

Day Vs. Gallup

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 97

Appellant : Day

Respondent : Gallup

Judgement :

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Day v. Gallup

69 U.S. (2 Wall.) 97

ERROR TO THE FEDERAL

COURT FOR MINNESOTA

SYLLABUS

1. In trespass in a state court against the marshal of the United States for levying on goods which ought not to have been levied on, the marshal's title as marshal is not necessarily drawn in question. He may be sued not as marshal, but as

trespasser. Hence a judgment in a state court against a marshal for making a levy alleged to be wrong is not necessarily a proper subject for review in this Court under the 25th section of the Judiciary Act allowing such review in certain cases where "an authority exercised under the United States is drawn in question, and the decision is against its validity."

2. Where a proceeding in the federal court is terminated so that no case is pending there, a state court, unless there be some special cause to the contrary, may have jurisdiction of a matter arising out of the same general subject, although, if the proceeding in the federal court had not been terminated, the state court might not have had it.

The 25th section of the Judiciary Act provides that a final judgment in the highest court of law of a state, in which is drawn in question the validity of an "authority exercised under the United States," and the decision is against its validity, may be reviewed in this Court. With this act in force, Gallup sued Derby & Day Gear, and Allis, in a state court of Minnesota in trespass for taking and carrying away goods. On the 1st April, 1860, the defendants justified under certain writs of attachment and execution issued out of the Federal Court for Minnesota in a certain suit therein

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pending wherein Derby & Day were plaintiffs and one Griggs defendant. In this suit, judgment had been given 10th September, 1859, execution issued on the next day, and returned satisfied on the 19th. The justification set up that Allis was attorney of Derby & Day, and Gear, marshal of the United States; that the taking was by Gear as United States marshal, under and by virtue of the writs, and at the request of Derby & Day. The debt from Griggs to Derby & Day the affidavits and order on which the attachment and the judgment on which the execution were issued, were also pleaded by the defendants below, and that the property was the property of Griggs. The plaintiff below replied, denying that the property was the property of Griggs, but not denying the character of the defendants, or that the taking was under federal process.

Gallup's suit against Derby & Day Allis, and the marshal, was brought to trial June 18, 1860; but before the swearing of a jury, was discontinued as to the marshal.

On trial of it against the remaining defendants, Derby & Day and Allis, it was not contended by the plaintiff that any of these parties were guilty of any but a constructive taking -- that is to say, of more than having authorized the marshal to seize under his process, and before the defendants had offered any evidence, and before there had been any proof of a suit pending in the federal court, or of an attachment issued out of such court, or that the said goods had been taken under process, the defendants' counsel moved, on the part of the defendants, Derby & Day and Allis, and also for each of them separately, to dismiss the case, on the ground that there was nothing in the evidence which showed that they, or either of them, had had anything to do with the act of Gear, the marshal, in taking the goods; a defense set up by Allis in his answer as to other defendants than the marshal, and as was said in the motion, not denied in the reply. This the court refused to do, the defendants excepting. The defendants then called the clerk of the federal court and gave in evidence the substance of the attachment suit of Derby & Day against Griggs, showing or endeavoring

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to show that the goods attached had originally been their goods; that Griggs had bought them on credit, and that the alleged sale by him to Gallup was a fraud; that the goods were in fact still the property of Griggs. They offered in evidence, also, the simple writ of attachment, which, under exception, the court refused to let go before the jury, unless the affidavit on which it was founded was also produced. Verdict was, however, given against Derby & Day and Allis, the attorney, though afterwards set aside as to this last. Judgment having been entered against Derby & Day the case was taken by writ of error to the Supreme Court of Minnesota, in which it was affirmed; and it was now before this Court on writ of error, the question being whether there had been drawn in question, in that Supreme Court of Minnesota, any authority exercised under the United States.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

The dates in this case show that at the time Gallup's suit was brought, there was no case pending in the federal court, respecting the goods which had been attached under that court's process, on attachment. On the 18th of June, 1860, before a jury was sworn in the case, it was dismissed as to Gear, the marshal. On that day a jury was sworn, and on the 20th of the month *they returned a verdict for Gallup*, with interest and costs. In fact, it becomes plain that the defendants did not then consider that there was any necessary connection between Gallup's complaint and themselves on account of the seizure and sale of the former's goods under the process of the federal court; for on the trial of the cause, before any proof had been given that there had been a suit in the federal court from which an attachment had been issued, or that the goods of Gallup had been seized and sold under its process, and after the defendants had examined witnesses and *Gallup had rested his case upon that testimony*, the defendants moved to dismiss Gallup's complaint as to all of them conjointly, and for each of them separately, on the ground that the defense of Allis in his answer was not denied in the reply as to the defendants, Derby & Day and Allis, or on the part of them separately, and because there was no evidence to connect them with the taking of the goods. The motion was refused; the defendants excepting to the decision of it. And then the defendants introduced as a witness the clerk of the federal court; and he, to use the language of the record, proved *substantially* the suit in the federal court of Derby & Day against Griggs, and the defendants regarded the sale by Griggs to Gallup as fraudulent. In no part of the record does it appear that the authority of Gear, as marshal, to take the goods, was drawn in question. Nor is it to be inferred from any pleading by the

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defendants. The facts are that from the return of the execution satisfied, the federal court had no control over the parties. The case between the plaintiffs in error against Griggs had been decided, the money made on the execution, and the debt paid.

Upon the facts of the case, as they appear in the record, we have determined that no one of the questions described in the 28th section of the Judiciary Act necessarily arose or was decided by the Supreme Court of Minnesota. We think it unnecessary to particularize such decided questions as will give jurisdiction to this Court under that act. We therefore dismiss the writ of error to the Supreme Court of Minnesota.

Dismissal accordingly.

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