Supreme Court of the United States

October Term, 1968

In the Matter of:

THE GAS SERVICE COMPANY Petitioner vs OTTO R. COBURN, on behalf of Himself and All Others Similarly Situated Respondent	**Docket No.** 117

Pt. 1

Place Washington, D. C.

Date January 21, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

****

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

THE GAS SERVICE COMPANY,

Petitioner,

vs.

OTTO R. COBURN, on Behalf of Himself and All Others Similarly Situated,

Respondent.

No. 117

Washington, D. C.
Tuesday, January 21, 1969

The above-entitled matter came on for argument 2:15 p.m.

BEFORE:

EARL WARREN, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

GERRIT H. WORMHOUDT, Esq.
1600 Wichita Plaza
Wichita, Kansas
Counsel for Petitioner

ROBERT MARTIN, Esq.
1111 Vickers Tower
Wichita, Kansas
Counsel for Respondent

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE MARSHALL: No. 117, The Gas Service Company, petitioner, versus Otto R. Coburn, et cetera.

Mr. Wormhoudt.

ORAL ARGUMENT OF GERRIT H. WORMHOUDT, ESQ.

ON BEHALF OF PETITIONER

MR. WORMHOUDT: Mr. Chief Justice, may it please the Court:

This action was commenced in the United District for the Court of Kansas also as a class suit under the newly amended rule appointed three of the Federal Rules of Civil Procedure.

The plaintiff bring the action on behalf of himself and 18,000 other consumers of natural gas at retail from the petitioner in this case who is a public utility, a Missouri Corporation, qualified to do business in Kansas.

The petitioner complains that the -- I beg your pardon -- the respondent claims that the petitioner in this case illegally exacted from the plaintiff and from the members of the class which the plaintiff seeks to represent, an illegally imposed franchise charge exacted by the city of Kansas City, this charge was not maintainable beyond the city limits, that respondent in this case resides beyond the city limits, along with 18,000 other members of his class.

Diversity did exist, jurisdictional amount was pleaded. The petitioner then moved and the District Court dismissed the action. The motion to dismiss was supported by an affidavit indicating that during the probable time period involved here, this particular respondent's claim would have amounted $7.81.

During the course of argument, counsel for the respondent, frankly, stipulated that the respondent's claim could not equal $10,000and that they had no knowledge of any other member of the class whose claim would equal or exceed $10,000.

The District Court, however, overruled the motion to dismiss. It did, in its order, make the necessary determination and bindings permitting petitioner to apply to the Court of Appeals for the 10th Circuit for an interlockatory appeal.

That application was granted and the 10th Circuit Court of Appeals affirmed the order of the District Court at approximately the same time, within a month or two, of the affirmation of the District Court's ruling in Snyder versus Harris.

I would like to address myself to what I think has been raised in the brief of the respondent. It has been suggested that the petitioner in this case is seeking to confine the construction of the amendments to the rules to

the language of the former rule, that is, Rule 23.

The references to true class actions,hybrid class actions, and spurious class actions.

I think it is perfectly clear that the real problem involved here is not one of construction of prior Ruler 23. So far as we are concerned that rule has nothing to do with the present action. We don't rely on it. We find it unnecessary to refer to it.

We do think that jurisdictional standards, first as adopted by Congress and the body of case law which has developed around those jurisdictional standards is one set of rules and one body of law.

The rule of practice adopted by this Court from time to time for itself and for the District Courts have to do with an entirely different set of proceedings; an entirely different set of standards are involved under those circumstances.

There are many, many cases, of course, that are filed in Federal Courts every day where jurisdictional amount is not involved: Fair Labor cases; I think some cases under the Securities Act; Civil Rights cases and others.

Under those circumstances the District Courts need not be bothered with the $10,000 jurisdictional amount as they are in ordinary diversity and in ordinary Federal question cases.

In those cases, I trust, as well as in the diversity and the Federal question cases, the amendments to Rule 23, will make class actions easier to handle, easier to process, easier to understand the results.

Simply because we now have before us an attempt to improve former Rule 23, it seems to me, has nothing whatsoever to do with that pre-existing body of law which deals with jurisdiction, which has developed through decisions of this Court, since 1789, and which has always been a problem or a matter that any complainant in Federal Court must meet regardless of what the rules of practice are, which have prevailed in that court from time to time.

I would call the Court's attention to the opinion of Mr. Justice Story in the Alexander case which was well over 100 years old, so far as I know, that is one of the first cases dealing with the jurisdictional questions and the matter of aggregation.

The Court pointed out in that case, that, although Congress had authorized ceiling to bring, in effect, class actions, or joint suits or unpaid wages in the Federal District Courts, that because this Court, at that time, had an appellate jurisdiction limit of $500 as the matter in controversy or the amount in controversy, therefore, there was no appellate jurisdiction of any seaman's wages when those wages did not amount to in excess of $500.

So far as I know there has been an unbroken string of decisions following that case and applying it both to the appellate jurisdiction of this Court and to the jurisdiction of Federal Court.

Q I haven't read that opinion but it seems to have to do with appellate jurisdiction rather than diversity jurisdiction, the language, as quoted in your brief, at least.

A That is correct. It seems to me the principle is identical, however.

Q It didn't directly have to do with diversity jurisdiction?

A No, Your Honor, it did not.

Q So, it was in admiralty.

A That is correct.

I would point out that there are numerous situations where a class action was appropriate under the old rules and will be just as appropriate under the new rules.

I do think it may be some help in analyzing the question,to really ask what do we mean when we use the term "aggregation"?

I think it was Judge Frankle mentioned in an article in our brief,who suggested that the term"aggregation" has probably been a complete misnomer from the beginning. His analysis may have some bearing on the question put by Mr. Justice Fortas earlier.

Since, as he points out in a traditional class action where the claim is common or undivided or joint. In effect you have but a single claim. While numerous people may be interested in it, claims are not being aggregated, where the claim, itself, is joint or common or undivided.

In those cases, where the total claim,itself, has any derivative suit in excess of $10,000, there really is not an aggregation or a joinder of plans.

The jurisdictional problem simply doesn't exist.

Q What is your view of the case where a single stockholder sues on behalf of, although they are similarly situated, and he had admittedly more than a $10,000 claim.

A Is he bringing this on behalf of the stockholders or the corporation, Your Honor?

Q On behalf of the stockholders.

A Well, he, himself, has a claim in excess of the jurisdictional amount -- I do not know of any decisions of this Court which say, under those circumstances, he could then, if this were simply a joinder device, include all the other members of the class unless their claims also exceeded.

I think in Clark against Paul Grey, and I am sorry I am not more conversant with that case, where this Court, on its own motion, dismissed several claims.

As I recall, the plaintiff, in that case, had the requisite jurisdictional, and this Court directed, however,

that the other parties to the action be dismissed from the suit. This is my recollection of it.

Q Of course, you do not need to go that far to win your lawsuit, do you?

A No, Your Honor, I don't.

Q So far as you know, nobody here has a claim of as much as $10,000.

A I think it is inconceivable that any of them would.

I point out that neither the District Court nor the Appellate Court characterized this as a B-1, B-2 or B-3 class action.

Q You would say,then,that the only judgment the Court can render here -- let's assume that it got over the jurisdictional amount hurdle -- the only judgment the Court could render here would be based on the claims of the individual plaintiffs?

A Yes, Mr. Justice, I am -- I assume separate decrees would have to be entered in each case -- I mean as to each party, defining the exact amount that he had, assuming he had paid his gas bill at the time and there weren't any set-offs.

Q You don't think the purpose of the amendment to the rules was to overcome precisely that situation.

A Not, Your Honor, in diversity suits. I submit

it was not.

I think the main thrust of my argument would be along these lines.

Rule 82 says the rule shall not be construed to extend or limit jurisdictional ---

Q It doesn't really matter whether it is diversity or not; suppose, somehow or other, that the jurisdictional amount were not available. You just think that this is not a proper class action.

A No, Mr. Justice, I think it may be a proper class action as a class action is now defined. I simply submit that that doesn't tell you whether or not you have jurisdiction.

Q Does it have any bearing on how much can be recovered ultimately? what the judgment can be? Is the judgment limited to the individual plaintiffs who have joined?

A I think it depends not on the total amount of the aggregate judgment, but on the nature of the claim of the plaintiff, himself, and of the claim of the class.

I would like to refer, very briefly, to Rule 82, which says that the rules,and this rule was also amended in 1966, shall not be construed to enlarge or diminish the jurisdiction of the Federal Courts.

The Circuit Court conceded, in its opinion, and I think counsel will concede here, this action simply was not maintainable prior to the amendment of the rule.

That being so, although I may be too closely geared to logic, if the action could not have been maintained for jurisdictional reasons prior to the amendment of the rule, but itmay now be maintained because of the amendment of the rule, then, it seems to me, that is only because of a construction which does enlarge the jurisdiction of the Federal District Courts.

MR. CHIEF JUSTICE WARREN: We will recess now.

(Whereupon, at 2:30 p.m. the argument in the above-entitled matter was recessed to reconvene on January 22, 1969.)