Steiner Vs. Fell

Steiner Vs. Fell

SooperKanoon Citation : sooperkanoon.com/77834

Court : US Supreme Court

Decided On : 1776

Appeal No. : 1 U.S. 22

Appellant : Steiner

Respondent : Fell

Judgement :

STEINER v. FELL - 1 U.S. 22 (1776)
U.S. Supreme Court STEINER v. FELL, 1 U.S. 22 (1776)

1 U.S. 22 (Dall.)

Steiner
v.
Fell and others

Supreme Court of Pennsylvania

April Term, 1776

Plaintiff brought an action of debt on an arbitration Bond in Bucks County, Common Pleas. Defendant pleaded nun award. Plaintiff replied, and set forth an award. In September Term, 1775, Plaintiff got a rule for rejoinder in six weeks, or judgment, Before the six weeks expired, defendant's attorney gave him a rejoinder, and, at the same time, showed him a Habeas Corpus, by which he intended to remove the cause to the next Supreme Court. Plaintiff, choosing that the proceedings should go up above, as they were below, took out a Certiorari, and, going into court the first day of the term, got it allowed. The next day the defendant presented the Habeas Corpus, to which plaintiff's attorney objected, for that the record was removed by the Certiorari. The Court below agreed to send up both writs, and let the Supreme Court receive the record on which they pleased.

Now it came on to be argued, and the plaintiff's council contended, that the record should be received only on the Certiorari; First for that, when the other writ was presented, there was no record before the court, on which the Habeas Corpus could operate, and that the power of the court below was exercised. Secondly, that if that could not be allowed, yet both writs might be returned reddendo singula singulis; the Certiorari might remove the cause, and the Habeas Corpus the body; and there was no inconsistency in so doing.

The defendants council rested it on the advantage taken of him, and on the constant practice of the court with respect to writs of removal.

BY THE COURT. Whenever a writ issues fairly, if it is first delivered it shall take preference. The proceedings, on a Habeas Corpus are de novo; on a certiorari, the court proceed on the state returned. Therefore, both

writs cannot issue in the same cause; for the court cannot proceed de novo and on the old record too; which upon the idea of returning both writs must be done. In this case, the defendant, not having affected delay, but proceeded in the [Steiner v. Fell 1 U.S. 22 (1776)

usual course, having taken out the first writ, and delivered it as soon as was usual, his writ should take preference; and the Court accordingly order the return to be made on the Habeas Corpus.