

## THE BANK OF THE UNITED STATES v. DEVEAUX

## UNITED STATES SUPREME COURT

9 U.S. 61 (1809)

ERROR to the circuit court for the district of Georgia.

In the year 1805 the State of Georgia passed a law to tax the Branch Bank of the United States, at Savannah. The bank having refused to pay the tax, the state officers entered their office of discount and deposit, and took and carried away two thousand dollars, for which the bank of the United States brought their action of trespass in the circuit court of the United States for the district of Georgia. The plea to the jurisdiction does not deny that the plaintiffs were citizens of the State of Pennsylvania, but relies upon the fact that the plaintiffs sue as a body corporate.

OPINION: MARSHALL, Ch. J. delivered the opinion of the court as follows:

Two points have been made in this cause.

1. That a corporation, composed of citizens of one state, may sue a citizen of another state, in the federal courts.
2. That a right to sue in those courts is conferred on this bank by the law which incorporates it.

The last point will be first considered.

The plaintiffs contend that the incorporating act confers this jurisdiction. That act creates the corporation, gives it a capacity to make contracts and to acquire property, and enables it 'to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever....'

This evinces the opinion of congress, that the right to sue does not imply a right to

sue in the courts of the union, unless it be expressed. The court, then, is of opinion, that no right is conferred on the bank, by the act of incorporation, to sue in the federal courts.

The other point is one of much more difficulty. The jurisdiction of this court being limited, so far as respects the character of the parties in this particular case, 'to controversies between citizens of different states,' both parties must be citizens, to come within the description.

That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals, who, in transacting their joint concerns, may use a legal name, they must be excluded from the courts of the union.

The duties of this court, to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation. The constitution, therefore, and the law, are to be expounded, without a leaning the one way or the other, according to those general principles which usually govern in the construction of fundamental or other laws....

As our ideas of a corporation, its privileges and its disabilities, are derived entirely from the English books, we resort to them for aid, in ascertaining its character. It is defined as a mere creature of the law, invisible, intangible, and incorporeal. Yet, when we examine the subject further, we find that corporations have been included within terms of description appropriated to real persons....

If, then, the congress of the United States had, in terms, enacted that incorporated aliens might sue a citizen, or that the incorporated citizens of one state might sue a citizen of another state, in the federal courts, by its corporate name, this court would not have felt itself justified in declaring that such a law transcended the constitution.

If the constitution would authorize congress to give the courts of the union jurisdiction in this case, in consequence of the character of the members of the corporation, then the judicial act ought to be construed to give it. For the term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come into court, in this case, under their corporate name.

That corporations composed of citizens are considered by the legislature as citizens, under certain circumstances, is to be strongly inferred from the registering act. It never could be intended that an American registered vessel, abandoned to an insurance company composed of citizens, should lose her character as an American vessel; and yet this would be the consequence of declaring that the members of the corporation were, to every intent and purpose, out of view, and merged in the corporation.

The court feels itself authorized...to look to the character of the individuals who compose the corporation, and they think that the precedents of this court, though they were not decisions on argument, ought not to be absolutely disregarded.

If a corporation may sue in the courts of the union, the court is of opinion that the averment in this case is sufficient. Being authorized to sue in their corporate name, they could make the averment, and it must apply to the plaintiffs as individuals, because it could not be true as applied to the corporation.

Judgment reversed; plea in abatement overruled, and cause remanded.