

Buck Vs. Colbath

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Appeal No. : 70 U.S. 334

Appellant : Buck

Respondent : Colbath

Judgement :

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70 U.S. (3 Wall.) 334

ERROR TO THE SUPREME

COURT OF MINNESOTA

SYLLABUS

1. A suit prosecuted in the state courts to the highest court of such state against a marshal of the United States for trespass who defends himself on the ground that the acts complained of were performed by him under a writ of attachment from the

proper federal court presents a case for a writ of error under the 25th section of the Judiciary Act

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when the final decision of the state courts is against the validity of the authority thus set up by the marshal.

2. The case of [*Freeman v. Howe*](#), 24 How. 450, an action of replevin decided that property held by the marshal under a writ from the federal court could not be lawfully taken from his possession by any process issuing from a state court, and decided nothing more.

3. The ground of that decision was that the possession of the marshal was the possession of the court, and that pending the litigation, no other court of merely concurrent jurisdiction could be permitted to disturb that possession.

4. An action of trespass for taking goods does not come within the principle of that case, inasmuch as it does not seek to interfere with the possession of the property attached; but it involves the question, not raised in that case, of the extent to which the federal courts will protect their officers in the execution of their processes.

5. With reference to this question, all writs and processes of the courts may be divided into two classes

i. Those which point out specifically the property or thing to be seized.

ii. Those which command the officer to make or levy certain sums of money out of property of a party named.

6. In the first class, the officer has no discretion, but must do precisely what he is commanded. Therefore, if the court had jurisdiction to issue the writ, it is a protection to the officer in all courts.

7. But in the second class the officer must determine for himself whether the property which he proposes to seize under the process, is legally liable to be so

taken, and the court can afford him no protection against the consequences of an erroneous exercise of his judgment in that determination. He is liable to suit for injuries growing out of such mistakes in any court of competent jurisdiction.

8. A plea, therefore, which does not deny that the property seized was the property of the plaintiff or aver that it was liable to the writ under which it was seized is bad in any court.

9. The rule that among courts of concurrent jurisdiction that one which first obtains jurisdiction of a case has the exclusive right to decide every question arising in the case is subject to some limitations, and

is confined to suits between the same parties or privies seeking the same relief or remedy and to such questions or propositions as arise ordinarily and properly in the progress of the suit first brought, and does not extend to all matters which may by possibility become involved in it.

Colbath sued Buck in one of the state courts of Minnesota in an action of *trespass* for taking goods. Buck pleaded in defense that he was *Marshal of the United States* for the District of Minnesota and that, having in his hands a writ of attachment against certain parties whom he named, he levied

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the same upon the goods, for taking which he was now sued by Colbath. *But he did not aver that they were the goods of the defendants in the writ of attachment.*

On the trial, Colbath made proof of his ownership of the goods, and Buck relied *solely on the fact that he was marshal* and held the goods under the writ in the attachment suit.

The court refused to instruct the jury that the defense thus set up was a sufficient one, and the plaintiff had a verdict and judgment. This judgment was affirmed on error in the Supreme Court of Minnesota, and the defendant brought the case here under the 25th section of the Judiciary Act -- an act which, as most readers will remember, provides that a final judgment in any suit in the highest court of a state

where 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.

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MR. JUSTICE MILLER delivered the opinion of the Court.

There seems to be no reason to doubt that the case comes within the provisions of the 25th section of the Judiciary Act. The defendant claimed the protection of "an authority exercised under the United States," and the decision was against the protection thus claimed -- or in other words against the validity of that authority as a protection to him in that action. Whether the authority which he thus set up was valid to protect him is a question for this Court to decide finally, and is properly before us under the writ of error to the Supreme Court of Minnesota.

Upon the merits of the case, the plaintiff in error relies mainly on the case of *Freeman v. Howe*, decided by this Court, and upon the opinion by which the Court sustained the decision.

That was a case like this in every particular, with the single exception -- that when the marshal had levied the writ of attachment on certain property, a writ of replevin was instituted against him in the state court and the property

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taken out of his possession, while in the present case the officer is sued in trespass for the wrongful seizure.

In that case it was held that although the writ of attachment had been wrongfully levied upon the property of a party not named in the writ, the rightful owner could not obtain possession of it by resort to the courts of another jurisdiction.

It must be confessed that this decision took the profession generally by surprise, overruling as it did the unanimous opinion of the Supreme Court of Massachusetts -- a court whose opinions are always entitled to great consideration, as well as the

opinion of Chancellor Kent as expressed in his Commentaries. [[Footnote 1](#)]

We are, however, entirely satisfied with it and with the principle upon which it is founded -- a principle which is essential to the dignity and just authority of every court and to the comity which should regulate the relations between all courts of concurrent jurisdiction. That principle is that whenever property has been seized by an officer of the court by virtue of its process, the property is to be considered as in the custody of the court and under its control for the time being, and that no other court has a right to interfere with that possession unless it be some court which may have a direct supervisory control over the court whose process has first taken possession or some superior jurisdiction in the premises. This is the principle upon which the decision of this Court rested in *Taylor v. Caryl* [[Footnote 2](#)] and *Hogan v. Lucas*, [[Footnote 3](#)] both of which assert substantially the same doctrine.

A departure from this rule would lead to the utmost confusion and to endless strife between courts of concurrent jurisdiction deriving their powers from the some source; but how much more disastrous would be the consequences of such a course in the conflict of jurisdiction between courts whose powers are derived from entirely different sources while their jurisdiction is concurrent as to the parties and the subject matter of the suit.

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This principle, however, has its limitations -- or rather, its just definition is to be attended to. It is only while the property is in possession of the court, either actually or constructively, that the court is bound or professes to protect that possession from the process of other courts. Whenever the litigation is ended or the possession of the officer or court is discharged, other courts are at liberty to deal with it according to the rights of the parties before them, whether those rights require them to take possession of the property or not. The effect to be given in such cases to the adjudications of the court first possessed of the property depends upon principles familiar to the law; but no contest arises about the mere

possession, and no conflict but such as may be decided without unseemly and discreditable collisions.

It is upon this ground that the Court, in *Day v. Gallup*, held that this Court had no jurisdiction of that case. The property attached had been sold and the attachment suit ended when the attaching officer and his assistants were sued, and we held that such a suit in the state court, commenced after the proceedings in the federal court had been concluded, raised no question for the jurisdiction of this Court.

It is obvious that the action of trespass against the marshal in the case before us does not interfere with the principle thus laid down and limited. The federal court could proceed to render its judgment in the attachment suit, could sell and deliver the property attached and have its execution satisfied, without any disturbance of its proceedings or any contempt of its process, while at the same time the state court could proceed to determine the questions before it involved in the suit against the marshal without interfering with the possession of the property in dispute.

How far the courts are bound to interfere for the protection of their own officers is a question not discussed in the case of *Freeman v. Howe*, but which demands a passing notice here. In its consideration, however, we are reminded at the outset that property may be seized by an officer of the court under a variety of writs, orders, or processes of the court.

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For our present purpose, these may be divided into two classes:

1. Those in which the process or order of the court describes the property to be seized, and which contain a direct command to the officer to take possession of that particular property. Of this class are the writ of replevin at common law, orders of sequestration in chancery, and nearly all the processes of the admiralty courts by which the *res* is brought before it for its action.

2. Those in which the officer is directed to levy the process upon property of one of the parties to the litigation sufficient to satisfy the demand against him, without describing any specific property to be thus taken. Of this class are the writ of attachment or other mesne process by which property is seized before judgment to answer to such judgment when rendered and the final process of execution, *elegit*, or other writ, by which an ordinary judgment is carried into effect.

It is obvious on a moment's consideration that the claim of the officer executing these writs to the protection of the courts from which they issue stands upon very different grounds in the two classes of process just described. In the first class, he has no discretion to use, no judgment to exercise, no duty to perform but to seize the property described. It follows from this as a rule of law of universal application that if the court issuing the process had jurisdiction in the case before it to issue that process, and it was a valid process when placed in the officer's hands, and that, in the execution of such process, he kept himself strictly within the mandatory clause of the process, then such writ or process is a complete protection to him not only in the court which issued it, but in all other courts.

And in addition to this, in many cases the court which issued the process will interfere directly to protect its officers from being harassed or interfered with by any person, whether a party to the litigation or not. Such is the habitual course of the court of chancery, operating by injunction against persons who interfere by means of other courts.

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And instances are not wanting, where other courts have in a summary manner protected their officers in the execution of their mandates.

It is creditable, however, to the respect which is paid to the process of courts of competent jurisdiction in this country, that the occasion for the exercise of such a power is very rare.

In the other class of writs to which we have referred, the officer has a very large and important field for the exercise of his judgment and discretion. *First*, in

ascertaining that the property on which he proposes to levy, is the property of the person against whom the writ is directed; *secondly*, that it is property which, by law, is subject to be taken under the writ; and *thirdly*, as to the quantity of such property necessary to be seized in the case in hand. In all these particulars he is bound to exercise his own judgment, and is legally responsible to any person for the consequences of any error or mistake in its exercise to his prejudice. He is so liable to plaintiff, to defendant, or to any third person whom his erroneous action in the premises may injure. And what is more important to our present inquiry, the court can afford him no protection against the parties so injured; for the court is in no wise responsible for the manner in which he exercises that discretion which the law reposes in him, and in no one else.

In the case before us, the writ under which the defendant justified his act and now claims our protection, belongs to this latter class. Yet the plea on which he relied contains no denial that the property seized was the property of plaintiff, nor any averment that it was the property of either of the defendants in the attachment suit, or that it was in any other manner subject to be taken under that writ.

Seizing upon some remarks in the opinion of the court in the case of *Freeman v. Howe*, not necessary to the decision of that case, to the effect that the court first obtaining jurisdiction of a cause has a right to decide every issue arising in the progress of the cause, and that the federal court could not permit the state court to withdraw from the former the

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decision of such issues, the counsel for plaintiff in error insists that the present case comes within the principle of those remarks.

It is scarcely necessary to observe that the rule thus announced is one which has often been held by this and other courts, and which is essential to the correct administration of justice in all countries where there is more than one court having jurisdiction of the same matters. At the same time, it is to be remarked that it is confined in its operation to the parties before the court, or who may, if they wish to

do so, come before the court and have a hearing on the issues so to be decided. This limitation was manifestly in the mind of the court in the case referred to, for the learned judge who delivered the opinion, goes on to show, that persons interested in the possession of the property in the custody of the court, may, by petition, make themselves so far parties to the proceedings as to have their interests protected, although the persons representing adverse interests in such case do not possess the qualification of citizenship necessary to enable them to sue each other in the federal courts. The proceeding here alluded to is one unusual in any court, and is only to be resorted to in the federal courts, in extraordinary cases, where it is essential to prevent injustice, by an abuse of the process of the court, which cannot otherwise be remedied. But it is not true that a court, having obtained jurisdiction of a subject matter of a suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and, in some instances, requiring the decision of the same questions exactly.

In examining into the exclusive character of the jurisdiction of such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits. For example, a party having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover a judgment on his notes, and in another court of law in an

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action of ejectment to get possession of the land. Here in all the suits the only question at issue may be the existence of the debt mentioned in the notes and mortgage; but as the relief sought is different, and the mode of proceeding is different, the jurisdiction of neither court is affected by the proceeding in the other. And this is true notwithstanding the common object of all the suits may be the collection of the debt. The true effect of the rule in these cases is that the court of chancery cannot render a judgment for the debt, nor judgment of ejectment, but can only proceed in its own mode, to foreclose the equity of redemption by sale or otherwise. The first court of law cannot foreclose or give a judgment of ejectment,

but can render a judgment for the payment of the debt, and the third court can give the relief by ejectment, but neither of the others. And the judgment of each court in the matter properly before it is binding and conclusive on all the other courts. This is the illustration of the rule where the parties are the same in all three of the courts.

The limitation of the rule must be much stronger, and must be applicable under many more varying circumstances, when persons not parties to the first proceeding are prosecuting their own separate interests in other courts.

The case before us is an apt illustration of these remarks. The proceeding in the attachment suit did not involve the question of the title of Colbath, defendant in error, to the property attached. The whole proceeding in that court, ending as it might in a judgment for the plaintiff, an execution and sale of the property attached, and satisfaction thereby of the plaintiff's debt, may be, and in such cases usually is, carried through without once requiring the court to consider the question of title to the property. That is all the time a question between the officer, or the purchaser at his sale, on the one side, and the adverse claimant on the other. There is no pretense, nor does anyone understand, that anything more is involved or concluded by such proceedings, than such title to the property as the defendant in attachment had when the levy was made.

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Hence it is obvious that plaintiff in error is mistaken when he asserts that the suit in the federal court drew to it the question of title to the property, and that the suit in the state court against the marshal could not withdraw that issue from the former court. No such issue was before it, or was likely to come before it, in the usual course of proceeding in such a suit.

It is true, that if under the intimations in *Freeman v. Howe*, the claimant of the property had voluntarily gone before that court and asked by petition that the property be released from the attachment and restored to his possession, he might have raised such issue, and would have been bound by its decision. But no such

application was made, no such issue was in fact raised, and no such issue belonged ordinarily to the case. We see nothing, therefore, in the mere fact that the writ issued from the federal court, to prevent the marshal from being sued in the state court, in trespass for his own tort, in levying it upon the property of a man against whom the writ did not run, and on property which was not liable to it.

Judgment affirmed with costs.

[[Footnote 1](#)]

Vol. i, 410.

[[Footnote 2](#)]

[61 U. S. 20](#) How. 583.

[[Footnote 3](#)]

[35 U. S. 10](#) Pet. 400.