

**Davis Vs. Packard**

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**Court :** US Supreme Court

**Decided On :** 1832

**Appeal No. :** 31 U.S. 41

**Appellant :** Davis

**Respondent :** Packard

**Judgement :**

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**Davis v. Packard**

**31 U.S. (6 Pet.) 41**

*ERROR TO THE COURT FOR THE CORRECTION*

*OF ERRORS OF THE STATE OF NEW YORK*

## **SYLLABUS**

Motion to dismiss a writ of error to the Court for the Correction of Error in the State of New York. The case went up to that court upon a writ of error to the supreme court of New York, and in the Court for the Correction of Error, the plaintiff in error

assigned for error that he was, at the time of the commencement of the suit and continued to be Consul General in the United States of the King of Saxony, and so being consul general, he ought to have been impleaded in some district court of the United States, and that the supreme court of New York had not jurisdiction of the case. The defendants answered that in the record of the proceedings of the supreme court it nowhere appears that the plaintiff in error was ever Consul of Saxony. The record states that the Court for the Correction of Error, having fully understood the causes assigned for error and inspected the record, did order and adjudge that the judgment of the supreme court should be affirmed. Affidavits of the proceedings in the highest court of the State of New York and the opinion of the chancellor assigning his reasons for affirming the judgment of the supreme court were laid before this Court.

"Whatever took place in the state court, which forms no part of the record sent up to this Court, must be entirely laid out of view. This is the established course of the court. The question before this court is whether the judgment was correct, not whether the ground on which that judgment was given was correct."

The fact that the plaintiff in error was the Consul General of the King of Saxony is not denied by the joinder in error. The answer given is that it nowhere appears by the record, proceedings, or judgment of the supreme court that he was such consul. The Court of Errors said, after having examined and fully considered the causes assigned for error, it affirmed the judgment of the supreme court. This was deciding against the privilege set up under the act of Congress which declares that the district courts of the United States shall have jurisdiction, exclusive of the courts of the several states, of all suits against consuls and vice-consuls.

It has been settled that in order to give jurisdiction to this Court under the twenty-fifth section of the Judiciary Act, it is not necessary that the record should state in terms that an act of Congress was in point of fact drawn in question. It is sufficient if it appears from the record that an act of Congress was applicable to the case and was misconstrued, or the decision of the state court was against the privilege or exemption specially setup under such statute.

The now defendants in error, Isaac Packard, Henry Disdier and William Morphy, brought an action of debt on a recognizance

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of bail against the now plaintiff in error, Charles A. Davis, in the Supreme Court of Judicature of the State of New York, the writ of *capias ad respondendum* in which action was returnable in January term, 1830. The defendant, Mr. Davis, appeared by attorney and pleaded several pleas in bar, upon which issues were taken both in fact and in law. The issues were determined against the defendant, and final judgment was rendered against him at the May term of the said supreme court for \$4,538.20 debt \$469.09 damages and costs.

Upon that judgment a writ of error was brought to the Court for the Correction of Error -- being the highest court of the State of New York -- and the plaintiff in error assigned error in the following words:

"Afterwards, to-wit on the first day of September in the year of our Lord one thousand eight hundred and thirty, before the president of the senate, senators, and Chancellor of the State of New York in the Court for the Correction of Error, at the city hall of the City of New York, comes the said Charles A. Davis, by Andrew S. Garr, his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that he, the said Charles A. Davis, before and at the time of the commencement of the suit of the said Isaac Packard, Henry Disdier, and William Morphy, against him the said Charles A. Davis, was and ever since hath continued to be and yet is Consul General of his Majesty the King of Saxony in the United States, duly admitted and approved as such by the President of the United States. That being such, he ought not, according to the Constitution and laws of the United States, to have been impleaded in the said supreme court, but in the District Court of the United States for the Southern District of New York or in some other district court of the said United States, and that the said supreme court had not jurisdiction, and ought not to have taken to itself the cognizance of the said cause; therefore in that there is manifest error, and this he, the said Charles A. Davis, is ready to verify; wherefore

he prays that the judgment aforesaid, for the error aforesaid, may be revoked, annulled, and altogether held for nothing and that

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he may be restored to all things which he hath lost by occasion of the judgment aforesaid."

To the foregoing assignment, the following joinder in error was put in:

"And the said Isaac Packard and others, defendants in error, before the president of the senate, senators, and Chancellor of the State of New York, in the Court for the Correction of Error, at the city hall of the City of New York, by David Dudley Field, their attorney, come and say that there is no error in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid, because they say that it nowhere appears by the said record, proceedings, or judgment that the said Charles A. Davis ever was Consul of the King of Saxony, and they pray that the said Court for the Correction of Error may proceed to examine the record and proceedings aforesaid and the matters aforesaid above assigned for error, and that the judgment aforesaid may be in all things affirmed. "

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This case comes up on a writ of error to the Court for the Correction of Error in the State of New York, being the highest court of law in that state in which a decision in this suit could be had. And a motion has been here made to dismiss the writ of error for want of jurisdiction in this Court.

From the record returned to this Court, it appears that the cause went up to the Court for the Correction of Error in New York upon a writ of error to the supreme court of that state, and that in the Court of Errors, the plaintiff assigned as error in fact that he Charles A. Davis, before and at the time of the commencement of the suit against him, was and ever since hath continued to be and yet is Consul General in the United States of his Majesty, the King of Saxony, duly admitted and

proved as such by the President of the United States. And being such consul, he ought not, according to the Constitution and laws of the United States, to have been impleaded in the said supreme court, but in the District Court of the United States for the Southern District of New York or in some other district court of the said United States, and that the said supreme court had not jurisdiction, and ought not to have taken to itself the cognizance of the said cause. To this assignment of errors the defendants in error answered that there is no error in the record and proceedings aforesaid, nor in giving the judgment aforesaid, because they say that it

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nowhere appears by the said record, proceedings, or judgment that the said Charles A. Davis ever was Consul of the King of Saxony, and they pray that the said Court for the Correction of Error may proceed to examine the record and proceedings aforesaid and the matter aforesaid above assigned for error, and that the judgment aforesaid may be in all things affirmed.

The record then states:

"Whereupon the Court for the Correction of Error, after having heard the counsel for both parties and diligently examined and fully understood the causes assigned for error and inspected the record and process aforesaid, did order and adjudge that the judgment of the supreme court be in all things affirmed."

The motion made in this Court to dismiss the writ of error is founded and resisted upon affidavits on each side disclosing what took place in the Court of Errors in New York on a motion there made to dismiss the writ of error to the supreme court of that state, and the opinion of the chancellor delivered in the Court of Errors, assigning his reasons for affirming the judgment of the supreme court, has also been laid before us.

We cannot enter into an examination of that question at all. Whatever took place in the state court which forms no part of the record sent up to this Court must be entirely laid out of view. This is the established course of this Court, and neither

the opinion of the chancellor or the proceedings on the motion forms a part of the record. [25 U. S. 12](#) Wheat. 118. The question before this Court is whether the judgment was correct, not the ground on which that judgment was given. [19 U. S. 6](#) Wheat. 603.

It has also been settled that in order to give jurisdiction to this Court under the twenty-fifth section of the Judiciary Act, 2 L.U.S. 65, it is not necessary that the record should state in terms that an act of Congress was in point of fact drawn in question. It is sufficient, if it appears from the record that an act of Congress was applicable to the case and was misconstrued, or the decision in the state court was against the privilege or exemption specially set up under such statute. [17 U. S. 4](#) Wheat. 311; [27 U. S. 2](#) Pet. 250; [28 U. S. 3](#) Pet. 301; [29 U. S. 4](#) Pet. 429. How stands the record, then, in this case? Charles A. Davis alleges that he is Consul General of the King of Saxony in the United States and that he is thereby privileged from being

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sued in the state court, according to the Constitution and laws of the United States. The fact of his being such consul is not denied by the joinder in error. The answer given is that it nowhere appears by the record, proceedings, or judgment of the supreme court that the said Davis was such consul, and the Court of Errors, in giving judgment, said, after having examined and fully understood the causes assigned for error, it affirmed the judgment of the supreme court. This was deciding against the privilege set up under the act of Congress, which declares that the district court of the United States shall have jurisdiction, exclusively of the courts of the several states, of all suits against consuls and vice consuls. 2 L.U.S. 60, sec. 9.

The question before this Court is not whether the judgment of the supreme court in New York was correct. It is the judgment of the Court for the Correction of Error that is to be reviewed here. That is the final judgment in the highest court in the state, and none other can be brought into this Court under the twenty-fifth section of the Judiciary Act.

Whether it was competent for Davis in the Court of Errors to assign as error in fact his exemption from being sued in a state court is not a question presented by the record. No such question appears to have been raised or decided by the court. And, judging from the ordinary course of judicial proceedings in such cases, we are warranted in inferring that no such question could have been made. For if the Court of Errors had entertained the opinion that such exemption could not be assigned for error in that court, the writ of error would probably have been dismissed. Or if the court had understood that the fact of his being consul was denied, an issue would probably have been directed to try that fact under a provision in a statute of that state which declares

"That whenever an issue of fact shall be joined upon any writ of error, returned into the Court for the Correction of Error, and whenever any question of fact shall arise upon any motion in relation to such writ or the proceedings thereon, the court may remit the record to the supreme court with directions to cause an issue to be made up by the parties, to try such question of fact at the proper circuit court or sittings, and to certify

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the verdict thereupon to the said Court for the Correction of Error."

2 Rev.Stat. New York 601.

From the record, then, we are necessarily left to conclude that the state court, assuming or admitting the fact that Davis was consul general as alleged in his assignment of errors, yet it did not exempt him from being sued in a state court, which brings the case within the twenty-fifth section of the Judiciary Act, the decision having been against the exemption set up and claimed under a statute of the United States.

The motion to dismiss the writ of error is accordingly

*Denied.*

On consideration of the motion made in this cause by Mr. Sedgwick, of counsel for the defendants in error, at the last January term of this Court, to-wit, on Saturday, 5 February A.D. 1831, to dismiss the writ of error in this cause for the want of jurisdiction, and of the arguments of counsel thereupon had, it is now here considered and ordered by this Court that the said motion be and the same is hereby denied and overruled.

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