Barry Vs. Mercein

Barry Vs. Mercein

SooperKanoon Citation : sooperkanoon.com/79987

Court : US Supreme Court

Decided On : 1847

Appeal No. : 46 U.S. 103

Appellant : Barry

Respondent : Mercein

Judgement :

Barry v. Mercein - 46 U.S. 103 (1847)
U.S. Supreme Court Barry v. Mercein, 46 U.S. 5 How. 103 103 (1847)

Barry v. Mercein

46 U.S. (5 How.) 103

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

This Court has no appellate power, in a case where the circuit court refused to grant a writ of habeas corpus, prayed for by a father to take his infant child out of the custody of its mother.

The judgments of a circuit court can be reviewed only where the matter in dispute exceeds the sum or value of two thousand dollars. It must have a known and certain value which can be proved and calculated in the ordinary mode of business transactions.

But a controversy between a father and mother, each claiming the right to the custody care, and society of their child, relates to a matter in dispute which is incapable of being reduced to any pecuniary standard of value.

The writ of error must be dismissed for want of jurisdiction.

The facts are sufficiently set forth in the opinion of the Court, to which the reader is referred.

Page 46 U. S. 118

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

It appears from the record that the plaintiff in error is a subject of the Queen of Great Britain, and resides in Liverpool, Nova Scotia.

Page 46 U. S. 119

In April, 1835, he intermarried with Eliza Ann Barry, one of the defendants in error, who is the daughter of the late Thomas B. Mercein, of the City of New York, and upon some unfortunate disagreement between the plaintiff in error and his wife, a separation took place in the year 1838, and they have ever since lived apart; she residing in New York, and he at Liverpool. They have two children, a son and a daughter. The son is with his father, and the daughter, now about ten years of age, is with her mother.

The plaintiff in error filed his petition in the Circuit Court of the United States for the Southern District of New York, at April term, 1844, stating that his wife had separated from him without any justifiable cause and refused to return, and unlawfully detained and kept from him his daughter; that she was harbored,

countenanced, and encouraged in these unlawful proceedings by her mother, Mary Mercein, the other defendant in error, and prayed that the writ of habeas corpus *ad subjiciendum* might issue, commanding the said Mary Mercein and Eliza Ann Barry to have the body of his daughter, Mary Mercein Barry, by them imprisoned and detained, with the time and cause of such imprisonment or detention, before the circuit court to do and receive what should then and there be considered of the said Mary Mercein Barry. The petition was supported by the usual affidavits and proofs. The case came on to be heard in the circuit court, and it was then ordered and adjudged by the court that the petition be disallowed and the writ of habeas corpus denied. It is upon this judgment that the writ of error is brought.

A motion has been made to dismiss the writ of error for the want of jurisdiction in this Court. In the argument upon this motion, the power of the circuit court to award the writ of habeas corpus, in a case like this, has also been very fully discussed at the bar. But this question is not before us, unless we have power by writ of error to reexamine the judgment given by the circuit court, and to affirm or reverse it, as we may find it to be correct or otherwise. And the question therefore to be first decided is whether a writ of error will lie upon the judgment of the circuit court in this case refusing to grant the writ of habeas corpus. It is an important question; deeply interesting to the parties concerned, and we have given to it a full and mature consideration.

By the Constitution of the United States, the Supreme Court possesses no appellate power in any case unless conferred upon it by act of Congress, nor can it, when conferred, be exercised in any other form or by any other mode of proceeding than that which the law prescribes.

The Act of 1789, ch. 20, § 22, provides that final judgments and decrees in civil actions and suits in equity in a circuit court, when the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs, may be reexamined and reversed or

affirmed in the Supreme Court. And it is by this law only that we are authorized to reexamine any judgment in a circuit court by writ of error.

Before we speak more particularly of the construction of this section, it may be proper to notice the difference between the provisions contained in it, and those of the twenty-fifth section, in the same act of Congress, which gives the appellate power over the judgments of the state courts. In the latter case, the right to reexamine is not made to depend on the money value of the thing in controversy, but upon the character of the right in dispute, and the judgment which the state court has pronounced upon it, and it is altogether immaterial whether the right in controversy can or cannot be measured by a money standard.

But in the twenty-second section, which is the one now under consideration, the provision is otherwise, and in order to give this Court jurisdiction to reexamine the judgment of a circuit court of the United States, the judgment or decree must not only be a final one, in a civil action or suit in equity, but the matter in dispute must exceed the sum or value of two thousand dollars, exclusive of costs. And in order, therefore, to give us appellate power under this section, the matter in dispute must be money, or some right, the value of which, in money, can be calculated and ascertained.

In the case before us, the controversy is between the father and mother of an infant daughter. They are living separate from each other, and each claiming the right to the custody, care, and society of their child. This is the matter in dispute. And it is evidently utterly incapable of being reduced to any pecuniary standard of value, as it rises superior to money considerations.

The question for this Court to decide is whether a controversy of this character can by a fair and reasonable construction be regarded as within the provisions of the twenty-second section of the act of 1789. Is it one of those cases in which we are authorized to reexamine the decision of a circuit court of the United States, and affirm or reverse its judgment? We think not. The words of the act of Congress are plain and unambiguous. They give the right of revision in those cases only where the rights of property are concerned, and where the matter in dispute has a known

and certain value, which can be proved and calculated, in the ordinary mode of a business transaction. There are no words in the law, which by any just interpretation can be held to extend the appellate jurisdiction beyond those limits, and authorize us to take cognizance of cases to which no test of money value can be applied. Nor indeed is this limitation upon the appellate power of this Court confined to cases like the one before us. It is the same in judgments in criminal cases, although the liberty or life of the party may depend on the decision of the circuit court. And since this Court can exercise

Page 46 U. S. 121

no appellate power unless it is conferred by act of Congress, the writ of error in this case must be

Dismissed.

ORDER

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 New York, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that this cause be and the same is hereby dismissed for the want of jurisdiction.