

Gill Vs. Oliver's Executors

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Appellant : Gill

Respondent : Oliver's Executors

Judgement :

Gill v. Oliver's Executors - 52 U.S. 529 (1850)

U.S. Supreme Court Gill v. Oliver's Executors, 52 U.S. 11 How. 529 529 (1850)

Gill v. Oliver's Executors

52 U.S. (11 How.) 529

ERROR TO THE COURT OF APPEALS

FOR THE WESTERN SHORE OF MARYLAND

SYLLABUS

In 1839, a treaty was made between the United States and Mexico providing for the "adjustment of claims of citizens of the United States on the Mexican Republic." Under this treaty, a sum of money was awarded to be paid to the

members of the Baltimore Mexican Company, who had subscribed money to fit out an expedition against Mexico under General Mina in 1816.

The proceeds of one of the shares of this company were claimed by two parties, one as being the permanent trustee of the insolvent owner of the share, and the other as being the assignee of the provisional trustee and afterwards the assignee of the insolvent himself.

The judgment of the Court of Appeals of Maryland that the latter claimant is entitled to the money is not reviewable by this Court under the twenty-fifth section of the Judiciary Act.

This case was argued at last term on a motion to dismiss for want of jurisdiction. But the court reserved the point till final hearing. On the hearing at this term, the question of jurisdiction continued to be the most important question in the case, and that on which it was decided by the Court.

A brief history of the facts connected with the case and of the pleadings will be sufficient to exhibit the questions involved.

In the year 1816, General Xavier Mina, who was at that time connected with the revolutionary party in Mexico in opposition to the authority of Spain, came to the City of Baltimore,

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and there entered into a contract with certain gentlemen of that place, who associated themselves under the name of the "Baltimore Mexican Company," for the purchase of a quantity of arms, ammunition &c.;, to fit out an expedition against the then government of Mexico. On account of the risk attending their delivery and the uncertainty of the payment, it was agreed that Mina should pay one hundred percent on the cost of the articles, and interest. The goods were shipped for Mexico and delivered according to contract, but were not paid for by General Mina, as he was soon after taken prisoner and shot.

From this time till 1825, the recovery of the claim was considered hopeless.

In 1825, Mexico had achieved her independence, and after much solicitation the government was persuaded to acknowledge the justice of this claim, and assume the payment of it by an act of Congress passed to pay the debts of Mina. But notwithstanding the recognition of this claim as a debt, its payment was delayed for many years, and seemed almost hopeless.

Many and larger claims were held by citizens of the United States against Mexico of which the government had been urging the payment, and finally, on 11 April, 1839, a convention was concluded between the Secretary of State of the United States and the Mexican Minister "for the adjustment of claims of citizens of the United States of America upon the government of the Mexican Republic." By this treaty, all claims by citizens of the United States upon the Mexican government &c., were referred to four commissioners, "who were authorized to decide upon the justice of said claims, and the amount of compensation due from the Mexican government in each case."

As the claim of the "Baltimore Mexican Company" had been recognized as a debt of the Mexican government by a solemn act of their Congress, its justice could not well be denied. It was accordingly allowed by the commissioners on proof of its correctness and exhibition of the original contract with Mina.

David M. Perrine and John Glenn, who claimed to be assignees in trust of eight of the nine shares into which the stock of the company had been divided, received the amount of the award, and according to agreement with their *cestui que trusts*, deposited the money in the Mechanics' Bank of Baltimore, to be distributed according to the respective rights of the parties claiming it.

Soon after this was done, Philip E. Thomas and John

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White filed their bill in chancery against said Perrine and Glenn, claiming the share of _____ Smith, and praying the intervention and assistance of a court of equity, in order to the just distribution of the proceeds of the award in the hands of the trustees.

The defendants, Perrine and Glenn, came into court and submitted

"that they are willing and desirous that the proceeds of the award may be distributed among the parties under the direction of the court &c.;, and join in praying an early reference to an auditor for that purpose."

The money being thus in court for distribution, all persons who laid any claim to it intervened by bill or petition against the trustees and opposing claimants. Among others, the plaintiff in error, George M. Gill filed his bill, claiming the share and interest of Lyde Goodwin, who was one of the original nine or ten persons who were partners or members of the "Baltimore Mexican Company."

The bill alleges that this company was formed in 1816; that Lyde Goodwin owned one ninth part of the property; that in February, 1817, Lyde Goodwin applied to the court for the benefit of the insolvent laws of Maryland, which he duly received; that the complainant was appointed permanent trustee, and gave the proper bond for faithful performance of the trust. The bill goes on to state the convention with Mexico in 1839, the award of the commissioners, the receipt of the share of Lyde Goodwin by Glenn and Perrine, under a power of attorney from Oliver's executors, who claimed title to the same under a pretended assignment from George J. Brown, the provisional trustee of said Goodwin, and finally prays that the executors of Oliver, the claimant of the share, and said trustees, may answer, account, and bring the certificates in which payment was made into court, that they may be delivered over to complainant.

The complainant filed also another bill against the trustees and all other claimants, for the sum of five percent on the whole amount, as due to Lyde Goodwin for services rendered to the company, by contract with them.

The complainant founded his claim to the money in both cases on the allegation "that all Lyde Goodwin's interest in said property and claims had become vested in the petitioner by virtue of his application and the laws of the state."

The answers of the defendants admit the application of Lyde Goodwin for the benefit of the insolvent laws and his discharge, but state that the complainant, Gill

was not appointed permanent trustee till March, 1837; that on 26 February, 1817, George J. Brown was duly appointed by the court provisional trustee, and gave bond and security, and

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that the debtor, Lyde Goodwin, on the same day executed to said trustee a deed of assignment of all his property. That in 1825 said Brown conveyed to Robert Oliver, and afterwards, on 30 May, 1829, Lyde Goodwin assigned and conveyed to said Oliver all his title and interest in the claim of the company on Mexico. The defendants allege and plead, that by these assignments the title to the share of Lyde Goodwin vested in Robert Oliver in his lifetime, who is now represented by his executors.

There was no dispute on the facts of this case, and the only questions of law involved in it are whether, by the insolvent laws of Maryland, the title of Gill as permanent trustee, to the money in court, was better than the previous assignment by the provisional trustee and Lyde Goodwin himself. On the one side it was contended that by the insolvent act of Maryland passed in 1805, all the property and estate of the insolvent which he held at the time of his discharge vested in his permanent trustee whensoever he should thereafter be appointed, and that the deed from the provisional trustee, George J. Brown, conveyed no title to Oliver under the insolvent laws. Nor did the deed of Goodwin himself convey any title, because by his insolvent proceedings, all his right, title, and interest in this claim became divested.

On the contrary, the executors of Oliver contended that until the recognition of this claim by Mexico in 1825, it did not constitute such property as would pass by the insolvent assignment. That after, by the labors of Goodwin and other agents of the company, this claim was assumed by Mexico and acknowledged as a debt, it vested in Goodwin as a new acquisition, which he might convey. And of this opinion was the Court of Appeals of Maryland.

The judgment of the Court of Appeals of Maryland was as follows:

"The appeal in this case coming on for hearing, and having been fully argued by the solicitors of the respective parties, has been since fully considered by the court, and it appearing to the court that that part of the decree appealed from of the court below, which directed any portion of the fund in controversy to be transferred or paid to the appellee, George M. Gill as permanent trustee of Lyde Goodwin, was erroneous and should be reversed, and it also appearing to the court that said portion of said fund should be paid over and transferred to the appellants, Charles Oliver, Robert M. Gibbs, and Thomas Oliver, as executors of Robert Oliver in the proceedings mentioned, together with all accumulations of interest or dividends since accruing upon the same: "

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"It is thereupon by this Court and the authority thereof on this 23d day of June in the year 1849 adjudged, ordered, and decreed that the said decree of the court below, so far as the same adjudged and decreed any portion of the fund in controversy to be transferred or paid to the said George M. Gill as permanent trustee of Lyde Goodwin, be and the same is reversed and annulled, and this Court, proceeding to pass such decree in the premises as they are of opinion should have been passed by the court below, do further adjudge and decree that all and every part of such portion of said fund so by the court below decreed to be transferred or paid to said George M. Gill as trustee aforesaid be by the trustees in the proceedings mentioned, David M. Perrine and John Glenn, transferred or paid over to the appellants, Charles Oliver, Robert M. Gibbs, and Thomas Oliver, as executors of Robert Oliver, together with all and every accumulation of interest or dividends or investments of the same made or accruing in and upon such part or portion of said fund, and it is further by this Court and its authority adjudged and decreed that all other portions of the decree of the court below except such as is hereby reversed be and the same is hereby affirmed; it is further adjudged and decreed that the reversal of the decree of the court below be without costs."

The opinion of the said Court of Appeals was as follows:

"The majority of this Court who sat in the trial of this cause and by which was decreed the reversal of the decree of the county court, at the instance of the solicitors of the appellees, briefly state the following as their reasons for such reversal. They are of opinion that the entire contract, upon which the claim of the appellees is founded is so fraught with illegality and turpitude as to be utterly null and void and conferring no rights or obligations upon any of the contracting parties which can be sustained or countenanced by any court of law or equity in this state or of the United States; that it has no legal or moral obligation to support it, and that therefore, under the insolvent laws of Maryland such a claim does not pass to or vest in the trustee of an insolvent petitioner. It forms no part of his property or estate within the meaning of the legislative enactments constituting our insolvent system. It bears no analogy to the cases, decided in Maryland and elsewhere, of claims not recoverable in a court of justice, which nevertheless have been held to vest in the trustees of an insolvent or the assignees of a bankrupt. In the case referred to, the claims, as concerned those asserting them, were on their part tainted by no principle of illegality or immorality; on the

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contrary, were sustained by every principle of national law and natural justice, and nothing was wanting to render them recuperable but a judicial tribunal competent to take cognizance thereof. Wholly dissimilar is the claim before us. Such is its character, that it cannot be presented to a court of justice but by a disclosure of its impurities, and if anything is conclusively settled or ought to be so regarded, it is that a claim thus imbued with illegality and corruption will never be sanctioned or enforced by a court either of law or equity."

"Entertaining this view of the case, it is unnecessary to examine the various minor points which were raised in the argument before us."

To review the judgment of the Court of Appeals, Gill sued out a writ of error, and brought the case up to this Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

If this Court can take jurisdiction of this case under the twenty-fifth section of the Judiciary Act, it must be under either the first or third clause, as the second is admitted to be wholly inapplicable to it.

1. The first is

"where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity."

2. The third is

"where is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party under such clause,"

&c.;

1. We have sought in vain through the record of this case to find any question raised directly by the pleadings or "by clear and necessary intendment therefrom" touching the validity of any treaty, statute, or authority exercised under the United States.

Both parties claim certain moneys in court as assignees of Lyde Goodwin, who was a member of the "Baltimore Mexican Company," and entitled to a certain proportion of the money awarded to said company as a just claim on the Mexican government. The validity of the award, or the treaty under which it was made, is not called in question by either party, as both claim under them. In order to ascertain the effect of certain previous assignments made by Lyde Goodwin, the history of the origin of his claim necessarily makes a part of the case.

The treaty and award are introduced as a part of this history, as facts not disputed by either party. The money being in court, both the treaty and the award were *functi officio*, and no decision of the rights of the claimants *inter se* can, in the

nature of the case, involve the validity of either.

The decision of the Court of Appeals that the original contract with Mina in 1816 did not create such a debt as would

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pass by the insolvent laws of Maryland, neither directly nor by implication questions the validity of any treaty, statute, or authority under the United States.

That the Baltimore Mexican Company set on foot and prepared the means of a military expedition against the territories and dominions of the King of Spain, a foreign prince with whom the United States were at peace, is a fact in the history of the case not disputed, and which if wrongly found by the court would not give us jurisdiction of the case. That such conduct of the company in making their contract with General Mina was a high misdemeanor, punishable with fine and imprisonment by the fifth section of the Act of 5 June, 1794, chap. 51, cannot be disputed by anyone who will read the statute, and the conclusion drawn therefrom by the court below, that the contract of the company with Mina in 1816, being founded on an illegal transaction, was void by the law of Maryland, where it was made, and passed no equity, right, or title whatsoever to an insolvent assignee in 1817, involved no question of "the validity of any treaty or statute of, or an authority exercised under the United States."

The validity or binding effect of the original contract with Mina is neither directly nor indirectly affirmed, either in the convention with Mexico or in the award of the commissioners under it.

The fact that the "Baltimore Mexican Company" exposed not only their property to capture by the Spanish vessels of war but their own persons to fine and imprisonment by the authorities of the United States only enhanced the justice and equity of their claims against the new government of Mexico.

The original contract with General Mina was a Maryland contract, and its validity and construction are questions of Maryland law, which this Court is not authorized

to decide in the present action.

2. We are equally at a loss to discover in this record where or how "the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United States" is drawn in question in this case.

As we have already said, both parties claim money in court, and in order to test the value of their respective assignments from Lyde Goodwin, introduce the history of the claim from its origin.

The treaty and award are facts in that history. They were before the court but as facts, and not for construction. If A hold land under a patent from the United States or a Spanish grant ratified by treaty, and his heirs, devisees, or assignees dispute as to which has the best title under him, this does not

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make a case for the jurisdiction of this Court under the twenty-fifth section of the Judiciary Act. If neither the validity nor construction of the patent or title under the treaty is contested, if both parties claim under it, and the contest arises from some question without or *dehors* the patent or the treaty, it is plainly no case for our interference under this section.

That the title originated in such a patent or treaty is a fact in the history of the case incidental to it, but the essential controversy between the parties is without and beyond it. So in this case, both claim the money in court. It is a fact that the money has been paid by the Republic of Mexico, on a claim which has been pronounced just and equitable by commissioners under the convention of 1839. It is a fact also that the origin of this claim was for arms and ammunition furnished for an expedition under General Mina for the purpose of insurrection against the Spanish government. It is a fact that the Baltimore Mexican Company, or the individuals composing it, exposed themselves to punishment under the neutrality act. It is a fact also that afterwards, when Mexico had succeeded in establishing her independence, when her rebellion had become a successful revolution, that she very justly and honorably made herself debtor to those who periled their property

and persons in her service at the commencement of her struggle. It is a fact that though this claim was acknowledged as a just debt by Mexico as early as 1825, payment was never obtained till after the award of the commissioners under the convention with Mexico in 1839, "for the adjustment of claims of citizens of the United States on the Mexican Republic." It is a fact that this claim thus recognized by the Mexican Congress was pronounced a just debt in favor of citizens of the United States against the Republic of Mexico.

But whether this debt of the Mexican government, first acknowledged and made tangible as such in 1825, did previously exist as an equity, a right, or a chose in action capable of passing by assignment under the insolvent laws of Maryland in 1817 is a question not settled in the treaty or award nor involving any question as to the construction of either, but arising wholly from without and entirely independent of either the one or the other. The treaty was that "all claims of citizens of the United States found to be just and equitable should be paid." The award was that this claim of the "Baltimore Mexican Company," which had been acknowledged in 1825 as a valid claim by Mexico, was a just debt, not a false or feigned one, and ought to be paid. The money is awarded to be paid to Glenn and Perrine "in trust for whom it may concern." The award does not undertake to settle the equities or rights of

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the different persons claiming to be legal or equitable assignees or transferees of the interests of the several members of the company. That is left to the tribunals of the state where the members of the company resided and the assignments were made. In deciding this question, the courts of Maryland have put no construction on the treaty or award asserted by one party to be the true one and denied by the other. It was before them as a fact only, and not for the purpose of construction. Whether this money paid into court under the award and first acknowledged by Mexico as a debt in 1825 existed as a debt transferable by the Maryland insolvent laws in 1817, or whether it for the first time assumed the nature of a chose in action transferable by assignment after 1825, when acknowledged of record by Mexico and passed by the assignment of Lyde Goodwin to Robert Oliver, was a

question wholly *dehors* the treaty and award, and involving the construction of the laws of Maryland only, and not of any treaty or statute or commission under the United States.

It is a conclusive test of the question of jurisdiction of this Court in the present case that if we assume jurisdiction and proceed to consider the merits of the case, we find it to involve no question either of validity or construction of treaties or statutes of the United States.

But the only questions in the case will be found to be what was the effect of the appointment of George M. Gill in 1837 as permanent trustee under the insolvent laws of Maryland of 1805? Was the void and illegal contract with Mina, made in 1816, such a chose in action as would pass by such insolvent law in 1817? Or did it first become an assignable claim after it was acknowledged by Mexico in 1825, and, as a new acquisition of Lyde Goodwin after his insolvency, pass by his assignment to Oliver. A resolution of these questions by or through anything to be found on the face of the treaty or award or any necessary intendment or even possible inference therefrom is palpably impossible.

The whole case evidently turns on the construction of the laws of Maryland, and on facts connected with the previous history of the claim, which are not disputed, and which are incidental to the treaty and award, but which raise no question either as to their validity or construction.

This case is therefore

Dismissed for want of jurisdiction.

MR. CHIEF JUSTICE TANEY, MR. JUSTICE Mc LEAN, MR. JUSTICE WAYNE, and MR. JUSTICE WOODBURY dissented.

CHIEF JUSTICE TANEY stated that in his opinion, this Court

had jurisdiction of the question upon which the case was decided in the Court of Appeals of Maryland, and that their decision was erroneous, and ought to be reversed.

MR. JUSTICE Mc LEAN concurred in opinion with the Chief Justice.

MR. JUSTICE WOODBURY.

I object to the form of the judgment to be entered in this case, rather than to the results of it to the parties. By dismissing the writ of error for want of jurisdiction, as is done here, the judgment in the state court is left in full force, whereas in my view this Court has jurisdiction, and should affirm the judgment in the state court, thus leaving it, as the other course does, in full force, but on different grounds. The consequence to the parties, by pursuing either course, differs so little that it does not seem necessary to go into any elaborate exposition of the reasons for this dissent, and I shall therefore content myself with stating only the general grounds for it.

All that seems indispensable to give jurisdiction to us in this class of cases is that the plaintiff in error should have set up in support of his claim in the state court some right or title under a treaty or doings by authority from Congress, and that it should be overruled by the state court. See the twenty-fifth section of the act of 1789, 1 Stat. 85, and various decisions under it, including [*Owings v. Northwood's Lessee*](#), 5 Cranch 348, and [*Smith v. Maryland*](#), 6 Cranch 304; [43 U. S. 2](#) How. 372. Here the appellant set up in his bill a claim to money under a treaty with Mexico, and an award under it by commissioners appointed by an act of Congress, and the state court, in his opinion, overruled his claim. This, in my view, gives jurisdiction to us whether the state court decided right or wrong. See [*Armstrong v. Athens County*](#), 16 Pet. 285; [*Miller v. Nichols*](#), 4 Wheat. 311. The very object of the writ of error is to ascertain whether they did decide right or wrong, and the jurisdiction to make this revision of their opinion arises not from its error, but its subject matter, the latter being a claim set up under some United States authority. [*Neilson v. Lagow*](#), 7 How. 775.

The next and only remaining inquiry for me, supposing that we have jurisdiction, is whether the state court formed a right conclusion in overruling the claim set up by the appellant. I think they did. So far as it rested on authority under the United States, it is by no means clear that they overruled it improperly. The claim, so far as regards the enforcement of the treaty with Mexico, does not seem to have been overruled

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in terms by the state court. That court did not decide that the treaty was corrupt or illegal or in any way a nullity when they held that the original contract violated the laws of neutrality. So far, too, as regards the award made by the commissioners, that the Baltimore Mexican Company and their legal representatives had a just claim under the treaty for the amount awarded, it was not overruled at all.

It is not manifest, then, that anything really in the treaty or in the award set up by Gill the plaintiff was actually decided against, but only something he claimed to be there; that when the appellants claimed that he, rather than others, was legally entitled to one ninth of the sum awarded to the Baltimore Mexican Company, the state court seems to have overruled that. But in doing this, they must still have held the treaty itself to be valid, and the award of the commissioners under it to be valid, or they could not have decreed this share of the fund to Oliver's executors, as they appear to have done expressly by the record.

All must concede that the state court speaks in its language against the Mina "contract" alone as illegal, and in terms does not impugn either the treaty or the award, and it is merely a matter of inference or argument that either of these was assailed or any right properly claimed under them overruled. But it is true the court held that Oliver's executors, rather than the appellant, were entitled to the fund furnished by Mexico and long subsequent to Mina's contract; but in coming to that conclusion, they seem to have been governed by their views as to their own laws and the principles of general jurisprudence. The treaty or award contained nothing as to the point whether Gill or Oliver's executors had the better right to this share, but only that the Mexican Company and their legal representatives should receive

the fund. This last the court did not question.

But who was the legal representative of Lyde Goodwin's share? Who, by insolvencies, sales, or otherwise, had become entitled to it?

That was the question before the court, and the one they settled, and in deciding that, they overruled the claim of Gill to be so, by virtue of any authority in the treaty or award, and in saying that the fund should go to Oliver's executors, as best entitled, rather than Gill, they did it under their own state laws.

It is a general rule for the state tribunals, and not the commissioners, to settle any conflict between different claimants, and the usage, when disputes exist, is not for commissioners to go further than act on the validity of the claim, and decide

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besides the superior rights of one of the claimants. [Frevall v. Bache](#), 14 Pet. 95; [Comegys v. Vasse](#), 1 Pet. 212; [Sheppard v. Taylor](#), 5 Pet. 710.

It is true that the opinion given in the state court in support of its judgment is not entirely free from some grounds for misconception, yet the judgment itself appears right, and, if erroneous, resting as it does wholly on the state laws, it is not competent for us, under this writ of error, to reverse it. We can reverse it only when wrong, and wrong too for deciding improperly against some claim under a United States law or treaty.

This I think it has not done. In short, the whole real truth appears to be that the state court considered the Mina contract in 1817 as a violation of the neutrality act of 1794, and therefore, when Lyde Goodwin failed in the same year and went into insolvency, that his share in the contract, being illegal and void, could not then pass to his creditors, or his trustee in their behalf. But when the Mexican government, about 1825, adopted the contract and acknowledged its liability to pay those entitled, the court seems to have thought that their obligation was virtually a new one. It occurred after the insolvency, and hence seems supposed not to have passed to the creditors, any more than did new property subsequently

acquired. See Insolvent Act of 1805, ch. 110, 2. Consequently the commissioners held that the creditors and their trustee were not entitled to its benefits. Goodwin could and did legally assign to Oliver his new rights and new guarantees for his share from Mexico. These last, though growing out of the original Mina purchase, were not a violation of the act of 1794 -- were honorable, though not compellable, and were not deemed illegal either by Mexico or the government of the United States, or the commissioners, or the state court.

Again, under the state laws doubts seemed to arise, in deciding on which was the proper claimant, whether the original trustee was not duly appointed in 1817, and could not legally assign this claim, if it passed to him then or afterwards, as he attempted to pass it to Oliver, rather than considering it as belonging to, or vesting in, Gill the appellant, who was not appointed trustee till 1825, and then in a manner somewhat questionable. 4 Gill & Johns. 392. That, however, was likewise a point arising exclusively under the state laws, and which we are not authorized to decide in this writ of error.

It is for reasons like these that in my opinion the judgment in the state court, so far as it related to any claim set up and supposed to be overruled under any authority derived from the United States, is within our jurisdiction, but that the state

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court did not improperly overrule any such claim so set up, and hence that the judgment in the state court ought to be affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Court of Appeals for the Western Shore of Maryland, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that this cause be and the same is hereby dismissed for the want of jurisdiction.