Brown Vs. Wiley

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 165

Appellant : Brown

Respondent : Wiley

Judgement :

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Brown v. Wiley

71 U.S. (4 Wall.) 165

ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. Under the Act of March 3, 1863, establishing the Supreme Court of the District of Columbia, the action of that court can be examined here in no case in which like action in the circuit court of the district, whose place it supplies, could not be

reexamined.

2. Hence, it can be examined only in those cases where there has been a final judgment, order, or decree.

3. The certificate of the finding of a jury on certain issues involving paternity, marriage, and legitimacy, sent from the Orphans' Court to the Supreme Court of the District, which certificate of finding is transmitted

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by the Supreme Court to the Orphans' Court, is not such a final judgment, order, or decree as this Court can reexamine on error.

4. Nor where the finding of the jury was at special term held by a single judge of the Supreme Court of the District of Columbia, under instructions by such judge, and a motion for new trial on exception to such instructions and other grounds has been heard at general term by all the judges and overruled, is such overruling a final judgment, order, or decree, reviewable on writ of error by this Court.

A petition was filed in the Orphans' Court of the District of Columbia by John Wiley and Emily his wife setting forth that the said Emily was the child of Tillotson Brown, deceased and his sole heir and distributee; that her mother, Elizabeth Brown, the widow of the said Tillotson, had duly administered upon his estate; that a surplus was left in her hands from the assets of the estate, and praying that such portion of the same as the petitioner was entitled to might be paid over to her.

Marshall Brown filed an answer to the petition, setting forth that he was the brother of said Tillotson and alleging that the said Tillotson was never married to the said Elizabeth Brown and that if he ever was so married, the petitioner, Emily Wiley, was not his child.

Thereupon the Orphans' Court, on the 10th of February, 1863, sent the following issues to the Circuit Court of the District of Columbia:

1st. Whether the petitioner, Emily Wiley, was the child of the said Tillotson?

2d. Whether the said Tillotson was ever married to the mother of said Emily?

3d. Whether, after the said marriage, the said Tillotson ever acknowledged the said Emily to be his child?

After this -- that is to say March 3, 1863 -- an act of Congress abolished the circuit court and established in its stead the Supreme Court of the District of Columbia. [Footnote 1]

The issues were submitted to a jury, at a special term of this Supreme Court, November, A.D. 1865, and a verdict rendered thereon in the affirmative on all the questions.

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A motion for a new trial was made, on exceptions taken at the trial, which was heard before all the four judges at a general term of the Supreme Court of the District of Columbia, in the manner prescribed by the statute constituting the court. [Footnote 2] The motion was overruled, and the cause remanded with directions that the same should be proceeded in according to law.

Thereupon an order was entered by the court before which the issues had been tried directing that the finding of the jury on the issues sent from the Orphans' Court be certified by the clerk to said Orphans' Court.

The writ of error in this case was sued out that the foregoing order might be brought up to this Court.

It is proper here to remark that by the eleventh section of the Act of March 3, 1863, abolishing the Circuit Court of the District and establishing in its stead the Supreme Court,

" *Any final judgment, order, or decree* of said court may be reexamined and reversed or affirmed in the Supreme Court of the United States upon writ of error or appeal *in the same cases and in like manner as is now provided by law* in

reference to final judgments, orders, or decrees of the Circuit Court of the United States for the District of Columbia,"

and that in the circuit court referred to, as was provided by the law establishing it (an act of 1801), *"any final judgment, order, or decree"* wherein the matter in dispute exceeded the value of $100 might "be reexamined, reversed, or affirmed in this Court." It may also be mentioned that by the eighth section of the act of 1863, it is enacted

"That if upon the trial of any cause an exception be taken, . . . it may be stated in writing in a case, or in a bill of exceptions, with so much of the evidence as may be material to the questions to be raised. . . . The justice who tries the cause may in his discretion entertain a motion to set aside a verdict and grant a

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new trial, upon exceptions, or for insufficient evidence, or for excessive damages. "

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THE CHIEF JUSTICE delivered the opinion of the Court.

This cause is before us upon a motion to dismiss the writ of error.

On the 10th of February, 1863, certain issues of fact were sent by the Orphans' Court of Washington County, District of Columbia, to the Circuit Court of the District to be tried by a jury.

These issues were transferred, by the Act of Congress of March 3, 1863, to the Supreme Court of the District of Columbia, and were brought to trial in November, 1865, before that court, held by a single judge, in special term. All the issues were determined in the affirmative by the jury, under the rulings of the judge. Exceptions were taken to the rulings, and a motion for new trial was made in general term before all the judges and was overruled. Subsequently an order was made at special term certifying the finding of the jury on the issues to the Orphans' Court.

The record of these proceedings is brought here by writ of error.

The case, in almost every particular, is identical with that

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of *Van Ness v. Van Ness.* [Footnote 3] In that case, as in this, an issue of fact was sent out of the Orphans' Court to the circuit court to be tried by a jury, was tried and found in the negative. Exceptions were taken to the rulings upon the trial, and an order was made certifying the finding to the Orphans' Court. The proceeding was brought into this Court by writ of error, which was dismissed for want of jurisdiction.

It is true that in the case before us the exceptions were taken to the rulings at special term, and that a motion for new trial was heard at general term, and was denied, whereas it does not appear that there was any motion for new trial in the case of Van Ness, and it was insisted in argument that this difference in proceeding distinguishes the two cases, so that the latter cannot be regarded as an authority in the decision of the former.

We are unable to perceive that the difference is material. The order certifying the finding to the Orphans' Court, in the case of Van Ness, was identical in effect with the two orders overruling the motion for new trial, and certifying the finding in the case before us. In each case, the exceptions taken at the trial before the jury were overruled, and nothing was left for action in the court before which the issues were tried; but the cause went to the Orphans' Court for final judgment.

In that case it was held that the order was not one which could, under the act, be reexamined on writ of error, and we see no reason for a different ruling in this.

It was argued that the act organizing the Supreme Court of the District gives this Court jurisdiction of this case by writ of error. We do not think so. That act expressly provides that any final judgment, order, and decree of the District Supreme Court may be reexamined upon writ of error or appeal, "in the same cases and in like manner as provided by law in reference to the final judgments,

orders, and decrees of the District Circuit Court." It is clear, therefore, that the action of the former court can be reexamined here

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in no case in which like action in the latter court could not be reexamined.

The only real difference between the two statutes is that the latter gives an appeal from a decision of the single judge at special term, on a motion for new trial, to the whole court at general term, or secures an original hearing of the motion in general term. This is an advantage to the unsuccessful party not formerly enjoyed, but it makes no changes as to reexamination upon appeals or writs of error in this Court.

The court has considered the motion for a certiorari to supply alleged defects in the record; but after a careful comparison of the suggestions of counsel with the record before us, and the act establishing the Supreme Court for the District of Columbia, we are satisfied that the granting of the motion would avail nothing to the plaintiff in error. It must therefore be overruled. And the writ of error must be

Dismissed for want of jurisdiction.

[Footnote 1]

12 Stat. at Large 763.

[Footnote 2]

The Supreme Court of the District, by the act constituting it, had four justices, before anyone of whom any issues of fact triable by a court or jury might be tried (7), it being enacted (9), "that a motion for a new trial &c.;, shall be heard, in the first instance, at a general term" or court in banc.

[Footnote 3]

47 U. S. 6 How. 62.