Ex Parte Schollenberger

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Appeal No. : 96 U.S. 369

Appellant : Ex Parte Schollenberger

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Ex Parte Schollenberger - 96 U.S. 369 (1877)
U.S. Supreme Court Ex Parte Schollenberger, 96 U.S. 369 (1877)

Ex Parte Schollenberger

96 U.S. 369

PETITION FOR A MANDAMUS TO THE JUDGES OF THE CIRCUIT COURT

OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

A foreign insurance company was doing business in Pennsylvania under a license granted pursuant to a statute, which, among other things, provided that the company should file a written stipulation, agreeing that process issued in any suit brought in any court of that Commonwealth having jurisdiction of the subject matter, and served upon the agent specified by the company to receive service of

process for it, should have the same effect as if personally served upon the company within the state. Suit was brought in the Circuit Court of the United States for the Eastern District of Pennsylvania by a citizen of that state against the company, and process served, in accordance with the state law, upon its agent so specified, who resided within the district. The service of the process was quashed, because the company was not an inhabitant of or found within the district.

HELD

1. That the circuit court has jurisdiction of the suit, and should proceed to hear and determine it.

2. That said court is a court of the commonwealth within the intent of the statute.

Page 96 U. S. 370

Schollenberger, a citizen of Pennsylvania, brought sundry suits in said circuit court against certain foreign insurance companies upon policies which they had severally issued upon his property situate in that state and within the jurisdiction of the court.

Each company, before the issue of its policy, had accepted the provisions of the statute of the state, and, in compliance therewith, appointed its agent residing there, on whom process of law against it could be served. So much of the statute as bears on the question here involved is set out in the opinion of this Court.

The service of the writs, which were sued out by Schollenberger and executed, in accordance with the state law, on the agents of the several companies by them respectively specified for the purpose and residing within the jurisdiction of the court, was quashed by the circuit court. On his petition, setting forth the foregoing facts, a rule was awarded upon the judges of that court to show cause why a writ of mandamus should not be issued out of the office of this court commanding them to hear and determine the suits so brought in the said circuit court and also to strike from the record certain orders dated the thirteenth day of April, 1878,

whereby the service of the said writs was quashed, and thereupon to make such disposition of the suits as ought to have been made had the said orders not been entered.

The judges in their return answered that the facts were truly stated in the petition, that the respondents declined to hear and determine the said suits because, in their opinion, the said circuit court had no competent jurisdiction thereof, the defendants not having appeared therein or in any wise submitted to the jurisdiction of the court, and not having been at the commencement of the respective suits or at any time inhabitants of or found in the said district within the meaning of the Act of Congress of March 3, 1875, reenacting a like provision of the eleventh section of the Act of Sept. 24, 1789; that the question under this enactment being one of jurisdiction,

Page 96 U. S. 371

and not of mere procedure, the statute of Pennsylvania mentioned in the said petition was, in the opinion of the respondents, inapplicable. The service of the process in the said suits was therefore set aside as unauthorized.

Page 96 U. S. 374

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court.

This is a petition for a writ of mandamus, requiring the judges of the Circuit Court of the United States for the Eastern District of Pennsylvania to hear and determine certain suits brought in that court in favor of the relators against a number of insurance companies incorporated by the laws of other states, but doing business in that state under a license granted pursuant to a statute regulating that subject. The circuit court declines to entertain jurisdiction of the causes for the reason, as is alleged, that the defendant companies were not "at the commencement of the respective suits, or at any time, inhabitants of or found in the said district." This presents the only question in the case, as it is conceded that the citizenship of the parties is such as to give the court jurisdiction, if the several defendants can be

sued in the district without their consent.

A statute of Pennsylvania provides that

"No insurance company not of this state, nor its agents, shall do business in this state until he has filed with the insurance commissioner of this state a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the insurance commissioner, or the party designated by him, or the agent specified by said company to receive service of process for the said company, shall have the same effect as if served personally on the company within this state, and, if such company should cease to maintain such agent in this state, so designated, such process may thereafter be served on the insurance commissioner; but so long as any liability of the stipulating company to any resident of this state continues, such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with the service at the office of said company within this state, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term 'process'

Page 96 U. S. 375

includes any writ of summons, subpoena, or order whereby any action, suit, or proceedings shall be commenced, or which shall be issued in or upon any action, suit, or proceedings brought in any court of this Commonwealth having jurisdiction of the subject matter."

Laws of Penn., 1873, p. 27, sec. 13.

The return to the rule to show cause admits that all the defendant companies were doing business in the state under this statute, and that their designated agents were duly served with process in each of the suits. For the purposes of this hearing, the fact of due service upon the agents must be considered as established. If in reality it is not so, the court below will not be precluded by any thing in this proceeding from inquiring into the truth, and acting upon the facts as they are found to exist.

The act of 1875, determining the jurisdiction of the circuit courts, 18 Stat. 470, and which in this particular is substantially a re enactment of the act of 1789, 1 Stat. 79, sec. 11, provides that

"no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceedings, except,"

&c.;

It is unnecessary to inquire whether these several companies were inhabitants of the district. The requirements of the law, for all the purposes of this case, are satisfied if they were found there at the time of the commencement of the suits, and that question, we think, was settled in *Railroad Company v. Harris,* 12 Wall. 65. In that case, it appears that when the suit was commenced, the statutes defining the jurisdiction of the courts of the District of Columbia provided that

"No action or suit shall be brought . . . by any original process against any person who shall not be an inhabitant of or found within the District at the time of serving the writ."

2 Stat. 106, sec. 6. Afterwards, in 1867, the law was changed in respect to foreign corporations doing business in the District, and service allowed upon the agent, 14 Stat. 404, sec. 11; but when the suit was begun and the process served, the old law was in force. The Baltimore and Ohio Railroad Company, a Maryland corporation, was authorized by Congress to construct and extend its

Page 96 U. S. 376

railroad into the District of Columbia. Harris, having been injured while traveling as a passenger upon the railroad outside of the District, sued the company in the Supreme Court of the District and caused the writ to be served upon the president of the company within the District. The company objected to the jurisdiction of the court and insisted that it was neither an inhabitant of nor found within the District.

In ruling upon this objection, we held that although the company was a foreign corporation, it was suable in the District because it had in effect consented to be sued there in consideration of its being permitted by Congress to exercise therein its corporate powers and privileges. The language of the Court, speaking through MR. JUSTICE SWAYNE, is:

"It [a corporation] cannot migrate, but may exercise its authority in a foreign territory upon such conditions as may be prescribed by he law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there, it will be presumed to have assented, and will be bound accordingly."

Then, after an examination of the statute granting the right to extend the road, it was said (p. 79 U. S. 84):

"We entertain no doubt that it made the company liable to suit where this suit was brought, in all respects as if it had been an independent corporation of the same locality."

This language was cited with approbation, and adopted as a correct exposition of the law by MR. JUSTICE FIELD, speaking for the Court in *Railway Company v. Whitton,* 13 Wall. 270.

Applying these principles to the present case, there cannot be any doubt, as it seems to us, of the jurisdiction of the circuit court over these defendant companies. They have in express terms, in consideration of a grant of the privilege of doing business within the state, agreed that they may be sued there -- that is to say that they may be found there for the purposes of the service of process issued "by any court of the Commonwealth having jurisdiction of the subject matter." This was a condition imposed by the state upon the privilege granted, and it was not unreasonable. *Lafayette Insurance Co. v. French,* 18 How. 404. It was insisted in argument that the statute confines the right of suit to the courts of the state; but we cannot so construe it. There is nothing to manifest such an

intention, and, as the object of the legislature evidently was to relieve the citizens of Pennsylvania from the necessity of going outside of the state to seek judicial redress upon their contracts made with foreign insurance companies, it is but reasonable to suppose that they were entirely at liberty to select the court in the state having jurisdiction of the subject matter, which, in their judgment, was the most convenient and desirable. As the company, if sued in a state court, could remove the cause to the circuit court, and thus compel a citizen of the state to submit to that jurisdiction, we see no reason why the citizen may not, if he desires it, bring the company into the same jurisdiction at the outset. While the circuit court may not be technically a court of the Commonwealth, it is a court within it; and that, as we think, is all the legislature intended to provide for.

States cannot by their legislation confer jurisdiction upon the courts of the United States, neither can consent of parties give jurisdiction when the facts do not; but both state legislation and consent of parties may bring about a state of facts which will authorize the courts of the United States to take cognizance of a case. *Ex Parte McNeil,* 13 Wall. 236. Thus, if the parties to a suit, both plaintiff and defendant, are in fact citizens of the same state, an agreement upon the record that they are citizens of different states will not give jurisdiction. But if the two agree that one shall move into and become a citizen of another state in order that jurisdiction may be given, and he actually does so in good faith, the court cannot refuse to entertain the suit. So, as in this case, if the legislature of a state requires a foreign corporation to consent to be "found" within its territory for the purpose of the service of process in a suit as a condition to doing business in the state, and the corporation does so consent, the fact that it is found gives the jurisdiction notwithstanding the finding was procured by consent. The essential fact is the finding, beyond which the court will not ordinarily look.

A corporation cannot change its residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority of its charter, but it may by its agents transact business anywhere, unless prohibited by its

charter or excluded by local laws. Under such circumstances, it seems clear that it may, for the purpose of securing business, consent to be "found" away from home, for the purposes of suit as to matters growing out of its transactions. The act of Congress prescribing the place where a person may be sued is not one affecting the general jurisdiction of the courts. It is rather in the nature of a personal exemption in favor of a defendant, and it is one which he may waive. If the citizenship of the parties is sufficient, a defendant may consent to be sued anywhere he pleases, and certainly jurisdiction will not be ousted because he has consented. Here the defendant companies have provided that they can be found in a district other than that in which they reside if a particular mode of proceeding is adopted, and they have been so found. In our opinion, therefore, the circuit court has jurisdiction of the causes and should proceed to hear and decide them.

We are aware that the practice in the circuit courts generally has been to decline jurisdiction in this class of suits. Upon an examination of the reported cases in which this question has been decided, we find that in almost every instance the ruling was made upon the authority of the late Mr. Justice Nelson, in *Day v. The Newark India rubber Manufacturing Co.,* 1 Blatchf. 628, and *Pomeroy v. New York & New Haven Railroad Co.,* 4 *id.* 120. These cases were decided by that learned justice, the one in 1850 and the other in 1857, long before our decision in *Railroad Company v. Harris, supra,* which was not until 1870, and are, as we think, in conflict with the rule we there established. It may also be remarked that Mr. Justice Nelson, as a member of this Court, concurred in that decision.

Judge Woods, of the Fifth Circuit, has already decided in favor of the jurisdiction in *Knott v. The Southern Life Insurance Co.,* 2 Woods 479, and Judge Dillon, of the eighth circuit, declined to take it, only because he felt himself foreclosed by the rulings of other judges, and especially of Mr. Justice Nelson. *Stillwell v. The Empire Fire Insurance Co.,* 4 Cent.Law Jour. 463.

Writ of mandamus granted.