Sizer Vs. Many

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 98

Appellant : Sizer

Respondent : Many

Judgement :

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Sizer v. Many

57 U.S. (16 How.) 98

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Where a judgment in a patent case was affirmed by this Court with a blank in the record for costs, and the circuit court afterwards taxed these costs at a sum less than two thousand dollars and allowed a writ of error to this Court, this writ mast

be dismissed on motion.

The writ of error brings up only the proceedings subsequent to the mandate, and there is no jurisdiction where the amount is less than two thousand dollars, either under the general law or the discretion allowed by the patent law. The latter only relates to cases which involve the construction of the patent laws and the claims and rights of patentees under them.

As a matter of practice, this Court decides that it is proper for circuit courts to allow costs to be taxed, *nunc pro tunc,* after the receipt of the mandate from this Court.

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

A motion has been made to dismiss the writ of error in this case for want of jurisdiction.

The case as it comes before us is this:

Many, the defendant in error, in the year 1848, recovered a judgment in the Circuit Court for the District of Massachusetts against the plaintiffs in error in an action for the infringement of certain letters patent. The verdict and judgment was for less than $2,000, but the writ of error to remove the case to this Court was allowed under the patent law of 1836. From some oversight or accident, the costs were not taxed in the circuit court before the transcript of the record was transmitted to this Court. And the judgment as it stood upon the transcript was for the damages awarded by the jury, and costs of suit -- leaving a blank space open for the insertion of the amount of the costs.

The judgment of the circuit court was affirmed at the December term, 1851, and the usual mandate sent down directing execution.

Upon the receipt of the mandate by the circuit court, the defendant in error applied for leave to have the costs taxed and the amount inserted in the blank left for that

purpose in the original record of the judgment. The motion was refused. And thereupon the defendant in error, at December term, 1852, applied to

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this Court for a mandamus directing the court below to tax and allow his costs in the original action, amounting, as he alleged, to $1,811.59. But the court refused the motion upon the ground that a mandamus could not lawfully be issued to a circuit court to guide its judgment in the taxation of costs.

At a subsequent term of the circuit court, the defendant in error renewed his motion for an order allowing the taxation of these costs and their insertion in the original judgment, and the court thereupon allowed the taxation of costs and directed the amount above mentioned to be inserted in the original judgment. But the court at the same time allowed a writ of error from their decision, and ordered that this second writ of error should operate as a supersedeas of the execution prayed for if sued out within the time fixed by law. It is this writ of error that is now before the court and which the defendant in error has moved to dismiss.

It has been settled by the decisions of this Court that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the court on the first writ of error can be reheard or reexamined upon the second, and there is nothing therefore now before the court but the taxation of costs. 20 U. S. 7 Wheat. 58; 37 U. S. 12 Pet. 488, 37 U. S. 492 .

The sum taxed being less than $2,000, no writ of error will lie under the act of 1789. This act gives no jurisdiction to this Court over the judgment of a circuit court where the judgment is for less than that sum.

Neither can the allowance of the writ by the circuit court give jurisdiction where the only question is the amount of costs to be taxed and the amount allowed is less than $2,000. The discretionary power in this respect vested in the circuit courts by the Act of July 4, 1836, sec. 17, is evidently confined to cases which involve the

construction of the patent laws and the claims and rights of patentees under them. But the amount of costs which either party shall be entitled to recover is not regulated by these laws. The costs claimed are allowed or refused in controversies arising under the patent acts, upon the same principles and by the same laws, which govern the court in the taxation of costs in any other case that may come before it. The same laws therefore must be applied to them in relation to the writ of error, and must limit the jurisdiction of this Court as in other cases.

The writ of error must therefore be dismissed for want of jurisdiction. But as the question raised in this case may often occur in the circuit courts, and it is important that the

practice should be uniform, it is proper to say that we consider the decision of the circuit court allowing those costs to be taxed after the receipt of the mandate from this Court to have been correct and conformable to the general practice of the courts. The costs are perhaps never in fact taxed until after the judgment is rendered, and in many cases cannot be taxed until afterwards. And where this is the case the amount ascertained is usually, under the direction of the court, entered *nunc pro tunc* as a part of the original judgment. And this mode of proceeding is necessary for the purposes of justice in order to afford the necessary time to examine and decide upon the several items of costs to which the successful party is lawfully entitled.

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 Massachusetts, 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.