

**Chaffee Vs. Hayward**

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**SooperKanoon Citation :** [sooperkanoon.com/80732](http://sooperkanoon.com/80732)

**Court :** US Supreme Court

**Decided On :** 1857

**Appeal No. :** 61 U.S. 208

**Appellant :** Chaffee

**Respondent :** Hayward

**Advocate for Def. :** Mr. Pitman

**Judgement :**

Chaffee v. Hayward - 61 U.S. 208 (1857)

U.S. Supreme Court Chaffee v. Hayward, 61 U.S. 20 How. 208 208 (1857)

**Chaffee v. Hayward**

**61 U.S. (20 How.) 208**

*ERROR FOR THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF RHODE ISLAND*

**SYLLABUS**

By the Judiciary Act of 1789, no civil suit shall be brought against an inhabitant of the United States by an original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ.

This provision of law is not changed by any subsequent process act, or by the law giving jurisdiction to circuit courts in patent cases, without regard to citizenship.

Therefore, where a suit was commenced for an infringement of a patent right, and process was served by attaching the property of an absent defendant, this was not sufficient to give the court jurisdiction.

The defect of an irregular citation being signed by the clerk of the court, and not by the judge who allowed the writ of error is cured by an appearance in this Court; so that a motion to dismiss the writ, when made at the term succeeding that at which the appearance was entered, comes too late.

At an early day of the term, Mr. Pitman, counsel for the defendant in error, moved to dismiss the writs of error upon the ground stated below, and filed the following affidavit in support of the motion:

" *SUPREME COURT OF THE UNITED STATES, NO. 51; DEC. TERM, 1857*"

" *Edwin M. Chaffee, Trustee of Horace H. Day,* "

" *Plaintiff in Error, v. Nathaniel Hayward* "

"The defendant in error in this cause moves that this cause be dismissed, the citation herein having been signed by the clerk of the circuit court, and not by the judge, as required by law. By his attorney,"

"JOSEPH S. PITMAN"

"I, Joseph S. Pitman, of the City and County of Providence, and State of Rhode Island &c.;, attorney at law, on oath say, that I am and have been associated with Charles S. Bradley, Esq., in the defense of the above cause; that he is the junior counsel in said cause; that he left the City of Providence for Europe on the first or

second day of December, 1856; that we

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had no consultation respecting the management of said cause before his departure, Mr. Bradley expecting to return by the first of March, 1857; that after his departure, I caused an appearance to be entered in said cause, and did not file a motion for the dismissal of said cause at the last term, because I did not wish to decide on the expediency of that motion without consultation with him; that I expected he would return in season for such consultation, either before the court adjourned, or that I should have opportunity to make that motion after consultation with him at an adjourned term of this Court, which I supposed would be held as at the December term, 1856; that to my surprise this Court adjourned about the seventh day of March, and the opportunity was lost, as Mr. Bradley did not return to this country until the twenty-fourth of March, 1857."

"JOSEPH S. PITMAN"

" *RHODE ISLAND DISTRICT, ss.*"

" *Clerk's Office, Circuit Court of the United States* "

"On this nineteenth day of December, A.D. 1857, came the above-named Joseph S. Pitman, and made oath that the foregoing statements are true. Before me."

"[SEAL] Witness my hand and official seal, at Providence."

"HENRY PITMAN"

" *Clerk circuit court U.S., R.I. Dist.* "

Upon which motion MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

In this case, a judgment in favor of the defendant in error was rendered in the Circuit Court of the United States for the District of Rhode Island, at its June term, 1856. The plaintiff sued out a writ of error on the 27th of October, 1856, returnable

to the December term of this Court then next following; but the citation to the defendant was signed by the clerk of the court, and not by the judge who allowed the writ of error.

In pursuance of this writ of error, the record was filed here and the case docketed on the 24th of November, 1856; and on the 4th of December the defendant appeared by counsel in this Court.

A motion has been made at the present term to dismiss the case, because the citation is signed by the clerk and not by the judge.

The citation is undoubtedly irregular in this respect, and the defendant in error was not bound to appear under it. And if a motion had been made at the last term, within a reasonable time, to dismiss the case upon this ground, it would have

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been dismissed. But the appearance of the party in this Court, without making a motion to dismiss during the first term, is a waiver of any irregularity in the citation, and is an admission that he has received notice to appear to the writ of error. This point was decided in the cases of [McDonogh v. Millaudon](#), 3 How. 693; [United States v. Yulee](#), 6 How. 605; and [Buckingham v. McLean](#), 13 How. 150. And these cases have been recognized and affirmed in the case of *Carroll v. Dorsey*, decided at the present term.

Indeed, any other rule would be unjust to a plaintiff in error, and is not required for the protection of the defendant. The latter is not bound to appear, unless he is legally cited, except for the purpose of moving to dismiss. He knows, or must be presumed to know, whether the notice which the law requires has been served on him or not. And if the objection is made at the first term, the plaintiff, by a new writ and proper citation, might bring up the case to the succeeding term. But if the defendant does not, by motion at the first term, apprise him of the irregularity of his proceeding in this respect, and of his intention to take advantage of it, the plaintiff is put off his guard by the defendant's appearance, and if the motion is permitted at the second term, he will be delayed an entire year in the prosecution of his suit,

whenever it is the interest of a defendant in error to delay and harass his adversary.

An affidavit has been filed by one of the counsel for the defendant in error, stating that he is the junior counsel in the case, and that he did not make the motion at the last term, because the senior counsel was absent in Europe, and the deponent did not wish to decide on the expediency of the motion to dismiss without consulting him; that he expected him to return before the term ended, but the court adjourned sooner than he anticipated, and the senior counsel did not return until the court had finally adjourned to the next term.

The facts stated in this affidavit cannot influence the decision of the motion. The absence of one or of all the counsel employed by one party, in pursuit of other business, furnishes no ground for delaying a case in this Court, without the consent of the adverse party.

The motion comes too late, and is therefore overruled.

DAY

v. No. 52

HAYWARD

The motion to dismiss in this case stands on the same ground with that of Chaffee, trustee of *Day v. Hayward*, just disposed of, and must, for the reasons assigned in that case, be also overruled.

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MR. JUSTICE CATRON delivered the opinion of the Court.

The question of law decided below, and which we are called on to revise, arises on the following facts: on the twenty-second day of October, 1855, the plaintiff in error sued out a writ in the Circuit Court of the United States for the Rhode Island District, against Nathaniel Hayward, styling him as "of Colchester, in the State of

Connecticut, commorant of Providence, in the State of Rhode Island," for the recovery of damages alleged to have been sustained by the plaintiff in error, by reason of an alleged infringement of a patent right claimed by said plaintiff.

On the same day, the marshal of the Rhode Island District made return on the writ, that "for want of the body of the within defendant to be by me found within my district, I have attached," &c.;, enumerating certain real estate lying in the City of Providence, in the State of Rhode Island, and a still further return of having made further service of the writ, by attaching all the personal estate of the defendant in the India rubber factory of Hartshorn & Co., and in the store or warehouse No. 7, Dorrance Street stores &c.;, and

"have left true and attested copies of this writ, with my doings thereon, with the City Clerk of the City of Providence, and with John Sweet and William E. Himes, they being in possession of the premises, the defendant having no known place of abode within my district."

At the November term of the court, a declaration was filed,

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containing the allegations of citizenship of the plaintiff and defendant, and that the defendant was commorant of Providence, as in the writ, and at the same term the defendant, in his own proper person, pleaded to the jurisdiction of the court, that he was at the time of the pretended service of the writ, and is, an inhabitant of the District of Connecticut, and not an inhabitant of the District of Rhode Island, nor was he at the time of the pretended service of the writ within the District of Rhode Island, praying the judgment of the court, whether it can or will take cognizance of the action against him.

To this plea the plaintiff, by his attorney, filed a general demurrer, on which the cause was heard, and at the June term the court overruled the demurrer and dismissed the case for want of jurisdiction, upon which the plaintiff sued out a writ of error.

By the eleventh section of the Judiciary Act of 1789, it is provided

"That no civil suit in a circuit or district court shall be brought against an inhabitant of the United States by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ."

It has been several times held by this Court as the true construction of the foregoing section, that jurisdiction of the person of a defendant, who is an inhabitant of another state, can only be obtained, in a civil action, by service of process on his person, within the district where the suit is instituted; and that no jurisdiction can be acquired by attaching property of a nonresident defendant, pursuant to a state attachment law. The doctrine announced to this effect, in the case of [Toland v. Sprague](#) in 1838, 12 Pet. 300, [37 U. S. 327](#) , has been uniformly followed since, both by this Court and at the circuits. [40 U. S. 15](#) Pet. 171; [58 U. S. 17](#) How. 424

It is insisted, however, for the plaintiff, that these rulings were had in cases arising where the jurisdiction depended on citizenship; whereas here the suit is founded on an act of Congress conferring jurisdiction on the circuit courts of the United States in suits by inventors against those who infringe their letters patent, including all cases, both at law and in equity, arising under the patent laws, without regard to citizenship of the parties or the amount in controversy, and therefore the eleventh section of the Judiciary Act does not apply, but the process acts of the state where the suit is brought must govern, and that the Act of Congress of May 8, 1792, so declares.

The second section of that act provides, that the forms and modes of proceeding in suits at common law shall be the same as are now used in the federal courts, respectively, pursuant

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to the act of 1789, ch. 21, known as the process act of that year.

This act sec. 2 declares, that until further provision shall be made, and except where by this act "or other statutes of the United States is otherwise provided," the forms of writs and executions, and modes of process in suits at common law, shall be the same in each state, respectively, as are now used or allowed in the supreme court of the same. This was to be the mode of process, unless provision had been made by Congress, and to the extent that Congress had provided, the state laws should not operate.

Now the only statute of the United States then existing, regulating practice, was the Judiciary Act of 1789, ch. 20, which is above recited. The eleventh section is excepted out of and stands unaffected by the subsequent process acts, and is as applicable in this case as it was to those where jurisdiction depended on citizenship. It applies in its terms to all civil suits; it makes no exception, nor can the courts of justice make any.

The judicial power extends to all cases in law and equity arising under the Constitution and laws of the United States, and it is pursuant to this clause of the Constitution that the United States courts are vested with power to execute the laws respecting inventors and patented inventions; but where suits are to be brought is left to the general law -- to-wit, to the eleventh section of the Judiciary Act, which requires personal service of process, within the district where the suit is brought, if the defendant be an inhabitant of another state.

This case and that of *Day v. Hayward* depend on the same grounds of jurisdiction, and were both correctly decided in the circuit court, and the judgment in each is

*Affirmed.*