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Gilbert Vs. David

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Court : US Supreme Court

Decided On : Jan-05-1915

Appeal No. : 235 U.S. 561

Appellant : Gilbert

Respondent : David

Judgement :

Gilbert v. David - 235 U.S. 561 (1915)
U.S. Supreme Court Gilbert v. David, 235 U.S. 561 (1915)

Gilbert v. David

No. 97

Argued December 4, 1914

Decided January 5, 1915

235 U.S. 561

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

SYLLABUS

As 37, Judicial Code, does not prescribe any particular mode by which the question of jurisdiction shall be raised, the method of raising that question may be left to the sound discretion of the trial judge, and, if the state practice admits, the issue may be raised by general denial in the answer.

While the trial court may submit the question of a party's residence to the jury, it is not bound to do so, and in this case the court properly exercised its privilege to dispose of that issue on the testimony.

In this case, the defendant was not chargeable with laches because he did not force to trial the issue of plaintiff's citizenship.

The fact that delay in determining the issue of citizenship results in the statute of limitations applying does not confer jurisdiction on the federal court if diverse citizenship does not exist.

Where the record in a case dismissed by the district court for want of jurisdiction on account of absence of diverse citizenship brings up the testimony, this Court must consider it and determine whether the trial court rightly decided that plaintiff was a citizen of the same state as defendant.

If plaintiff at the commencement of the action, be domiciled in a different

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state from that of defendant, he is a citizen of that state within the meaning of the Judicial Code.

Change of domicile arises where there is a change of abode and the absence of any present intention to not reside permanently or indefinitely in the new abode, and this notwithstanding a floating intention of returning to the former place of domicile after completion of the object for which the change was made. In this case, *held* that the acts of the plaintiff in regard to his change of residence indicated a change of domicile to the state in which defendant resided prior to

commencement of the action, and diverse citizenship did not then exist.

The facts, which involve the jurisdiction of this Court under 238, Judicial Code, and the construction of 37, Judicial Code, and the jurisdiction and duty of the district court thereunder, are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case is here upon writ of error and certificate presenting the question of jurisdiction of the district court. It comes under 238 of the Judicial Code, and presents to this Court the question of jurisdiction only. The suit was begun on November 5th, 1904, in the United States Circuit Court for the District of Connecticut. On May 24th, 1905, a substituted complaint was filed. The object of the suit was to recover for alleged breaches of a certain indemnity contract set forth in the complaint. In this substituted complaint, as well as in the original complaint, the allegation as to diverse citizenship is that plaintiff is a citizen of the State of Michigan, and defendants are citizens of the State of Connecticut. On August 3, 1907, an answer was

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filed in which it was admitted that the defendants were citizens of the State of Connecticut, and it was averred that the defendants had no knowledge or information as to the citizenship of the plaintiff, and would "leave him to proof thereof." On April 27th, 1911, the defendants filed a motion to dismiss the suit for want of jurisdiction. On October 5th, 1911, defendants filed another motion to dismiss for want of jurisdiction. On October 6th, 1911, the plaintiff filed a motion to strike the last-mentioned motion from the files. Both of the motions to dismiss were upon the ground that the plaintiff was not a citizen of the State of Michigan, but was a citizen of the State of Connecticut. The motion of the plaintiff to strike the last-mentioned motion from the files was upon the ground, among others, that the motion was an improper and irregular method of raising the question of

jurisdiction, and because that matter was already in issue under the allegations of complaint and answer.

After the taking effect of the Judicial Code on January 1st, 1912, the case was transferred to the District Court of the United States for the District of Connecticut. On August 26th, 1912, a jury was impaneled, and the case came on for trial. The court directed that the trial should proceed upon the question of jurisdiction. Thereupon the parties proceeded to offer testimony upon the question of plaintiff's residence. At the conclusion of this testimony, the court found that the plaintiff and defendants were citizens of the State of Connecticut at the time the action was begun, and accordingly dismissed the suit upon the sole ground of want of jurisdiction, and ordered the jury discharged from further consideration of the case.

The Act of 1875, 18 Stat. 472, c. 137, 5, now 37 of the Judicial Code, 36 Stat. 1098, c. 231, provides:

"If, in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of the said district

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court at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit, or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

This section defines the duty of the district court of the United States when it shall appear to its satisfaction that the suit does not really and substantially involve a dispute or controversy properly within the court's jurisdiction. While this section gives the court the right to dismiss a suit when that situation appears, whether the

parties raise the question or not, it is the duty of the defendant to bring the matter to the attention of the court, in some proper way, where the facts are known upon which a want of jurisdiction appears. *Deputron v. Young,* 134 U. S. 241 , 134 U. S. 251 . Under the former practice, before the passage of the Act of 1875, above quoted, it was necessary to raise the issue of citizenship by a plea in abatement, when the pleadings properly averred the citizenship of the parties. *Farmington v. Pillsbury,* 114 U. S. 138 , 114 U. S. 143 ; *Little v. Giles,* 118 U. S. 596 , 118 U. S. 604 . The objection may be made now by answer before answering to the merits, or it may be made by motion. *Steigleder v. McQuesten,* 198 U. S. 141 . The statute does not prescribe any particular mode by which the question of jurisdiction is to be brought to the attention of the court, and the method of raising the question may be left to the sound discretion of the trial judge. *Wetmore v. Rymer,* 169 U. S. 115 , 169 U. S. 121 . It may be raised by a general denial in the answer, where the state practice permits of that course. *Roberts v. Lewis,* 144

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U.S. 653. In the State of Connecticut, under the form of denial contained in this answer, the answer raised the issue. *Sayles v. Fitzgerald,* 72 Conn. 391, 396. Moreover, the parties to the suit regarded the matter as at issue under the pleadings, and it was so held by the court. The motion of the plaintiff to strike off the motion to dismiss for want of jurisdiction was based upon the ground that that issue was already made in the pleadings. The question was properly before the court.

It is also insisted that the court erred in itself considering the testimony, and in not submitting the issue to the jury. But while the court might have submitted the question to the jury, it was not bound to do so; the parties having adduced their testimony, pro and con, it was the privilege of the court, if it saw fit, to dispose of the issue upon the testimony which was fully heard upon that subject. *Wetmore v. Rymer, supra.*

It is urged that the delay in making the issue and bringing it to a hearing was such laches upon the part of the defendants as to preclude the consideration of the question. The issue was made when the answer was filed, but for some reason neither party forced the case to trial. Apart from the imperative duty of the court to dismiss the action under the statute, when it appears that the case is not within the jurisdiction of the court, we find nothing in the conduct of the parties to support the suggestion of laches. If it be true that the statute of limitations would prevent the beginning of a new action in the state court, that fact cannot confer jurisdiction upon a court of the United States, in the absence of a showing of diverse citizenship.

As the record brings up the testimony upon which the court below decided the question, it becomes the duty of this Court to consider it and determine whether the court rightly found that the plaintiff at the beginning of the suit was not a citizen of the State of Michigan. *Wetmore*

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v. Rymer, supra. If the plaintiff was domiciled in the State of Michigan when this suit was begun, he was a citizen of that state within the meaning of the Judicial Code. *Morris v. Gilmer,* 129 U. S. 315 ; *Williamson v. Osenton,* 232 U. S. 619 , 232 U. S. 624 . In this case, it clearly appears that, for some years prior to 1890, the plaintiff lived in Menominee, in the State of Michigan. He had there a home, and exercised the ordinary duties and privileges of citizenship. In February, 1890, his uncle died in Connecticut, and the plaintiff immediately went to Danbury, in that state, where he remained practically all the time until his death in 1911.

The question is had he lost his domicil in Michigan and acquired one in Connecticut, so that he was, at the beginning of the suit in 1904, in reality a citizen of the last-mentioned state?

This matter of domicil has been often before this Court, and was last under consideration in the case of *Williamson v. Osenton, supra.* In that case, the definition of domicil, as defined by Mr. Dicey, in his book on "Conflict of Laws," 2d

ed. 111, is cited with approval. There, change of domicil is said to arise where there is a change of abode and "the absence of any present intention to not reside permanently or indefinitely in the new abode." Or, as Judge Story puts it in his work on "Conflict of Laws," 7th ed. 46, page 41,

"If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicil, it is to be deemed his place of domicil notwithstanding he may entertain a floating intention to return at some future period. . . . The requisite animus is the present intention of permanent or indefinite residence in a given place or country, or, negatively expressed, the absence of any present intention of not residing there permanently or indefinitely."

Price v. Price, 156 Pa. 617, 626.

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Applying these definitions to the conduct of plaintiff, we have no doubt that the court was right in holding that he had acquired a new domicil in the State of Connecticut. He removed there with his family, and occupied a house to which he held the title. He owned other real estate in Connecticut, inherited from his uncle. He took a letter from his church in Michigan to a church in Danbury, Connecticut. For about ten years, he was not back in Michigan except for a short time, and then for a temporary purpose. The Michigan homestead and much of the furniture used there were sold upon the removal to Connecticut. For more than ten years, he resided continuously with his family in the same house in Danbury, Connecticut. While the plaintiff did not vote in Connecticut, as far as the record shows, it is in evidence that he declared to another his intention of becoming a voter there. To some witnesses he declared his purpose to reside in Connecticut. As against this testimony, it appears that he left his desk with his brother-in law in Michigan, which he declared was for the purpose of "holding his residence there." To some witnesses he declared his intention to live in Michigan, and expressed his preference for that state as a dwelling-place. He continued to pay membership

dues to orders to which he belonged in Michigan.

It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut, should he succeed in disposing of it for what he considered it worth. But, as we have seen, a floating intention of that kind was not enough to prevent the new place, under the circumstances shown, from becoming his domicil. It was his place of abode, which he had no present intention of changing; that is the essence of domicil.

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We find no error in the conclusion of the district court upon the question of jurisdiction, and its judgment is therefore

Affirmed.

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