Clearwater Vs. Meredith

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Court : US Supreme Court

Decided On : 1858

Appeal No. : 62 U.S. 489

Appellant : Clearwater

Respondent : Meredith

Judgement :

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Clearwater v. Meredith

62 U.S. (21 How.) 489

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF INDIANA

SYLLABUS

Where four persons made a contract with a citizen of Ohio, and three of the four were citizens of Indiana, and suit was brought against the three in the Circuit Court of the United States for Indiana, the nonjoinder of the fourth was justified by the

act of 1839, 5 Stat. 321

The decision at the present term, in the case of *Hill v. Smith,* again affirmed.

On the 18th of March, 1857, Hiram Clearwater, a citizen of Ohio, brought a suit against Johnson Meredith, and Tyner, citizens of Indiana; and in the declaration said, that the

"defendants, together with one Caleb B. Smith, who, at the time of the commencement of this suit, was not a citizen of the State of Indiana, and is therefore not joined as a defendant herein, made and delivered to the plaintiff their certain written agreement,"

&c.;

The cause of action was a written agreement, signed by the four persons above named, guaranteeing that the stock in a railroad company should be at par within a certain time, in consideration that Clearwater had executed a deed of conveyance of land to Meredith, to whom the same had been sold by the company, Clearwater having previously contracted to sell it to the company.

The three defendants named in the caption appeared and filed the following demurrer:

"The said defendants, by counsel, come and say the declaration of the said plaintiff, and the several counts therein contained, are severally insufficient in law to enable said plaintiff to have and maintain his action against said defendants, and for cause of demurrer shows to the court the following:"

"1. The jurisdiction of the court is not shown by proper averment."

"2. No sufficient consideration is shown for the undertaking."

"3. The several counts do not contain facts sufficient to constitute a cause of action. "

This demurrer was sustained by the court below, and a writ of error brought this ruling before this Court.

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

The plaintiff, who is averred to be a citizen of the State of Ohio, brought his action against Solomon Meredith and Thomas Tyner, citizens of Indiana, on the 12th July, 1853, together with Caleb B. Smith, who, at the time of the commencement of this suit was not a citizen of the State of Indiana, and is therefore not joined as a defendant herein &c.;

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The declaration has three counts, one of which contains the following guarantee:

"Whereas Hiram Clearwater, of the City of Cincinnati, on the 6th of May, 1853, contracted with the Cincinnati, Cambridge & Chicago Short Line Railway Company for the sale of a tract of land situate in Wayne County, Indiana, lying on the national road about four miles east of Cambridge City and adjoining the lands of John Jacobs and others, containing three hundred and twenty acres, for the consideration of ten thousand dollars, to be paid in the capital stock of said company at par, and whereas, in such contract of sale, it was agreed that said company should furnish to said Clearwater a guarantee that the capital stock of said railway company should be at par within one year from the completion of the entire line of said road, now in consideration that the said H. Clearwater has, with the consent of the said company and at our request, executed a deed of conveyance to Solomon Meredith for said land, to whom the same has been sold by the said company, we, the undersigned, hereby guarantee that the said stock of said company, which has been issued to said Clearwater in pursuance of said contract, shall be worth par in the City of Cincinnati within one year from the time the said railroad shall be completed from Cincinnati to Newcastle, Indiana, and that said road shall be completed within two years from the 1st day of October, 1853, and signed by Pleasant Johnson S. Meredith, Caleb B. Smith, and Thomas Tyner."

The defendants, by counsel, come and say the declaration of the said plaintiff and the counts therein contained are severally insufficient in law to enable said plaintiff to have and maintain his action against said defendants; and for cause of demurrer shows to the court the following:

1. The jurisdiction of the court is not shown by proper averment.

2. No consideration is shown for the undertaking.

3. The several counts do not contain facts sufficient to constitute a cause of action; wherefore the defendants pray judgment &c.;

If this be regarded as a plea to the jurisdiction of the court,

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it is argued that the suit is brought on a joint contract executed by the defendants in error, when only two of them were served with process, and the third one, Caleb B. Smith, who, at the time of the commencement of the suit, was not a citizen of the State of Indiana, and is therefore not joined as a defendant herein &c.;

The first section of the Act of February 28, 1839, provides that

"Where, in any suit at law or in equity commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of or found within the district where the suit is brought or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction and proceed to the trial and adjudication of such suit between the parties who may be properly before it, but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process or not voluntarily appearing to answer."

In the case of *Railroad Bank of Vicksburg v. Slocomb,* 14 Pet. 65, it is said the 11th section of the Judiciary Act declares that no civil suit shall be brought before either of said courts 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 held that this is a personal privilege of not being sued out of the district in which the defendant may live or in which he shall be found on serving the writ, and that it may be waived by the defendant. And it is said in the above opinion

"that it did not contemplate a change in the jurisdiction of the courts, as it regards the character of the parties, as prescribed by the Judiciary Act, and expounded by this Court -- that is that each of the plaintiffs must be capable of suing and each of the defendants capable of being sued, which is not the case in this suit, some of the defendants being citizens of the same state with the plaintiffs."

It is well known that the act of 1839 was intended so to modify the jurisdiction of the circuit court as to make it more practical and effective. Where one or more of the defendants

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sued were citizens of the state, and were jointly bound with those who were citizens of other states, and who did not voluntarily appear, the plaintiff had a right to prosecute his suit to judgment against those who were served with process; but such judgment or decree shall not prejudice other parties not served with process, or who do not voluntarily appear.

Now it is too clear for controversy that the act of 1839 did intend to change the character of the parties to the suit. The plaintiff may sue in the circuit court any part of the defendants, although others may be jointly bound by the contract who are citizens of other states. The defendants who are citizens of other states are not prejudiced by this procedure, but those on whom process has been served and who are made amenable to the jurisdiction of the court.

And in regard to those whose rights are in no respect affected by the judgment or decree, it can be of no importance of what states they are citizens. If one of the defendants should be a citizen of the same state with the plaintiff, no jurisdiction could be exercised as between them and no prejudice to the rights of either could

be done.

The plea to the jurisdiction seems not to be well taken, and it cannot be sustained.

In the case of *Hill v. Smith,* decided at the present term, this Court held that the demurrer filed to the counts on the guarantee did not bring up the validity of that instrument for the action of the court, and that it must be specially pleaded, with suitable averments. And the Court reversed the judgment, and remanded it to the circuit court with leave, on the payment of costs, to move to amend the pleadings so as to raise the questions on the guarantee. The same order is made in the present case.

Judgment reversed.