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StarIn Vs. New York

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Court : US Supreme Court

Decided On : Nov-02-1885

Appeal No. : 115 U.S. 248

Appellant : Starin

Respondent : New York

Judgement :

Starin v. New York - 115 U.S. 248 (1885)
U.S. Supreme Court Starin v. New York, 115 U.S. 248 (1885)

Starin v. New York

Submitted April 22, 1885

Decided November 2, 1885

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

When it appears in a suit that same title, right, privilege or immunity on which recovery depends will be defeated by one construction of the Constitution or laws of the United States, or sustained by the opposite construction, the case is one arising under the Constitution or laws of the United States within the meaning of that term as used in the Act of March 3, 1875, 18 Stat. 470.

The questions whether the City of New York has the exclusive right to establish ferries between Manhattan Island and the north shore of Staten Island on the Kill von Kull, and whether in a given case this right has been interfered with by the setting up of a ferry without license are not questions arising under the Constitution or laws of the United States.

A separate defense by one defendant in a joint suit against him and others upon a joint or a joint and several cause of action does not create a separate controversy, so as to entitle that defendant, if the necessary citizenship exists as to him, to a removal of the cause under the second clause of 2, Act of March 3, 1875.

Louisville & Nashville Railroad Co. v. Ide, 114 U. S. 52 ; *Putnam v. Ingraham,* 114 U. S. 57 , and *Pirie v. Tvedt,* 115 U. S. 41 , affirmed.

These were appeals from orders of the circuit court remanding a suit which had been removed from a state court under the Act of March 3, 1875, c. 137, 18 Stat. 470. The questions to be decided arise on the following facts:

The Mayor, Aldermen, and Commonalty of the City of New York, a municipal corporation of the State of New York, commonly called the City of New York, brought a suit in equity on or about the 11th of August, 1884, in the Superior Court of the City of New York against John H. Starin, Independent Steamboat Company, Starin's City, River and Harbor Transportation Company of New York, New York and Staten Island Steamboat Company, David Manning, Franklin Wilson, William Clark, John G. Belknap, James B. Corwin, Max Golden, Samuel

Underhill, and Frank Smith, to restrain them from using and employing the steam ferry boats *Pomona, D. R. Martin, Laura M. Starin,* and *Castleton,* or any other vessel or vessels of any kind, for and in the transportation of persons, animals, vehicles, freight, goods, and chattels from or to Pier No. 18, North River, or from or to any place in Manhattan Island to or from certain landing places on the shore of Staten Island without the license or permission of the plaintiffs, and also for an account of moneys received by the defendants, or any or either of them, for such transportation. Both Manhattan Island and Staten Island are in the State of New York. The cause of action as stated in the complaint is that the city, under its charter granted originally January 15, 1730, by the Province of New York, and since confirmed by the State of New York, has the exclusive right of establishing ferries from Manhattan Island to the opposite shores in such and so many places as the common council may think fit; that the defendants, without the permission of the city, have set up and are maintaining a ferry between Manhattan Island and certain landing places on Staten Island, and for that purpose employ the boats above named; that the defendant Starin is the owner of the *Castleton* and the *D. R. Martin,* and the person chiefly interested in Starin's City, River and Harbor Transportation Company, of New York, which owns the *Laura M. Starin,* and in the New York and Staten Island Steamboat Company, which owns the *Pomona;* that while the business in done in the name of the Independent Steamboat Company, that company was organized and incorporated through his instrumentality and in his interest, and is composed of but three persons, all of whom are in his employ and under his control; that the incorporation of the company was a device for his own personal benefit, and that he is in fact the person actually operating the ferry. The certificate of incorporation, a copy of which is attached to the complaint, shows that the company was organized under the laws of New Jersey, July 26, 1884, with a capital of $5,000, divided into 500 shares of $10 each, all owned by three persons, for the transportation of persons and property upon water as common

carriers for hire; that the principal part of the business of the company in New Jersey was to be transacted in Jersey City, and that the business out of that state was to be done in the cities of New York and Brooklyn, and the several villages, landing places, cities, and towns on the Hudson River, Staten Island, and Long island, in New York, accessible by water.

The defendants Starin, Independent Steamboat Company, Starin's City, River and Harbor Transportation Company, and New York and Staten Island Steamboat Company each filed a separate answer to the complaint. All the other defendants, who are the masters or pilots or engineers employed in running the several boats, united in one answer. The answers all contain substantially the same defenses. They admit the ownership of the boats as set forth in the complaint except that it is alleged the *Castleton* belongs to the New York and Staten Island Steamboat Company instead of Starin. They admit the charter of the city, with words purporting to grant certain rights as to the establishment of ferries from Manhattan Island to the opposite shores, but deny that this grant extends to ferries between New York and that part of Staten Island which borders upon the Kill von Kull. They admit that the several boats mentioned in the complaint were run at stated times by the Independent Steamboat Company under the management of the masters and engineers, without the license or permission of the city, for the transportation of persons and property between Pier 18, North River, which is on Manhattan Island, and certain landing places on the shore of Staten Island, making daily fourteen trips or thereabouts, but they deny that in so doing the company either operated a ferry or usurped any franchise belonging to the city. They also deny the allegations in the complaint as to the connection of the defendant Starin with the Independent Steamboat Company, and deny that Starin is the person who is actually operating the boats.

The answers then allege, "as a matter of special defense under the laws of the United States:" --

1. That the Independent Steamboat Company is a corporation, organized and incorporated under the laws of New

Jersey, for the purpose of transporting persons and property by water, as a common carrier for hire, in and over the waters of the Hudson River, Kill von Kull, Raritan Bay, and their tributaries, between places on such waters in New York and New Jersey, including Staten Island and Long island, and the Cities of New York and Brooklyn; that the company chartered the boats in question from the several owners thereof, and leased wharves and landing places in New York and on the shore of Staten Island, bordering on the Kill von Kull, for the purpose of engaging in the business of transportation by water between such wharves and landings.

2. That all the boats in question are enrolled and licensed under the laws of the United States for carrying on the coasting trade as vessels of the United States, and that the individual defendants described as masters or engineers on the boats are all licensed under the laws of the United States to act as masters or pilots, or as engineers on steam vessels upon the waters traversed by the boats in question.

3. That for a number of years, terminating in 1874, steamboats similar to those operated by the company, and doing a transportation business similar to that in which the company is engaged, had been, without any license or permission from the city, navigated from Pier 18, New York, to the landing places on Staten Island made use of by the company, and back; that large sums were realized therefrom, and that since 1874, this business has greatly increased.

4. That the waters of the Hudson River or Bay of New York and the Kill von Kull are waters of the United States, and public and common highways of interstate and international commerce; that the steamboats, as operated by the company, do not constitute a ferry within the meaning of the laws of the United States or of the State of New York or of the city charter, but that the city seeks, under the cover of its charter and by this suit, to establish in itself, as and for a monopoly and as private property, the ownership of all rights to carry on commercial intercourse, consisting in the daily or regular interchange or transportation of passengers and property between Manhattan and Staten Islands, over such waters,

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and to obstruct the navigation of such waters, although carried on by citizens of the United States in steam vessels duly enrolled and licensed under the laws of the United States and navigated by masters, pilots, and engineers duly licensed under the laws of the United States, thus practically nullifying the laws of the United States regulating commerce and navigation.

After the answers were filed, two petitions were presented for a removal of the suit to the circuit court, one by all the defendants on the ground that the suit was one arising under the Constitution and laws of the United States, and the other by the Independent Steamboat Company alone on the ground that there was in the suit a controversy wholly between that company and the city as to whether the company "had or had not the right to use and operate its steamboats" in the way contended for, and that this controversy could be fully determined between them. A copy of the record in the state court having been filed in the circuit court of the United States, that court remanded the cause, and thereupon these appeals were taken, one by all the defendants and the other by the Independent Steamboat Company alone. The two appeals were docketed in this Court separately.

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MR. CHIEF JUSTICE WAITE delivered the opinion of the Court. After stating the facts in the language above reported, he continued:

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We will first consider whether the suit is one which arises under the Constitution or laws of the United States, for if it is not, the order to remand was right so far as the removal upon the application of all the defendants is concerned.

The character of a case is determined by the questions involved. *Osborn v. Bank of the United States,* 9 Wheat. 737, 22 U. S. 824 . If from the questions it appears that some title, right, privilege, or immunity on which the recovery

depends will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States within the meaning of that term as used in the act of 1875 -- otherwise not. Such is the effect of the decisions on this subject. *Cohens v. Virginia,* 6 Wheat. 19 U. S. 379 ; *Osborn v. Bank of the United States, supra;* 73 U. S. *Cooper,* 6 Wall. 247, 73 U. S. 252 ; *Gold Washing & Water Co. v. Keyes,* 96 U. S. 201 ; *Tennessee v. Davis,* 100 U. S. 264 ; *Railroad Co. v. Mississippi,* 102 U. S. 140 ; *Ames v. Kansas,* 111 U. S. 462 ; *Kansas Pacific v. Atchison Railroad,* 112 U. S. 416 ; *Provident Savings Co. v. Ford,* 114 U. S. 641 ; *Pacific Railroad Removal Cases,* 115 U. S. 1 , 115 U. S. 11 .

The questions in this case, as shown by the pleadings, are 1, whether the City of New York has, under its charter, the exclusive right to establish ferries between Manhattan Island and the shore of Staten Island on the Kill von Kull, and, if it has, then 2 whether the defendants have, in law and in fact interfered with that right by setting up and operating such a ferry. The determination of these questions depends 1 on the construction of the grant in the charter of the city and 2 on the character of the business in which the defendants are engaged. It is not contended that there is anything either in the Constitution or the laws of the United States which takes away the right from the city, if it was in fact granted by the original charter before the Revolution, or which defines what a ferry is or shall be, or provides that enrolled and licensed steamboats, managed by licensed officers, may be run on the public waters as ferry boats without regard to grants that may have been made by competent authority of exclusive ferry

privileges, and that is not the defense set up in the answers in this case. The question here is as to the extent of the ancient grant made to the city, not as to the rights of the defendants in the navigation of the waters of the United States irrespective of this grant.

It is not pretended that the United States have in any manner attempted to interfere with the power of a state to grant exclusive ferry privileges across public waters between places within its own jurisdiction. No attempt is made by the city to control the use of the licensed and enrolled vessels of the defendants or their licensed officers in any other way that by preventing them from running as a ferry between the points named. They may run as they please, and engage in any business that may be desirable not inconsistent with the exclusive ferry rights of the city. The claim of the city is based entirely on its charter, and it seeks in its complaint to control only that part of the navigation of the public waters in question which is connected with the establishment and operation of ferries between New York and the specified landing places on Staten Island. Although the prayer for judgment, when taken by itself, may appear to go further, it must be construed in connection with the cause of action as stated in the complaint, and limited accordingly. The defense is that the defendants are not operating a ferry within the meaning of the charter, or, if they are, that it is not such a ferry as comes within the monopoly of the city. If they are not operating such a ferry, or if they are, and it appears that the monopoly granted to the city does not include ferries between New York and Staten Island on the Kill von Kull, they must prevail in the final determination of the suit. The decision of these questions does not depend on the Constitution or laws of the United States. There is nothing in the Constitution or laws of the United States entering into the determination of the cause which, if construed one way will defeat the defendants or in another sustain them.

It remains to consider the removal on the application of the Independent Steamboat Company alone. The suit is against all the defendants jointly on the allegation that, acting in common, they are all engaged in violating the rights of the

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city by keeping up and maintaining the ferry in question. The averment in the complaint is that the defendant Starin is in reality the person actually operating the ferry, and that he uses the other defendants as his instruments for that purpose. It is conceded that the Independent Steamboat Company does not own the boats running on the route. They all belong to Starin or to companies in which he is the

person chiefly interested. The Independent Company was not organized until a few days before this suit was begun. It has a capital of only $5,000, and while it claims to have chartered the boats in question from their respective owners, and to be engaged in running them on the route, it does not deny that the other defendants are directly interested in the establishment and maintenance of the ferry, if it be one, which is being operated by and in the name of the company. The only controversy in the case as stated in the complaint is as to the right of the defendants to keep up and maintain a ferry on the route in question. Upon one side of that controversy is the plaintiff, and upon the other all of the defendants. There cannot be a full determination of this one controversy unless all the defendants are parties. The case as stated in the complaint makes Starin the principal defendant and the Independent Company only an instrument of his. The object is to prevent him, as well as the others, from using these boats, or any others they may own or control, in the way these are being used. There is, according to the complaint, but a single cause of action, and that is the violation of the exclusive ferry rights of the plaintiff by the united efforts of all the defendants. The case is therefore within the rule established in *Louisville & Nashville Railroad Co. v. Ide,* 114 U. S. 52 ; *Putnam v. Ingraham,* 114 U. S. 57 ; *Pirie v. Tvedt,* 115 U. S. 41 -- that a separate defense by one defendant in a joint suit against him and others upon a joint or a joint and several cause of action does not create a separate controversy so as to entitle that defendant, if the necessary citizenship exists as to him, to a removal of the cause under the second clause of 2 in the act of 1875.

It follows that the case was properly remanded, and the orders of the circuit court to that effect are

Affirmed.

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