

SUPREME COURT OF NORTH CAROLINA

State of North Carolina v. Norris Earl Francis, Jr., et al., 261 N.C. 358

134 S.E.2d 681 (1964) · No. No. 6 · Decided February 26, 1964

SUMMARY

The Supreme Court of North Carolina held that the defendants' timely filing of a federal removal petition, service of notice, and filing of a copy with the state-court clerk effected removal under 28 U.S.C. § 1446. Consequently, the state trial court's jurisdiction terminated, and the defendants' motion to arrest the judgments for lack of jurisdiction should have been allowed. The judgment was reversed.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Rodman, Justice
JURISDICTION	North Carolina
DECIDED	February 26, 1964
DOCKET	No. 6
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from the Superior Court of Pasquotank County's denial of their motion challenging the court's jurisdiction after they filed a petition to remove the state criminal prosecutions to the federal district court.
STANDARD OF REVIEW	De novo review of the legal question whether federal removal deprived the state court of jurisdiction.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of North Carolina.
PARTIES	Norris Earl Francis, Jr., et al. v. State of North Carolina

TOPICS

criminal procedure federalism civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether filing a removal petition in the federal district court, providing notice, and filing a copy with the state-court clerk effected removal of the state criminal prosecutions.
2. Whether the state Superior Court retained jurisdiction to try the defendants after the statutory removal steps had been completed.
3. Whether defendants' motion to arrest the judgments for lack of state-court jurisdiction should have been allowed.

HOLDINGS

1. Under 28 U.S.C.A. §§ 1446(c) and 1446(e), removal was accomplished when defendants filed the petition in the appropriate federal district court, gave notice to the adverse parties, and filed a copy of the petition with the state-court clerk.
2. The Superior Court's jurisdiction terminated when the statutory removal requirements were satisfied; any challenge to the propriety of removal had to be presented by motion in the federal district court.
3. The defendants' motion to arrest the judgments for want of jurisdiction should have been allowed.

KEY QUOTATIONS

“The language of the statute is too plain to require interpretation.” (134 S.E.2d at 682)

“The Superior Court's jurisdiction terminated before appellants were tried.” (134 S.E.2d at 682)

“If the cases have been improperly removed, the error may be corrected by motion in the U. S. District Court.” (134 S.E.2d at 682)

FACTUAL BACKGROUND

The defendants, who were identified in the removal petition as Negroes, were facing criminal prosecutions in the Superior Court of Pasquotank County. Before trial, they filed a petition for removal in the appropriate federal district court, served the adverse parties, and filed a copy with the state-court clerk as required by the federal removal statute. The state trial court denied the removal motion and continued with the prosecutions.

PROCEDURAL HISTORY

Before trial, defendants filed a verified removal petition in the United States District Court for the Eastern District of North Carolina, served notice, and filed a copy with the state-court clerk. The Superior Court denied the removal motion and proceeded with the state prosecutions. The North Carolina Supreme Court held that removal had already been effected and reversed the denial of defendants' motion to arrest the judgments for lack of jurisdiction.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The opinion states that if the federal district court remands the prosecutions, the Superior Court may then try defendants on the charges in the bills of indictment.

CASES CITED

- Levine v. Lacy, 204 Va. 297, 130 S.E.2d 443 (Va.)
- Hopson v. North American Insurance Company, 71 Idaho 461, 233 P.2d 799, 25 A.L.R. 2d 1040
- State of Louisiana ex rel. Gremillion v. National Association for the Advancement of Colored People, 90 So. 2d 884 (La.App.)
- Bean v. Clark, 226 Miss. 892, 85 So. 2d 588
- Consolidated Underwriters v. McCauley, 320 S.W.2d 60 (Tex. Civ. App.)
- Lowe v. Jacobs, 243 F.2d 432 (5th Cir.)
- Adair Pipeline Company v. Pipeliners Local Union No. 798, 203 F. Supp. 434

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