

**Kanouse Vs. Martin**

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**Court :** US Supreme Court

**Decided On :** 1853

**Appeal No. :** 56 U.S. 198

**Appellant :** Kanouse

**Respondent :** Martin

**Judgement :**

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**Kanouse v. Martin**

**56 U.S. (15 How.) 198**

*ERROR TO THE SUPERIOR COURT*

*OF THE CITY OF NEW YORK*

## **SYLLABUS**

Where a citizen of New Jersey was sued in a state court in New York, and filed his petition to remove the case into the circuit court of the United States, offering a bond with surety, the amount claimed in the declaration being one thousand

dollars, it became the duty of the state court to accept the surety and proceed no further in the cause.

Consequently it was erroneous to allow the plaintiff to amend the record and reduce his claim to four hundred and ninety-nine dollars.

The case having gone on to judgment and been carried by writ of error to the superior court, without the petition for removal into the circuit court of the United States, it was the duty of the superior court to go behind the technical record and inquire whether or not the judgment of the court below was erroneous.

The defendant was not bound to plead to the jurisdiction of the court below; such a step would have been inconsistent with his right that all proceedings should cease when his petition for removal was filed.

The superior court being the highest court to which the case could be carried, a writ of error lies to examine its judgment under the 25th section of the Judiciary act.

A motion was made at the last term of this Court, by Mr. Martin to dismiss the case, for want of jurisdiction, which is reported in [55 U. S. 14](#) How. 23.

The facts are stated in the opinion of the court.

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MR. JUSTICE CURTIS delivered the opinion of the Court.

This is a writ of error to the Superior Court of the City of New York. Upon the return of the writ at the last term, the defendant in error moved to dismiss it for want of jurisdiction. This motion was overruled, and the opinion of the court is reported in [55 U. S. 14](#) How. 23. At the present term, the case has been submitted on its merits upon printed arguments filed by the counsel for the two parties.

The action was, originally, a suit in the Court of Common Pleas for the City and County of New York. The plaintiff was a citizen of the State of New York, and the defendant a citizen of the State of New Jersey, and at the time of entering his appearance, he filed his petition for the removal of the cause into the Circuit Court of the United States for the Southern District of New York, and offered a bond with surety; the form of this bond, or the sufficiency of the surety does not appear to have been objected to. The declaration then on file demanded damages in the sum of the thousand dollars. That was the amount then in dispute between the parties. The words "matter in dispute," in the 12th section of the Judiciary Act, do not refer to disputes in the country, or the intentions or expectations of the parties concerning them, but to the claim presented on the record to the legal consideration of the court. What the plaintiff

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thus claims, is the matter in dispute, though that claim may be incapable of proof, or only in part well founded. So it was held under this section of the statute, and in reference to the right of removal, in [Gordon v. Longest](#), 16 Pet. 97, and the same construction has been put upon the eleventh and twenty-second sections of the Judiciary Act, which makes the jurisdiction of this Court and the circuit court dependent on the amount or value of "the matter in dispute." The settled rule is that until some further judicial proceedings have taken place, showing upon the record that the sum demanded is not the matter in dispute, that sum is the matter in dispute in an action for damages. [Green v. Liler](#), 8 Cranch 229; [Wise v. Col. Turnpike Co.](#), 7 Cranch 276; [Gordon v. Ogden](#), 3 Pet. 33; [Smith v. Honey](#), 3 Pet. 469; [Den v. Wright](#), 1 Pet.C.C. 64; [Miner v. Dupont](#), 2 Wash.C.C. 463; [Sherman v. Clark](#), 3 McLean 91.

Without any positive provision of any act of Congress to that effect, it has long been established, that when the jurisdiction of a court of the United States has once attached, no subsequent change in the condition of the parties would oust it. [Morgan v. Morgan](#), 12 Wheat. 290; [Clarke v. Mathewson](#), 12 Pet. 165. And consequently, when, by an inspection of the record, it appeared to the court of common pleas that the sum demanded in this action was one thousand dollars,

and when it further appeared that the plaintiff was a citizen of the State of New York, and the defendant of the State of New Jersey, and that the latter had filed a proper bond with sufficient surety, a case under the twelfth section of the Judiciary Act was made out, and, according to the terms of that law, it was "then the duty of the state court to accept the surety, and proceed no further in the cause."

But the court proceeded to make inquiry into the intention of the plaintiff, not to claim of the defendant, the whole of the matter then in dispute upon the record, and allowed the plaintiff to reduce the matter then in dispute to the sum of four hundred and ninety-nine dollars, by an amendment of the record. It thus proceeded further in the cause, which the act of Congress forbids. All its subsequent proceedings, including the judgment, were therefore erroneous.

But it is objected that this is a writ of error to the superior court, and that by the local law of New York, that court could not consider this error in the proceedings of the court of common pleas, because it did not appear upon the record, which, according to the law of the state, consisted only of the declaration, the evidence of its service, the entry of the appearance of the defendant, the rule to plead, and the judgment for want of a

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plea, and the assessment of damages, and that these proceedings, under the act of Congress, not being part of this technical record, no error could be assigned upon them in the superior court. This appears to have been the ground upon which the superior court rested its decision. That it was correct, according to the common and statute law of the State of New York, may be conceded. But the act of Congress, which conferred on the defendant the privilege of removal, and pointed out the mode in which it was to be claimed, is a law binding upon all the courts of that state, and if that act both rendered the judgment of the court of common pleas erroneous, and in effect gave the defendant a right to assign that error, though the proceeding did not appear on the technical record, then, by force of that act of Congress, the superior court was bound to disregard the technical objection, and inspect these proceedings, unless, which we shall presently

consider, there was some defect in its jurisdiction which disenabled it from doing so.

The reason why the superior court declined to inspect these proceedings was that the defendant did not plead them to the jurisdiction of the court of common pleas, and thus put them on the record. And it is generally true that a party claiming a right under an act of Congress, must avail himself of some legal means to place on the record that claim, and the facts on which it rests; otherwise he cannot have the benefit of a reexamination of the judgment upon a writ of error. But this duty does not exist in a case in which he cannot perform it without surrendering some part of the right which the act secured to him, and in which the court, where the matter is depending, is expressly prohibited from taking any further proceeding. In this case, the right of the defendant to remove the cause to the next term of the circuit court was complete, and the power of the court of common pleas at an end. To require the defendant to plead, would deny to him his right to have all proceedings in that court cease, and would make all benefit of that right dependent on his joining in further proceedings in a court forbidden by law to entertain them. It would engraft upon the act of Congress a new proviso that, although the court was required to proceed no further, yet it might proceed, if the defendant should fail to plead to the jurisdiction, and that, though the defendant had done all which the laws required, to obtain the right to remove the suit, yet a judgment against him would not be erroneous unless he should do more.

In our opinion, therefore, the act of Congress not only conferred on the defendant the right to remove this suit, by filing his petition and bond, but it made all subsequent proceedings of the court of common pleas erroneous, and necessarily

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required the court, to which the judgment was carried by a writ of error, to inspect those proceedings which showed the judgment to be erroneous, and which could not be placed on the technical record consistently with the act which granted the right of removal.

It should be observed that the judgment of the superior court did not proceed upon any question of jurisdiction. If it had quashed the writ of error, because the laws of the State of New York had not conferred jurisdiction to examine the case, this Court could not have treated that judgment as erroneous. But entertaining jurisdiction of the writ of error, it pronounced a judgment, "that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect," and it did so, because the plaintiff in error, by omitting to plead to the jurisdiction, had not placed on the record those proceedings which rendered the judgment of the court of common pleas erroneous. The error of the superior court was therefore an error occurring in the exercise of its jurisdiction, by not giving due effect to the act of Congress under which the plaintiff in error claimed, and this error of the superior court, in the construction of this act of Congress, it is the province of this Court to correct.

Though the point does not appear to have been made in *Gordon v. Longest*, yet it was upon this ground only that this Court could have rested its decision to look into the proceedings for the removal of that suit from the state court. For it is as true in this Court as in the superior court of New York, that, upon a writ of error, this Court looks only at the technical record, and affirms or reverses the judgment, according to what may appear thereon. [\*Inglee v. Coolidge\*](#), 2 Wheat. 363; [\*Fisher's Lessor v. Cockerell\*](#), 5 Pet. 248; [\*Reed's Lessee v. Marsh\*](#), 13 Pet. 153. But this is only one of the rules of evidence for the exercise of its jurisdiction as a court of error; it prescribes what shall and what shall not be received as evidence of what was done in the court below; and when an act of Congress cannot be executed without disregarding this general rule, it becomes the duty of this Court to disregard it. The plaintiff in error, having a right to have the erroneous judgment reversed, must also have the right to have the only legal proceedings, which could be had consistently with the act of Congress examined to show that error.

It is unnecessary to refer to the proceedings in the court of appeals any further than to say, that the appeal was dismissed for want of jurisdiction, that court not having cognizance of appeals from the decisions of a single judge at a special term. It is stated by counsel, that when these proceedings took place

in the court of common pleas, there was, by law, no distinction between general and special terms of the court of common pleas, and that therefore the plaintiff in error could not, by any proceeding, have entitled himself to go to the court of appeals.

We have not thought it necessary to inquire into his, because we are of opinion that the defendant was not bound to take any appeal to the general term, if there was such an one then known to the law. His right to remove the suit being complete, he could not be required, consistently with the act of Congress, to follow it further in the court of common pleas, and the power of that court being terminated, it could not lawfully render a judgment against him; and it is of that judgment he now complains. The only legal consequence, therefore, of his not appealing to the general term is that the superior court is the highest court of the state to which his complaint of that judgment could be carried, and therefore, under the twenty-fifth section of the Judiciary Act, a writ of error lies to reexamine the judgment of that highest court.

*The judgment of the superior court must be reversed and the cause remanded with directions to conform to this opinion.*

## **ORDER**

This cause came on to be heard on the transcript of the record from the Superior Court of the City of New York, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said superior court, in this cause be, and the same is hereby reversed, with costs, and that this cause be, and the same is hereby, remanded to the said superior court, for further proceedings to be had therein, in conformity to the opinion of this Court.