Buel Vs. Van Ness

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Appeal No. : 21 U.S. 312

Appellant : Buel

Respondent : Van Ness

Judgement :

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Buel v. Van Ness

21 U.S. (8 Wheat.) 312

ERROR TO THE SUPREME COURT OF

V ERMONT FOR THE COUNTY OF CHITTENDEN

SYLLABUS

The appellate jurisdiction of this Court, under the twenty-fifth section of the Judiciary Act of 1789, c. 20, may be exercised by a writ of error issued by the clerk of a circuit court under the seal of that court in the form prescribed by the Act of 8

May, 1792, c. 137, s. 9, and the writ itself need not state that it is directed to a final judgment by the state court, or that the court is the highest court of law or equity of the state.

The appellate jurisdiction of this Court in cases brought from the state courts, arising under the Constitution, laws, and treaties of the union is not limited by the value of the matter in dispute.

Its jurisdiction in such cases extends to a case where both parties claim a right or title under the same act of Congress and the decision is against the right or title claimed by either party,

Under the ninety-first section of the Duty Act of 1799, c. 128, the share of a forfeiture to which the collector, &c.;, of the district is entitled is to be paid to the person who was he collector, &c.;, in office at the time the seizure was made, and not to his successor in office at the time of condemnation and the receipt of the money.

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The plaintiff in error, Buel, brought an action of assumpsit against the defendant in error, Van Ness, in the state court. The declaration was for money had and received, and money lent and advanced, to which defendant pleaded the general issue, and upon the trial the jury found the following special verdict:

"That for the space of two years preceding the fifteenth day of February, in the year 1813, the said Samuel Buel was collector of the customs for the District of Vermont, having been theretofore duly appointed and commissioned by the President of the United States to that office, and sworn according to law, and taken upon himself the discharge of the duties of the office aforesaid; that during the time the said Buel was collector of the customs aforesaid, a certain quantity of fur and wine was seized in the said district, by one Joshua Peckham, an inspector of the customs within the said district, acting under the authority of the said Buel, as collector as aforesaid, as forfeited to the United States, for having been

imported contrary to law; that the

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said fur and wine, during the time the said Buel was collector as aforesaid, were duly libeled in the District Court of the United States for the District of Vermont; that at the term of said court, in which the said fur and wine were libeled, as aforesaid, one Zalmon Atwood preferred his claim to the said fur and wine, in due form, in the said court, and then and there executed to the said United States, a bond in the sum of $1,202.64, being the value of the said fur and wine, as appraised according to law, and conditioned for the payment of the said sum to the United States, in case the said fur and wine should be condemned; that afterwards, and while the said Buel was collector as aforesaid, to-wit, at the term of the said court holden at Rutland, within and for said district, on the tenth day of October, in the year 1812, such proceedings were had on said libel, that the said fur and wine were regularly condemned as forfeited to the United States; that on the said fifteenth day of February, in the year 1813, the said Samuel Buel was, by the President of the United States, removed from the said office of Collector for the District of Vermont; that on the same day, the said Cornelius P. Van Ness was duly appointed to the said office, and"

brk:

commissioned and sworn accordingly, and still continues to hold said office; that on the tenth day of May in the year 1813, the said sum of $1,202.64 was paid into court, in discharge of the said bond, into the hands of Jesse Gore, Esquire, clerk of the said court; that on the same day, the said sum of money was,

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by the said Jesse Gore, paid into the hands of the said Cornelius P. Van Ness, Esquire, collector as aforesaid, to be by him distributed according to the laws of the United States; that the said Cornelius P. Van Ness, on the first day of July in the year last aforesaid, paid into the Treasury of the United States one moiety of the said sum of $1,202.64, and that the said Cornelius P. Van Ness retains the

remainder of the said sum as belonging to him as collector as aforesaid, and to the inspector who seized the said goods, and to the person who first informed of the said offense, notwithstanding the said Buel, before the commencement of the said action, to-wit, on the fifth day of June, 1813, at Burlington aforesaid, did demand the same of the said Van Ness. And if upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, it shall seem to the court here that the said Cornelius P. Van Ness is liable in law for the nonperformance of the promises in said declaration contained, in manner and form as the said Samuel Buel complains against him, then the said jurors further upon their oath say that the said Cornelius did assume and promise, in manner and form as the said plaintiff, in his said declaration hath alleged, and they assess the damages of him, the said Samuel, by the occasion of the nonperformance of the said promises and undertakings, at the sum of $672.47, and find for him to recover the said sum, with his costs; but if upon the whole matters aforesaid, by the jurors aforesaid, in form aforesaid found,

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it shall seem to the court here that the said Cornelius P. Van Ness is not liable in law in manner and form as the said Samuel complains against him, then the jurors aforesaid, upon their oath say, that the said Cornelius P. Van Ness did not assume and promise in manner and form as the said Samuel hath alleged against him, and find for him to recover his costs.

Upon which, judgment was rendered by the state court for the defendant; and the cause was brought by writ of error to this Court. The writ of error was issued by the clerk of the Circuit Court of Vermont, under the seal of that court, and in the usual form of writs of error to the judgments of the circuit courts of the United States.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

This suit was instituted by the plaintiff

in error, late Collector of the District of Vermont, against the collector, his successor in office. The sum sued for is one-half the proceeds of a seizure made while Buel was in office, but not recovered until after he was superseded by the defendant.

The right of Buel to the sum sued for is not now to be questioned. It has already obtained the sanction of this Court. *Jones v. Shore,* 1 Wheat. 462. But before the question was agitated here, a decision had already taken place in the state court, in favor of Van Ness, and the cause being now brought up under the 25th section of the Judiciary Act, a number of exceptions have been taken to the plaintiff's right of recovery, which have no bearing whatever upon the right of action.

The first of the points made by the defendant's counsel is "that the writ of error does not, upon its face, purport to be issued upon a final judgment of the highest court in the state."

We see no reason why it should be so expressed. The writ of error is the act of the court; its object is to cite the parties to this Court, and to bring up the record. How else is this Court to ascertain whether the judgment be final? Nor can there be any danger of its being hastily or erroneously used, since it must be allowed either by the presiding judge of the state court or a judge of the Supreme Court of the United States.

2. "That the writ does not appear to have emanated from the office of the supreme court, nor from any office authorized to issue it."

This is answered by reference to the seal on the face of the writ, which appears to be that of the Circuit Court of Vermont, and the signature of the clerk. A form of a writ of error has been designed by the judges of this Court, and transmitted to the clerks of the respective circuits by the clerk of this Court according to law. And this writ has duly issued from the circuit court, after being allowed by the circuit judge.

What more does the law require? *See* s. 8, Act of May 8, 1792.

3. It is objected,

"That it is not stated, nor does it appear, that the Supreme Court of the State of Vermont is the highest court in the state in which a decision in the suit could be had, and therefore the jurisdiction of this Court is not shown."

Nor was it necessary at this stage of the proceedings that it should have been shown. It has been before observed that this writ is the act of the court, and if it has issued improvidently, the question is open on a motion to quash it. No one is precluded by the emanation of the writ, and the right of the party who demands it, ought not to be finally passed upon by a judge at his chambers. It is a writ of common right in the cases to which the jurisdiction of an appellate court extends, and the abuse of it is sufficiently guarded against, as suggested to the first exception.

4. It is contended, "That the amount of the judgment is not sufficient to ground an appeal or writ of error to this Court."

This is a new question. Thirty-four years has

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this Court been adjudicating under the 25th section of the act of 1789, and familiarly known to have passed in judgment upon cases of very small amount, without having before had its attention called to the construction of the 25th section now contended for. Nevertheless if the received construction has been erroneously adopted without examination, it is not too late to correct it now.

But we think that it is not necessary to sustain our practice upon contemporaneous and long protracted exposition; that as well the words of the two sections under which we exercise appellate jurisdiction, as the reasons and policy on which those clauses were enacted, will sustain the received distinction between the cases to which those sections extend.

The argument on this part of the case is that the appellate jurisdiction conferred by the 25th section of the Judiciary Act of 1789, is restricted within the same limits, as to amount, with that conferred by the 22d section, under the influence of those words which enact, as to the cases comprised within the 25th section,

"that they may be reexamined, and reversed, or affirmed, in the Supreme Court of the United States, upon a writ of error, the citation being signed, &c.;, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered in a circuit court,"

&c.;

The fallacy of the argument consists in attaching too enlarged an application to the meaning of the word "regulation," as here used. It is obvious

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from the context, as well as from its ordinary meaning and use, that its proper bearing is altogether confined to the writ of error, citation, &c.;, to be issued in a case which has been before fully defined, and not that it should itself enter into the descriptive circumstances by which those cases are to be identified, to which the appellate jurisdiction of the court is to be extended. By reference to the 22d section it will be seen that the sum to which the appellate power is confined in that section is in every case the specific difference by which it is distinguished from every other case, and that the regulations under which the jurisdiction in those cases is to be exercised constitute the subject of the remaining part of that section, and the whole of the 23d, as it does of various other sections scattered through the laws passed upon the same subject.

And this construction is fully supported by reference to the political object of the two sections, as has been forcibly insisted upon by the defendant's counsel. Questions of mere *meum* and *tuum,* are those to which the 22d section relates; but those intended to be provided for by the 25th section are noticed only for their national importance, and are deemed proper for an appellate tribunal, from the principles, not the sums, that they involve. Practically, we know that experience

has vindicated the foresight of the legislature in making this distinction.

The 5th point submitted by the defendant's counsel is

"that the decision of the state court was not against a right claimed under a statute of

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the United States, within the provisions of the 25th section of the Judiciary Act, since both parties claimed the money in contest under the same act of Congress."

This point we consider as already decided in the case of *Matthews v. Zane,* 4 Cranch 382, nor do we feel any difficulty in again deciding that the principle which it asserts cannot be sustained. The simplest mode of meeting the proposition is to negative it in its own terms. The decision of the state court was "against a right claimed under a statute of the United States." Buel's claim was altogether founded upon a statute of the United States. Nor was he a volunteer in the state court, for, being a citizen of the same state with the defendant, he could not, under the Judiciary Act of the United States, come, in the first instance, into the courts of the United States. Had it been otherwise, however, it would seem to be a question of expediency with the legislature, rather than one of construction for a court. The literal meaning of the terms of the 25th section embraces the plaintiff's case, as it would also have embraced that of the defendant, had the state court decided against his claim under the same act. If the United States has jurisdiction over all causes arising under their own laws, Congress must possess the power of determining to what extent that jurisdiction shall be vested in this Court.

The 6th and last point made for the defendant, is that the plaintiff was not entitled to judgment on the verdict according to the facts found by the

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jury. And under this head it is contended,

"that the inspector, acting as seizing officer or informer, who appears in the special verdict, must have been entitled by law to a proportion of this forfeiture, and therefore the plaintiff could not have been entitled to the whole amount awarded him by the jury in the alternative finding."

It is not now necessary, nor are we in possession of the facts necessary to determine the relative rights of the collector, and the supposed informer. If Peckham was entitled in that character to share with this plaintiff, he is not precluded by this decision. He was no party to the action. And if his rights were intended to be set up against this plaintiff, they should have been distinctly found by the jury. Under the finding, as it actually exists, there is no right definitively ascertained but those of the two parties to the suit. The 6th section of the Collection Law requires no officer to be appointed for the District of Vermont but a collector. The presumption, therefore, is that he is the only individual entitled to forfeitures in that district, until the contrary be shown. The 91st section, which vests the interest on which this suit is sustained, gives the whole to any one of the three distributees of the moiety, when there is but one officer for the district in which the seizure is made.

We are therefore of opinion that the judgment be

Reversed and a judgment entered for the plaintiff upon the other alternative of the verdict.