

LAW CASE.

Circuit Court of the U. States for the Eastern District of Pennsylvania, at Philadelphia, on Monday, 20 May 1850.

REPORT.

This was an action on the case, brought by Levi Hallingworth against Wm. Duane, in the Circuit Court of the United States, for the district of Pennsylvania, for a bill on the plaintiff, in the nature of a writ published by the defendant. The declaration from the plaintiff to be a citizen of the United States, the defendant to be an alien and subject of his Britannic Majesty. The defendant pleaded in abatement the jurisdiction of the court, that long before the action was brought and at the bringing of it, and at the time of his plea, he was a citizen of the state of Pennsylvania, and not an alien and subject of His Britannic Majesty, and that the plaintiff was also a citizen of the same state of Pennsylvania, therefore by the constitution of the United States, the said Circuit Court had no jurisdiction over the parties, &c.

To this plea the plaintiff replied, confessing that the Circuit Court of the United States could not hold plea between citizens of the same State, yet averring, that the defendant was not a citizen of the state of Pennsylvania, but an alien, &c. To this replication the defendant rejoined, that he was, and is a citizen of the state of Pennsylvania, and not an alien, and that himself was the country, and the plaintiff did the like.

To try this issue, a special jury was struck between the parties, and the following route appeared and were duly impanelled, viz—

- Tracy W. Johnson (Foreman) Joshua Boyon, John B. H., jun., George B. R., George J. R., James Edwards, George J. R., James Edwards, Richard Jones, Rich. Hamplinsy.

Witnesses, of counsel for the plaintiff, were called, by observing very briefly that the only principal matter of enquiry on this issue was, whether the defendant was a citizen of the United States or not.

He was a citizen of the state of Pennsylvania, it could be proved, and that he admitted the Court had no jurisdiction, because the constitution gave the Federal Court no cognizance of such a case between citizens of the same State; but if, from the evidence, it should appear that the defendant, was an alien or subject or citizen of some other or foreign power or state, then his plea failed, and he must answer the action for the bill in the Court. He mentioned that he was not minutely informed as to the evidence which could be adduced to prove the defendant an alien, but he understood it would appear in a very clear manner, that this was the fact, and he the burden of proof lay on the party alleging the other to be an alien, the bill proceed to call the witness.

Mr. Mather, who in substance proved, that the (Mather) was brought up in Ireland, and was then about 28 years old, that he knew the defendant in Ireland—that the defendant, lived with his mother, a widow, who resided in the town of Clennell, in the province of Munster; that he went to school with the defendant a considerable time in that town; that the defendant was 15 or 16 years of age at their first acquaintance, and about two years older than the witness. To the left of his mother, and the defendant left the school at Clennell and went to Waterford to learn the printing business, about six or seven years before the witness left Ireland, which was in 1785, though he would not speak with certainty as to dates.

On his cross examination by the defendant's counsel, he said that the defendant was considered at school as an outstanding scholar, including thereby as having come from some other country; that the report in Ireland was that his mother had been in a foreign country, and he was remarked for having less of the Irish accent than the other boys.

Travis Hamilton being sworn, said, that on a conversation with the defendant about 6 years ago he informed him, that the place of his birth was Canada. This was the impression on his mind, but he could not be

understood to speak with certainty. He further said, defendant told him, he was taken from the place of his nativity very young, and carried to Ireland, where he had his education. He had a faint recollection of leaving this country, though it was like a dream.—The witness further said, he remembered having sold Capt. Taylor, two years ago, that the defendant was born in Canada, in answer to an assertion of Mrs. Taylor's, that the defendant was an Irishman. His expression to Taylor then was, that he thought he had been taken to Ireland, but he was born in Canada. Evidence for the plaintiff relied.

DATA, of counsel for the defendant, said, the case was an American citizen, and from these derived his right of the claim of a citizen of the United States of America, that he conceived the only question to be tried was, whether the defendant was born within the limits of the American domain. It was proved, he thought there was an end to the question, and the jury would find him not an alien, but a citizen of the United States. He proposed a case or cases to be tried, which could be proved by his birth to have been within the colony of New-York. Wm. Goodfellow, being sworn, said, that he was present at the conversation referred to by the defendant, and he collected it perfectly. That the defendant did not say he was born in Canada; that this was a mistake of Mr. Hammit's, easily accounted for. That defendant, in conversation with the defendant, was born on the border of Lake Champlain. Witness asked him at what place? Defendant to this could not give a correct description or idea of the place, but said he was near the town of Champlain, within the bounds of New-York; and witness said from the defendant's description, he knew the place in 1760 (to which period he referred) to be within the colony of New-York. The witness then said, he got the idea of defendant's being born in Canada, from the mention of Canada in the conversation, which was introduced incidentally by the defendant, who, in giving the defendant his birth, had said he had his father could go from that place, in the colony of New-York, to St. John's in Canada in one day and return the next.

The witness then went on to say, that defendant had repeatedly told him of his birth in the colony of New-York, and his removal to Ireland as he had received the relation from his mother. The account he gave was that his father was, at least his mother, natives of Ireland—that he was born on Lake Champlain in the year 1760—and when about seven or eight years of age, his mother (being then a widow) removed to the British Islands, where they remained two or three years, in which time he went to school there; that his mother, about the year 1771, left America taking him with her to Ireland, and she remained in that country until her mother took him to Ireland. Defendant, in some conversation, told witness that when he was in India he had claimed his birth to be a citizen of the United States, and witness then asked him for the character. Witness further proved that defendant arrived at Philadelphia from India in the year 1795.

The plaintiff's counsel then called, Thomas Hickey, who being sworn, said, he knew defendant at Clennell in Ireland, he was then about 17 years old, and at school. He first saw him at Clennell about four years before the peace with Great Britain, and he never saw him again in London, where he was working at his business, as a Journeyman Printer. His acquaintance with him there continued about a year, after which defendant went to some of the islands in the East-Indies, after which witness did not see him 'till the year 1795, when he met with him at New-York. Witness came to America in 1794, and further acquaintance with him in London, had expressed a desire to him, to go to America; and they proposed to come out together; but for reasons unknown to him, defendant would not go to India.

The evidence was here rested on both sides. The witness immediately mentioned to the court, that they had agreed to submit the case to the jury, without any removal of the opinion of the court, in point of law, whether defendant was upon the evidence a citizen of the United States, or an alien.

GRISTY, Judge. Before we charge the jury, I wish to state to you, whether (taking the relation of the defendant himself as evidence for him on this issue) the facts on which he relies, in proof of his claim to be an American citizen, are

as follow: That his parents were natives of Great-Britain or Ireland, and previous to the year 1760, settled on the borders of the colony of New-York, within the limits of the British colony of New-York; the defendant was born there about the year 1760, and lived there with his parents, and was educated by his mother, until he was 7 or 8 years of age; that his mother then removed from the colony of New-York into that of Pennsylvania, and resided with her in the city of Philadelphia, in which place he went to school; that about the year 1771, he being then 11 years old, he was removed with him to her former residence in Clennell in Ireland; that he there completed his education; and from there in Ireland served an apprenticeship to the art of printing. That he came age of 17 in 1780 or 1781, and after the peace, in 1783 or 1784, was pursuing his business as a Journeyman Printer in the city of London, which place he left about that year, and went into the British East-Indies, where he resided until the year 1795, when he came to New-York, and has since resided there; and the question is upon this, whether he is a citizen of the United States? He argued for the defendant, that the statement was correct, and that their chief relied upon it as entailing him to his claim of citizenship.

DALY, for the plaintiff, here said that before the court charged the jury, he had time to read the case of William Smith, of South-Carolina, which he thought applicable to the plea of the defendant. By the Court, he certainly said, that he would be very desirous of hearing all that could be brought on either side.

D. Has then read the case of William Smith, from Debates of Congress, 64, 136, 182, 183, in which the defendant was seen with a view to establish his proposition, that birth in the colonies conferred a right of becoming a citizen of the United States, under the circumstances of his case.

The Court said, he had made no marks, but submitted the case to the opinion of the court.

TILGHMAN, Chief Justice, after a few minutes conference on the bench with Judges Bassett and Griffitts, charged the jury as follows, viz—

Gentlemen of the Jury.

The single question for you to decide on this issue is, whether the defendant be a citizen of the United States, or an Alien? It is your duty to decide on the truth of the material facts alleged on the one side or on the other. These facts being settled in your minds, it is the province of the Court, to render your judgments on the law, which will direct the parties to the facts. In this case the facts necessary to form a legal decision, and which you are to take as the foundation of your verdict, I leave to you to be settled. There is indeed some doubt upon the evidence, whether Mr. Duane was born in Canada or in the province of New-York. This question is to be decided by you. If you think from the evidence in this case, that he was born in the British foundation, upon which his claim to citizenship rests, falls; and that in 1760 at his birth, Canada was a part of the French territory. Taking the fact, however, to be as stated by the defendant himself, it is to be ascertained, whether the defendant had been produced on his behalf, (and we think the probability is on that side) viz that he was born within the British colony of New-York, in the year 1760, and removed with his mother to Ireland in 1771; at the age of 11 years, and continued within the British dominions during the revolution, and until 1795, under the circumstances before mentioned. It is your duty to give your opinion to his Counsel, and say, taking his own statement as true, it is the clear opinion of the Court, in point of law, that Mr. Duane is not an alien, when he put in this plea, and is not now an alien of the United States, but an alien.

It is not the intention of the Court, on a sudden, to enter upon a discussion of supposable cases, wherein the place of birth might confer a right of election on the party. At the present time, to make that circumstance a ground for his claim to citizenship. We confine ourselves to the case before us. We are of opinion that there has been no period until this time, at which he could be considered as a citizen of Great-Britain, or as a subject of the king of Great-Britain, as much so as if he had been born in Great-Britain or Ireland. We were all of us, at that time. In 1776, at Independence, he was permanently settled in Ireland, receiving his education or learning; his trade. After he came of age, which much he had in 1781 or 1782, we find him settled in the British Islands in London, in the year 1791, and in 1795, going out to the British possessions in India, where he resided until the year 1795, when and whence he came to Pennsylvania.

It seems to be the idea of his Counsel, that because born in the colony of New-York, and removed from the place of his birth, and carried to the limits of the British colony in her late of independence, after he came of age. Without giving any opinion on this right of election, in such circumstances as the present, it is a sufficient answer to it, in this case, to say, that he made no such election. He indeed told Lacey in 1782 or 1783, that he had intentions to go to America; and according to Mr. Goodfellow's relation, Mr. Duane told him, that while he was in the British East-Indies, he on some occasion, made claim to be an American citizen. But no one can, for a moment, view such declarations as such, as amounting to an election of citizenship in the British States, in view of his birth-right. If such a right existed, he should immediately, on his coming of age, or as soon after as he could, have taken on him the actual character of a citizen of the United States, instead of the one he remains in the year 1781, when he came of age, to 1795, within the British dominions, having in all that time done no act, or made any application, nor been recognised by any authority of the United States, as a citizen of the United States. Suppose he had been found in arms against the United States in 1783, after he came of age, must he not have been treated as a British subject? Could he have been given a commission on the ground of his having been born within the colony of New-York in the year 1760? Certainly not.

It is, in my whole view, we entertain no doubt on this question, in point of law. We do not confide the defendant as ever having entitled himself to those great privileges and rights of citizenship which related to the British subject, after his solemn and public declaration of independence, was effected, and the final recognition of them as independent States. If Mr. Duane can, merely in consequence of his birth in 1760, have been treated as a British subject, removal from the year 1771 to 1796, a period of 24 years, and residence within the British dominions as a British subject, come here and claim to be a citizen of the United States, it is a matter which I think it would be very difficult to make a claim, or when a limitation would attach. The case of the honourable Mr. SMITH, which has been mentioned as parallel to Mr. Duane's, bears no resemblance to this. It differs in every circumstance. It would be wasting time to note the circumstances of differentiation. You have then, gentlemen, the unanimous opinion of the Court, delivered in haste, and without that position of things, which perhaps might be more impressive, that Mr. Duane, upon his own evidence, is not in law a citizen of the United States, but an alien. If you are of this opinion, upon the facts, and that you find a verdict accordingly. On the contrary, it is your right to find him a citizen of the United States, if, upon the law and facts, you are of that opinion.

Judges BASSETT and GRIFFITTS merely affected to dissent, without delivering any reasons.

GRIFFITT, Judge, observed to Mr. DALY, Counsel for defendant, that as the matter was referred to his client, and the point might be thought worthy of consideration, or revision, he would remind him that if the opinion of the court was thought erroneous, the defendant might take a bill of exceptions, and have the question decided in the Supreme Court of the United States. Or if he could prefer a re-consideration in this court, he should be at liberty to move for a new trial, for the misdirection, if the jury were not satisfied with the defendant's case. The court, however, was of opinion, that the opinion of the court, declining to take a bill of exception.

The Jury retired for about two minutes, and returned with a verdict accordingly. The defendant was not a citizen of the United States, but an alien and subject of the king of Great-Britain, which was entered accordingly.

For sale or Rent,

THE house and lot as advertised by Mr. John Dimpley, situated near the Capitol Building, on lot No. 6, in figure 759; this lot contains 25 feet on East Capitol Street, and 75 feet on Second Street, and is to be let for a year, or half a year, and for terms apply to the subscriber.

AMUEL N. SMALLWOOD, Washington, May 29, 1850.

Take Notice—The gentleman

concerning the company of militia formerly commanded by Captain WILLIAM WOOD, is requested to return the arms and accoutrements that have been delivered them, belonging to the British in the Marston, to the Subscriber at the City of New-York.

By order of the Brigadier General, SAMUEL N. SMALLWOOD, Brig. Genl. comd.