FOSTER v. PARAGOULD S. E. R. CO.

(Circuit Court, E. D. Missouri, E. D. May 18, 1896.)

No. 3,925.

REMOVAL OF CAUSES—DIVERSE CITIZENSHIP.

There is no right of removal under the act of March 3, 1887, unless the record and papers show that the citizenship was diverse, both when the suit was begun and when the petition for removal was filed. Gibson v. Bruce, 2 Sup. Ct. 873, 108 U. S. 561, Railway Co. v. Shirley, 4 Sup. Ct. 472, 111 U. S. 358, and Akers v. Akers, 6 Sup. Ct. 669, 117 U. S. 197, followed.

This was a suit by William Foster against the Paragould Southeastern Railroad Company. Plaintiff moves to remand the case to the state court, from which it was removed.

C. P. Caldwell and H. N. Phillips, for plaintiff.

Phillips, Stewart, Cunningham & Eliot and Block & Sullivan, for defendant.

ADAMS, District Judge. The question raised by the present motion is whether it is necessary for the record and papers in the case to show that there was a diversity of citizenship of the parties, within the meaning of the act relating to the removal of causes, both at the time the petition for removal was filed in the state court and at the time the suit was commenced in the state court, or whether it is sufficient if such diversity existed at the time the petition for removal was filed. The papers in the case show that the plaintiff, at the time the motion to remove was filed in the state court, was a citizen of the state of Missouri, and that the defendant, at the time the motion to remove was filed, and also at the time the suit was instituted, was a citizen of the state of Arkansas. It does not appear, and cannot be ascertained from the record and papers in the case, whether the plaintiff was, at the time of the institution of his suit, a citizen of a different state than Arkansas.

This being a court of prescribed jurisdiction, the facts disclosing the same must affirmatively appear. The question therefore is: Is the fact that the record and papers fail to disclose the requisite citizenship at the time the suit was instituted in the state court fatal to the jurisdiction of this court? The judiciary act of March 3, 1875, employs the same phraseology with respect to diverse citizenship of the parties in connection with the right of removal as is found in the act of March 3, 1887, now in force. The first-mentioned act received construction, in the particulars now under consideration, by the supreme court of the United States in the cases of Gibson v. Bruce, 108 U. S. 561, 2 Sup. Ct. 873, Railway Co. v. Shirley, 111 U. S. 358, 4 Sup. Ct. 472, and Akers v. Akers, 117 U. S. 197, 6 Sup. Ct. 669; and in them it was held that a suit cannot be removed unless the requisite citizenship of the parties exists, both when the suit was begun and when the petition for removal was filed. The doctrine of these decisions controls the court in its action on the present motion. The motion is sustained.

AUDSLEY et al. v. MAYOR, ETC., OF CITY OF NEW YORK et al.

(Circuit Court of Appeals, Second Circuit. May 12, 1896.)

CONTRACTS—PREMIUM FOR ARCHITECT'S DESIGNS.

Pursuant to authority given by an act of the legislature, a board of commissioners advertised for plans for a building to be erected in behalf of the city of New York. The advertisement stated that the plans offered would be submitted to a committee of architects, who would select the best six plans; that the designer of the one adjudged by the board of commissioners to be first best would be appointed architect of the building, and the designers of the other five would each receive a premium of $2,000. Plaintiff, among many others, submitted plans. The committee of architects made its report, but, before the board of commissioners had made a decision, the act authorizing the erection of the building was repealed. Plaintiff then sued the city for his services in preparing the plans. No evidence was offered to show that plaintiff's plans were among the best six selected by the committee. *Held*, that plaintiff had no cause of action.

In Error to the Circuit Court of the United States for the Southern District of New York.

Chas. G. F. Wahle (Edward C. Stone on the brief), for plaintiffs in error.

Theodore Connoly, for defendants in error.

Francis M. Scott, for the corporation.

Before WALLACE and SHIPMAN, Circuit Judges, and TOWNSEND, District Judge.

WALLACE, Circuit Judge. Error is assigned of the ruling of the trial judge in directing the jury to find a verdict for the defendants.

The action was brought to recover the value of services rendered by the plaintiffs as architects in preparing plans and designs for a public building to be erected for the city of New York by a board of commissioners, who, by chapter 299 of the Laws of New York of 1890, as amended by chapter 414 of the Laws of 1892, were empowered to select and locate a site and erect the building in behalf of the city. It appeared in evidence that the plans and designs were made pursuant to an advertisement of the board of commissioners inviting plans and specifications of which the following are the material portions:

"In the examination and judgment of the designs, the board of commissioners will be assisted by a committee to be selected by the said board from a list nominated by the New York Chapter of the American Institute of Architects and the Architectural League of New York. This committee will consist of three competent architects who do not take part in the competition. Five equal premiums of $2,000 each shall be awarded to the authors of designs adjudged by the board of commissioners to be the second, third, fourth, fifth, and sixth best of those submitted; and the author of the designs adjudged to be the first best by the said board of commissioners will be appointed architect for the construction of the building, provided his professional standing is such as to guaranty a proper discharge of his duties; and he will be paid a commission on the total cost of the work, viz. 5 per cent. on the first $1,000,000, 4 per cent. on the second $1,000,000, and 3 per cent. on the remainder. The conditions under which this competi-