district court. Several other pleas appeared in the record, but they presented matters in bar, and as they were not considered by the court below, they are not stated.

In December, 1835, the cause came on for hearing, and the judgment of the court is thus recorded:

"The court, having maturely considered the plea to the jurisdiction made in this case, now orders that the same be sustained and that the plaintiff's petition be dismissed at his costs. "

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The plaintiff prosecuted a writ of error to this Court.

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THOMPSON, Justice, delivered the opinion of the Court:

This case comes before this Court on a writ of error from the District Court of the United States in and for the Eastern District of the State of Louisiana. The suit in the court below was commenced by petition, in which the cause of action is set out, informally but substantially as follows:

That the defendants are jointly and severally indebted to the plaintiff

in the sum of $4,866.93, besides interest and costs; for this, to-wit, that some time in the year 1815, the petitioner and one James H. Ficklin formed a co-partnership and did business in the Parish of Feliciana in the State of Louisiana under the name and firm of McMicken & Ficklin; that on or about 8 September 1817, said partnership was dissolved by mutual consent. That at the time of such dissolution there was a quantity or stock of goods on hand, which Ficklin took and purchased at cost, with five percent addition, and for the payment of one-half of said stock of goods he gave to the petitioner a promissory note, dated 20 September 1817 and payable on 1 March 1819, to the order of McMicken & Ficklin, for the sum of $4,866.93, which note was executed by said Ficklin, Jedediah Smith (by the name of Jed. Smith), and Amos Webb by which they promised jointly and severally to pay the aforesaid sum according to the terms of said note, a copy of which is annexed to the petition. The petition avers that the note was made and dated subsequent to the dissolution of the partnership, and although made payable to McMicken & Ficklin, it was made for the sole benefit of the petitioner, McMicken, and that Ficklin was in no wise interested therein except as one of the obligors. The petition then sets out the death of Jedediah Smith and how the other defendants become bound to pay the note. It also contains an averment that the petitioner is a citizen of the State of Ohio and that the defendants are citizens of the State of Louisiana.

To this petition several pleas to the jurisdiction of the court are interposed. The defendant, Webb, in one of his pleas, admits that he is a citizen of Louisiana and that he was in New Orleans when the petition and citation were served upon him, but avers that he resides in the Parish of St. Landry in the Western District of Louisiana, and denies the jurisdiction of the court on this ground. The second plea in abatement is founded on the fact, which is set out in the petition, that the note in question is made payable to McMicken & Ficklin and the suit is in the name of McMicken alone, without showing any assignment by Ficklin or that at the time of making said note, McMicken & Ficklin could have prosecuted a suit upon it in this

Court. The third plea alleges a want of jurisdiction in the court because the petition does not allege that at the time of assigning said note, the payees might have prosecuted the makers in this Court.

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The other defendants also interposed pleas to the jurisdiction of the court upon the grounds substantially as set forth in the last two pleas of Amos Webb. The court below sustained these pleas to the jurisdiction of the court and dismissed the petition.

This petition, although informal in many respects, must be considered as the commencement of a suit at law according to the course of proceedings in the courts of Louisiana, and is properly brought up here by writ of error. The object of the petition is simply to set forth the cause of action, and praying that the defendants may be cited in court to answer to the demand set up against them, and all that is required in such petition, according to the practice in Louisiana, is that it should contain a clear and concise statement of the object of the demand or the cause of action upon which it is founded.

The question presented by the first plea to the jurisdiction of the court is whether Webb, a citizen of the State of Louisiana who resided in the Western District of that state, could be sued by a plaintiff, who was a citizen of the State of Ohio, in the District Court of the Eastern District of the State of Louisiana. The residence of Webb being in the Western District of Louisiana could not affect the jurisdiction of the court. The plea admits that he was a citizen of Louisiana, and the act of Congress gives jurisdiction where the suit is between a citizen of the state where the suit is brought and a citizen of another state, and the division of a state into two or more districts cannot affect the jurisdiction of the court on account of citizenship. This plea admits that the petition and citation were served upon him in New Orleans, which takes the case out of the prohibition in the Judiciary Act that no civil suit shall be brought in the courts of the United States against an inhabitant of the United States by any original process in any other district than that whereof

he is an inhabitant or in which he shall be found at the time of serving the writ.

The second plea to the jurisdiction of the court is founded on the assumption that the plaintiff McMicken is to be considered as the assignee of McMicken & Ficklin of the note in question, and that the petition does not allege that they could have prosecuted a suit upon it in the courts of the United States, and that the case therefore falls within the prohibition in the Judiciary Act that no district or

circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange. 1 Stat. 79. But the cause of action and the right of the plaintiff to sustain it do not place him in the character of assignee. Ficklin never had any interest whatever in the note, according to the allegations in the petition; the partnership had been dissolved before the note in question was given. The consideration thereof was McMicken's share of the stock and goods on hand at the time of the dissolution of partnership, and the petition avers that although the note is given in the name of the late firm of McMicken & Ficklin, it was for the sole and individual benefit of the petitioner, and that Ficklin was in no wise a party or interested therein except as one of the obligors; there was therefore no interest which Ficklin could assign, and the objection is one purely of form and of a mere technical character, which ought not to be noticed according to the course of proceedings in the courts of Louisiana. The facts set forth in the petition may well be considered as an averment that the note was given to the petitioner McMicken under the name and description of McMicken & Ficklin. And this view of the case disposes of the matter set up by the other defendants in their pleas to the jurisdiction of the court, as well as of that which is set up in the third plea to the jurisdiction of the court.

There are other pleas to the merits interposed *de bene esse* by all the defendants and which have not, of course, been in any manner considered or disposed of by the court below, as the pleas to the jurisdiction of the court were

sustained and the petition dismissed. Nor does the record contain the necessary matter to enable this Court to dispose of the case upon its merits; some of these, turning upon questions of fact the evidence to sustain which not all appearing upon the record, and the cause must therefore necessarily go back for further proceedings on those pleas. The judgment of the court below is accordingly

Reversed and the cause sent back for further proceedings.

This cause come on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of

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Louisiana and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for the further proceedings to be had therein according to law and justice, and in conformity to the opinion of this Court. *

* For a decision of this case upon the merits, *see* 47 U. S. 6 How. 292.

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