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Ex Parte Crenshaw

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Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 119

Appellant : Ex Parte Crenshaw

Judgement :

Ex Parte Crenshaw - 40 U.S. 119 (1841)
U.S. Supreme Court Ex Parte Crenshaw, 40 U.S. 15 Pet. 119 119 (1841)

Ex Parte Crenshaw

40 U.S. (15 Pet.) 119

APPEAL FROM THE CIRCUIT

COURT OF ALABAMA

At January term 1840, the case of Jefferson L. Edmonds, appellants, v. Anderson Crenshaw was brought before the Court on appeal from the decree of the Circuit Court of Alabama, which had been given in favor of the appellee, in which court the bill of the complainants, the appellants, was ordered to be dismissed. The Supreme Court had proceeded to hear and adjudge the case, after argument for the appellants by their counsel, Mr. Key, no counsel appearing for Crenshaw, 39 U. S. 14 Pet. 166, and had reversed the decree of the circuit court. It was

afterwards discovered that a citation on the appeal had never been served on the appellee, and that the Court was, by an accidental circumstance, in the printing of the transcript of the record for the use of the Supreme Court, led to the belief that the appellee had been cited to appear, in the manner required by the judiciary law. Under this belief, the Court had proceeded to a decision of the case.

Sergeant, for Crenshaw, on notice to Key, the counsel for Jefferson L. Edmonds and others, moved the Court, on the first day of the term, to set aside and annul the judgment and decree of this Court in the case on the ground that no citation had been served upon the appellee nor other notice given to him of the appeal, and that the same was heard *ex parte.* He also moved to dismiss the case on the ground that it was brought up by writ of error, instead of appeal, and whether by appeal or writ of error, it was not in time, and also on other grounds.

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TANEY, CH.J., delivered the opinion of the Court.

This case was argued at the last term on the part of the appellants, and the decree of the circuit court reversed. The argument and decision are reported in 39 U. S. 14 Pet. 166. Anderson Crenshaw, against whom the judgment of this Court was given, never appeared to the appeal, but the argument was heard in behalf of the appellants, and the decree of the circuit court reversed, under the belief that a citation had been regularly issued and served upon him. It now appears that an accidental circumstance led the Court into error in this respect, and that Crenshaw was not cited to appear in the manner required by the act of Congress.

A motion has been made at the present term on behalf of Crenshaw to set aside and annul the judgment and decree of this Court and also to dismiss the appeal. As there is no case now pending here between these parties, there is nothing upon which an order to dismiss would operate. But upon the facts above stated, it is very clear that the case was not legally before us at the last term, and the decree then pronounced

must therefore be declared null and void, and the mandate directed to the circuit court must be revoked. An order will accordingly be issued from this Court.

On consideration of the motion made by Mr. Sergeant on a prior day of the present term of this Court, to-wit, on Monday, the 11th ultimo, and of the arguments of counsel thereupon had, as well against as in support of said motion, it is now here ordered, adjudged and decreed that the judgment and decree of this Court rendered in the above-entitled cause on Wednesday, 26 February, A.D. 1840, be and the same is hereby declared utterly null and void, and that the mandate of this Court directed to the judges of the said circuit court in this cause be and the same is hereby revoked. And it is also now here further ordered that the clerk of this Court do forthwith send to the judges of the Circuit Court of the United States for the Southern District of Alabama a copy of this order of the Court, under the seal of this Court, together with a copy of the opinion of this Court pronounced this day.

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