

## §11 CL Bates - jurisdiction must appear upon the face of the record.

CL BATES ... VOL I ... § 11. \*The jurisdiction must appear upon the face of the record.\*- The jurisdiction of the circuit court is limited, in the sense that it has no jurisdiction other than that conferred upon it by the constitution and laws of the United States; and, as a result of this limitation upon the jurisdiction, the presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears. It has long been settled that the facts upon which the jurisdiction of the circuit courts rests must, in some form, appear upon the face of the record in all suits prosecuted before them, and it is error for the court to proceed until its jurisdiction is shown.

Chief Justice Taney, discussing the necessity of the record showing the jurisdiction, and the reason of the rule, said: "But in making this objection, we think the peculiar and limited jurisdiction of courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary, in these courts, to adopt different rules and principles of pleading, so far as jurisdiction is concerned, from those which regulate courts of common law in England [exclusive equity?] and in the different states of the Union which have adopted the common law rules. In these last mentioned courts, where their character and rank are analogous to that of a **circuit court of the United States**-in other words, where they are what the law terms 'courts of general jurisdiction,' -they are presumed to have jurisdiction unless the contrary appears. No averment in the pleadings of the plaintiff is necessary in order to give jurisdiction. If the defendant objects to it, he must plead it specially, and, unless the fact on which he relies is found to be true by a jury, or admitted to be true by the plaintiff, the jurisdiction cannot be disputed in an appellate court.

Plaintiff always sets jurisdiction!

Now, it is not necessary to inquire whether in courts of that description a party who pleads over in bar, when a plea to the jurisdiction has been ruled against him, does or does not waive his plea; nor whether upon a judgment in his favor on the pleas in bar, and a writ of error brought by the plaintiff, the question upon the plea in abatement would be open for revision in the appellate court. Cases that may have been decided in such courts, or rules that may have been laid down by common-law pleaders, **can have no influence in the decision in this court**.

\*Because, under the constitution and laws of the United States, the rules which govern the pleadings in its courts, in questions of jurisdiction, stand on different principles and are regulated by different laws. This difference arises, as we have said, from the peculiar character of the government of the United States.

For although it is sovereign and supreme in its appropriate sphere of action, **yet it does not possess all the powers which usually belong to the sovereignty of a nation**. Certain specified powers, enumerated in the constitution, have been conferred upon it; and neither the Legislative, executive nor judicial departments of the government can lawfully exercise any authority beyond the limits marked out by the constitution.\* And in regulating the judicial department, the cases in which the courts of the United States shall have jurisdiction are particularly and specifically enumerated and defined; **and they are not authorized to take**

## VALUABLE CONSIDERATION

97. Pomeroy §747. What is Valuable Consideration: What constitutes a valuable consideration within the meaning of the doctrine which gives protection to a bona fide purchaser? No person who has acquired title as a mere volunteer...can thereby be a bona fide purchaser.
98. Gibson §75: VENDEE MUST BE LEGALLY WORSE OFF: Valuable consideration means, and necessarily requires under every form and kind of purchase, something of actual value, capable, in estimation of the law, of pecuniary measurement, parting with money or money's worth, or an actual change of the purchaser's legal position for the worse. The amount of the purchase, if otherwise in good faith, is not generally material.
99. Gibson §43 Hence, it is the passing of a consideration and not the form of the contract that in Equity passes title; and whatever the form of the transaction, if no consideration passes, in Equity no title passes.

## MAXIMS OF EQUITY.

100. EQUITY MAXIMS EXISTED BEFORE THE LAWS: Page 459 Institutes of American Law by Bouvier, 1870: section: 3726 "Maxims are rules or principles of law universally admitted as being just and consonant with reason ... These existed before the law, for, it has been well observed, nations have been found without laws, none without maxims. Such maxims may be considered as fragments of the natural law which was promulgated at the beginning of the world.

- i. Equity sees that as done what ought to be done.
- ii. Equity will not suffer a wrong to be without a remedy.
- iii. Equity delights in equality.
- iv. One who seeks equity must do equity.
- v. Equity aids the vigilant, not those who slumber on their rights.
- vi. Equity imputes an intent to fulfill an obligation.
- vii. Equity acts in personam.
- viii. Equity abhors a forfeiture.
- ix. Equity does not require an idle gesture.
- x. He who comes into equity must come with clean hands.
- xi. Equity delights to do justice and not by halves.
- xii. Equity will take jurisdiction to avoid a multiplicity of suits.
- xiii. Equity follows the law.
- xiv. Equity will not aid a volunteer.
- xv. Where equities are equal, the law will prevail.
- xvi. Between equal equities the first in order of time shall prevail.
- xvii. Equity will not complete an imperfect gift.
- xviii. Equity will not allow a statute to be used as a cloak for fraud.
- xix. Equity will not allow a trust to fail for want of a trustee.
- xx. Equity regards the beneficiary as the true owner.
- xxi. He who occasioned the loss must bear the burden.
- xxii. *Ex nudo pacto non oritur actio.* (No suit can be brought upon a contract without a supporting consideration.)
- xxiii. *Ex dolo malo non oritur actio.* (No suit can be brought to enforce a fraud.) A complainant must have clean hands.
- xxiv. *Ex pacto illicito non oritur actio.* (No suit can be brought to enforce a contract in violation of law.)
- xxv. *Ex facto jus oritur.* (The law arises out of the transaction.) The law is the shadow which the facts cast.
- xxvi. *Expressio unius persona vel rei est exclusio alterius.* (The express mention of one person or thing in a written instrument is equivalent to the express exclusion of all other persons or things.) Thus, a deed to A is a deed to him alone, and to no other person; and a devise to B in effect excludes all others.

"*verba fortius accipiuntur contra proferentem*" Every presumption is against the composer (pleader).

101. Judge Tuley: "I contend that no one, be he judge or student of equity, can give himself up to the earnest study of equity maxims and the science of equity as one who loves his profession should, without becoming not only a wiser, but a better and purer man. Such study of equity maxims and jurisprudence quickens the perceptions between right and wrong, brightens the conscience, and elevates the entire moral character—in other words, ennobles the man beyond, far beyond, the study of any other known science or profession. A Chief Justice of England once remarked that law was a coy mistress, she would bear no other wooing, and that remark is peculiarly applicable to the study of equity. The student who wishes to worship at her shrine must not mix with his study any other pursuit or business, but he must give himself up heart and soul to his task, and never falter or weary in its pursuit. He must study equity as one studies a foreign language; he must study its history and learn the root or source from which it is derived; he must fully understand its construction and principles, and by continued application become so imbued with its spirit and become so fully a master of the language, that without effort on his part he thinks in such foreign language, and then and not until then can he claim to fully comprehend it.
102. Laches: (if you wait too long to enforce your right then your rights stale over time) Where the federal equity jurisdiction is exclusive and is not exercised in aid of a legal right, state statutes of limitations barring actions at law



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