

Ross Vs. Prentiss

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Court : US Supreme Court

Decided On : 1845

Appeal No. : 44 U.S. 771

Appellant : Ross

Respondent : Prentiss

Judgement :

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44 U.S. (3 How.) 771

MOTION TO DISMISS

SYLLABUS

Where a bill was filed on the equity side of the court below to enjoin the marshal from levying an execution upon certain property, which execution was for a less sum than two thousand dollars, an appeal from a decree dismissing the bill will not lie to this Court, although the entire value of the property may be more than two thousand dollars.

The jurisdiction of the Court does not depend upon the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the amount in dispute between them

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It was moved by Nelson (Attorney General) to dismiss the case for want of jurisdiction under the circumstances stated in the opinion of the Court, which was delivered by

MR. CHIEF JUSTICE TANEY.

It appears from the record in this case that a bill in chancery was filed in the Circuit Court for the District of Illinois by the appellant against the appellee, who was the marshal for that district, stating among other things that the United States had recovered a judgment in the District Court for the District of Illinois against one John S. C. Hagan and Gholson Kirchenal for the sum of \$600 damages, and \$35.25 costs, upon which an execution had been issued, directed to the said marshal, who had levied it upon a certain lot of land and premises described in the bill, upon which the complainant, as administrator as aforesaid, held a mortgage to a large amount mentioned in the bill, and which he was then proceeding to foreclose, and averring that the said property was not chargeable with the said judgment, and that he was in danger of losing the benefit of his mortgage by a sale under the execution, and praying that the marshal might be enjoined from making such sale.

Upon this bill an injunction was granted, and the appellee afterwards put in his answer, and the cause was proceeded in until a final hearing, when the injunction was dissolved and the bill dismissed.

It is unnecessary to state more particularly the character of the controversy, because the case now comes before us on a motion to dismiss upon the ground that the matter in dispute is not sufficient in amount to give jurisdiction to this Court.

The motion is resisted by the appellant, who insists that the jurisdiction depends on the value of the property upon which the execution has been laid, and the amount of the appellant's interest in it. And as the property is worth much more than the sum required to give jurisdiction, and the mortgage also for a larger amount, he has a right to appeal to this Court from the decree of the circuit court because, as he allows, he may lose the whole benefit of his mortgage by a forced sale under the execution.

We think otherwise. The only matter in controversy between the parties is the amount claimed on the execution. The dispute is whether the property in question is liable to be charged with it or not. The jurisdiction does not depend upon the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the amount in dispute between them, and as that amount is in this case below two thousand dollars, the appeal must be

Dismissed.