Eberly Vs. Moore

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Court : US Supreme Court

Decided On : 1860

Appeal No. : 65 U.S. 147

Appellant : Eberly

Respondent : Moore

Judgement :

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Eberly v. Moore

65 U.S. (24 How.) 147

ERROR FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF TEXAS

SYLLABUS

After the defendants had put in a plea in bar, they moved the court for leave to withdraw the plea and to plead in abatement that the plaintiffs had alleged themselves to be citizens of another state, but were in reality the citizens of the

same state with themselves, in consequence of which the district court of the United States had not jurisdiction of the case.

The court allowed the motion and the plea in abatement to be filed. Being satisfied by the verdict of a jury that the allegation of the plea was true, the petition of the plaintiffs was dismissed.

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In this the district court was right. The jurisdiction has been conferred by acts of Congress upon the courts of the United States so to supervise the various steps in a cause as to prevent hardship and injustice, and that the merits of a cause may be fairly tried.

That the plea was not artistically drawn is not a sufficient reason for reversing the judgment of the court below.

Angelina R. Eberly, and the minor, Peyton Lytle, brought an action of trespass to try title to a tract of land situated in Falls County, in the State of Texas. The suit was brought against a number of persons, who adopted different modes of defense. Moore and Raybon pleaded the general issue and certain pleas of adverse possession in bar. At the succeeding term of the court they presented a motion for leave to withdraw their answer, and plead in abatement upon the ground that the plaintiffs, instead of being citizens of Kentucky, as they had alleged, were in reality citizens of Texas, and consequently that the court had no jurisdiction over the case. The motion was granted and the pleas in abatement filed. Other proceedings took place which it is not necessary to state. After the jury was empanelled, the court charged them as follows:

"GENTLEMEN OF THE JURY: To give the court jurisdiction of this case, it is necessary that the plaintiffs should be nonresidents, or citizens of the State of Texas. The petition alleges that two of the plaintiffs, *viz.,* Mrs. Eberly and Peyton Lytle, are citizens of the State of Kentucky. This allegation is denied by the plea in abatement, which avers them to be citizens of the State of Texas. Upon this issue

arises the question of fact which you are to determine."

"When a domicil or citizenship is once acquired in a state, a mere temporary removal will not affect it, and a citizenship elsewhere will not be acquired without a corresponding removal, accompanied with a *bona fide* intent for that purpose. This intent the jury must determine from all the facts and circumstances in evidence before them. The jury will simply state in their verdict whether, from the proof before them in

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this case, Mrs. Eberly and her grandson, Peyton Lytle, or either of them, were citizens of the States of Kentucky or Texas on the 4th November, 1855."

"T. H. DUVAL, *U.S. Dist. Judge* "

"The defendants ask the court to charge that if Texas was the natural domicil of Peyton Lytle -- that is, the domicil of his birth -- and if it remained so until the death of his parents, then it was not in the power of the grandmother to change his domicil by carrying him to Kentucky, and thus to confer upon him that citizenship which would give this Court jurisdiction."

"JNO. A. & R. GREEN, *For Def'ts* "

"The above instruction is given."

"T. H. DUVAL, *U.S. Dist. Judge* "

And the jury having heard the evidence and argument of counsel and the charge of the court, retired and returned into court with the following verdict, which is in words, to-wit:

"We, the jury, find, from the law and the evidence, that the domicil or residence of the plaintiffs in this case, Angelina R. Eberly, and her grandson, Peyton Lytle, never has been changed from the State of Texas, and that their domicil or residence was in the State of Texas at the commencement of this suit."

The counsel for the plaintiffs took an exception to the judgment of the court granting permission to the defendants to withdraw their plea first filed and file one in abatement, and afterwards moved the court for judgment by default to be entered against the defendants, for want of a defense or answer, which motion being overruled by the court, the plaintiffs excepted. The jury then found that the residence of the plaintiffs was in Texas, and the court dismissed the suit.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The plaintiffs, as citizens of Kentucky, commenced a suit by petition against the defendants, as citizens of Texas, for the recovery of a parcel of land in their possession. At the return of the process, the defendants pleaded to the petition the general issue and the statute of limitations in bar of the suit.

At the next succeeding term, they moved the court, upon an affidavit charging that the allegation in the petition, "that the plaintiffs were citizens of Kentucky, was untrue, and fraudulently made to induce the court to take cognizance of the cause," and that they were citizens of Texas, for leave to withdraw their pleas, and to plead this matter in abatement of the suit. This motion was allowed, and pleas in abatement were filed. One of these avers that the allegation of citizenship in said plaintiffs' petition is not true; that said plaintiffs are not citizens of Kentucky, but are respectively citizens of Texas; wherefore he prays the dismissal of the cause for want of jurisdiction. The plaintiffs thereupon moved the court for judgment for the want of a plea. This motion was not allowed, and thereupon the plaintiffs refused to reply to the pleas in abatement, and the court then proceeded to empanel a jury, and directed them to ascertain whether, from the proof before them, the plaintiffs, or either of them, were citizens of the States of Kentucky or Texas at the date of the writ. The jury returned as their verdict that the domicil or residence of the plaintiffs never had been changed from the State of Texas, and that their domicil or residence was in the State of Texas at the commencement of this suit. The court dismissed their petition.

The plaintiffs object to the authority of the district court to permit the withdrawal of pleas in bar for the purpose of pleading to the jurisdiction, that a plea in bar admits the jurisdiction of the court, and the capacity of the plaintiffs to sue, and that they cannot be deprived of the benefit of that admission. The equitable jurisdiction of the courts of the United States as courts of law is chiefly exercised in the amendment of pleadings and proceedings in the court and in the supervision of all the various steps in a cause, so that the rules and practice of the court shall be so administered and enforced as to prevent hardship and injustice and that the merits of the cause may be fairly tried. Such a jurisdiction is essential to and is inherent in the organization of courts of justice. *Bartholomew v. Carter,* 2 M. & G. 125.

But this jurisdiction has been conferred upon the courts of the United States in a plenary form by acts of Congress. 1 Stat. at Large 83, sec. 17; 335, sec. 7; 91, sec. 32.

It has been uniformly held in this Court that a circuit court could not be controlled in the exercise of the discretion thus conceded to it. *Spencer v. Lapsley,* 20 How. 264. In the present instance, the jurisdiction was properly exercised. An attempt was made, according to the affidavit on which the motion was founded, to confer upon the district court, by a false and fraudulent averment, a jurisdiction to which it was not entitled under the Constitution. If true, this was a gross contempt of the court for which all persons connected with it might have been subject to its penal jurisdiction.

The plaintiffs contend that the plea is a nullity and that they were entitled to sign judgment. It is not a precise, distinct, or a formal plea, but it denies the truth of the averment of the citizenship of the plaintiffs as they had affirmed it to be in the petition. We may say, as Lord Denman said in *Horner v. Keppel,* 10 A. & E. 17:

"Where a plea is clearly frivolous on the face of it, that is a good ground for setting it aside, but the plea here is not quite bad enough to warrant that remedy."

Judgment affirmed.