Schunk Vs. Moline, Milburn and Stoddart Co.

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Decided On : Feb-08-1893

Appeal No. : 147 U.S. 500

Appellant : Schunk

Respondent : Moline, Milburn and Stoddart Co.

Judgement :

Schunk v. Moline, Milburn & Stoddart Co. - 147 U.S. 500 (1893)
U.S. Supreme Court Schunk v. Moline, Milburn & Stoddart Co., 147 U.S. 500 (1893)

Schunk v. Moline, Milburn & Stoddart Company

No. 1153

Submitted January 9, 1893

Decided February 8, 1893

147 U.S. 500

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEBRASKA

SYLLABUS

A statute of the Nebraska authorizes a creditor in certain cases to bring an action on a claim before it is due and to have an attachment against the property of the debtor. A citizen of Ohio brought an action in the Circuit Court of the United States for the District of Nebraska against a citizen of Nebraska to recover $530.09 which was overdue, and $1,664.04 which was to become payable in the following month, and an attachment was issued under the statute against the defendant's property. The Circuit Court sustained its jurisdiction and gave judgment in plaintiff's favor for both sums.

HELD

(1) That the circuit court had jurisdiction notwithstanding the fact that a part of the sum sued for was not due and payable when the action was commenced and the amount actually due and payable was less than$2,000.

(2) That if there were any error in the decision, on which this Court expresses no opinion, the defendant, if desiring to have it reviewed, should have taken the case to the circuit court of appeals.

On the 14th of November, 1891, defendant in error commenced a suit against B. A. Schunk in the Circuit Court of the United States for the District of Nebraska on several notes, some of which, amounting to $530.09, were past due, while the others, amounting to $1,664.04, were not then due. The prayer of the petition was in these words:

"Wherefore the plaintiff prays judgment against the said defendant for the said sum of $530.09, with interest thereon from the respective dates of the notes which are now past due, together with the further sum of $1,664.04, which will become due and payable the 1st and 8th days of December, 1891, with interest thereon from the respective dates of said promissory notes, and the plaintiff prays that it recover a judgment for all of its costs paid out and expended in this action, and

plaintiff further prays for a judgment against said defendant for all reasonable costs of collection of the above-mentioned indebtedness and for a judgment, including plaintiff's attorneys' fees, in the sum of $250."

Under the provisions of the state statutes, an attachment was issued against the property of the defendant. The section authorizing this is in these words:

"SEC. 237. A creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor, in the following cases: First. Where a debt or has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors or to hinder or delay them in the collection of their debts. Second. Where he is about to make such sale, conveyance, or disposition of his property with such fraudulent intent. Third. Where he is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors or of hindering and delaying them in the collection of their debts."

Cobbey's Consolidated Statutes, 1891, p. 1003; Compiled Stats.Neb. 1892, p. 884.

Subsequent sections prescribe the proceedings to be pursued, the regularity of which in this case is not challenged. A demurrer to the petition, on the ground, among others, that no cause of action was stated, was overruled, a motion to discharge the attachment denied, and judgment rendered on May 21, 1892, for the sum of $2,347.50, together with $100 as an attorney's fee. To reverse this judgment, the defendant below, as plaintiff in error, has sued out a writ of error from this Court.

Page 147 U. S. 503

MR. JUSTICE BREWER, after stating the facts in the foregoing language, delivered the opinion of the Court.

In this case, the only question that can be considered is, under section 5 of the Court of Appeals Act of March 3, 1891, 26 Stat. 826, c. 517, that of the jurisdiction

of the circuit court. *McLish v. Roff,* 141 U. S. 661 .

The errors assigned are first in overruling the demurrer, second in holding that the court had jurisdiction to seize and sequester the property to secure the payment of a debt not yet due, third in holding that it had jurisdiction to issue an attachment upon a demand not yet due, and fourth in allowing an attorney's fee. Of course, the latter matter presents no question of jurisdiction.

With respect to the other assignments, the plaintiff was a corporation created by and a citizen of the State of Ohio, and

Page 147 U. S. 504

the defendant a citizen of Nebraska. The jurisdiction of the circuit court was therefore invoked on the ground of diverse citizenship. By the Act of March 3, 1887, 24 Stat. 552, c. 373, as corrected by the Act of August 13, 1888, 25 Stat. 433, c. 866, jurisdiction is given to the circuit courts over controversies "between citizens of different states, in which the matter in dispute exceeds" the sum or value of $2,000. The claim of the plaintiff was to recover $2,194.13 and interest. The right to recover this, or any part thereof, was challenged by the demurrer.

In *Gaines v. Fuentes,* 92 U. S. 10 , this Court said:

"A controversy was involved in the sense of the statute whenever any property or claim of the parties capable of pecuniary estimation was the subject of litigation, and was presented by the pleadings for judicial determination."

Hilton v. Dickinson, 108 U. S. 165 .

Within the letter of the statute, there was therefore a controversy between citizens of different states in which the matter in dispute was over the sum or value of $2,000.

It matters not that, by the showing in the petition, part of this sum was not yet due. Plaintiff insisted that it had a right to recover all. That was its claim, and the claim was disputed by the defendant. Suppose there were no statute in Nebraska like

that referred to, and the plaintiff filed a petition exactly like the one before us, excepting that no attachment was asked for, and the right to recover anything was challenged by demurrer, would not the matter in dispute be the amount claimed in the petition? Although there might be a perfect defense to the suit for at least the amount not yet due, yet the fact of a defense, and a good defense, too, would not affect the question as to what was the amount in dispute. Suppose an action were brought on a nonnegotiable note for $2,500, the consideration for which was fully stated in the petition, and which was a sale of lottery tickets, or any other matter distinctly prohibited by statute, can there be a doubt that the circuit court would have jurisdiction? There would be presented a claim to recover the $2,500, and

Page 147 U. S. 505

whether that claim was sustainable or not, that would be the real sum in dispute. In short, the fact of a valid defense to a cause of action, although apparent on the face of the petition, does not diminish the amount that is claimed nor determine what is the matter in dispute, for who can say in advance that that defense will be presented by the defendant or, if presented, sustained by the court? We do not mean that a claim, evidently fictitious and alleged simply to create a jurisdictional amount, is sufficient to give jurisdiction. In *Bowman v. Chicago &c.; Railway,* 115 U. S. 611 , the damages as originally stated in the declaration were $1,200. By amendment, they were raised to $10,000, but, it being evident that the increase was simply to give this Court jurisdiction on error, and not because there was really a claim for any such damages, the case was dismissed for want of jurisdiction. The authorities on this question are collected in the opinion of Chief Justice Waite, and it may be laid down as a general proposition that no mere pretense as to the amount in dispute will avail to create jurisdiction. But here there was no pretense. The plaintiff in evident good faith, and relying upon the express language of a statute, asserted a right to recover for $2,000, and that its claim was not merely specious is shown by the fact that, after a contest, it did recover a judgment for the full amount that it claimed. A case much in point is that of *Upton v. McLaughlin,* 105 U. S. 640 , 105 U. S. 644 . That was a suit brought by an assignee in bankruptcy more than two years after the cause of action accrued, and

it was claimed that the trial court had no jurisdiction, because of a provision of section 5057 of the Revised Statutes of the United States, that

"No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee unless brought within two years from the time when the cause of action accrued for or against such assignee."

But it was held that the court did have jurisdiction, and this notwithstanding sections 55 and 57 of the Code of Civil Procedure of Wyoming, the territory in which that litigation took place, authorized

Page 147 U. S. 506

a defendant to demur to the petition when it appeared upon its face either that the court had no jurisdiction or that the petition did not state facts sufficient to constitute a cause of action, and also provided that these objections were not waived by not taking them by either demurrer or answer. Speaking for the Court, MR. JUSTICE BLATCHFORD said:

"It is contended that a petition which shows upon its face that the cause of action is barred by a statute of limitation is a petition which does not state facts sufficient to constitute a cause of action, and that that objection, though not taken by demurrer or answer, may be taken at any time. But we are of opinion that the statutory provisions referred to cannot properly be construed as allowing the defense of a bar by a statute of limitation to be raised for the first time in an appellate court, even though the petition might have been demurred to as showing on its face that the cause of action is so barred, and thus as not stating facts sufficient to constitute a cause of action."

In other words, it was held that although there was a perfect defense apparent upon the face of the petition, yet the court had jurisdiction -- *i.e.* the right to hear and determine -- and further, in that case, that the defense was not available when suggested for the first time in the appellate court. So here the circuit court had

jurisdiction because the amount claimed was over $2,000, and although it appeared upon the face of the petition that a part of the claim was not yet due, still the court had jurisdiction -- the right to hear and determine whether this matter constituted a good defense to any part of the amount claimed.

But it is said that the plaintiff in a federal court cannot avail himself of the right given by a state statute to attach for a claim not yet due, that state statutes can confer no jurisdiction on the federal courts, and that therefore the circuit court had no jurisdiction to issue the attachment in this case. Even if it were conceded that such contention were well founded -- and we express no opinion in that matter -- the result would not be, as claimed, that the circuit court was ousted of all jurisdiction. It would be simply an instance in

Page 147 U. S. 507

which a court having jurisdiction gave to a party greater relief than he was entitled to. Surely the court, the matter in dispute being over $2,000 and therefore a controversy within its jurisdiction, has a right to hear and determine, in the exercise of jurisdiction, whether the plaintiff was entitled to this extraordinary relief. If it be conceded that it erred in granting such relief, it would be simply a matter of error, and not one of jurisdiction.

But was it error? Section 915, Revised Statutes, provides that

"In common law causes in the circuit and district courts, the plaintiff shall be entitled to similar remedies, by attachment or other process, against the property of the defendant, which are now provided by the laws of the state in which such court is held for the courts thereof, and such circuit or district courts may, from time to time, by general rules, adopt such state laws as may be in force in the states where they are held in relation to attachments and other process, *provided* that similar preliminary affidavits or proofs and similar security as required by such state laws shall be first furnished by the party seeking such attachment or other remedy."

It is sufficient to say that this section of the statute makes it clear that a question was presented worthy at least of the consideration of the circuit court, and whose determination, even though erroneous, was not sufficient to oust the court of jurisdiction.

Unquestionably the circuit court had jurisdiction, and if the defendant sought to have any matter of error considered, it should have taken the case to the circuit court of appeals.

Judgment affirmed.

MR. JUSTICE FIELD dissents.