

Mountz Vs. Hodgson and Thompson

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Court : US Supreme Court

Decided On : 1808

Appeal No. : 8 U.S. 324

Appellant : Mountz

Respondent : Hodgson and Thompson

Judgement :

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Mountz v. Hodgson & Thompson

8 U.S. (4 Cranch) 324

ERROR TO THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF WASHINGTON

SYLLABUS

In this case it was decided that the refusal of the Circuit Court of the District of Columbia to quash, on motion, an execution issued by the Mayor of Georgetown,

was not a judgment to which a writ of error will lie.

This was a writ of error to a supposed judgment of the Circuit Court of the District of Columbia for the County of Washington between Hodgson and Thompson, plaintiffs, and Jacob Mountz, John Mountz and Henry Knowles, defendants.

Hodgson and Thompson had recovered judgment in the court below at December term, 1805, against Jacob Mountz and George Reintzel. By the Act of Assembly of Maryland, 1791, c. 67, entitled "An act for regulating the mode of staying execution, and for repealing the acts of assembly therein mentioned," it is enacted that no execution shall issue upon any judgment, provided the person or persons against whom such judgment is obtained shall come before two justices of the peace of the county where such person or persons shall reside within two months after the rendition of such judgment and together with two other persons such as the said justices shall approve of and confess judgment for his debt and costs of suit adjudged, with stay of execution for six months thereafter, which confession shall be made in manner and form following, that is to say "you H.M. A.B. and C.D. do confess judgment to E.F.", &c.;, which confession shall be signed by the

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justices before whom the same is made, and a certificate thereof shall be procured under the hands of the said justices, and such certificate shall be a sufficient supersedeas to the sheriff to forbear serving execution upon the body or goods of the person so obtaining such certificate. And it is further enacted that the justices shall return the confession of judgment to the clerk of the court where the first judgment was rendered by the next court in course, to be entered on record, and after the expiration of the time limited in such confession it shall be lawful to take out execution thereon, without a *scire facias* or any other delay, against either the principal or the security, or all or either of them for such judgment so confessed.

According to the provisions of this act, the original defendant, Jacob Mountz (without his co-defendant George Reintzel), went before John Ott and Daniel Reintzel, and, together with Henry Knowles and John Mountz, his sureties,

confessed judgment to Hodgson and Thompson in the form prescribed by the act of assembly. John Ott was admitted to be a justice of peace of the County of Washington, but Daniel Reintzel signed his name as Mayor of Georgetown.

By the Act of assembly of Maryland, 1789, c. 23, incorporating the Town of Georgetown, it is enacted "That the mayor, recorder and aldermen shall be justices of the peace within the said town, and the precincts thereof," and that each of them "shall have the same jurisdiction as to debts, as any justice of the peace of any county of this state now hath, or shall hereafter have by law."

After the expiration of the six month mentioned in the confession of judgment, a *ca. sa.* was issued thereon against Jacob Mountz, Henry Knowles, and John Mountz, upon which they were all taken, and on the return thereof they moved to quash the execution

1. Because the confession of judgment was not before two justices of peace of the county, and
2. Because the judgment was not confessed by George Reintzel, the co-defendant in the first judgment.

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But the court below overruled both objections and refused to quash the execution, whereupon the defendants took a bill of exceptions, and brought their writ of error.

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MR. CHIEF JUSTICE MARSHALL.

The majority of the Court is of opinion that the writ of error must be quashed, this Court not having jurisdiction.

The refusal of the court below to quash the execution on motion is by some of the judges supposed not to be a judgment to which a writ of error will lie.

Others are of opinion that a writ of error will lie to that decision of the court, but that this writ of error is not to the judgment of the circuit court, but to that of the justices.

Writ of error quashed.