

King Bridge Co. Vs. Otoe County

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Court : US Supreme Court

Decided On : Jan-31-1887

Appeal No. : 120 U.S. 225

Appellant : King Bridge Co.

Respondent : Otoe County

Judgement :

King Bridge Co. v. Otoe County - 120 U.S. 225 (1887)

U.S. Supreme Court King Bridge Co. v. Otoe County, 120 U.S. 225 (1887)

King Bridge Company v. Otoe County

Submitted January 7, 1887

Decided January 31, 1887

120 U.S. 225

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEBRASKA

SYLLABUS

An order drawn upon a county treasurer by county officials in favor of A or order unendorsed, and a like order in favor of A, both assigned by A to B for a valuable consideration, constitute no cause of action in B's favor on which B can maintain an action in a circuit court of the United States on the ground of citizenship if A could not maintain the action there on the same ground, and if, in such action in B's favor, A's necessary qualification of citizenship does not affirmatively appear in the record in this Court, the judgment below will be reversed whether the question of jurisdiction be made or not, and plaintiff in error adjudged to pay costs in this Court.

This action was brought November 10, 1885, by the King Iron Bridge and Manufacturing Company, a corporation of Ohio, against Otoe County, in the State of Nebraska, to recover the amount of two county warrants or orders, each signed by the chairman of the county commissioners of the county, and countersigned by the county clerk. One was dated October 9, 1878, and directed the "Treasurer of Otoe County to pay to Z. King or order sixteen hundred and five dollars, and charge to account of special bridge funds," and the other dated January 9, 1879, directed the "Treasurer of Otoe County to pay to Z. King sixteen hundred and five dollars, and charge to account of special bridge fund." The first one being presented for payment on the 23d of October, 1878, was endorsed by the treasurer, "Presented, and not paid for want of funds." The other was presented on the 15th of January, 1879, and received a like endorsement. The petition states in respect of each warrant that it had been, for a valuable consideration, "sold, transferred, and delivered" by Z. King to the plaintiff, who sues as the holder and owner thereof.

Judgment was asked for \$3,210, with ten percent interest on \$1,605 thereof from October 23, 1878, and for \$1,605, with like interest from January 15, 1879.

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The defense was the limitation of five years prescribed by the local law for an action "upon a specialty, or any agreement, contract, or promise in writing, or

foreign judgment." The court below overruled a demurrer to the answer and dismissed the action.

MR. JUSTICE HARLAN, after stating the case as above reported, delivered the opinion of the Court.

This case was argued upon the question of limitation. But we have no occasion to consider that question, for it does not appear that the circuit court had jurisdiction of the action. Unless the contrary appears affirmatively from the record, the presumption upon writ of error or appeal is that the court below was without jurisdiction. *Robertson v. Cease*, [97 U. S. 646](#) ; *Grace v. American Central Ins. Co.*, [109 U. S. 283](#) ; *Boers v. Preston*, [111 U. S. 252](#) . That the point as to jurisdiction was not made here by either party is immaterial, because, as said in *Mansfield &c.; Railway Co. v. Swan*, [111 U. S. 382](#) ,

"The rule, springing from the nature and limits of the judicial power of the united states, is inflexible and without exception which requires this Court of its own motion to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction -- first of this Court and then of the court from which the record comes."

See also *Hancock v. Holbrook*, [112 U. S. 231](#) . The Act of March 3, 1875, 1, excludes from the cognizance of a circuit or district court of the United States

"any suit founded on contract in favor of an assignee unless a suit might

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have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant, and bills of exchange."

One of the warrants is payable to Z. King and the other to Z. King or order. The latter is not endorsed by him in blank or to the order of the plaintiff. Plainly, therefore, upon any view of the statute, the plaintiff, as the holder or owner of the warrants, could not maintain a suit in the court below unless King could have sued in that court had he not sold the warrants. But it does not appear that King could have maintained the suit. There is no averment as to his citizenship, nor does his citizenship otherwise appear from the record. We must therefore presume, on this writ of error, that the circuit court was without jurisdiction.

It will be for the court below to determine whether an amendment of the pleadings upon the point of jurisdiction will be proper.

The plaintiff in error must pay the costs in this Court. *Peper v. Fordyce*, [119 U. S. 469](#) ' *Everhart v. Huntsville College*, ante, [120 U. S. 223](#) .

Reversed.