

Hurley Vs. Street

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Court : US Supreme Court

Decided On : 1871

Appeal No. : 81 U.S. 85

Appellant : Hurley

Respondent : Street

Judgement :

Hurley v. Street - 81 U.S. 85 (1871)

U.S. Supreme Court Hurley v. Street, 81 U.S. 14 Wall. 85 85 (1871)

Hurley v. Street

81 U.S. (14 Wall.) 85

MOTION TO DISMISS A WRIT OF ERROR

TO THE SUPREME COURT OF IOWA

SYLLABUS

In this case, the court dismissing, as involving no federal question, an appeal from the supreme court of a state taken on a false assumption that the case fell within the 25th section of the Judiciary Act of 1789, call the attention of the bar of the

court generally to the fact that much expense would be saved to suitors if before they advised them to appeal from decisions of the highest state courts to this one, they would see that the case was one of which this Court had cognizance on appeal.

Hurley sued Street to recover a lot of ground at Council Bluff. The defendant set up that the plaintiff had no title himself, and then relied on a tax sale, statute of limitation, and various other defenses. The plaintiff demurred to four of these defenses, assigning among other grounds of demurrer that "the law authorizing the tax sale was unconstitutional and void." The court overruled the demurrer, and the parties went to trial. On the trial, much evidence was given about the character of the tax sale, the notice given &c., tender of redemption money, and other matters relating to the regularity of what had been done at the sale, but nothing of a different kind.

The court found for the defendant, and the defendant appealed to the supreme court of the state. The same sort of questions were there raised, and the same passed on, the supreme court finally affirming the decree. From that decree the case was brought here under an assumption that it came within the 25th section of the Judiciary Act, quoted *supra*, pp. [81 U. S. 5](#) -6.

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THE CHIEF JUSTICE delivered the opinion of the Court.

To give jurisdiction to this Court upon error to the highest court of the state in which a judgment or decree has been rendered, it is necessary to show that some question under the 25th section of the Judiciary Act was made and decided, of which this Court has cognizance by writ of error on appeal. This has been frequently ruled. *

It does not appear from the record that any such question was either made or decided.

Much expense to suitors would be spared if counsel would attend to the principle above stated, and as we have said, frequently laid down, before advising their clients to resort

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to the appellate jurisdiction of this Court from the decisions of the state courts. The writ of error must be

Dismissed.

* [Crowell v. Randell](#), 10 Pet. 368; [Armstrong v. Treasurer](#), 16 Pet. 281; Phillips's Practice, 108.

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