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**Prentice Vs. Pickersgill**

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**SooperKanoon Citation** : sooperkanoon.com/81550

**Court** : US Supreme Court

**Decided On :** 1867

**Appeal No.** : 73 U.S. 511

**Appellant** : Prentice

**Respondent** : Pickersgill

**Judgement** :

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**Prentice v. Pickersgill**

**73 U.S. (6 Wall.) 511**

*ERROR TO THE CIRCUIT COURT FOR*

*THE WESTERN DISTRICT OF PENNSYLVANIA*

## SYLLABUS

A judgment affirmed under Rule 23 of the court, with ten percent damages, it appearing from the character of the pleadings, that the writ of error must have been taken only for delay.

The twenty-third rule of this Court declares that

"In all cases where a writ of error shall delay the proceedings on

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the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages shall be awarded at the rate of ten percentum per annum on the amount of the judgment, and the said damages shall be calculated from the date of the judgment in the court below until the money is paid."

With this rule in force, Prentice sold to Pickersgill a lot of ground having a mortgage of $5,000 on it, Pickersgill paying $1,500 in cash and Prentice covenanting to pay off the mortgage. The covenant not being kept and the property having been sold on a foreclosure of the mortgage, Pickersgill sued Prentice on the covenant. Prentice pleaded that as "he claimed, supposed, and understood" the covenant was satisfied and discharged, he having paid Pickersgill $1,500 back, but that a dispute arising between the parties as to whether anything more ought to be paid, the matter was agreed to be left to one Henry, who said and decided that $1,500 more ought to be paid.

Replication that there was no such reference, that Henry did not make any award or decision, and that the said defendant did not pay to the plaintiff the sum of $1,500 or any sum of money for or on account of any award or determination, concluding to the country.

To this replication, after issue joined and when the cause was on the trial list and ready for trial, Prentice demurred, assigning for cause that the replication did not properly traverse the plea, that it introduced new matter in the allegation that the defendant did not pay to the plaintiff $1,500 or any sum of money for or on account of the award, which allegation ought to have concluded with a verification, and not to the country, and that it was colorable, uncertain &c.;

The demurrer being overruled, the case went to trial before Grier, J., when the defendant wholly failing to prove any reference or submission or award by Henry,

the jury found for the plaintiff $2,618, the plaintiff having been credited by them with the $1,500 paid back. Judgment having gone accordingly, a writ of error was taken by the defendant to this Court, no counsel appearing for him in this Court, nor any brief being filed.

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THE CHIEF JUSTICE:

The writ of error in this case was sued out merely for delay. The judgment will therefore be affirmed under the twenty-third rule, with ten percentum damages on the amount of the judgment below.

*Affirmed accordingly.*

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