

Lathrop Vs. Judson

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Court : US Supreme Court

Decided On : 1856

Appeal No. : 60 U.S. 66

Appellant : Lathrop

Respondent : Judson

Judgement :

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Lathrop v. Judson

60 U.S. (19 How.) 66

ERROR TO THE CIRCUIT COURT FOR THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

Where exceptions are not taken in the progress of the trial in the circuit court, and do not appear on the record, there is no ground for the action of this Court.

This suit was commenced by Charles Judson, a citizen of New York, to recover from Lathrop the amount of a judgment rendered by the Supreme Court of Louisiana, in June, 1851, for \$1,810, with interest from the 2d of May, 1845. The plaintiff attached to his petition a copy of the record of the judgment. The suit was commenced on 6 May, 1854.

On the 18th of May, the defendant filed the following exception and plea:

" *To the Hon. the Judges of the Circuit Court of the United States* "

" *for the Fifth Circuit and Eastern District of Louisiana:* "

"The exception and plea to the jurisdiction of Charles C. Lathrop, of New Orleans, to the petition filed against him in this Honorable Court by Charles Judson, of the State of New York."

"This respondent alleges, that this Honorable Court has no jurisdiction of the suit instituted in this matter, the same

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having been litigated and decided in the courts of the State of Louisiana, and an execution having been issued on the judgment in said suit by the said Charles Judson against this respondent, under which execution a seizure has been made of certain property as belonging to this respondent, and which execution has not yet been returned, all of which will fully appear by reference to the suit No. 16,671, of the docket of the late Parish Court of New Orleans, transferred to the Third District Court of New Orleans, and to the notice of seizure, herewith filed. Wherefore this respondent prays that his exception may be sustained and that he may be excused from answering to said petition, and that he may be hence dismissed with his costs."

In June, 1854, the court ordered and adjudged that the said exception be dismissed at defendant's costs.

On the same day, Lathrop filed his answer alleging that on the 11th of February, 1851, he had made a cession of all his property to his creditors, under the insolvent laws of Louisiana, that the plaintiff in the suit was placed on the list of creditors for the amount of the judgment, that the debt for which the judgment was rendered was contracted in Louisiana, and that the plaintiff bought the debt at the sale by the U.S. Marshal &c.; To sustain this answer, the defendant produced the record in insolvency.

In November, 1854, the cause came on to be heard and was submitted to the court, when judgment was entered in favor of Judson against Lathrop for \$1,810.50, with interest from 2 May, 1845, till paid, and costs.

Lathrop sued out a writ of error, and brought the case up to this Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The action was brought on a judgment rendered by the Supreme Court of Louisiana; certain matters were set up in the circuit court as a defense, all of which were overruled, and judgment was entered for eighteen hundred and ten dollars, with interest and costs. The only errors assigned in this Court on which a reversal of the judgment of the circuit court is prayed are: 1, that at the time suit was brought on the judgment in the circuit court, an execution had been issued on the same judgment in the state court which was in full force and on which a seizure had been made, and 2 that the circuit court erred in holding that the indebtedment was not founded on a Louisiana contract.

These exceptions were not taken in the progress of the trial in the circuit court, and do not appear on the record. The

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fact that an execution was issued and returned appears in the record of the state court, but it was not made a part of the record of the circuit court by bill of

exceptions, and it cannot now be noticed. There is no ground of error on the face of the record for the action of this Court.

The judgment of the circuit court is affirmed with ten percent damages.

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