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Veazie Vs. Wadleigh

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Court : US Supreme Court

Decided On : 1837

Appeal No. : 36 U.S. 55

Appellant : Veazie

Respondent : Wadleigh

Judgement :

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Veazie v. Wadleigh

36 U.S. (11 Pet.) 55

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF MAINE

SYLLABUS

On the trial of a cause in the Circuit Court of the District of Maine, upon certain questions which arose in the progress of the trial, the judges of the court were divided in opinion, and the questions were, at the request of the plaintiff, certified

to the Supreme Court, to January term, 1835. In December, 1836, the plaintiff filed in the office of the clerk of the Circuit Court of Maine, a notice to the defendant that he had discontinued the suit in the circuit court, and that as soon as the Supreme Court should meet at Washington, the same disposition would be made of it there, and that the costs would be paid when made up. A copy of this notice was given to the counsel of the defendants. The plaintiffs counsel asked the court for leave to discontinue the cause, and the discontinuance was allowed.

Quaere whether the party on whose motion questions are certified to the Supreme Court, under the act of Congress, has a right generally to withdraw the record or discontinue the case in the Supreme Court, the original cause being detained in the circuit court for ulterior proceedings.

An action of trespass was instituted in 1835 in the Circuit Court of the District of Maine, and the question between the plaintiff and the defendant was as to the title in certain lots of ground, described in the declaration, in the County of Penobscot in the State of Maine.

The case came on to be tried before the circuit court at October term 1835, and the judges of the court being divided in opinion on certain questions arising in the trial of the cause, the same were, at the request of the plaintiff, by the order of the court, certified to the Supreme Court of the United States. The case was docketed at January term 1836.

On 15 December 1836, the plaintiff filed a notice in the circuit court, that the case then under a certificate of division to the Supreme Court of the United States was discontinued in the circuit court, and that the same would be discontinued in the Supreme Court at Washington as soon as that Court should meet. The notice also stated the readiness of the plaintiff to pay the legal costs of the defendants when the same should be made up. Notice of this paper was given to the defendants.

Smith and Butler, of counsel for the plaintiff, moved the court to discontinue the case.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is a case certified from the Circuit Court for the District of Maine, upon a division of opinion of the judges of that court, upon certain questions which arose in the progress of the trial of the cause. These questions were certified to this Court at the last term upon the motion of the plaintiff. On 15 December last, the plaintiff filed in the clerk's office of the circuit court (it being vacation) a written declaration, as follows:

"I hereby notify you that the action of trespass which is now pending in said court to await the decision of certain questions carried up to the Supreme Court is discontinued by me, and that the same disposition will be made of the case in the Supreme Court at Washington as soon as it meets at Washington. You will therefore please to file this in the case and notify the counsel for the defendants of the same and that their legal costs in the said circuit court may be immediately made up, and the same will be paid."

Due notice was accordingly given to the counsel of the defendants, and the counsel for the plaintiff have, accordingly, at the present term, made a motion in this Court under these circumstances to discontinue the cause here and to withdraw the record. The motion is resisted on the other side upon the ground that the defendants have an interest in having these certified questions decided by this Court of which they cannot be deprived without their own consent by the dismissal of the cause. The point is confessedly new, and we have therefore thought it right, after the argument, to give it full consideration with reference to the future practice of the Court.

The Act of 1802, ch. 31, § 6, under which this case has been certified, provides

"That whatever any question shall occur before a circuit court upon which the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party, or their counsel, be

stated under the direction of the judges and certified, under the seal of the court, to the Supreme Court at its next session to be held thereafter, and shall by the said Court be finally decided. And the decision of the Supreme Court and its order in the premises shall be remitted to the circuit court and be there entered on record, and shall have effect according to the nature of the said judgment and order, provided however that nothing herein contained shall prevent the cause from proceeding if, in the opinion of the Court, further proceedings can be had without prejudice to the merits."

In construing a statute providing for such a novel mode of obtaining the decision of an appellate court upon the matters of controversy between the parties, it is not surprising that there should be some difficulty in ascertaining the precise rights of the parties; whether the party upon whose motion the questions are brought here is to be treated like a plaintiff in error, as entitled to dismiss his own certified cause at his pleasure, or whether the other party is entitled to retain the cause for his own benefit and to insist upon a final adjudication of the questions here. It is clear that the statute does not, upon the certificate of division, remove the original cause into this Court; on the contrary, it is left in the possession of the court below for the purpose of further proceedings if they can be had without prejudice to the merits, so that in effect the certified questions only, and not the original cause, are removed to this Court. In the next place, looking to the intent and objects of the provision, which are to enable the court below to proceed to a final adjudication of the merits of the cause, it seems equally clear that if the original cause is entirely withdrawn from the cognizance of the circuit court by discontinuance or otherwise, there is no ground upon which this Court should be required to proceed to decide the certified questions, since they are thus become mere abstract questions. They are but incidents to the original cause, and ought to follow the fate of their principal. We have no doubt, then, that upon the true construction of the statute, if a discontinuance had been actually entered in the Circuit Court of Maine in term, the record here ought not further to be acted upon by us, but a withdrawal or dismissal of the certified

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questions ought to be allowed. If it were necessary to accomplish this object in the most formal way, we should order the case to stand continued until the next term of this Court, so that the plaintiff might in the intermediate time make an application to the circuit court in term to enter a discontinuance thereof in that court.

The only point of difficulty is whether the filing of the above paper in the circuit court, in vacation, constitutes *per se* a discontinuance of the original cause, without any action of the circuit court thereon, upon which this Court ought now to act. According to the practice of some of the courts in the Union, it is understood to be the right of the plaintiff to enter a discontinuance of the cause at any time, either in term or in vacation, upon the payment of costs, before a verdict is given, without a formal assent of, or application to, the court, and that thereupon the cause is deemed in contemplation of law to be discontinued. In Massachusetts and Maine a different practice is understood to prevail, and the discontinuance can only be in term, and is generally upon application to the court. In many cases, however, in these states, it is a matter of right. In *Haskell v. Whitney,* 12 Mass. 49-50, this doctrine was expressly recognized. The court on that occasion said,

"The plaintiff or demandant may, in various modes, become nonsuit or discontinue his cause, at his pleasure; at the beginning of every term at which he is demandable, he may neglect or refuse to appear; if the pleadings are not closed, he may refuse to reply or to join an issue tendered, or after issue joined he may decline to open his cause to the jury; the court also may, upon sufficient cause shown, allow him to discontinue, even when it cannot be claimed as a right, or after the cause is opened and submitted to the jury."

Before trial, then, the plaintiff may, in many cases, as a matter of right, discontinue his cause, according to the practice of the state courts, at any time when he is demandable in court. After a trial or verdict, he can do so only by leave of the court, which it may grant or refuse, in its discretion. But under ordinary circumstances, before verdict it is almost a matter of course to grant it upon payment of costs when it is not strictly demandable of right.

Under the circumstances of the present case, we have no doubt that the plaintiff is estopped hereafter to withdraw his assent to the discontinuance of his suit in the circuit court, and that that court possesses full authority to enter such discontinuance at its next term upon the mere footing of the paper filed in the clerk's office, without

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any further act of the plaintiff. We think too that it would be the duty of that court to allow the entry of such discontinuance upon the application of the plaintiff, as he certainly has a right, in that or some other form, to decline to proceed further in the suit or to prosecute it further, subject to the payment of costs to the defendants. In substance, then, we think the original cause in the circuit court ought now to be treated by us as virtually at an end for all the purposes of requiring our decision upon the certified questions, and that the motion to withdraw the record and discontinue the cause ought to be granted.

In making this decision, we wish to be understood as not meaning to intimate that the party upon whose motion any questions are certified to this Court under the statute has a right generally to withdraw the record or discontinue the case here while the original cause is retained in the circuit court for ulterior proceedings. That is a point of a very different nature from that now before us, and may require very different principles to govern it. It will be sufficient to decide it when it shall arise directly in judgment.

On consideration of the motion made in this cause on a prior day of the present term of this Court, to-wit, Thursday, the 12th inst., by Mr. Smith, of counsel for the plaintiff, to dismiss this cause, and of the arguments thereupon had, as well in support of as against the motion, it is now here considered by the Court that said motion be and the same is hereby granted. Whereupon it is now here ordered and adjudged by this Court that this cause be and the same is hereby dismissed.

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