

RankIn Vs. State

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Court : US Supreme Court

Decided On : 1870

Appeal No. : 78 U.S. 380

Appellant : Rankin

Respondent : State

Judgement :

Rankin v. State - 78 U.S. 380 (1870)

U.S. Supreme Court Rankin v. State, 78 U.S. 11 Wall. 380 380 (1870)

Rankin v. State

78 U.S. (11 Wall.) 380

I N ERROR TO THE SUPREME

COURT OF TENNESSEE

SYLLABUS

Where, on an indictment for a capital offense, the supreme court of a state reverses a judgment of a court below under such circumstances as that the case must go back for trial on its merits, the judgment is not a "final judgment," and

therefore is not capable of being brought here under the 25th section of the Judiciary Act.

An indictment had been found in one of the state courts of Tennessee at August Term, 1865, against a certain Rankin and ten other persons named in the indictment charging them with the murder of one Thornhill on the first of June preceding. The defendant, in August Term, 1866, pleaded that on the day mentioned in the indictment, he was in the military service of the United States, in the military district of East Tennessee, being first lieutenant of company B of the 9th Tennessee Cavalry, and bound to obey all lawful orders of his superiors, "then and there existing and being an insurrection and civil war in said military district," and that on the 5th day of October thereafter he was arraigned

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and put on trial at Chattanooga, before a general court-martial, for the same identical crime with which he was charged by the indictment, and was acquitted thereof; and he set forth the record and proceedings of the court-martial. To this plea the attorney general filed a replication, denying the existence of the record and the continuance of the war, and alleging fraud in the procurement of the trial by court-martial. The defendant demurred, and the court sustained the demurrer. The attorney general then filed a new replication, the case was tried, and the defendant was acquitted. Writ of error being brought, the supreme court of the state reversed the decree of acquittal on the ground that the defendant's plea was insufficient, and remanded the case to the circuit court for trial. The effect of this judgment was to overrule the defendant's plea and to require him to plead over to the indictment.

The case was now brought here by Rankin under the 25th section of the Judiciary Act, which gives a writ of error to this Court from the highest court of the state on "final judgments" in certain cases specified in the section.

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The difficulty with the case as brought before us is that the judgment was not a final one in the case. This Court, under the 25th section of the Judiciary Act, can only take cognizance of final judgments of the state courts. And although the Court has been liberal in its construction of the statute as to what judgments are final, yet the judgment in this case cannot be deemed such by any reasonable stretch of construction. It is a rule in criminal law *in favorem vitae* in capital cases that when a special plea in bar is found against the prisoner, either upon issue tried by a jury, or upon a point of law decided by the court, he shall not be concluded or

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convicted thereon, but shall have judgment of *respondeat ouster*, and may plead over to the felony the general issue, not guilty. [*](#) And this is the effect of the judgment of reversal rendered by the Supreme Court of Tennessee in this case, so that in no sense can that judgment be deemed a final one. The case must go back and be tried upon its merits, and final judgment must be rendered before this Court can take jurisdiction. If after that it should be brought here for review, we can then examine the defendant's plea and decide upon its sufficiency.

Writ of error dismissed.

* 4 Blackstone's Commentaries 338.