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Bradstret Vs. Thomas

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Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 59

Appellant : Bradstret

Respondent : Thomas

Judgement :

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37 U.S. (12 Pet.) 59

ERROR TO THE DISTRICT COURT OF

THE NORTHERN DISTRICT OF NEW YORK

SYLLABUS

The demandant, a subject of the King of Great Britain, instituted an action by writ of right in the District Court for the Northern District of New York, against the defendant, a citizen of New York. In the declaration, there was no averment that

the defendant was a citizen of New York. The defendant pleaded to the first count in the declaration and demurred to the second and third counts; the demandant joined in the demurrer and averred that the defendant was a citizen of New York. In the subsequent proceedings in the case in the district court and afterwards in the Supreme Court, no exception was taken by the defendant that there was no averment in the declaration that the defendant was a citizen of the United States, and not until the case came a second time before the Supreme Court, to which it was now brought by a writ of error, prosecuted by the demandant in the writ of right. The defendant moved to dismiss the writ of error, for the want of an averment of the citizenship of the defendant in the declaration. The court overruled the motion.

The district court was not bound to receive the averment of the citizenship of the defendant in the joinder in demurrer, and clearly ought not to have received it if it had been objected to by the tenant. But he has waived the objection by failing to make it at an earlier stage of the cause, and after the proceedings which have taken place in the district court and in this Court, and when the cause has been so long continued and allowed to proceed in the same condition of the pleadings and averments, it would be unjust to the demandant to dismiss it upon this mere technical informality. The pleadings in fact contain all the averments required by the decisions of this Court to give jurisdiction to the courts of the United States, and as they appear to have been acquiesced in by the tenant and regarded as sufficient in the district court and were not objected to in this Court when the case was here on the application for a mandamus, the informality cannot be relied on now to dismiss the suit.

Mr. Beardsley moved to dismiss the writ of error, it not being stated in the writ or declaration that the defendant was a citizen of the State of New York. The plaintiff is an alien, and this is stated in due form, but nothing is said of the citizenship of the defendant.

The Constitution of the United States gives jurisdiction to the courts of the United States when an alien is a party who sues a defendant, a citizen of the state in which the suit may be brought, and it has been expressly decided that both parties

must be stated descriptively in the pleadings. And where, as in this case, jurisdiction depends on the character of the parties, the averment of character

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is not matter of form, but of substance, it may be traversed, and in that event must be proved like any other material fact. Cited, 9 U. S. 5 Cranch 303; 4 U. S. 4 Dall. 12; 3 U. S. 3 Dall. 382; and 1 Cond. 170, where all the cases are collected in a note.

There is no averment of the value of the property in either count of the plaintiff's declaration, although it appears from the bill of exceptions, to have been of the value of two thousand dollars. There is, however, no doubt of the right of the party to prove the value of the property to be such as will give the right to a writ of error; this is not now taken as an objection to the proceeding to bring the case before this Court. The objection, so far as respects the point of value, is that the court below had no jurisdiction, there being no averment that the property was worth more than five hundred dollars. The defendant relies on the absence of the necessary averment of the citizenship of the defendant, as a sufficient ground to dismiss the writ of error, the District Court of New York not having had jurisdiction to entertain the cause.

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

A motion has been made by the defendant in error to dismiss this case upon the ground that the averments necessary to give jurisdiction to the courts of the United States do not appear in the record. The decisions which have heretofore been made on this subject render it proper that the circumstances under which this motion comes before the Court should be stated.

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A writ of right was brought in the District Court for the Northern District of New York, to recover certain lands situated in the State of New York. The demandant, in her declaration, avers that she is an alien, and a subject of the King of the United Kingdom of Great Britain and Ireland, but does not aver that the tenant is a citizen of the State of New York, or of any other state of the United States. The suit was brought to January term, 1825, at which term the tenant appeared, and prayed leave to imparle until the next term, "saving all objections as well to the jurisdiction of the court as to the writ and count."

The case was continued from term to term until August term 1826, when the tenant put in the usual plea to the first count, and demurred to the second and third, setting down special causes of demurrer. The demandant joined in the mise on the plea, and joined in the demurrer, and in her joinder in demurrer she averred that the defendant was a citizen of the State of New York. The want of this averment of citizenship in the counts was not one of the causes of demurrer assigned by the tenant. The demurrers were decided against the demandant at August term, 1827, and further proceedings were had which it is unnecessary to state here, and the case continued until August term, 1831, when the defendant moved the court to dismiss the suit for want of jurisdiction, assigning as the foundation of this motion, the want of an averment of the pecuniary value of the lands demanded in the counts filed by the demandant.

The court sustained the motion and dismissed the suit. But at that time no objection to the jurisdiction was made on account of the omission to aver the citizenship of the tenant.

In 1832, this dismissal of the suit was brought before the Supreme Court and a rule laid on the district court to show cause why the case should not be reinstated in that court, and at January term, 1833, a peremptory mandamus was issued by this Court, commanding the district court to reinstate the suit, and "to proceed to try and adjudge according to the law and right of the case, the said writ of right and the mise therein joined." The mandamus was obeyed and the cause reinstated, and the mise tried and found against the demandant, and judgment entered against her at November, 1837. The case is now before us upon a writ of error on

this judgment, and a motion is made to dismiss the case, upon the ground that neither the district court nor this Court could have jurisdiction of the

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suit, because the demandant is an alien, and there is no averment that the tenant was a citizen of New York.

The above statement of the proceedings makes it evident that the dismissal of the suit, upon this ground, at this time, would be a surprise upon the demandant, who has been prosecuting the suit for many years, most probably under the impression that the averment of citizenship contained in her joinder in demurrer, was considered by this Court and by the district court, to be a sufficient compliance with the rules of pleading established by the decisions of this Court. For the averment in question was received in the district court without objection, and indeed would seem to have been regarded as sufficient by that court, because when the suit was dismissed there, upon the ground that the counts did not contain proper averments to give jurisdiction, no notice was taken of the want of this averment in the counts, nor any objection to the place where it had been inserted in the pleadings; and when the case was brought before this Court, on the application for the mandamus, the fault in the pleadings now charged, was not noticed by the court in the opinion delivered, and does not appear to have been brought to their attention by the counsel for the tenant. 32 U. S. 7 Pet. 634. The demandant might therefore reasonably have supposed that the court deemed the averment sufficient, because certainly the mandamus would not have been issued commanding the district court to reinstate the case, and proceed to try it, unless this Court had been of opinion that a sufficient cause was presented by the pleadings to give jurisdiction to the district court.

The principle on which this averment has been required is purely technical. But the rule has been established by the decisions of this Court, and we do not mean to disturb it, and the proper place for the averment is undoubtedly in the declaration of the plaintiff in the cause.

The district court was not bound to receive it in the joinder in demurrer, and clearly ought not to have received it, if it had been objected to by the tenant. But he has waived the objection, by failing to make it in an earlier stage of the cause, and after the proceedings which have taken place in the district court, and in this Court, and when the cause has been so long continued and allowed to proceed in the same condition of the pleadings and averments, it would be unjust to the demandant to dismiss it upon this mere technical

informality. The pleadings, in fact, contain all the averments required by the decisions of this Court, to give jurisdiction to the courts of the United States, and as they appear to have been acquiesced in by the tenant, and regarded as sufficient in the district court, and were not objected to in this Court when the case was here on the application for a mandamus; we do not think the informality can be relied on now to dismiss the suit.

The motion is therefore

Overruled.

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