

Stockton Vs. Bishop

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Court : US Supreme Court

Decided On : 1844

Appeal No. : 43 U.S. 74

Appellant : Stockton

Respondent : Bishop

Judgement :

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43 U.S. (2 How.) 74

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

An execution, issued in the court below, after a writ of error has been sued out, a bond given, and a citation issued, all in due time, may be quashed either in the court below or this Court, these things operating as a stay of execution.

In the Circuit Court of the United States for the Western District of Pennsylvania, Harriet Bishop, the defendant in error and a citizen of the State of Ohio, obtained a judgment against Stockton and Moore for \$6,500 damages and costs, on 7 December, 1843.

On 15 December, 1843, Stockton and Moore entered into a bond with Hugh Campbell as surety, for the prosecution of a writ of error to this Court, which was approved by the judge, and, on the same day, a writ of error and citation was sued out. On 16 December, 1843, the citation was returned served on R. Biddle, Esq., attorney of defendant in error.

On 11 January, 1844, the plaintiff below sued out a writ of *feri facias* and placed it in the hands of the marshal, returnable on 20 May.

Coxe moved to quash the writ of *feri facias*, as having been irregularly issued.

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MR. JUSTICE STORY delivered the opinion of the Court.

Upon the facts stated in the application, there is no doubt that the writ of error, bond, and citation, having been given in due season according to law, operated as a stay of execution, and that a supersedeas to the *feri facias* ought to issue from this Court, to supersede and quash the same, as prayed for in the motion. Indeed, the issuing of the execution was wholly irregular, and it might have been quashed by an application to the court below. But it is equally competent for this Court to do the same thing in furtherance of the purposes of justice.

The motion is therefore, granted and a supersedeas will be issued accordingly.

ORDER

"UNITED STATES OF AMERICA, ss.: "

" *The President of the United States of America* "

"To the Honorable the Judges of the Circuit Court of the United States for the Western District of Pennsylvania, and to the Marshal of the United States for the said district, greeting: "

"WHEREAS, lately in the said circuit court, _____ before you, or some of you, in a cause between Harriet Bishop, plaintiff, and Lucius W. Stockton and Daniel Moore defendants, judgment was rendered by the said circuit court on 7 December, 1843, in favor of the said plaintiff and against the said defendants, for the sum of \$6,500 and costs of suit, and on 15 December, 1843, the aforesaid defendants, with sufficient security, filed their bond in error, which was approved by the judge of the district court, so as to operate as a supersedeas, the defendants having sued out a writ of error in due form and time, and a citation having been regularly taken out, served upon the defendant in error and duly returned, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and forty-four, it is made to appear on affidavit to the said Supreme Court of the United States, that, notwithstanding the premises, the aforesaid plaintiff in the said circuit court caused a writ of *feri facias* to be issued on 11 January, 1844, upon the judgment obtained in said cause, and to be placed

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in the hands of the aforesaid marshal for service and satisfaction thereof. On consideration whereof, it is now here ordered by this Court that a writ of supersedeas be, and the same is hereby awarded to be directed to the aforesaid marshal, commanding and enjoining him and his deputies, to stay every and all proceedings upon the said writ of *feri facias*, and that he return the said execution with the writ of supersedeas to the said circuit court, and that the judges of the said circuit court do cause the said writ of execution to be quashed, the same having been unjustly, improvidently, and erroneously issued out of the said court, at the instance of the said plaintiff. You therefore, the marshal of the United

States for the Western District of Pennsylvania, are hereby commanded that, from every and all proceedings on the said *feri facias* or in any wise molesting the said defendants on the account aforesaid, you entirely surcease, as being superseded, and that you do forthwith return the said *feri facias*, together with this supersedeas to the said circuit court, as you will answer the contrary at your peril. And you the judges of the said circuit court are hereby commanded that such further proceedings be had in the premises, in conformity to the order of this Court, and as according to right and justice, and the laws of the United States ought to be had, the said execution notwithstanding."

"WITNESS the HONORABLE ROGER B. TANEY, CHIEF JUSTICE of the said Supreme Court, 13 March, in the year of our Lord, one thousand eight hundred and forty-four."

"WM. THOS. CARROLL"

"Clerk of the Supreme Court of the United States"

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