Case No. 12,736.

SHEDDEN v. CUSTIS.

{1 Hughes, 246;[1] 6 Call, 241.}

Circuit Court, D. Virginia. 1793.

COURTS—FEDERAL JURISDICTION—FAILURE TO STATE CITIZENSHIP IN DECLARATION—HOW TAKEN ADVANTAGE OF.

1. A plaintiff in a federal court must state himself to be the subject or citizen of a foreign state, in order to entitle the court to jurisdiction. And if he omits it, the defendant may take advantage of the omission by motion in arrest of judgment.
2. For, the general and state governments should be kept separate; and each left to do the business properly belonging to it.

The plaintiff did not state himself in his declaration to be the subject or citizen of a foreign state; and the question was, if this should be done, in order to show that the court had jurisdiction.

JAY, Circuit Justice. If the court has not jurisdiction, it is on account of the disability of the person, which might be pleaded in abatement; and if it could be pleaded in abatement, then can the exception be taken advantage of, by motion in arrest of judgment, after verdict.

Mr. Wickham, for defendant.

The exception appears upon the face of the declaration. For the charge of jurisdiction in the declaration only states that the bond itself was made within the jurisdiction, but says nothing as to the person of the plaintiff. Now, jurisdiction in this court respects the person, and not the place; for the court has jurisdiction as well over contracts made without, as those made within the limits of the state. The difference is, between courts of general, and those of limited jurisdiction. If the cause depended before the court of king's bench in England, or the general court

here, and there had been any disability, it should have been pleaded; because their jurisdiction is general. But the jurisdiction of this court is limited, as to persons; and, therefore, should be shown, as well as that of a court whose jurisdiction is limited as to locality and extent. The common law authorities all show that jurisdiction should be averred; and though they may seem to differ, yet the whole difference in any of them is only what amounts to a sufficient averment, on which the authorities do not agree. Now, the only difference between those cases and that at bar is that those were inferior courts, and this a superior court; and therefore it may be argued that the cases in the former turned upon the inferiority of the court; but that 1219 argument is not satisfactory. The true reason is, not that they were inferior, but that they were limited courts. So this is. Therefore, the plaintiff must show that the court has a right to discuss his claims, and not merely that he has a right to the thing he claims.

Mr. Campbell, contra.

A motion to arrest a judgment must be grounded on error apparent on the record; and the question is of this case here. Something should manifestly appear to be erroneous; not whether, possibly so, or not. The English authorities do not prove that disability may be urged after verdict. The question, in all of them, was concerning the limits of the jurisdiction of the court where the actions were brought. For, being inferior courts, the superior courts at Westminster confined them, both because derogatory to the common law and for the sake of the venue. This, therefore, is a novel objection, and must stand on its own reasons. Some persons may sue here, others cannot. Therefore, the defendant must point out the disability; for the court will not inquire into circumstances, unless he shows it. Parties are only the instruments of jurisdiction; for the jurisdiction of the court is independent of parties.

There must, indeed, be parties before the court; but jurisdiction consists in authority to decide rights. If the defendant does not show a want of jurisdiction, it shall be intended. Carth. 33, 34. The doctrine is, that by pleading you admit jurisdiction. It may be argued that consent does not give jurisdiction, but that is only where want of it appears of record. If, indeed, the declaration had slated that the plaintiff and defendant were both, citizens of this state, the defendant's admission would not have given jurisdiction; but the party may dispense with facts if he will. Comb. 254. Therefore, as the case now stands, it is altogether a question as to the subject-matter of complaint, and if the plea does not state facts to oust jurisdiction, the court will intend it as admitted. The court cannot judicially notice districts of country, or the kind of persons who sue, unless it be expressly submitted to them by the pleadings. But after issue joined on the merits, they will not receive proof of residence or other disability, but of the subject-matter in dispute only. For the plea answers the allegations with respect to the debt, and not of the person. If inconveniences should be alleged as that any citizen may sue here, the answer is, that the defendant may avail himself of the incapacity of the plaintiff to sue, by pleading, and if he does not, he must abide by it.

Wickham was about to reply, but was stopped by the court.

IREDELL, Circuit Justice. The jurisdiction of the court is limited to particular persons; and, therefore, must be averred. For the difference has been rightly taken by the defendant's counsel, between courts of limited and those of general jurisdiction. In the latter, exceptions to the jurisdiction must be pleaded; but in the former the defendant is not bound to plead it, for the plaintiff must entitle himself to sue there. If the declaration had alleged that the plaintiff was a foreigner, then the defendant must have pleaded

the disability, as he would have admitted his capacity to sue. Ability to sue here is a fact which rests more in the knowledge of the plaintiff than of the defendant; and, therefore, the former should show himself capable of suing here. It is not the same with regard to the place of contract, for that the defendant knows as well as the plaintiff; and, therefore, if there be any exceptions on that ground, it being a thing in the knowledge of the defendant, he should plead it for the same reason that the plaintiff must aver his capacity in the other case. It is important that it should appear upon the record that the court had jurisdiction and has only decided on cases within its cognizance.

JAY, Circuit Justice. I at first thought it questionable on the ground of a difference between jurisdiction over the subject-matter and over persons. But on reflection, I do not think the distinction is important. The English practice has been rightly stated by the defendant's counsel, and those rules are more necessary to be observed here than there, on account of a difference of the general and state governments, which should be kept separate, and each left to do the business properly belonging to it. Therefore, this court should not exceed its limits, and try causes not within its jurisdiction. Consequently, the jurisdiction ought to appear, but it does not in this case; and, therefore, I think the judgment should be arrested.

{PEE CURIAM. Arrest the judgment.}[2]

[1] {Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.}

[2] {From 6 Call, 241.}