

Walker Vs. Villavaso

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Court : US Supreme Court

Decided On : 1867

Appeal No. : 73 U.S. 124

Appellant : Walker

Respondent : Villavaso

Judgement :

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Walker v. Villavaso

73 U.S. (6 Wall.) 124

ERROR TO THE SUPREME

COURT OF LOUISIANA

SYLLABUS

1. When the question is whether this Court has jurisdiction under the twenty-fifth section of the Judiciary Act, nothing out of the record certified to the court can be taken into consideration.

2. Accordingly, when it was sought by counsel to bring before it as matter of which it would take judicial cognizance, the fact that a judgment in a primary state court of the South -- affirmed in the highest state court after the restoration of the federal authority -- was rendered after the state was in proclaimed rebellion, and by judges who had sworn allegiance to the rebel confederacy, the record not disclosing the fact that the want of authority under the federal Constitution of such primary court was in such court drawn in question and decided against -- this Court dismissed the writ.

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3. When the proceeding is according to the law of Louisiana, the case within the section must appear by the statement of facts and decision, as usually made in such cases by the court.

This was a motion by Mr. Janin to dismiss the writ of error. The suit -- a suit instituted by Villavaso against Walker in the District Court of the Parish of St. Bernard, Louisiana -- was one of the ordinary sort for foreclosure and sale under a mortgage according to the practice prevailing in Louisiana. Between the 25th January and the 17th August, 1861, Louisiana had passed an "ordinance of secession" from the Union, adopted the Constitution of the Rebel states, required all officeholders to swear allegiance to it, and had been proclaimed in a state of insurrection by the President of the United States. During this term, to-wit, on the 18th October, 1861, an order of sale of the mortgaged premises was made. It was made by the same judges who had sat before the secession, and who remained in office apparently until May, 1865, when loyal judges were appointed under act of Congress. The supreme court of the state having, in 1867, affirmed the decree of foreclosure made in the parish court, the affirmance was brought here as within the 25th section of the Judiciary Act, which declares that where a controversy in a state court draws in question an authority exercised under the United States, and the decision is against its validity, the matter may be reviewed here, but declares also that no other cause shall be regarded as ground of reversal, than "such as appears on the face of the record." No question apparently about the legality of the

court had been raised on the trial or decided by the parish court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The suit in the district court for the Parish of St. Bernard was an ordinary one for seizure and sale under a mortgage according to the practice prevailing in the courts of Louisiana. Indeed, this is hardly denied by the learned counsel for the plaintiff in error, but he relies on some infirmity in the jurisdiction of the court to hear and determine the case, and refers in support of it to certain insurgent proceedings in the State of Louisiana, against the then existing government, and to acts of Congress on the subject. But this question as to the competency of the court was not made on the trial, nor did the court below consider or determine any such question.

In order to give this Court jurisdiction under the twenty-fifth section, it must appear on the record itself to be one of the cases enumerated in that section, and nothing out of the record certified to the court can be taken into consideration, and when the proceeding is according to the law of Louisiana, the case within the section must appear by the statement of facts and decision, as usually made in such cases by the court. * No such case or question appears on the present record.

Writ dismissed.

* [*Armstrong v. Treasurer*](#), 16 Pet. 285.