

13812

No. _____

Supreme Court of Illinois

Tiffany

vs.

Spaulding

Supreme Court of Illinois,
THIRD GRAND DIVISION.
APRIL TERM, 1859.

WILLIAM C. TIFFANY,

vs.

JONATHAN SPAULDING

ERROR TO COOK.

Brief Points and Arguments for Plaintiff in Error by H. P. SMITH.

1. The court below erred in sustaining the demurrer to the plea in abatement.

The Statute, Chap. 83, Section 2, entitled Practice, enacts that it shall not be lawful for any Plaintiff to sue a defendant out of the county where the latter resides, or may be found, except in cases where the debt, contract or cause of action accrued in the county of the Plaintiff, or where the contract may have specifically been made payable, etc.

If the cause of action accrued in the County of Cook and the Plaintiff resided in that County, or if the money or contract sued on was made payable in that County then the court had jurisdiction of the *person* of the defendant and power to send its process to Lake County; otherwise the court has no jurisdiction of his *person* unless he may be found in the County of Cook, and has no power to send its process to any other County.

The former doctrine of this court was, that in order to justify the sending of process to a foreign County the declaration should aver the causes which under the Statute authorized it. *Key vs Collins*, 1 Scam, 403—*Gillett vs Stone*. 1 Scammon, 547; *Clark vs Clark*, 1 Gill. 33. But in the case of *Kennedy vs Greer*, 13 Ill., 434, it was held that the jurisdiction of the court would be presumed, unless the contrary was affirmatively shown.

The plea in this case does show affirmatively that the causes which authorize the sending of process to Lake County do not exist in this case and that consequently the court has no jurisdiction of the person of the defendant. The court though a court of general jurisdiction so far as regards the cause of action is limited territorially to the County in which it sets, with the exceptions above stated. It is a court of general jurisdiction in the same sense that the Circuit courts of the United States are courts of general jurisdiction.

And the jurisdiction of each over the parties; and it is sufficient in either to show by plea that though the court has jurisdiction of the subject matter of the suit, yet it has not jurisdiction of the person.

That is what is done in this case. But it is said the plea is bad because it does not show what court has jurisdiction. The rule is thus stated by Mr. Gould, page 236-7, cited by the counsel "as to the *mode of pleading* to the jurisdiction, there is an essential difference to be observed between a plea to the jurisdiction in a court of *limited* and one of *general* jurisdiction. In a court of the former class it is sufficient to plead *negatively*, i. e. to show by proper allegations that the court *has not* jurisdiction; whereas in a *superior* court it is necessary both at law and equity and as well in criminal as in civil cases, not only to show that the court has not jurisdiction, but also to point out specially, some *other court* which has it. For if it does not appear that a remedy can be had in some other tribunal, that very fact will in general confer jurisdiction upon a Superior court, as there would otherwise be, for ought that would appear, a failure of justice. But it seems manifest for reasons which have already been stated, that neither in this nor in any other way, can jurisdiction be ultimately given to any court, which has not cognizance of the *subject matter* as where the action is brought for the recovery of *real* property lying in a *foreign* country or where the process of the court cannot run.

The reason for the distinction between courts of general and limited jurisdiction and the necessity for a plea to the jurisdiction in the former to show what court has jurisdiction is that if it does not appear that a remedy can be had in some other tribunal; that very fact will in general confer jurisdiction upon a Superior court. Gould, Pl. p 236-7; 1 Chitty Pl. p 444; authorities cited by counsel for deft.

If the want of jurisdiction in some other court would confer jurisdiction on the *Cook County Court of Common Pleas*, then this case would be within the reason of the rule, but as that fact would not give jurisdiction it is not within the reason, and the averment is useless.

In the same book and on the same page (Gould's Pl) it is said that if the nature of the action is such as the court is under no circumstances competent to try, that neither plea to the jurisdiction *nor* any other plea would be necessary to oust the jurisdiction of the court. The cause might be dismissed on motion; and even without motion it would be the duty of the court to dismiss it, *ex officio*. Now the plea in this case does show that the court below had no power and jurisdiction to try the case

and it is altogether immaterial whether any other and what other court had jurisdiction. Besides the court knows as a *matter of law* that there is a Circuit court in each County which has jurisdiction of all cases arising in the County, so that if it was necessary to make this *unnecessary averment* it is only matter of *form*, and its omission is not cause of *general demurer*.

A practice has grown up in Chicago of sending process in fraud of the law all over the State to an extent that is annoying and oppressive to the suitors, thus wrongfully drawn into court and the court seems to be astute in retaining and sustaining its jurisdiction. In this case the Plaintiff does not live in Chicago, the cause of action did not accrue there and the defendant took the precaution to make the money payable in his own County yet he is sued in Chicago; and when all these facts are shown to the court their effect are evaded by *unnecessary technical forms* and practical effect is thereby given to the frauds practiced upon the law, and this Court is now called on to give its sanction to this wrong and evasions.

This is a proper plea in *substance* and *form* adapted to the character of the defence interposed, and the statute under which it is pleaded.

It affirmatively avers all those facts necessary to sustain it as a plea in abatement to the *jurisdiction* of the court under this statute, and is in conformity with the form heretofore used in this State or in some parts of it at least. A similar one was pleaded in *Porter vs Boardman*, 17 Ill., 595.

The law of the forum will govern the pleadings. *Bond vs Bragg*, 17 Ill., 69.

This plea substantially adopts the language of the Statute under which it is pleaded and affirmatively avers all the facts enumerated by the Statute to oust the court of its presumed jurisdiction over the person of the defendant below. This is sufficient. It is immaterial what name is given it. *Mc Allister vs. Ely*, 18 Ill., 249.

*Pleas founded upon a defendants
privilege exempting him from suit
in a particular Court are considered
as pleas to the jurisdiction of the Court
Gould Pl. Chap 5 Sect 11 p 230
do " " " " 14 p 231*

*II. The Court erred in rendering judgment
by default - The judgment should
have been nil dicit -*

*III. The Court erred in rendering judgment
for Plff on the note disclosed on - The
Record does not disclose a legal
assignment thereof to the Plaintiff*

Now does the Duburition of ~~over~~ a legal opinion
must thereof - It does not over that
said note was arising by Endowment
thereon on the Statute and decisions of
the Courts of this State upon

By your V. P. 14 Dec 49

H. P. Smith City for Piffin Euro

Mr. C. Tiffany
no 61

of Springfield

61 Brief for Piff

in Error

Argument

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Leland
Clark

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