

Smith Vs. Trabue's Heirs

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Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 4

Appellant : Smith

Respondent : Trabue's Heirs

Judgement :

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Smith v. Trabue's Heirs

34 U.S. (9 Pet.) 4

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Jurisdiction. The judicial act authorizes the Supreme Court to issue writs of error to bring up any final judgment or decree in a civil action or suit in equity depending in the circuit court, &c.; But a judgment awarding a writ of restitution to an action of

ejectment, where, in the execution of a writ of *habere facias possessionem*, the sheriff had improperly turned a person out of possession, is not a final judgment in civil action; it is no more than the action of the court on its own process, which is submitted to its own discretion. This Court takes no jurisdiction in such a case.

In the circuit court, the defendants in error filed a petition in May, 1830, setting forth that on the demise of Richard Smith, an action of ejectment was instituted in the circuit court against Richard Fenn, with notice to Hiram Bryant and William Bryant and others; that the Bryants were tenants to the petitioners and to Robert Trabue, who appeared to the ejectment, had his tenants entered as defendants; and a judgment was rendered at May term, 1828, against them. No writ of *habere facias possessionem* was issued on this judgment, and at November term, 1818, a judgment was rendered against other tenants, and on that judgment a writ of *habere facias possessionem* was issued, and the marshal of the District of Kentucky, under this last judgment and writ, turned out of possession John Evans, who was a tenant of the petitioners, resident on the same place occupied by the Bryants when the suit was first brought and judgment rendered, and then possessed by the petitioners. The record showed that this writ of *habere facias possessionem* issued on 17 November, 1829.

At May term of the court in 1830, a motion was made in behalf of the petitioners, and a rule awarded on Smith the plaintiff in error and defendant in the petition, to show cause why a writ of restitution should not be awarded to them to restore the possession of the tenements held by their tenants, John Evans and others, taken from them by the marshal on

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the writ of possession mentioned in their petition. The marshal's return showed that he had turned John Evans, James McGuire, and William Acres, who were the tenants of the petitioners, out of possession.

At May term, 1831, the court ordered a writ of restitution to be awarded to the petitioners, the plaintiffs in the motion, to restore them to the possession of the

land from which their tenants had been removed by the marshal. To the opinion of the circuit court in overruling objections made by the defendant's counsel to the objects of the motion, and awarding possession to the plaintiffs, the defendant, now plaintiff in error, excepted and prosecuted this writ of error.

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

This is a writ of error to a judgment of restitution awarded by the court of the United States for the Seventh Circuit and District of Kentucky, whereby the tenant of the defendants in error was restored to the possession of a tract of land from which he had been improperly removed, under the process of that court.

The defendants in error filed their petition in the circuit court, stating that a declaration of ejectment had been brought by John Doe, on the demise of Samuel Smith, and notice served on Hiram and William Bryant, the tenants of the petitioners, and a judgment was rendered against them in May term 1818, on which no writ of *habere facias possessionem* has been issued.

In November term, 1818, a judgment was rendered against other tenants, by virtue of which the marshal turned John Evans out of possession, who, as tenant of the petitioners, resided on the place which had been occupied by the Bryants.

A rule to show cause was granted, and on its return restitution was awarded. To this judgment of restitution this writ of error is awarded.

The judicial act authorizes this Court to issue writs of error to bring up any final judgment or decree in a civil action or suit in equity, depending in the circuit court, &c.;

This is not a final judgment in a civil action, nor a decree in a court of equity. It is no more than the action of a court on its own process, which is submitted to its own discretion. This Court takes no jurisdiction in such a case. It is not, we think, given by the judicial act.

The writ of error is quashed and the suit dismissed, the court having no jurisdiction.

In error to the Circuit Court of the United States for the District of Kentucky.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Kentucky, and was argued by counsel, on consideration whereof, it is the opinion of this Court that this is not a final judgment in a civil action, nor a decree in a court of equity, but no more than the action of a court on its own process, which is submitted to its own discretion, and that the Court cannot take jurisdiction in such a case, it not being given by the judicial act, and that the writ of error must be quashed and the suit dismissed, the Court having no jurisdiction. Whereupon it is considered, ordered, and adjudged by this Court, that this writ of error be, and the same is hereby dismissed for the want of jurisdiction.

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