

Evans Vs. Gee

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Court : US Supreme Court

Decided On : 1840

Appeal No. : 39 U.S. 1

Appellant : Evans

Respondent : Gee

Judgement :

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U.S. Supreme Court Evans v. Gee, 39 U.S. 1 (1840)

Evans v. Gee

39 U.S. 1

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

It is the settled doctrine of the Supreme Court of the United States that a writ of error does not lie from the circuit court on a refusal of a motion to quash an execution; such refusal not being a final judgment under the twenty-second

section of the Judiciary Act of 1789.

The opinion of the Court on the case of [Boyle v. Zacharie and Turner](#), 6 Pet. 648, cited and affirmed.

In the Circuit Court of Alabama, an action was instituted by Sterling H. Gee, the defendant in error, against Thomas Evans on a bill of exchange drawn by Harris G. Evans in favor of Thomas Evans on George M. Rives, of Mobile, for five thousand three hundred and fifty dollars, dated 16 December, 1834, due twelve months after date, negotiable and payable at the office of discount and deposited of the Branch Bank of the United States at Mobile for value received, and protested for nonacceptance.

The declaration does not charge that notice of the nonacceptance was given to the endorser. No proof was given at the trial of such notice.

To this declaration the defendant (the endorser of the bill) demurred, and the plaintiff was nonsuited; afterwards, at the same term, the nonsuit was struck out and the cause continued. At the next term, a jury was empanelled, who found a verdict for plaintiff on which judgment was entered.

Thomas Evans, the defendant in this judgment, died 12 September, 1837; and on 16 March, 1838, a *fiery facias* issued on the judgment.

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The administrator of the deceased made a motion to quash this execution at May term, 1838, but the court overruled the motion and gave judgment, sustaining the execution.

The defendant prosecuted this writ of error.

MR. JUSTICE CATRON delivered the opinion of the Court.

The principal matters appearing in the record are not now open to investigation, being the same adjudged of by this Court in 1837, the report of which is found in

The original judgment against Thomas Evans was rendered at May term, 1836. No execution seems to have issued until 16 March, 1838, when one was taken out bearing teste the second Monday of October, 1837, and returnable the second Monday of April, 1838.

Nothing appears in the record showing that Thomas Evans was dead save an affidavit of one of his sons and the circumstance that the administrator's name is used in prosecuting the writ of error. but no suggestion of the death of Thomas Evans, nor any revival of the judgment against his administrator, is found.

The execution was levied on sundry slaves and a bond given for their delivery which recites that the execution in virtue of which the levy was made bore teste at May term, 1836, and to this date the writ may have had relation by the laws of Alabama and the facts of the case.

One of the sons of Thomas Evans made an affidavit stating his father to have died on 12 September, 1837, on which the motion to quash the execution and delivery bond was founded. The motion was refused, but for what particular reason does not

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appear, nor does this Court feel itself authorized to inquire. It is the settled doctrine here that a writ of error does not lie upon the refusal of a motion to quash an execution, such record of refusal not being a final judgment in the sense of the twenty-second section of the Judiciary Act. We will content ourselves by referring to the opinion of the Court in the cause of [Boyle v. Zacharie and Turner](#), 6 Pet. 654. It is therefore ordered that the writ of error be

Dismissed and the supersedeas discharged.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that

this writ of error be and the same is hereby dismissed with costs, and that this cause be and the same is hereby remanded to the said circuit court with directions to proceed therein according to law and justice.

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