

Case No. 5,188.

GALE v. BABCOCK.

[4 Wash. C. C. 199.]<sup>1</sup>

Circuit Court, D. New Jersey.

April Term, 1822.

PLEADING AT LAW—AMENDMENT OF DECLARATION IN EJECTMENT—CIRCUIT COURTS—JURISDICTION—SUITS BY A STATE.

1. Amendments of declarations in ejectment, by adding a count stating a demise under a new title, are not allowed.
2. The circuit courts have not jurisdiction of suits brought by a state, against a citizen of the same or of another state.

[Cited in *North Carolina v. Trustees of University*, Case No. 10,318; *Wisconsin v. Duluth*, Id. 17,902; *Texas v. Lewis*, 14 Fed. 66.]

GALE v. BABCOCK.

At law.

Wall & Ewing, for plaintiff.

Mr. McIlvaine and Richard Stockton, for defendant.

Mr. Wall moved to amend the declaration, by adding two new counts, one laying a demise by the state of New Jersey, and the other by a Mr. Hall. He referred to an act of the legislature of this state, passed at their last session, authorising the governor to prosecute and defend any suit for trying the jurisdictional line between this state and Delaware. The land in controversy, (an island in the Delaware river) was granted by the state of Delaware to the United States, on which a fort is erecting under the command of the defendant. The counsel also produced a letter from the governor, authorising this motion. In support of the motion, the following cases were referred to: [Blackwell v. Patton] 7 Cranch. [11 U. S.] 477, 478; 2 Caines, 260, 261; 5 N. J. Law, 851; Adams, Ej. 200-203.

The defendant's counsel stated that this cause had originally been brought in the state court, and was removed into this upon the ground that the plaintiff claims under a grant from the state of New Jersey, and the defendant under a grant from the state of Delaware; and they contended: (1) That the cause being at issue, and the amendments being to introduce entirely new titles, the motion is unprecedented. (2) That the act of assembly does not authorise the governor to interfere in this suit, the jurisdictional limits of this state not being in question.

THE COURT overruled the motion. The practice of amending declarations in ejectment by introducing new tides, would be highly inconvenient, and is altogether unnecessary; as distinct ejectments may be brought to try them. None of the cases cited are as strong as the present, and the court feels no disposition to encourage motions of this sort, particularly after the cause is at issue. Besides, this kind of action is instituted not by writ, but by service of the declaration on the tenant in possession, from which alone he is informed of the subject in controversy, and which he is to prepare himself to combat. In the instructions given to the counsel by the governor, he professes to act under the act of assembly; but it is perfectly clear that this case is not embraced by the act, as the jurisdiction of New Jersey can in no respect be involved in this action, or be affected by the decision either way. For whether the plaintiff or defendant prevails, the judgment can only affect the right to the soil, which is not claimed by New Jersey. The right of jurisdiction can only be settled by a suit between the two states. The amendment, in respect to the demise by the state of New Jersey, would be to make that state a party plaintiff in the cause, and the circuit courts of the United States have not jurisdiction in cases between a state and its own citizens, or citizens of other states; the judiciary law not having extended the jurisdiction to such cases. Motion overruled.

[NOTE. See *New Jersey v. Babcock*, Case No. 10,163.]

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<sup>1</sup> [Originally published from the MS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

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