

**De Krafft Vs. Barney**

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**Court :** US Supreme Court

**Decided On :** 1862

**Appeal No. :** 67 U.S. 704

**Appellant :** De Krafft

**Respondent :** Barney

**Judgement :**

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**De Krafft v. Barney**

**67 U.S. (2 Black) 704**

*APPEAL FROM THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

1. In order to give this Court jurisdiction under the 22d section of the Judiciary act of 1789, the matter in dispute must be money, or some right, the value of which can be calculated in money.

2. A claim to the guardianship of the person and property of children, not on account of any pecuniary value attached to the office, but upon other considerations, is not within the jurisdiction of this Court.

3. [Barry v. Mercein](#), 5 How. 103, restated and reaffirmed.

The appellant, De Krafft, by two petitions filed in the Orphans' Court of the District of Columbia on the 2d of October, 1860, and the 7th of September, 1861, alleged that by reason of a decree of divorce rendered by the District Court of Jasper County, Iowa, on the 18th day of September, 1860, divorcing from the appellee his wife, Mary De Krafft Barney, since deceased,

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and allotting the custody and control of their infant children to the latter, the appellee was not entitled to the guardianship of the persons and estates of said infant children, and that even if so entitled, the appellee was an unfit person to have the custody of the children and their estates, and ought to be removed; and the petition prayed the appointment of some suitable guardian to take charge of the children, and their estates. The answers of the appellee to these petitions, filed on the 3d of November, 1860, and the 11th of September, 1861, denied the validity of the alleged divorce because the appellee was not a party to the proceedings wherein the decree was alleged to have been rendered, and because said decree was obtained by fraud. The answers further denied the alleged unfitness of the appellee to act as guardian, and pleaded to the jurisdiction of the court to remove a guardian by nature. Here the pleadings ended. Evidence was taken at great length. The Iowa record showed on its face that the appellee was a nonresident of Iowa, was not served with process and did not appear, either in person or by attorney. Evidence was also produced showing that he was beyond the United States during the prosecution of the suit and had no notice that it was pending.

On the 25th of January, 1862, the judge of the orphans' court delivered his opinion in which he held that by the 4th Article of the Constitution of the United States,

Sec. I., and the acts of Congress passed in pursuance thereof, the decree of the District Court of Jasper County was final and conclusive. The court then rendered a decree appointing Dr. Harvey Lindsley guardian of the children and requiring him to give bond with sureties, to be approved by the court, in the sum of \$30,000, which bond was accordingly given. The appellee appealed from this decree to the circuit court. The circuit court, at October Term 1862, reversed the decree of the orphans' court and directed said court to cite the appellee

"for the purpose of entering into bond with good and sufficient security for the performance of his trust as natural guardian of the estate of his infant children,"

&c.; From this order De Krafft, in open court prayed an appeal to this Court.

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The case was submitted by counsel upon briefs on a motion to dismiss for want of jurisdiction.

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MR. CHIEF JUSTICE TANEY.

This case cannot be distinguished from the case of [Barry v. Mercein](#), 5 How. 103. The controversy in that case was between a husband and his divorced wife, respecting the guardianship of a child of the marriage who was still an infant.

The were living apart, and each of them claimed the right to the guardianship. And after full argument, the Court held that in order to give this Court jurisdiction under the 22d section of the Judiciary act of 1789, the matter in dispute must be money, or some right, the value of which could be calculated and ascertained in money. And as the matter in controversy between the parties was not money nor a right which could be measured by money, but was a contest between the father and mother of the infant upon other considerations, the appeal was dismissed for want of jurisdiction.

In the case before the Court, it is admitted that Dr Kraft, the appellant, has no pecuniary interest in the controversy. He appears as *prochein ami* for the children of Barney, whose wife is dead, and from whom the children inherited a large property. De Krafft alleges that Barney, from his character and habits, is unfit to be trusted with the guardianship of the persons or property of his children, and prays that some other persons suitable and trustworthy may be appointed by the orphans' court. The guardianship of the persons and property of the children is therefore the only matter in dispute, not on account of any pecuniary value attached to the office, but upon other considerations. The case is the same in principle with that of *Barry v. Mercein*, above referred to, and the appeal to this Court for the same reason must be dismissed for want of jurisdiction.

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