

Massachusetts Vs. Rhode Island

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Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 755

Appellant : Massachusetts

Respondent : Rhode Island

Judgement :

Massachusetts v. Rhode Island - 37 U.S. 755 (1838)

U.S. Supreme Court Massachusetts v. Rhode Island, 37 U.S. 12 Pet. 755 755 (1838)

Massachusetts v. Rhode Island

37 U.S. (12 Pet.) 755

ORIGINAL

SYLLABUS

The State of Massachusetts, after having appeared to process issued against her at the suit of the state of Rhode Island on a bill filed for the settlement of boundary, and after having filed an answer and plea to the bill and having failed in a motion to dismiss the bill for want of jurisdiction, was, on motion of her counsel, allowed to

withdraw her appearance.

The cases of [New York v. New Jersey](#), 5 Pet. 287; [Grayson v. Commonwealth of Virginia](#), 3 Dall. 320, 1 Cond. 141; [Chisholm v. Georgia](#), 2 Dall. 419, 1 Cond. 6, cited.

In the case of *Rhode Island v. Massachusetts*, ante, page [37 U. S. 657](#) , the Court did not mean to put the jurisdiction of the Supreme Court on the ground that jurisdiction was assumed in consequence of the State of Massachusetts' having appeared in that cause. It was only intended to say that the appearance of the state superseded the necessity of considering the question whether any and what course would have been adopted by the Court if the state

had not appeared. The Court did not mean to be understood that the state had concluded herself on the ground that she had voluntarily appeared, or that if she had not appeared, the Court would not have assumed jurisdiction of the case. Being satisfied the Court had jurisdiction of the subject matter of the bill, so far at least as respected the question of boundary, all inquiry as to the mode and manner in which the state was to be brought into court, or what would be the course of proceeding, if the state declined to appear, became entirely unnecessary.

The practice seems to be well settled that in suits against a state, if the state shall neglect to appear on due service of process, no coercive measures will be taken to compel appearance, but the complainant will be allowed to proceed *ex parte*.

Mr. Webster, in behalf of the State of Massachusetts, as her attorney and counsel in Court, moved the Court for leave to withdraw the plea filed in this case on the part of the State of Massachusetts, and also the appearance which has been entered in this Court for the said state.

Mr. Hazard, counsel for the State of Rhode Island, moved the Court for leave to withdraw the general replication to the defendant's plea in bar and answer and to amend the original bill.

MR. JUSTICE THOMPSON delivered the opinion of the Court:

A motion has been made on the part of the State of Massachusetts for leave to withdraw the plea filed on the part of that state, and also to withdraw the appearance heretofore entered for the state.

A motion has also been made on the part of Rhode Island for leave to withdraw the general replication to the defendant's answer and plea in bar and to amend the original bill filed in this case.

The motion on the part of the State of Massachusetts to withdraw the appearance heretofore entered seems to be founded on what is supposed to have fallen from the Court at the present term, in the opinion delivered upon the question of jurisdiction in this case. It is thought that opinion is open to the inference that jurisdiction is assumed in consequence of the defendant's having appeared in the cause. We did not mean to put the jurisdiction of the Court upon that ground. It was only intended to say that the appearance of the state, superseded the necessity of considering the question whether any and what course would have been adopted by the Court, if the state had not appeared. We certainly did not mean to be understood that the state had concluded herself on the ground that she had voluntarily appeared, or that if she had not, we could not have assumed jurisdiction of the case. But being satisfied that we had jurisdiction of the subject matter of the bill, so far at least as respected the question of boundary, all inquiry as to the mode and manner in which the state was to be brought into Court, or what would be the course of proceeding if the state declined to appear, became entirely unnecessary. But as the question is now brought directly before us, it becomes necessary to dispose of it. We think, however, that the course of decisions in this Court does not leave us at liberty to consider this an open question.

In the case of [*New Jersey v. New York*](#), 5 Pet. 287, this question was very fully examined by the Court, and the course of practice considered as settled by the

former decisions of the Court, both before and after the amendment of the Constitution, which declared that the judicial power of the United States shall not extend to any suit in law or equity commenced or prosecuted against a state by citizens of another state or subjects of any

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foreign state. This amendment did not affect suits by a state against another state, and the mode of proceeding in such suits was not at all affected by that amendment.

We do not propose to enter into this question any farther than briefly to notice what the Court has already decided upon the practice in this respect. These cases were reviewed in the case referred to of *New Jersey v. New York*, and the practice found to have been established by former decisions of the Court, as far as it went, was adopted. And the Court went a step further and declared what would be the course of proceeding in a stage of the cause, beyond which former decisions had not found it necessary to prescribe such course.

The Court in the case of *New Jersey v. New York* commence the opinion by saying: "This is a bill filed for the purpose of ascertaining and settling the boundary between the two states." And this is precisely the question presented in the bill now before us. And it is added that Congress has passed no act for the special purpose of prescribing the mode of proceeding in suits instituted against a state.

The precise question was therefore presented whether the existing legislation of Congress was sufficient to enable the Court to proceed in such a case without any special legislation for that purpose. And the Court observed that at a very early period of our judicial history, suits were instituted in this Court against states, and the questions concerning its jurisdiction were necessarily considered.

An examination of the acts of Congress in relation to process and proceedings and the power of the Court to make and establish all necessary rules for conducting business in the Courts is gone into and considered sufficient to authorize process and proceedings against a state, and the Court adopted the practice prescribed in

the case of [Grayson v. Commonwealth of Virginia](#), 3 Dall. 320, that when process in common law or in equity shall issue against a state, it shall be served on the governor or chief executive magistrate and the attorney general of the state. The Court in that case, declined issuing a *distringas* to compel the appearance of the state, and ordered as a general rule that if the defendant, on service of the subpoena, shall not appear at the return day therein, the complainant shall be at liberty to proceed *ex parte*. And the course of practice has since been to proceed *ex parte* if the state does not appear.

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And accordingly, in several cases, on the return of the process, orders have been entered that unless the state appears by a given day, judgment by default will be entered. And further proceedings have been had in the causes. In the case of [Chisholm v. Georgia](#), 2 Dall. 419, judgment by default was entered and a writ of inquiry awarded in February term, 1794. But the amendment of the Constitution prevented its being executed. And in other cases, commissions have been taken out for the examination of witnesses. By such proceedings, therefore, showing progressive stages in cases towards a final hearing and in accordance with this course of practice, the Court, in the case of *New Jersey v. New York*, adopted the course prescribed by the general order made in the case of *Grayson v. Commonwealth of Virginia*, and entered a rule that, the subpoena having been returned, executed sixty days before the return day thereof, and the defendant having failed to appear, it is decreed and ordered that the complainant be at liberty to proceed *ex parte* and that, unless the defendant, on being served with a copy of this decree, shall appear and answer the bill of the complainant, the Court will proceed to hear the cause on the part of the complainant and decree on the matter of the said bill.

So that the practice seems to be well settled that in suits against a state, if the state shall refuse or neglect to appear upon due service of process, no coercive measures will be taken to compel appearance, but the complainant or plaintiff will be allowed to proceed *ex parte*.

If, upon this view of the case, the counsel for the State of Massachusetts shall elect to withdraw the appearance heretofore entered, leave will accordingly be given, and the State of Rhode Island may proceed *ex parte*. And if the appearance is not withdrawn, as no testimony has been taken, we shall allow the parties to withdraw or amend the pleadings under such order as the Court shall hereafter make.

MR. JUSTICE BALDWIN dissented

MR. JUSTICE STORY did not sit in this case.

On consideration of the motion made by Mr. Webster on Saturday, 24 February, A.D. 1838, for leave to withdraw the

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plea filed on the part of the defendant and the appearance heretofore entered for the defendant and also of the motion made by Mr. Hazard on the same day of the present term for leave to withdraw the general replication to the defendant's answer and plea in bar and to amend the original bill filed in this case and of the arguments of counsel thereupon had, as well for the complainant as for the defendant, it is now here considered and ordered by the Court that if the counsel for the State of Massachusetts shall elect to withdraw the appearance heretofore entered, that leave be and the same is accordingly hereby given, and that the State of Rhode Island may proceed *ex parte*. But that if the appearance be not withdrawn, that then, as no testimony has been taken, the parties be allowed to withdraw or amend the pleadings under such order as the Court shall hereafter make in the premises.