Parmelee Vs. Lawrence

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Court : US Supreme Court

Decided On : 1870

Appeal No. : 78 U.S. 36

Appellant : Parmelee

Respondent : Lawrence

Judgement :

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Parmelee v. Lawrence

78 U.S. (11 Wall.) 36

ON MOTION TO DISMISS WRIT OF ERROR

TO THE SUPREME COURT OF ILLINOIS

SYLLABUS

1. To authorize the reexamination of a question brought here as within the 25th section of the Judiciary Act, the conflict of the state law with the Constitution of the United States and a decision by a state court in favor of its validity must appear on

the face of the record. And the question must have been necessarily involved in the decision, so that the state court could not have given a judgment without deciding it. *Railroad Company v. Rock,* 4 Wall. 177, affirmed.

Accordingly, where no question of such conflict was made in the pleadings, nor in the evidence, nor at the hearing in the court where the suit was brought; and the question was first made in the Supreme Court where the certificate of the presiding judge showed only that it was taken in argument and overruled, the writ was dismissed.

2. The office of the certificate from the Supreme Court, as it respects the federal question, is to make more certain and specific what is too general and indefinite in the record, but it is incompetent to originate the question within the true construction of the 25th section.

On motion to dismiss a writ of error to the Supreme Court of Illinois, brought here on the assumption that the case was shown to be within the 25th section of the Judiciary Act, the idea of the plaintiff it error having been that a statute of the State of Illinois on the subject of interest was brought in question in this suit and was upheld by the court below, though repugnant to the Constitution of the United States as impairing the obligation of contracts.

It appeared by the record that Parmelee & Co. filed their bill in chancery in the Superior Court of Chicago against one Lawrence, in which they sought to enforce the specific performance of what they alleged to be a contract by Lawrence to convey to them certain lots in Chicago for the consideration of $50,000 and interest at 10 percent, free and clear of encumbrance. The bill set forth that they were

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ready to pay on receiving such a conveyance, but that Lawrence was unable to make title to the land; that he had demanded the money, and was threatening to eject them.

Lawrence in his answer set up that the transaction was not, as represented in the bill, a naked agreement to convey, but was a mortgage to secure the loan of $50,000, and he tendered a reconveyance on payment of the principal and interest. He also filed his cross-bill for a foreclosure of the mortgage in the usual form.

The complainants, in answer to this cross-bill, asserted as before that the agreement had been simply an agreement to sell, but further insisted that if the agreement was a mortgage, then the loan was usurious and that Lawrence thereby forfeited under the laws of Illinois threefold the whole interest so received. They also set up, that the rate of interest was 12 percent, and that they had given Lawrence their bond for the 2 percent interest above the ten as already mentioned.

The cause was finally heard on the cross-bill, answer, replication, and proofs in the case. The superior court decreed that the plaintiffs should pay to the defendant the amount of the loan remaining due, with 6 percent interest from date of the last payment, but he to retain the 12 percent already paid. The defendant appealed to the supreme court, which reversed this decree, holding that the usurious interest already paid should be credited on the principal and that interest should be allowed at the rate of 10 percent. The cause was remanded to the superior court for a new trial, where a decree was rendered in conformity with the above opinion, and this was afterwards affirmed by the supreme court.

The record showed that the litigation resulted in a question as to the rate of interest to be allowed to Lawrence, the lender, according to the laws of Illinois, and that neither in the pleadings, nor in the evidence, nor at the hearing in the superior court was any question made as to the validity of any statute of the state on the ground of its repugnancy to the Constitution of the United States. This question was

first made before the supreme court on the appeal. The certificate of the presiding judge showed that the objection was taken in the argument there and overruled, and this furnished the only evidence that any federal question was raised in the case.

MR. JUSTICE NELSON delivered the opinion of the Court.

In *Lawler v. Walker,* [Footnote 1] it is said that the 25th section of the Judiciary Act required something more definite than the certificate of the supreme court to give this Court jurisdiction.

The conflict of the state law with the Constitution of the United States and a decision by a state court in favor of its validity must appear on the face of the record before it can be reexamined in this Court. It must appear in the pleadings of the suit or from the evidence in the course of the trial, in the instructions asked for, or from exceptions taken to the rulings of the court. It must be that such a question was necessarily involved in the decision and that the state court would not have given a judgment without deciding it. The decision in this case was approved, and applied in *Railroad Company v. Rock.* [Footnote 2] The certificate was as full in that case as in the present, but it was the only evidence of the fact that a federal question had been presented.

The judge, in delivering the opinion of the Court in that case, observed that

"it is probable that counsel, in the argument of the case in the Supreme Court of Iowa, insisted that these matters were involved, and that the chief justice felt bound to certify, when requested, that they were drawn

in question. But if the record [he proceeds] does not show that they were necessarily drawn in question, this Court cannot take jurisdiction to reverse the decision of the highest court of a state upon the ground that counsel brought them in question in argument."

We will add if this Court should entertain jurisdiction upon a certificate alone in the absence of any evidence of the question in the record, then the supreme court of the state can give the jurisdiction in every case where the question is made by counsel in the argument. The office of the certificate, as it respects the federal question, is to make more certain and specific what is too general and indefinite in the record, but is incompetent to originate the question within the true construction of the 25th section.

Motion to dismiss granted.

[Footnote 1]

55 U. S. 14 How. 152.

[Footnote 2]

71 U. S. 4 Wall. 177.