

United States Vs. Cox

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Court : US Supreme Court

Decided On : 1837

Appeal No. : 36 U.S. 162

Appellant : United States

Respondent : Cox

Judgement :

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APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

No appeal lies from the decree of a district judge of the United States on a petition presented by the defendant under the second section of the "act providing for the better organization of the Treasury Department" where an order had issued by the

Solicitor of the Treasury to the marshal of the United States, and the property of an alleged debtor, the petitioner, had been seized and was about to be sold to satisfy the alleged debt. No appeal by the government is authorized by the act, and the general law giving appeals does not embrace the case.

The law is the same where an appeal was taken from the district judge to the circuit court and an appeal taken thence to the Supreme Court and where an appeal was taken to the Supreme Court from the district judge of Louisiana, having the powers of a circuit court.

The case of *United States v. Nourse* cited and confirmed.

The act of Congress gives to the district judge a special jurisdiction which he may exercise at his discretion while holding the district court or at any other time. Ordinarily, as district judge he has no chancery powers, but in proceeding under this statute, he is governed by the rules of chancery which apply to injunctions, except as to the answer of the government.

On 18 September 1833, Cox, the defendant in error, applied by petition to the judge of the District Court of the United States for the Eastern District of Louisiana for an injunction to forbid all further proceedings on a warrant, then in the hands of the marshal, issued by the Solicitor of the Treasury under the Act of 15 May, 1830, and by which the marshal was directed to levy and collect the sum of \$4,163.50, then appearing to be due from said Cox, as a receiver of public moneys at New Orleans, to the United States. The petitioner alleged that he was not indebted to the United States, but that it was indebted to him in certain amounts which should be set off or compensated against the balance claimed under the warrant, and which, being allowed, would leave a balance due him from the United States of \$4,510.37. He therefore prayed that an injunction might be granted, that the amount claimed by the warrant be declared satisfied and compensated, that the cause be tried by a jury, and that he have all other and further relief to which he might be entitled.

Security being given, the injunction was issued as prayed for; a citation was issued to the marshal, and on affidavit of Cox the cause was continued until 6 March, 1835, when the court ordered the district attorney to show cause on the first day of the next term why the facts arising in the case should not be tried by a jury. This rule, having been argued, was subsequently made absolute by the court, and it was referred to a jury to settle whether Nathaniel Cox was entitled to the credits claimed in his petition or any of them. On 9 January, 1836, the cause was tried by a jury, which found that Cox was not indebted to the United States, but that, on the contrary, the United States was indebted to him in the sum of \$1,559.64. The court thereupon made the injunction perpetual and certified that the United States was indebted to the said Nathaniel Cox in the sum of \$1,559.64. The United States, on the trial, took three several exceptions:

1. Before the jury were all sworn, the district attorney objected to the swearing of the jury at all, that the case was one of chancery jurisdiction, that no issue had been directed by the court to ascertain any particular fact, and that if the cause were submitted to the jury under the rule of 6 March, 1835, the entire cause should be submitted as one of common law jurisdiction. The objections were overruled and the jury sworn as usual in common law cases.
2. The defendant claimed to be credited with the amount of certain orders, bills, and checks issued by one Wilkinson, a purser in the navy, held by the defendant, Cox, and specified in the document exhibited and stated in the record, to which the district attorney objected and prayed the court to instruct the jury that the defendants, as navy agent, was not authorized by law to pay the sums specified in the several vouchers, nor to buy such vouchers and present the same against any sum due from him to the United States. The court refused this instruction, but charged the jury that in point the strict law, the vouchers relied on could not be received, but if it should be of opinion that they presented equitable setoffs, it might allow them.
3. The defendant offered in evidence a certain schedule and certain vouchers in order to establish a setoff of \$1,433.12 and to show that the vouchers had been disallowed at the Treasury before the commencement of the suit, introduced

certain depositions, to the introduction of which the district attorney objected on the ground that said depositions were not legal or sufficient proof of the

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presentation to or disallowing of said documents by the proper accounting officer of the Treasury. The court overruled the objection, and the documents were permitted to go to the jury, which allowed them to the defendant.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The defendant, Nathaniel Cox, represented by petition to the district judge that by virtue of an order issued by the Solicitor of the Treasury to the marshal, his property had been seized and was about to be sold to satisfy a balance exceeding \$4,000 claimed to be due the government from the petitioner, as late receiver of public moneys. And the petitioner represented that he was not indebted to the government. An injunction was allowed by the judge on security's being given. After various steps were taken, some of which were clearly irregular, a final decree was entered which made the injunction perpetual. Exceptions, in the course of the proceedings, were taken by the counsel for the government, and the points thus raised are attempted to be brought before the Court by writ of error.

The Treasury order or warrant stated in the petition was issued under the second section of the act "providing for the better organization of the Treasury Department," passed 15 May, 1820; the injunction was allowed under the fourth section of that act. The fifth section provides that the injunction may be allowed or dissolved by the judge, either in or out of court, and in the ninth section it is provided, if the district judge shall refuse to grant the injunction or shall dissolve it after it has been allowed, an appeal in behalf of the party aggrieved may be allowed by a judge of the Supreme Court. The case of [*United States v. Nourse*](#), 6 Pet. 470, was very similar to the one under consideration. In that case, after a full

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investigation, this Court decided that no appeal by the government was authorized by the act and that the general law giving appeals did not embrace the case.

It is suggested that some distinction may be drawn between the two cases. That in the case of *Nourse*, the proceeding was first had before the district judge, from whose decree an appeal was taken to the circuit court, where the decree of the district judge was affirmed, and from which affirmance an appeal was made to this Court; that in the case under examination, an appeal is taken from the decree of the district judge. The act referred to gives to the district judge a special jurisdiction which he may exercise at his discretion while holding the district court or at any other time. Ordinarily, as district judge, he has no chancery powers, but in proceeding under this statute he is governed by the rules of chancery, which apply to injunctions, except no answer to the bill is required by the government. As no appeal is given to the government in the statute by writ of error or otherwise either to the circuit or the Supreme Court, the decree of the district judge in favor of the defendant, must be held final. We think the general law allowing appeals cannot be so construed as to enable this Court, by appeal or writ of error, to revise the proceedings of the district judge under this statute. The views of this Court in the case of *Nourse* apply to this case, and it is unnecessary to repeat them. This case must be

Dismissed for want of jurisdiction.

On appeal from the District Court of the United States for the Eastern District of Louisiana. This cause came on to be heard, on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that this appeal be and the same is hereby dismissed for the want of jurisdiction.