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Saltmarsh Vs. Tuthill

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 53 U.S. 387

Appellant : Saltmarsh

Respondent : Tuthill

Judgement :

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Saltmarsh v. Tuthill

3 U.S. (12 How.) 387

MOTION FOR MANDAMUS

SYLLABUS

Where an appeal was taken in a common law case instead of a writ of error, and after the lapse of ten days the plaintiff issued an execution upon his judgment, and the defendant then sued out a writ of error to bring the case up to this Court, it was error in the court below to quash the execution and supersede the judgment.

The appeal did not remove the case, and the writ of error was sued out too late to stay execution. It is immaterial whether it was a mistake of the party or the court.

The question reserved is whether this Court has the power to issue a mandamus to the judge below commanding him to set aside the supersedeas and order the clerk to issue an execution.

A motion was made for a mandamus in this case to compel the district judge to set aside an order of supersedeas and to order the clerk to issue an execution.

The circumstances were these:

At the fall term, 1849, of the District Court of the United States for the Middle District of Alabama, Tuthill obtained a judgment against Saltmarsh in a common law case.

Saltmarsh took an appeal in open court, and at the same time executed an appeal bond, in a penalty of double the amount of the judgment.

After the expiration of ten days, Tuthill caused execution to be issued on the judgment. Before the return of this writ, Saltmarsh sued out a writ of error and filed a writ of error bond.

At the return term of the execution, *viz.,* May, 1850, Saltmarsh moved the court to quash the execution and to supersede the judgment. Both motions were granted. The execution was quashed, and it was further considered and ordered by the court that

"A writ of supersedeas be and the same is hereby awarded commanding the clerk of the District Court of the

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United States for the Middle District of Alabama not to issue execution or any other process on said judgment rendered at the December term of this court, in the year of our Lord one thousand eight hundred and forty-nine, while the writ of error to the

Supreme Court of the United States is pending, nor until a decision is had thereon. And also to command the marshal of the United States for the district aforesaid that from every and all proceedings on execution, or in any wise molesting the plaintiff in error on account of the said judgment, he entirely surcease, the same being superseded."

The writ of error having brought the case up to this Court, a motion was made by Mr. Pryor and Mr. Seward for a mandamus to compel the district judge to set aside the order of supersedeas and to order the clerk to issue an execution.

1. The order was void for the want of jurisdiction in the court. There was no subject matter in controversy of which the court could take jurisdiction to hear and determine. Judiciary Act, 1789, ch. 20, 22, 23; Act Regulating Appeals, 1803, ch. 40, 2; *Wiscart v. Dauchey,* 3 Dall. 327 [argument of counsel -- omitted]; *Murdock ex Parte,* 7 Pick. 303, 321; *Wetherbee v. Johnson,* 14 Mass. 412, 420; *Livingston v. Jefferson,* 1 Brock., 203, 211; *The San Pedro,* 2 Wheat. 132, 15 U. S. 141 ; *Sarchet v. United States,* 12 Pet. 143, 37 U. S. 144 ; *Parish v. Ellis,* 16 Pet. 451, 41 U. S. 452 -454; *United States v. Wouson,* 1 Gall. 4, 10-11; *Villabolo v. United States,* 6 How. 81, 47 U. S. 90 -91; *United States v. Currey,* 6 How. 106, 47 U. S. 112 -113; *Hudson v. Guertier,* 7 Cranch 1; *The Avery,* 2 Gall. 386, 389; *Jackson v. Ashton,* 10 Pet. 480, 35 U. S. 481 ; *Ex parte Crenshaw,* 15 Pet. 119, 40 U. S. 123 ; *Cameron v. McRoberts,* 3 Wheat. 591, 16 U. S. 593 ; *Griffith v. Frazier,* 8 Cranch 9, 12 U. S. 10 ; *Patterson v. United States,* 2 Wheat. 221, 15 U. S. 225 -226; *Hickey v. Stewart,* 3 How. 750, 44 U. S. 762 ; *United States v. Moore,* 3 Cranch 159, 7 U. S. 172 -173; *Durousseau v. United States,* 6 Cranch 307, 10 U. S. 313 -314; *United States v. Goodwin,* 7 Cranch 108; *Ex Parte Kearney,* 7 Wheat. 38, 20 U. S. 42 ; *Ex Parte Watkins,* 3 Pet. 193, 28 U. S. 201 ; *United States v. Nourse,* 6 Pet. 470, 31 U. S. 493 -497; *Wood v. Lide,* 4 Cranch 180; *Hogan v. Ross,* 11 How. 294.

2. But if the court did have jurisdiction, then the jurisdiction was improvidently exercised and this Court ought to issue the mandamus. This Court has a general superintending control over inferior courts of the United States, and may issue such process as is necessary to enable it to make this control effectual. Judiciary

Act, 1789, ch. 20, 13, 14; *McIntire v. Wood,* 7 Cranch 504; *McClung v. Silliman,* 6 Wheat. 590; *Ex Parte Crane,* 5 Pet. 190; *Life & F. Ins. Co. v. Wilson,* 8 Pet. 291, 33 U. S. 306 ; *Marbury v. Madison,* 1 Cranch 137.

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

The judgment in this case being in a common law proceeding, it was not removed to this Court by the appeal, and consequently the appeal bond did not operate as a supersedeas.

The writ of error afterwards sued out, has brought the case regularly before this Court. But as it was not sued out within ten days after the rendition of the judgment, the writ of error bond does not stay the execution under the act of 1789.

Nor is there any equitable power in the circuit court to stay the execution, upon the ground that a mistake as to the manner or time of removing the case was committed. And it is immaterial in this respect whether it was the mistake of the party or the court. For this Court has never deemed the tribunals of the United States authorized to dispense with the express provisions of the acts of Congress regulating appeals and writs of error, upon any equitable ground. No such power is given to them by law. It was so decided in this Court in *United States v. Curry,* 6 How. 113; and *Hogan v. Ross,* 11 How. 297. The circuit court therefore erred in setting aside the execution which the plaintiff had issued on the judgment.

But we do not think it necessary at this time to determine whether this Court has the power to issue the mandamus, requiring the circuit court to issue the execution. Because we are satisfied from the facts before us, that the circuit court, without any coercive process, will conform to the opinion of this Court, and issue execution when informed of this decision.

The question, therefore, as to the power of this Court to issue the mandamus is, for the present,

Reserved.

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