

Wallace Vs. Anderson

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Court : US Supreme Court

Decided On : 1820

Appeal No. : 18 U.S. 291

Appellant : Wallace

Respondent : Anderson

Judgement :

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ERROR TO THE CIRCUIT

COURT OF OHIO

SYLLABUS

An information for a *quo warranto* to try the title to an office cannot be maintained but at the instance of the government, and the consent of parties will not give jurisdiction in such a case.

This was an information for a *quo warranto* brought to try the title of the defendant to the office of principal surveyor of the Virginia military bounty lands north of the River Ohio, and between the Rivers Scioto and Little Miami. The defendant had been appointed to the office by the State of Virginia, and continued to exercise its duties until the year 1818, during all which time his official acts were recognized by the United States. In that year he was removed by the Governor and Council of Virginia, and the plaintiff appointed in his place. The writ was brought, by consent of parties, to try the title to the office, waiving all questions of form, and of jurisdiction. Judgment was given in the court below for the defendant, and the cause was brought by writ of error to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court that a writ of *quo warranto* could not be maintained except at the instance of the government, and as this writ was issued by a private individual, without the authority of the government, it could not be sustained, whatever might be the right of the prosecutor or of the person claiming to exercise the office in question.

The information must therefore, be dismissed.

Judgment reversed.

JUDGMENT. This cause came on to be heard on the transcript of the record of the Circuit Court for the District of Ohio and was argued by counsel. On consideration whereof, this Court is of opinion that no writ of *quo warranto* can be maintained but at the instance of the government, and as this is a writ issued by an individual without the authority of government, it is the opinion of this Court that the same cannot be sustained whatever may be the right of that individual or of the person who claims to exercise the office to try the title to which the writ is brought. It is therefore the opinion of this Court that the judgment of the circuit court ought to be reversed, and the cause remanded to that court with directions to dismiss the information because it is not filed at the instance of the United States.

