

Waters v. Barrill.

WATERS v. BARRILL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

No. 90. December Term, 1867. — Decided March 23, 1868.

A citation served on the 1st December, before the return of the writ, is served in time.

The averments of alienage and citizenship in the declaration are sufficient to give the court jurisdiction.

THE case is stated in the opinion of the court.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Maryland.

A motion has been made to dismiss the case for want of jurisdiction, on the ground that the citation was not served in time. But this is a mistake. It was served on the first of December, before the return of the writ, and is within the cases of *Villabolos v. United States*, 6 How. 81, 89, 90, and *United States v. Curry*, 6 How. 106, 112.

Although it was returnable with the writ the first of the term, the defendants had thirty days by the statute to appear. The service on Barrill was good: he was one of the joint defendants, and it would have been good if Murr was dead, of which there is no legal proof, as the suit would survive against Barrill.

Then, as to the merits. The only point made is the want of jurisdiction in the court below, for the defect of the averment as to the alienage of the plaintiff and citizenship of the defendant. There is no foundation for this objection in point of fact, as the declaration plainly sets out that the plaintiffs are aliens, and the defendant a citizen of Maryland. *Covington Drawbridge Co. v. Sheppard*, 20 How. 227; *Philadelphia, Wilmington &c. Railroad v. Quigley*, 21 How. 202; *Sheppard v. Duncan*, 14 How. 504, 508.

*Judgment affirmed.*

Mr. R. J. Brent for plaintiff in error. Mr. S. T. Wallis and Mr. John H. Thomas for defendant in error.