Sparrow Vs. Strong

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SooperKanoon Citation : sooperkanoon.com/81400

Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 584

Appellant : Sparrow

Respondent : Strong

Judgement :

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Sparrow v. Strong

71 U.S. (4 Wall.) 584

ERROR TO THE SUPREME

COURT OF NEVADA

SYLLABUS

1. This Court will not take jurisdiction of a judgment shown by the context of the record to be but an order affirming a refusal of a court below to grant a new trial, even though the language of the record of affirmance brought here by the writ of

error purports to affirm generally the judgment of a court inferior to the affirming court and the only judgment, in strict language, in the record of such interior court, is a general judgment.

2. An appeal from an order denying a motion for a new trial does not, under the legislation of Nevada, carry the original judgment and the whole cause before the appellate court so that the decision upon the appeal operates as a judgment reversing or affirming the judgment below.

Sparrow brought ejectment against Strong in the District Court for the County of Story in Nevada for an undivided interest in a mining claim, the proceeding being in the form prevailing in Nevada of petition, answer, and replication.

On the 21st of May, 1862, a jury, after hearing the evidence and the charge of the court, rendered a general verdict for the defendants.

On the next day afterwards, to-wit, on the 22d day of May, 1862, the court pronounced judgment on the verdict.

On the 13th of November, 1862, the district court in which the cause had been tried heard a *motion for new trial,* and, after argument, overruled the motion and *refused the new trial,* to which the plaintiffs excepted.

Two days afterwards, the plaintiffs gave notice to the defendants that they (the plaintiffs) appealed to the supreme court of the territory from *the order* of the district court, *made on the 13th of November, 1862, overruling the motion for a new trial.*

On the same day of this notice, the defendants filed a bond -- an undertaking -- for the damages and costs. In this bond they recite that it is given on an appeal from *the order* of the district court, made on the *13th of November,* overruling the *motion for a new trial.*

On the 22d of November, 1862, the counsel of both parties agreed upon a *statement,* and it was declared in their agreement

that the statement so settled was to be used on the hearing in the Supreme Court of the appeal from the *order* of the district court refusing a *new trial,* which order is referred to in it as made on the 13th of November, 1862.

The statement comprised:

1. The motion of the plaintiffs for a new trial, and a specification of the grounds on which it was to be sustained, among which are insufficiency of the defendants' evidence, surprise at the trial, and newly discovered evidence.

2. Certain evidence, oral and documentary, given on the trial. There were no *bills of exception* to evidence embodied in the statement, but in the specification of grounds it was alleged that the evidence was excepted to.

3. The prayers of both parties for instructions to the jury on questions of law, with the answers of the judge.

4. The general charge to the jury.

5. Affidavits of the parties and of several other persons taken after trial to prove surprise and newly discovered evidence. One of these undertook to detail what a certain witness, who had been rejected, would have sworn if he had been admitted.

On this statement apparently, the case went into the supreme court of the territory. No writ of error was taken out, nor did bills of exception accompany the evidence, nor was any assignment of error made in the territorial supreme court.

On the 16th of March, 1863, the supreme court gave judgment in the case as follows:

"On appeal from the District Court of the First Judicial District in and for Story County."

"Now, on this day, that cause being called, and having been argued and submitted and taken under advisement by the court, and all and singular the law and the premises being by the court here *seen* and *fully considered,* the opinion of the court herein is delivered by Turner, C.J. (Mott, J., concurring), to the effect that the judgment below be affirmed."

"Wherefore it is now *ordered,* considered, and *adjudged* by the Court here that the *judgment* and *decree* of the District Court of

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the First Judicial District in and for Story County, *be and the same is affirmed* with costs."

From this judgment of the Supreme Court of Nevada a writ of error, on the 14th of August, 1863, was taken here.

On the same day, the plaintiff in error filed with the clerk of the supreme court of the territory the *assignment of errors* for this Court -- that is to say a specification of the grounds on which they relied here for the reversal of the decision of the territorial supreme court.

In those specifications they complained that the supreme court of the territory *refused to reverse the judgment and order of the district court refusing a new trial.* Then followed the specific objections to the *judgment and order,* some of which were *matters of fact.*

On the same day that the writ of error from this Court was taken out and the errors assigned the plaintiffs petitioned for a *citation.* In that citation they described the cause or subject matter which it was their object to have reviewed in this Court. They set forth that after trial and judgment in the district court, they moved the same court for a *new trial;* that it was refused on the 13th of November, 1862; that *an appeal from that order* was taken to the supreme court of the territory; that in the latter court, on the 16th of March, 1863, judgment was rendered *"affirming the order of said district court;"* that the plaintiffs afterwards asked for a

rehearing, which was denied them; hence the writ of error.

This Court, two terms ago, on the record being brought before them by a motion to dismiss the case on other grounds assigned, doubted, on looking at the judgment of affirmance above quoted, as given in the Supreme Court of Nevada, whether it was a final judgment or decision reviewable here within the meaning of the act of Congress organizing the territory, and which gave this Court jurisdiction to review "the final decisions" of the supreme court of the territory, and ordered that point to be argued. It was accordingly argued, the argument turning chiefly on the language of the affirmance.

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After the argument, this Court refused to dismiss the case on the motion. It then said: *

"It is insisted on this point that the judgment is merely an affirmance of the order of the district court overruling the motion for new trial. *If* this be so, the judgment itself is, in substance and effect, nothing more, and it is settled that this Court will not review such an order. The granting or refusing of new trials is a matter of discretion, with the exercise of which, by the court below, this Court will not interfere. The circumstance that the discretion was exercised under a peculiar statute by an appellate court, and on appeal, cannot withdraw the case from the operation of the principles which control this Court."

"But the majority of the Court does not feel at liberty to disregard the plain import of the terms of the judgment rendered by the supreme court of the territory. It does not purport to be an order or judgment affirming an order overruling a motion for new trial, but a judgment affirming the judgment or decree of the district court, and the only judgment or decree, which we find in the record, is the judgment for the defendants in the action of ejectment."

" *If* this view be correct, the judgment of the Supreme Court is one to review which a writ of error may be prosecuted."

The case was accordingly retained for a hearing in regular course. It was now reached, and was argued fully on its merits, the true nature of this judgment or decree of affirmance and of every part of the matter of the jurisdiction being, however, again very fully discussed on a minute examination of all parts of the record, with a presentation of the Code of Nevada.

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THE CHIEF JUSTICE delivered the opinion of the Court.

This case was before us at the last term, upon motion to dismiss the writ of error.

The suit, originally brought in the District Court for the Territory of Nevada, was an action of ejectment for an undivided interest in a mining claim.

Upon trial, there was a verdict and judgment for the plaintiff. Subsequently, and in accordance with the statute of Nevada, a motion for a new trial was made, which was denied. An appeal was then taken to the supreme court of the territory, which gave judgment affirming the judgment or decree of the district court.

We were asked to dismiss the writ upon the ground that this judgment affirmed only the order of the district court denying the motion for new trial, and was therefore not reviewable here.

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On opening the record, however, it was apparent that the judgment of the appellate court was, in terms, an affirmance of the judgment or decree of the district court, and that the only judgment of that court, properly so called, was the judgment for the defendants in the action of ejectment.

A majority of the court declined to look beyond the plain import of the judgment of affirmance and examine the record farther in order to ascertain whether there was anything in it which would limit its effect to an affirmance of the order denying the motion for a new trial.

The motion to dismiss was therefore overruled, but we then observed that if the judgment of the supreme court was in substance and effect nothing more than such an affirmance, this Court could not review it, and after stating the familiar rule that this Court will not revise the exercise of discretion by an inferior court in granting or refusing new trials, we said further:

"The circumstance that the discretion was exercised under a peculiar statute by an appellate court and upon appeal cannot withdraw the case from the operation of the principles which control this Court."

The cause has now been regularly heard and fully argued, and the first question for our consideration is that which was left undecided at the last term: "What is the true nature and effect of the judgment of the territorial supreme court?"

The record shows an action of ejectment by petition, answer, and replication -- the form sanctioned by territorial law -- regularly prosecuted in a territorial district court, resulting in a verdict and judgment for the defendants.

The record shows also a motion for new trial overruled and a notice by the plaintiffs to the defendants of an appeal from the order overruling that motion to the supreme court of the territory, and a bond of the plaintiffs on appeal reciting the appeal as made from that order.

Under the laws of Nevada, appeals are allowed from orders granting or refusing new trials, but it was necessary, before an appeal could be perfected, that a statement of the case showing the grounds of appeal should be filed. A

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statement which had been used on the motion for new trial was accordingly filed under a stipulation signed by both parties which recited the notice of appeal as an appeal from the overruling order.

There is no paper in the record which indicates that either party understood that anything was before the appellate court except that order. Nothing else, as it seems, was intended to be brought before it by the appellants, and nothing else

was understood to be by the appellees.

If, then, the decision of that court is anything more than an affirmance of the order of the district court, it is not what was expected by either party. It must not, therefore, be held to be more unless the principles of legal construction clearly require it.

Its terms, indeed, import an affirmance of the original judgment; but are they incompatible with a more limited sense? The decision is loosely and inaccurately expressed. It purports to affirm a judgment and decree, but there was no decree, in any proper sense of the word, in the district court. The words "judgment and decree" must therefore have been used as equivalents, and "judgment" in such a connection may well have been regarded as the equivalent of "decision or order."

It is probable, we think, that the court intended that its judgment should be understood as a simple affirmance of the order below. And such seems to have been the understanding of the appellants, for in their prayer for a citation on appeal to this Court, they describe their "appeal" to the supreme court of the territory as "taken for the reversal of the order" in the district court, and state that judgment was given "affirming the order." We impose, then, no impossible or even unnatural sense on the terms of the judgment, especially when considered in connection with the whole record, when we hold it, as we do, to be nothing else than an affirmance of the order overruling the motion for new trial.

But it was argued at bar with ingenious ability that this judgment, if admitted to be merely an affirmance of the

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order of the district court, was nevertheless a final judgment, subject to review on a writ of error by this Court. It was insisted that under the peculiar legislation of Nevada, an appeal from an order denying a motion for a new trial carried the original judgment and the whole cause before the appellate court, and that the decision upon appeal operated as a judgment reversing or affirming the judgment below.

But we do not so understand that legislation. The statutes of Nevada directed the judgment to be entered within twenty-four hours after verdict unless there was a stay of proceeding, and the direction of the statutes was observed in this case. But those statutes also provided for a motion for new trial after judgment, and the effect of granting the motion was to vacate the judgment and verdict, as in the ordinary practice it would vacate the verdict only, and so prevent the entry of judgment. With this exception, the proceeding on motion for new trial in the court of original jurisdiction was not distinguishable in any important respect from the like proceeding in the district and circuit courts of the United States. There was, however, another peculiarity in respect to the finality of the proceeding. In the latter courts, the decision upon such a motion is without appeal. In the District Court of Nevada, an appeal might be taken to the supreme court, and, as we have seen, in case of such appeal, a statement showing the grounds of it must be filed in order to perfect the proceeding.

But there is nothing in the statutes which gives, in terms, any other or different effect to the reversing or affirming order of the appellate court than would attend the allowance or denial of the motion in the inferior court. Nor is there anything in the statutes which seems intended to give by implication any such other or different effect. On the contrary, the statutes provide for the ordinary mode of reversing the judgments of inferior courts by appellate tribunals upon writs of error, which would hardly have been done if it was intended to give the same effect to appeals from decisions upon motions for new trials.

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Decisions on such motions by the district courts were required to be made upon such grounds of law and facts as the case might furnish, and upon like grounds were the decisions of the supreme court upon appeal required to be made. We cannot doubt that the decision of the district court in such a case was the exercise of a discretion not reviewable in the territorial supreme court, except under an express statute of the territory. And we are obliged to think that the decision of the appellate court was equally an exercise of discretion upon the law and the facts,

and not reviewable here in the absence of any act of Congress authorizing appeals in such cases.

This view of the preliminary question makes it unnecessary to examine the other important points in the case, which have been so ably and exhaustively discussed by counsel. We think the judgment of the supreme territorial court only an order affirming the order of the district court denying a motion for new trial, and that it is therefore not reviewable here on error.

Writ dismissed.

* *Sparrow v. Strong,* 3 Wall. 105.