

Van Ness Vs. Van Ness

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Court : US Supreme Court

Decided On : 1848

Appeal No. : 47 U.S. 62

Appellant : Van Ness

Respondent : Van Ness

Judgement :

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47 U.S. (6 How.) 62

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

The Act of Congress passed on 27 February, 1801, 2 Stat. 103, authorizes a writ of error from this Court to the Circuit Court for the District of Columbia in those cases only where there has been a final judgment, order, or decree in that court.

Where the orphans' court directed an issue to be sent for trial in the circuit court, which issue was "whether the petitioner was the widow of the deceased or not," and the circuit court proceeded to try the issue, and the jury, under the instructions of the court, found that the petitioner was not the widow, exceptions to these instructions cannot be reviewed by this Court on a writ of error.

The certificate of the finding of the jury, transmitted by the circuit court to the orphans' court, was not such a final judgment, order, or decree as is included within the statute. After the reception of the certificate, the orphans' court had still to pass a decree in order to settle the rights of the parties.

All the circumstances of the case are fully set forth in the opinion of the Court, as delivered by MR. CHIEF JUSTICE TANEY, from the commencement of which the Reporter extracts the following statement.

A motion has been made to dismiss this case, which is brought here by writ of error directed to the circuit court for Washington County, in the District of Columbia.

The case is this. John P. Van Ness, of the same county and district, died intestate, and letters of administration were granted by the orphans' court to Cornelius P Van Ness, his brother, who is the defendant in error.

Shortly after the letters were granted, Mary Ann Van Ness, the plaintiff in error, filed her petition in the Orphans' court, alleging that she was the widow of the deceased, and praying that the letters granted to the defendant should be revoked, and administration granted to her. The defendant answered, denying that she was the widow of the deceased. The right to the letters depended upon this fact; as by an act of assembly of Maryland passed in 1798, and adopted by Congress when it assumed jurisdiction over this district, the widow is

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entitled to letters of administration, in preference to any other person, where the husband dies intestate.

This act of assembly, 1798, ch. 101, subchap. 8, sec. 20, and subchap. 15, sec. 16, 17, makes it the duty of the orphans' court in a case like this, if required by either party, to direct an issue to be sent for trial to any court of law most convenient for trying it, and the court to which it is sent is authorized to direct the jury, and to grant a new trial if it thinks proper, as if the issue were in a suit therein instituted; and upon a certificate from such court, or a judge thereof, of the verdict or finding of the jury, under the seal of the court, the orphans' court is directed to give judgment upon such finding. It is unnecessary to give the words of the act. We state its provisions only so far as they relate to the case before us.

When the answer of the defendant came in, the orphans' court, upon the motion of the plaintiff, ordered the following issue to be made up and sent to the Circuit Court for Washington County, to be there tried; that is to say, "whether the said Mary Ann Van Ness be the widow of the said John P. Van Ness or not." No depositions or other testimony were taken on either side in the orphans' court.

The circuit court proceeded to the trial of the issue, and in the course of the trial sundry directions were given to the jury, to which the plaintiff excepted; and finally, as appears by the eleventh exception, the court instructed the jury that there was no evidence from which they could find that the plaintiff was lawfully married to John P. Van Ness, the intestate. Under this direction, the jury found by their verdict that Mary A. Van Ness was not the widow of the late John P. Van Ness, and this finding was, by order of the court, certified under seal to the orphans' court.

This is the case before us, upon the record brought here by the writ of error, and the question to be decided is whether this Court can take cognizance of the case and inquire whether error has or has not been committed by the circuit court in giving the instructions under which the verdict was found.

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

After stating the case, as above recited, the opinion proceeded as follows:

The appellate power of this Court in relation to the Circuit Court for the District of Columbia is regulated by the Act of Congress of February 27, 1801. And it authorizes the writ of error to the circuit court in those cases only in which there has been a final judgment, order, or decree in that court. Whatever errors, therefore, may have been committed, and however apparent they may be in the record, yet we have not the power to correct them unless the circuit court has passed a final judgment, order, or decree in the case before it.

The argument on the part of the plaintiff is that inasmuch as the verdict was found in obedience to the positive instructions of the court, and as the certificate of the finding of the jury was conclusive upon the orphans' court, the order of the circuit court to certify the verdict to the orphans' court ought to be regarded as a final judgment or order within the meaning of the act of Congress.

It is true the orphans' court has no power to grant a new trial, and is bound to consider the fact to be as found by the jury, and consequently the judgment of that court must be against the plaintiff. But the matter in contest in the orphans' court is the right to the letters of administration. And it is the province of that court to apply the law upon that subject to the fact, as established by the verdict of the jury, and to make their decree accordingly; refusing to revoke the letters

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granted to the defendant, and dismissing the petition of the plaintiff. The suit between the parties must remain still pending until that decree is pronounced. The certificate from the circuit court is nothing more than evidence of the finding of the jury upon the trial of the issue. It merely certifies a fact -- that is to say that the jury had so found. And the order of the circuit court directing a fact to be certified to another court to enable it to proceed to judgment can hardly be regarded as a judgment, order, or decree, in the legal sense of these terms as used in the act of Congress. Certainly it is not a final judgment or order. For it does not put an end to the suit in the orphans' court, as that court alone can dismiss the petition of the plaintiff which is there pending, and no other court has the power to pass a judgment upon it. A verdict in any court of common law, if not set aside, is in all

cases conclusive as to the fact found by the jury, and the judgment of the court must follow it, as the orphans' court must follow the verdict in this case. Yet a writ of error will not lie upon the verdict.

And if this Court should take jurisdiction, and should determine that the circuit court had erred in its directions to the jury, what judgment could be given here? Could we give a judgment reversing an order which does nothing more than direct a fact to be certified to another court? If we could do this, it would not reach the judgment in the orphans' court, nor exercise any control over it. And a writ of error can hardly be maintained where the judgment of the appellate court would be ineffectual and nugatory.

Neither could it make any difference as to the jurisdiction of this Court, if there had been a feigned issue with formal pleadings, and the circuit court had entered a judgment upon the verdict. For the judgment would have had no effect upon the rights of either party to the administration in dispute, nor could it exercise any influence upon the decision of the orphans' court. And if this Court could have regarded the feigned issue as an action regularly brought in the circuit court, and upon that ground have taken jurisdiction, the affirmance or reversal of the judgment would have had as little effect upon the proceedings in the orphans' court as the original judgment in the circuit court. It would indeed decide the right to the fictitious wager stated in the pleadings. But if the judgment of the circuit court was reversed and a *venire de novo* awarded, it would not alter the decree in the orphans' court. That court is required by law to act upon the finding of the jury, and not upon the judgment of the circuit court. And the reversal of that judgment and a new

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finding would not authorize the orphans' court to recall the judgment it had given, and was bound to give upon the original verdict certified by the circuit court.

The act of assembly of Maryland appears to have received in practice in that state the same construction that we have given to it. There is, indeed, no judicial opinion

on the subject; but there is no ground for supposing that a writ of error was ever sued out under that law. In 1832, an act was passed authorizing a writ of error in such cases and staying proceedings in the inferior courts until a decision was had in the appellate court, and this law embraces cases which had been tried before its passage as well as those which should afterwards take place. But from 1798 down to the passage of this act of assembly, we can find no trace of a writ of error sued out in a case like this. The absence of any such proceeding for so many years is the strongest evidence of the construction put upon the law and of the opinion entertained by the bar of the state that the writ would not lie. For many issues from the orphans' courts must have been tried during that period of time which would have given rise to the writ of error if it had been supposed to be warranted by the law. The act of 1832 also, embracing as it does prior as well as future cases, would have been altogether unnecessary if a different construction had been given to the act of 1798.

Upon the whole, therefore, this Court is of opinion that there has been no final judgment, order, or decree in the circuit court, and the writ of error must be

Dismissed for want of jurisdiction.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington 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 want of jurisdiction.