Greeley Vs. Lowe

Greeley Vs. Lowe

SooperKanoon Citation : sooperkanoon.com/87487

Court : US Supreme Court

Decided On : Oct-29-1894

Appeal No. : 155 U.S. 58

Appellant : Greeley

Respondent : Lowe

Judgement :

Greeley v. Lowe - 155 U.S. 58 (1894)
U.S. Supreme Court Greeley v. Lowe, 155 U.S. 58 (1894)

Greeley v. Lowe

No. 517

Submitted April 30, 1894

Decided October 29, 1894

155 U.S. 58

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF FLORIDA

SYLLABUS

A suit in equity for the partition of land, wherein the plaintiff avers that he is seized as tenant in common of an estate in fee simple and is in actual possession of the land described, and, after setting forth the interests of the other tenants in common, and alleging that no remedy at law exists to enable him to obtain his share of said lands in kind, or of the proceeds if sold, and that he is wholly without remedy except in chancery, prays for the partition of the land and the segregation of his own share from that of the others, and incidentally that certain deeds may be construed and, if invalid, may be cancelled, and that he may recover his advances for taxes and expenses, is clearly a bill to enforce a claim and settle the title to real estate, and as such is a suit covered by 8 of the Act of March 3, 1875, c. 137, 18 Stat. 470, 472, of which the Circuit Court of the district where the land lies may properly assume jurisdiction.

The questions that, the title of some of the parties to the land being in dispute, such titles must be settled before partition could be made, that the interests of several of the defendants were adverse to each other, and that as some of these defendants were citizens of the same state, it would raise controversies beyond the jurisdiction of the circuit court to decide, not having been certified to this Court, are not passed upon.

Page 155 U. S. 59

Where the laws of a state give a remedy in equity, that remedy will be enforced in federal courts in the state if it does not infringe upon the constitutional right of the parties to a trial by jury.

The objection that A. was alleged in the bill to be a resident and citizen of the District of Columbia was met by an amended allegation that A. was "a citizen of South Carolina, now residing in Washington City, District of Columbia," and while this allegation was traversed, it must, for the purpose of this hearing, be taken as true.

This was a bill in equity for the partition of real estate originally filed by George P. Greeley and wife, who were alleged to be citizens of New Hampshire, against 130 defendants, most of whom were citizens of Florida. Of the remaining defendants, some were citizens of Georgia; others, of Illinois, South Carolina, Alabama, Texas, North Carolina, New York, New Jersey, Mississippi, and one, Eliza B. Anderson, of the City of Washington and District of Columbia.

The bill averred the plaintiff, George P. Greeley, to be seised as tenant in common, in fee simple, and in actual possession, of 10,016 acres of land in the Northern District of Florida, of the value of $10,000, exclusive of interest and costs, etc.; that one John T. Lowe, and Susan, his wife, were originally seised of the said premises by grant from the Spanish government in 1816, as a mill right (Lowe being then married, and his wife, Susan, being seised, by ganancial right, of an undivided half of said premises under the laws of Spain, which declared that real estate acquired by either the husband or wife during coverture by purchase, gift, or gain becomes and remains community property), and that they were seised thereof as tenants in common; that Lowe died in 1824, and the grant was subsequently confirmed by the Supreme Court of the United States in 1842, *United States v. Low,* 16 Pet. 162, that the ganancial right and title of said Susan Lowe has never been alienated, relinquished, or annulled, and has been duly protected and guarantied by the treaty of 1819 between the United States and Spain, that Lowe attempted to convey to one Clark the southern half of this grant, but his wife, then living, did not join, and the half of the south half only was conveyed; that Clark conveyed to Duncan L. Clinch, who died testate, leaving his

Page 155 U. S. 60

executor power to sell said lands, that Susan Lowe survived her husband, but both died intestate, and their estates had long been settled, that the north half of said grant and half of the south half descended to their children, nine in number.

The geneology and shares of the heirs and their grantees are stated at great length in the bill, all the claims of the various members being set up and defined, and the invalidity of certain deeds attached as exhibits being averred and pointed

out. The bill contained a general averment that no other person except such as were made parties had any interest in or title to the premises, that by reason of the lapse of time, the disturbed condition of the country, etc., it has been almost impossible to trace the lineage of the several families and to find the actual parties in interest.

The bill prayed that the different deeds attached as exhibits might be construed and the interest, if any conveyed, ascertained or the deeds cancelled, that all persons having any claims or liens upon the lands might be brought in and required to prove their claims or have the same held null and void, that partition of the lands be made, if possible and equitable, and, if not, that they might be sold and the proceeds distributed, that plaintiff recover his advances for taxes and expenses, including costs and counsel fees; that a master be appointed to state the shares, advances, and fees, and that commissioners be appointed to make partition or sale, etc.

Isaac A. Stewart, one of the defendants resident in Florida, filed a plea to the jurisdiction setting up, among other things, that the suit was not brought in the district of the residence of either the plaintiffs or defendants, that the controversy was not between citizens of different states, that certain defendants had interests adverse to other defendants, that Eliza B. Anderson, one of the defendants, was a resident and citizen of the District of Columbia, that her claim was adverse to his (Stewart's), that Greeley's wife was improperly joined, was not the cotenant, and could not maintain a suit, that the wives of several of the defendants were improperly joined

Page 155 U. S. 61

in that they possessed no legal interest in the property, and that others who were necessary parties were not joined as defendants. Thereupon, plaintiff moved for leave to amend his bill by inserting after the name of Eliza Anderson the words, "citizen of South Carolina, now resident in Washington, D.C.," and also to add other defendants. The court granted the motion to amend, and the cause came on to be heard on the plea to the jurisdiction. The court made a final decree holding

that while it was true that the complainants were citizens of New Hampshire and resident there, and some of the defendants were citizens of Florida in the district in which the land lies, yet because there were other defendants citizens of New York, and also of other states than the state in which the complainants reside and have citizenship, and also citizens of other federal districts than that where the land is situate and where certain defendants reside, it was decreed that

"this court has not jurisdiction over all the defendants to this action, because they are not all residents and citizens of the district in which the land sought to be partitioned lies, and are not all found in said district at the time of the service of the process."

On May 6, 1892, plaintiffs filed a petition for rehearing, and on June 13 amended their bill by striking out the name of Eliza B. Anderson as defendant. While no formal decree subsequent to the rehearing appears to have been entered, by an endorsement made upon the bill of June 15, it would appear that the bill was finally dismissed upon that date. From this decree an appeal was taken to this Court, and the question of jurisdiction, as above stated, was certified to this Court for decision pursuant to section 5 of the Court of Appeals Act.

Page 155 U. S. 67

MR. JUSTICE BROWN delivered the opinion of the Court.

This bill appears to have been dismissed by the court below upon the ground that inhabitants of other districts than the Northern District of Florida were made defendants. The question really is whether, under the Act of August 13, 1888, c. 866, 25 Stat. 433, requiring, in actions between citizens of

Page 155 U. S. 68

different states, suits to be brought only in the district of the residence of either the plaintiff or the defendant, it is admissible to bring a suit for partition in a district in which only a part of such defendants reside. As suits are usually begun in the district in which the defendants or one of the defendants reside, the question

practically involves the whole power of the circuit court of one district to take jurisdiction of such suits, brought against defendants, some of whom are residents of other districts.

(1) The paragraph of section 1 of the act of 1888 relied upon by the defendants reads as follows:

"And 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, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

In the case of *Smith v. Lyon,* 133 U. S. 315 , this Court held that the circuit court has no jurisdiction on the ground of diverse citizenship if there are two plaintiffs to the action who are citizens of and residents in different states and defendant is a citizen of and a resident in a third state and the action is brought in a state in which one of the plaintiffs resides. As was said by the Court, the argument in support of the jurisdiction was

"that it is sufficient if the suit is brought in a state where one of the defendants or one of the plaintiffs is a citizen. This would be true if there were but one plaintiff or one defendant. But the statute makes no provision in terms for the case of two defendants or two plaintiffs who are citizens of different states. In the present case, there being two plaintiffs, citizens of different states, there does not seem to be, in the language of the statute, any provision that both plaintiffs may unite in one suit in a state in which either of them is a citizen."

The Court, referring to several prior cases in this Court in which it was held that the word "citizen," as used in the Judiciary Act of 1789, is used collectively, and means all citizens upon one side of a suit, and if there are several co-plaintiffs the intention of the act is that each plaintiff

must be competent to sue, and if there are several codefendants each defendant must be liable to be sued, or the jurisdiction cannot be entertained, held that the same construction must be given to the word "inhabitant" as used in the above paragraph in the act of 1888, and that if suit were begun in a district whereof the plaintiff was an inhabitant, jurisdiction would only attach if there were no other plaintiffs citizens and inhabitants of other districts. If this doctrine be also applicable to defendants in local actions, it necessarily follows that suit will not lie in any district of which a defendant is a citizen or inhabitant if there are inhabitants of other districts also made defendants. As above stated, this practically inhibits all suits against defendants resident in different districts.

A brief review of the history of corresponding provisions in prior acts will show that it has never been supposed that the federal courts did not have jurisdiction of local actions in which citizens of different districts were defendants, and in fact provision was expressly made by law for such contingency. In the eleventh section of the Judiciary Act of 1789, c. 20, 1 Stat. 73, 79, is a provision, subsequently incorporated in section 739 of the Revised Statutes, that

"no civil suit shall be brought before either of said courts against an inhabitant of the United States by any original process in any other district than that whereof he is an inhabitant or in which he shall be found at the time of serving the writ."

Under this section, any number of nonresidents could be joined as defendants if only they were served within the jurisdiction of the court. *Ober v. Gallagher,* 93 U. S. 199 .

But, to obviate any objection that might be raised by reason of the nonjoinder or inability to serve absent defendants, it was provided by the Act of February 28, 1839, c. 36, 5 Stat. 321, subsequently carried into the Revised Statutes as section 737, that

"When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district within which the suit is brought, and did not voluntarily appear, the court may entertain

jurisdiction, and proceed to the trial and adjudication of the suit

Page 155 U. S. 70

between the parties who are properly before it, but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer, and nonjoinder of parties who are not inhabitants of nor found within the district as aforesaid shall not constitute matter of abatement or objection to the suit."

Construing this act, it was held in *Shields v. Barrow,* 17 How. 130, that it did not enable a circuit court to make a decree in equity in the absence of an indispensable party whose rights must necessarily be affected by such a decree. Says Mr. Justice Curtis (page 58 U. S. 141):

"It remains true, notwithstanding the act of Congress and the forty-seventh rule, that a circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights."

This ruling was applied in *Barney v. Baltimore City,* 6 Wall. 280, to a bill for partition filed by Barney, a citizen of Delaware, in the Circuit Court of Maryland, against the City of Baltimore and several individuals, citizens of Maryland, and certain other citizens of the District of Columbia. These latter had made a conveyance to one Proud, a citizen of Maryland, for the special purpose of conferring jurisdiction on the federal court, such conveyance being made without consideration and with an agreement that the grantee would reconvey on request. It was held that the court of chancery could not render a decree without having before it the citizens of the District of Columbia, and that their conveyance to Proud, being merely collusive, conferred no jurisdiction upon the court.

The law remained in this condition until June 1, 1872, when Congress, apparently to remove the difficulty suggested by these cases, passed an act, Act of June 1, 1878, c. 255, 17 Stat. 196, 13; subsequently incorporated into the Revised

Statutes as section 738, providing that

"[w]hen any defendant in a suit in equity to enforce any legal or equitable lien or claim against real or personal property within the district where the suit is brought is not an inhabitant of nor found within the said district,

Page 155 U. S. 71

and does not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer or demur to the complainant's bill at a certain day therein to be designated,"

etc. And then follows the provision, in section 739 that

"except in the cases provided in the next three sections, . . . and the cases provided by *the preceding section* [section 738], no civil suit shall be brought in any other district than that of which the defendant is an inhabitant,"

etc. The "next three sections" are 740, in which special provision is made for states containing more than one district, requiring the defendant, if a single one, to be sued in the district where he resides, but if there are defendants in different districts, suit may be brought in either, and a duplicate writ issued against residents of the other districts; 741,wherein provision is made for suits of a local nature, where the defendant resides in a different district in the same state from that in which the suit is brought, permitting process to be served in the district where he resides, and 742, providing that in any suit of a local nature at law or in equity, where the land, or other subject matter of a fixed character, lies partly in one district and partly in another within the same state, suit may be brought in the circuit or district court of either district, etc. These sections -- 740, 741 and 742 -- are the "next three sections" mentioned in section 739 as exceptions to the general rule that no civil suit shall be brought against an inhabitant in any other district than his own.

But by the Act of March 3, 1875, c. 137, 1, 18 Stat. 470, a slight change was made in the previous phraseology to the effect 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 as hereinafter provided.* "

This exception is contained in 8 of the same act, which deals with the class of cases mentioned in Revised Statutes, 738, and provides for publication

"in any suit . . . to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien or could upon

Page 155 U. S. 72

the title to real or personal property within the district where such suit is brought,"

with a further proviso that

"said adjudication shall, as regards such absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district."

As no exception was made in that act of the cases provided for by 740-742, it is at least open to some doubt as to whether suits will lie against nonresident defendants under those sections. So too, in the Act of August 13, 1888, 5, there was an express reservation of any jurisdiction or right mentioned in 8 of the act of Congress of which this act was an amendment (that is, the Act of March 3, 1875), which, as above stated, is the section permitting suits to enforce any legal or equitable lien upon or claim to real estate to be brought in the district where the property lies, and defendants, nonresidents of such district, to be brought in by publication or personal service made in their own districts. It is entirely true that 8 of the act of 1875, authorizing publication, does not enlarge the jurisdiction of the circuit court. It does not purport to do so. Jurisdiction was conferred, by the first section of the act of 1888, of "all suits of a civil nature," exceeding $2,000 in amount, "in which there shall be a controversy between citizens of different states;" and this implies that no defendant shall be a citizen of the same state with

the plaintiff, but otherwise there is no limitation upon such jurisdiction. Section 8 of the act of 1875, saved by 5 of the act of 1888, does, however, confer a privilege upon the plaintiff of joining in local actions defendants who are nonresidents of the district in which the action is brought, and calling them in by publication, thus creating an exception to the clause of 1 that no civil suit shall be brought in any other district than that of which defendant is an inhabitant. Hence it appears that the case of *Smith v. Lyon* really has no bearing, as that case involved only the rights of parties to personal actions residing in different districts to sue and be sued, and was entirely unaffected by the act of 1888 (5), which deals with *defendants only in local actions,* and expressly reserves jurisdiction

Page 155 U. S. 73

if the suit be one to enforce a lien or claim upon real estate or personal property. The precise question here involved has never been passed upon by this Court, but in the only cases in the circuit courts to which our attention has been called the jurisdiction was upheld. *American F.L.M. Co. v. Benson,* 33 F. 456; *Carpenter v. Talbot,* 33 F. 537; *Ames v. Holderbaum,* 42 F. 341; *McBee v. Marietta &c.; Railway,* 48 F. 243, and *Wheelwright v. St. Louis, New Orleans &c.; Transportation Co.,* 50 F. 709.

In line with these cases, and almost directly in point here, is the decision of this Court in *Goodman v. Niblack,* 102 U. S. 556 , in which it was held that where a bill was filed to enforce a claim or lien upon a specific fund within reach of the court, and such of the defendants as were neither inhabitants of nor found within the district did no voluntarily appear, the circuit court had the power to adjudicate upon their right to or interest in the fund if they be notified of the pendency of the suit by service or publication in the mode prescribed by Rev.Stat. 738. This is a distinct adjudication that defendants who are neither inhabitants of nor found within the district may be cited by publication to appear, and, if this be so, it is difficult to see how the omission of the words "found within the district" in the act of 1888 makes any difference whatever with regard to the right to call absent defendants in by publication. The act of 1875 gave the right to sue defendants wherever they were *found.* The act of 1888 requires that they shall be inhabitants

of the district. But in both cases, an exception is created in local actions wherein any defendant interested in the *res* may be cited to appear and answer provided he be not a citizen of the same state with the plaintiff. So, too, in *Mellen v. Moline Malleable Iron Works,* 131 U. S. 352 , a suit instituted by a creditor to set aside a conveyance of the real estate and a mortgage upon the personal property of his debtor, made to secure certain preferred creditors, was held to be a suit brought to remove an encumbrance or lien or cloud upon the property within the meaning of 8 of the act of 1875, and that the circuit court

Page 155 U. S. 74

was authorized to summon an absent defendant and to exercise jurisdiction over his rights in the property in suit within the jurisdiction of the court.

Indeed, any other construction of this act would practically nullify 8 of the act of 1875, permitting the publication of absent defendants, since the entire object of the section is to call in defendants who cannot be served within the district, by reason of their absence or nonresidence.

It follows, then, that if this be a suit covered by 8 of the act of 1875, the circuit court of the district wherein the land in dispute lies may properly assume jurisdiction. We think that it is such a suit. The bill in question is one for the partition of land, wherein plaintiff avers that he is seised, as tenant in common, of an estate in fee simple, and is in actual possession of the land described, and after setting forth the interests of the other tenants in common, and alleging that no remedy at law exists to enable him to obtain his share of said lands in kind, or of the proceeds, if sold, and that he is wholly without remedy except in chancery, prays for the partition of the land, and the segregation of his own share from that of the others, and incidentally that certain deeds may be construed, and, if invalid, may be cancelled, and that he may recover his advances for taxes and expenses. This is clearly a bill to enforce a claim and settle the title to real estate.

2. Further objection was made to the jurisdiction of the court upon the ground that it appeared from the face of the bill that the title of some of the parties to the land

was in dispute; that such titles must be settled before partition could be made; that the interests of several of the defendants were adverse to each other, and that, as some of these defendants were citizens of the same state, it would raise controversies beyond the jurisdiction of the circuit court to decide. These objections, however, are not within the question certified to us for decision, which is that it had been

"adjudged and decreed that this Court has not jurisdiction over all of the defendants to this action, because they are not all citizens and residents of the district in which the land sought to be partitioned lies, and are not all found in said district at the time of service of

Page 155 U. S. 75

process, although they are all residents and citizens of other states than that in which complainants have residence and citizenship."

The objections do not go to the jurisdiction of the federal court as such, but to the maintenance of such a bill in any court of equity in the State of Florida. They are questions proper to be considered on demurrer to the bill, and, as bearing upon such questions, the local practice of the state in that regard may become an important consideration. This Court has held in a multitude of cases that where the laws of a particular state gave a remedy in equity -- as, for instance, a bill by a party in or out of possession to quiet title to lands -- such remedy would be enforced in the federal courts if it did not infringe upon the constitutional rights of the parties to a trial by jury. *Clark v. Smith,* 13 Pet. 195; *Holland v. Challen,* 110 U. S. 15 ; *Reynolds v. Crawfordsville Bank,* 112 U. S. 405 ; *Chapman v. Brewer,* 114 U. S. 171 ; *Cummings v. National Bank,* 101 U. S. 153 , 101 U. S. 157 ; *United States v. Landram,* 118 U. S. 81 , 118 U. S. 89 ; *More v. Steinbach,* 127 U. S. 70 .

This suggestion is the more important in view of a statute of Florida which authorizes a court of equity in partition cases "to ascertain and adjudicate the rights and interests of the parties," which has apparently been held to authorize

the court, in its discretion, to settle the question of title as incidental to the main controversy or retain the bill and refer it to a court of law. *Street v. Benner,* 20 Fla. 700; *Keil v. West,* 21 Fla. 508.

These questions, however, are not presented by the record in this case, and are mentioned only as giving color to plaintiff's claim that the existence of controversies between different defendants is not fatal to the jurisdiction of the federal court upon the allegations of this bill.

(3) The objection that Eliza B. Anderson was alleged in the bill to be a resident and citizen of the District of Columbia was met by an amended allegation that Anderson was "a citizen of South Carolina, now residing in Washington City, District of Columbia," and, while this allegation was traversed, it must for the purpose of this hearing be taken as true.

Page 155 U. S. 76

As this case was appealed under section 5 of the Act of March 3, 1891, upon a question of jurisdiction, no other question can be properly considered, and the decree of the court below must therefore be

Reversed, and the case remanded for further proceedings in conformity with this opinion.

MR. CHIEF JUSTICE FULLER dissented.