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Gordon Vs. Longest

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Court : US Supreme Court

Decided On : 1842

Appeal No. : 41 U.S. 97

Appellant : Gordon

Respondent : Longest

Judgement :

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U.S. Supreme Court Gordon v. Longest, 41 U.S. 16 Pet. 97 97 (1842)

Gordon v. Longest

41 U.S. (16 Pet.) 97

ERROR TO THE COURT OF APPEALS

OF THE STATE OF KENTUCKY

SYLLABUS

An action was instituted in the Circuit Court of Jefferson County, in the State of Kentucky, by a citizen of that state under an act of the Legislature of Kentucky against a citizen of the State of Pennsylvania to recover damages, alleging the

same in the declaration to be one thousand dollars, for having taken on board of the steamboat *Guyandotte,* commanded by him, a slave belonging to the plaintiff, from the shore of Indiana, on the voyage of the steamboat, proceeding up the Ohio River from Louisville to Cincinnati. The act of the Legislature of Kentucky subjects the master of a steamboat to the penalties created by the law who shall take on board the steamboat under his command a slave from the shore of the Ohio opposite to Kentucky in the same manner as if he had been taken on board from the shores or rivers within the state. On entering his appearance, the defendant claimed to remove the cause to the circuit court of the United States for the District of Kentucky, he being a citizen of Pennsylvania and the plaintiff a citizen of Kentucky, and offered to comply with the requisitions of the Judiciary Act of 1789. The court refused to allow the removal of the cause, deciding that it did not appear to its satisfaction that the damages exceeded five hundred dollars. The case went on to trial, and the jury gave a verdict for the plaintiff for six hundred and fifty dollars, and on a writ of error to the Court of Appeals of Kentucky, the judgment of the circuit court on the verdict was affirmed. Before the Court of Appeals the plaintiff in error excepted to the jurisdiction of the court of Jefferson County and also to the constitutionality of the law of Kentucky on which the suit was founded. *Held* that the decision of the Court of Appeals was erroneous, and the judgment of that court was reversed.

It has often been decided that the sum in controversy in a suit is the damages claimed in the declaration. If the plaintiff shall recover less than five hundred dollars, it cannot affect the jurisdiction of the court, a greater sum having been claimed in his writ. But in such case the plaintiff does not recover his costs, and at the discretion of the court he may be adjudged to pay costs.

The damages claimed by the plaintiff in his suit give jurisdiction to the court, whether it be an original suit in the circuit court of the United States or brought there by petition from a state court.

The judge of the state court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause. The defendant being entitled to a right to have

the cause removed under the law of the United States, on the facts of the case, the judge of the state court has no discretion to withhold that right.

The application to remove the cause having been made in proper form, and no objection having been made to the facts on which it was founded, it was the duty of the state court "to proceed no further in the cause," and every step subsequently taken in the exercise of a jurisdiction in the case, whether in the same court or in the Court of Appeals, was *coram non judice.*

One great object in the establishment of the courts of the United States and regulating

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their jurisdiction, was to have a tribunal in each state, presumed to be free from local influence and to which all who were nonresidents or aliens, might resort for legal redress. And this object would be defeated if a state judge, in the exercise of his discretion, may deny to the party entitled to it a removal of the cause.

In the Jefferson Circuit Court of the State of Kentucky, James Longest, of the State of Kentucky, instituted an action against John Gordon to recover the value of a certain slave belonging to him, which John Gordon, who was commander of the steamboat *Guyandotte,* then proceeding from Louisville, up the Ohio River, to Cincinnati, was alleged to have taken on board the *Guyandotte* from the Indiana shore or side of the Ohio as a passenger to Cincinnati.

John Gordon was a citizen of the State of Pennsylvania, and proceeding according to the provisions of the Judiciary Act of 1789, he claimed before the Circuit Court of Jefferson County to remove the cause to the circuit court of the United States for the District of Kentucky. The declaration filed in the case, in the Jefferson Circuit Court, claimed damages in $1,000. The circuit court decided that it did not appear that the amount in controversy in the suit exceeded $500, exclusive of costs, and refused to allow the removal of the cause to the circuit court of the United States. The case came on for trial on 21 March 1838, and a jury gave a verdict for the plaintiff for $650, on which judgment was entered for the plaintiff.

On the trial, the defendant asked the court to instruct the jury:

"1. That so much of the act entitled 'an act to amend an act to prevent masters of vessels and others from employing and removing persons of color from this state,' approved February 12, 1828, as is in the following words, to-wit:"

" Be it further enacted that the liabilities under the said act shall accrue, whenever the person of color shall be taken on board any steam vessel, from the shore of the Ohio River, opposite the state, to the same extent as if they were taken on board from the shores or rivers within the state,"

"is not within the constitutional power of the Legislature

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of the State of Kentucky, under the Constitution of the United States."

"2. That under the Constitution and laws of the United States, a steamboat captain navigating the Ohio River is not guilty of a breach of duty by taking persons of color from the Indiana shore and transporting them in their steamboats, provided such captain shall in good faith believe such persons of color are free, and that the act of the Kentucky Legislature, if to the contrary, is unconstitutional and void."

"3. If the jury believe from the evidence, that the negro was taken from the Indiana shore by the plaintiff, in good faith, believing him to be free, and that he was taken by the plaintiff as a passenger, in the navigation of his boat; that in such case, the jury ought to find for the defendant the issue in the case."

"4. That although persons of color in Kentucky are in law presumed to be slaves, they are in Indiana presumed *prima facie* to be free, and if the plaintiff took the slave from the Indiana shore in good faith and under the belief that he was free, and that he was taken by the defendant as a passenger, in the navigation of the said boat, that in such case, the jury ought to find for the defendant."

"5. That if the defendant was a citizen of the State of Ohio, residing there, and the steamboat *Guyandotte,* of which he was commander, did belong to the port of

Cincinnati in said state, and the negro Jim did come on board said boat at the Indiana shore of the Ohio River, and the said Gordon acted in good faith, and did not know that the said negro Jim was a slave, that then he is not liable to pay damages to the plaintiff for having permitted the said slave to come on board the boat and having taken him on board said boat to Cincinnati, in the State of Ohio."

"6. That if the jury believe from the evidence that the slave Jim was taken on board the *Guyandotte* from the State of Indiana, the plaintiff cannot recover in this action."

"7. If the jury believe from the evidence that the defendant, in the navigation of his boat, took the slave in the declaration mentioned from the Indiana shore believing him to be free, and that slave was at the time a runaway slave of plaintiff, in that case they find for defendant. "

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"8. That to enable the plaintiff to recover in this action, the jury must believe that the defendant took plaintiff's slave from Louisville or from the Kentucky shore."

The court refused to give those instructions.

On the motion of the counsel for the plaintiff, the court instructed the jury that if they found from the evidence that the defendant was master of the steamboat *Guyandotte,* put out his yawl, when opposite to Jeffersonville, in the State of Indiana, took the plaintiff's negro on board, and carried him to Cincinnati, in the State of Ohio, and that he was lost to the plaintiff, the defendant was liable in this action, and they ought to find for the plaintiff all the damages he had sustained.

To which opinions of the court, in refusing to give the instructions asked and in giving the instructions for the plaintiff, the defendant excepted, and he prayed an appeal to the Court of Appeals of the State of Kentucky. Before the Court of Appeals, the appellant assigned for error, among others, the following:

"1. The court erred in refusing to remove this cause to the federal court upon the petition of the appellant, filed on his first entering his appearance to the suit. The

appellant claims that he had a right to a trial in the United States court, and that the whole proceedings in this cause subsequent to the application to remove are against law."

"2. The circuit court erred in each and every instruction given on the trial at the instance of the plaintiff."

"3. The court erred in refusing to give each and every instruction asked by the appellant Gordon on the last trial."

"4. The circuit court has, in violation of the Constitution of the United States and of an act of Congress, clung to a jurisdiction that did not rightfully belong to a state court, and on the trial of the cause given instructions in violation of the Constitution of the United States, and the appellant relies upon each and every article of the Constitution of the United States for a reversal."

The Court of Appeals affirmed the judgment of the circuit court, and the plaintiff in that court prosecuted this writ of error.

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Mc LEAN, JUSTICE, delivered the opinion of the Court.

An action was commenced in the Circuit Court of Kentucky by the defendant in error against the plaintiff to recover the value of a certain slave which the defendant took on board a steamboat at Louisville of which he was master, as a passenger, and conveyed him out of the state in violation of the statutes of Kentucky.

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By an act of the Kentucky Legislature of 1824 to prevent the escape and removal of slaves, the masters of vessels, &c.;, receiving slaves on board and removing them from that state were made liable to the owners of such slaves for any loss they might sustain thereby. And by a subsequent act of 1828 it was enacted that

the liabilities under the first act

"shall accrue, whenever the persons of color shall be taken on board any steam vessel from the shores of the Ohio River opposite the state to the same extent as if they were taken on board from the shores or rivers within the state."

On entering his appearance, the defendant filed his petition to remove the cause to the circuit court of the United States for the District of Kentucky on the ground that he was a citizen of Pennsylvania and the plaintiff a citizen of Kentucky, and the defendant offered to give bond and security according to law. The citizenship of the parties, as alleged, was admitted, but the plaintiff objected to the removal, and the court decided it did not appear to its satisfaction that the amount in controversy exceeded $500, exclusive of costs, and on that ground refused the prayer of the petition. After the rejection of his petition, the defendant pleaded not guilty, and a jury, being called and sworn, found the defendant guilty and assessed the plaintiff's damages at $420, on which verdict a judgment was entered.

During the trial, several exceptions were taken to the rulings of the court which it is not necessary now particularly to notice. On these exceptions, a writ of error was taken to the Court of Appeals. Several errors were assigned in that court on which a reversal of the judgment of the circuit court was prayed. Among others was one that the court erred in overruling the application to remove the cause to the circuit court of the United States. The Court of Appeals reversed the judgment on the ground that the plaintiff was only entitled to recover the damages he had actually sustained by the act of the defendant, which was not in accordance with the instruction to the jury by the circuit court. The cause was remanded to the court below for further proceedings. A jury, being again called to try the cause, found the

defendant guilty and assessed the plaintiff's damages at $650. Judgment was entered upon this verdict, and the cause was again removed to the Court of Appeals by a writ of error on certain exceptions taken at the trial. Among the other errors again assigned in the Court of Appeals was the refusal by the circuit court to

permit the cause to be removed to the circuit court of the United States. The Court of Appeals affirmed the judgment, and the cause is now brought here by a writ of error from that court.

It is unnecessary to notice the other questions raised by the exceptions, as the judgment of this Court must turn upon the overruling by the state court of the application of the defendant for the removal of the cause to the federal court. In their opinion, the Court of Appeals did not notice this point, although it was assigned for error on each of the writs of error which were prosecuted before that court.

The 12th section of the Judiciary Act of 1789 provides

"That, if a suit be commenced in any state court against an alien, or by a citizen of the state, is brought against a citizen of another state, and the matter in dispute exceeds the sum or value of $500, exclusive of costs, to be made to appear to the satisfaction of the court, and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him and also for his then appearing and entering special bail in the cause if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety and proceed no further in the cause."

In the declaration, the plaintiff laid his damages at the sum of $1,000, and this was the amount named in the writ. Under the above section, it must be made to appear to the satisfaction of the state court that the defendant is an alien or a citizen of some other state than that in which suit is brought, and that the matter in controversy, exclusive of costs, exceeds the sum of $500.

It being admitted on the record that the defendant was a citizen of Pennsylvania and the plaintiff a citizen of Kentucky, the only question before the court was the amount in dispute. The damages claimed in the writ and declaration were unquestionably the sum in controversy. This is not an open question. It has been often decided that if the plaintiff shall recover less than $500, it cannot affect the jurisdiction of the court, a greater sum being claimed in his writ. But in such case the plaintiff does not recover his costs, and at the discretion of the court he may be adjudged to pay costs.

The damages claimed by the plaintiff in his writ gives jurisdiction to the court, whether it be an original suit in the circuit court of the United States or brought here by petition from a state court. From the decision of the state judge, he seemed to consider the application for the removal of the cause as a matter to be decided by his discretion. But he must exercise a legal discretion. The defendant was entitled to a right under the law of the United States, and on the facts of the case, the judge had no discretion to withhold that right. No objection can be made to the form of the application, nor to the facts on which it was founded. This being clear in the language of the above act, it was the duty of the state court "to proceed no further in the cause." And every step consequently taken in the exercise of a jurisdiction in the case, whether in the same court or in the Court of Appeals, was *coram non judice.*

This is the first instance known to us in which a state court has refused to a party a right to remove his cause to the circuit court of the United States. And it is impossible to conceive of a case in which the right of removal could be more unquestionable than in this case. One great object in the establishment of the courts of the United States and regulating their jurisdiction was to have a tribunal in each state presumed to be free from local influence and to which all who were nonresidents or aliens might resort for legal redress. But this object would be defeated if a state judge, in the exercise of his discretion, may deny to the party entitled to it a removal of his cause.

A more summary remedy might have been pursued by the defendant than the one which this Court can now give to him.

But the cause being brought before us through the supreme court of the state, we reverse the judgment of affirmance by that court and direct the cause to be remanded with instructions that it shall be transmitted to the circuit court of the state, which shall be directed to enter an allowance of the petition of the defendant for the removal of the cause to the Circuit Court of the United States for the District of Kentucky *nunc pro tunc.*

Judgment reversed.

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