

United States Vs. Daniel

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Court : US Supreme Court

Decided On : 1821

Appeal No. : 19 U.S. 542

Appellant : United States

Respondent : Daniel

Judgement :

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19 U.S. (6 Wheat.) 542

ON CERTIFICATE OF DIVISION OF OPINION AMONG THE

JUDGES OF THE CIRCUIT COURT OF SOUTH CAROLINA

SYLLABUS

A division of the judges of the circuit court, on a motion for a new trial in a civil or a criminal case is not such a division of opinion as is to be certified to this Court for its decision under the sixth section of the Judiciary Act of 1802, ch. 291.

This was an indictment in the Circuit Court of South Carolina against Lewis Daniel charging him with having knowledge of the actual commission of the crime of willful murder, committed on the high sea by John Furlong and with unlawfully, wickedly, and maliciously, concealing the same, &c.;

The indictment set forth at large the indictment and conviction of John Furlong for willful murder on the high seas, and then charged Lewis Daniel with the knowledge and concealment of that murder and with not having disclosed the same in the words of the act of Congress. The prisoner was tried on the plea of not guilty. It was proved that some of the persons present on board when the principal felony was committed had in conversation stated the fact of the murder to the defendant, who advised them to escape, promised secrecy, offered them the means of escape, and actually assisted one of them in escaping, but there was no evidence that the defendant knew of any fact which would have constituted legal evidence on the trial of the principal felon. The judge charged the jury that the concealment, under the circumstances, was sufficient to convict the defendant, and the jury found a verdict

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of guilty. The defendant then moved in arrest of judgment and for a new trial on the following grounds. That a person is not liable to be indicted and convicted under the 5th section of the Act of April, 1790, c. 36, for the punishment of certain crimes against the United States unless he has such knowledge of the felony as will enable him to testify in court at the trial of the principal felon, and particularly that in this case the evidence did not prove the defendant guilty of misprision of murder according to the terms of the said act. The motion was also supported by an alleged misdirection of the court to the jury. The judges being divided in opinion on this motion, it was ordered to be certified to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The indictment in this case is certainly sufficient to sustain a judgment according to the verdict, and all the other proceedings are regular. There is therefore no cause for arresting the judgment.

The motion for a new trial has never before been brought to this Court on a division of opinion in the circuit court. It had been decided that a writ of error could not be sustained to any opinion on such motion, and the reasons for that decision seemed entitled to great weight when urged against determining such a motion in this Court in a case where the judges at the circuits were divided on it. When we considered the motives which must have operated with the legislature for introducing this clause into the Judiciary Act of 1802, we were satisfied that it could not be intended to apply to motions for a new trial.

Previous to the passage of that act, the circuit courts were composed of three judges, and the judges of the Supreme Court changed their circuits. If all the judges were present, no division of opinion could take place. If only one judge of the Supreme Court should attend and a division should take place, the cause was continued till the next term, when a different judge would attend. Should the same division continue, there would then be the opinion of two judges against one, and the law provided that in such case that opinion should be the judgment of the court. But the act of 1802 made the judges of the Supreme Court stationary, so that the same judge constantly attends the same circuit. This great improvement of the preexisting system

was attended with this difficulty. The court being always composed of the same two judges, any division of opinion would remain and the question would continue unsettled. To remedy this inconvenience, the clause under consideration was introduced. Its application to motions for a new trial seems unnecessary. Such a motion is not a part of the proceedings in the cause. It is an application to the discretion of the court, founded on evidence which the court has heard, and which

may make an impression not always to be communicated by a statement of that evidence. A division of opinion is a rejection of the motion, and the verdict stands. There is nothing then in the reason of the provision which would apply it to this case.

Although the words of the act direct generally

"That whenever any question shall occur before a circuit court upon which the opinion of the judges shall be opposed, the point upon which the disagreement shall happen shall"

be certified, &c., yet it is apparent that the question must be one which arises in a cause depending before the court relative to a proceeding belonging to the cause. The first proviso is

"That nothing herein contained shall prevent the cause from proceeding if, in the opinion of the court, further proceedings can be had without prejudice to the merits."

It was also contended that under the second proviso, Lewis Daniel ought to be discharged. That proviso is in these words:

"And provided also that imprisonment shall not be allowed nor punishment in any case be inflicted where the judges of the said

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court are divided in opinion upon the question touching the said imprisonment or punishment."

A motion for a new trial is not "the question touching the said imprisonment or punishment." That question must arise on the law as applicable to the case, and is not, it would seem, to be referred to this Court. The proviso, if applicable to such a case as this, would direct the circuit court not to certify their division of opinion to this Court, but, in consequence of that division, to enter a judgment for the defendant. This Court can only decide the question referred to it and certify its

opinion upon that question to the circuit court, which will then determine what judgment it is proper to render.

CERTIFICATE. This cause came on to be heard on the transcript of the record, and on the points on which the judges in the circuit court were divided in opinion, and was argued by counsel, on consideration whereof this Court is of opinion that there is no error in the record and proceedings of the circuit court for which judgment ought to be arrested. And this Court is further of opinion that a division of the judges of the circuit court on a motion for a new trial, is not one of those divisions of opinion which is to be certified to this Court for its decision, under the act entitled, "an act to amend the judicial system of the United States."

All which is ORDERED to be certified to the United States court for the sixth circuit and district of South Carolina.

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