

Pennywit Vs. Eaton

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Court : US Supreme Court

Decided On : 1872

Appeal No. : 82 U.S. 382

Appellant : Pennywit

Respondent : Eaton

Judgement :

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Pennywit v. Eaton

82 U.S. (15 Wall.) 382

ERROR TO THE SUPREME

COURT OF ARKANSAS

SYLLABUS

Judgment affirmed with 10 percent damages in a case brought here in disregard of the law as already settled by precedents of the Court.

On the 3d day of January, 1862, during the late rebellion, the Fourth District Court of New Orleans (then held by a judge appointed by a military governor of Louisiana) issued a writ of attachment against the steamer *Thirty-fifth Parallel*, of which one Pennywit and certain other persons were owners, each owning a part. These owners had given a promissory note at New Orleans, on the 8th day of October, 1861, for \$6,795.71, to Eaton & Betterton. Bond with sureties was given, and the attachment was released. Judgment was subsequently rendered against the defendants personally for the amount of the note with interest. Suit was instituted upon this judgment against Pennywit in a court of Pulaski County in Arkansas. The defense was that at the time of the original suit, Pennywit was not a citizen of Louisiana and had not been served with process, but that he was a citizen of Arkansas, then domiciled there, and had ever since remained such. The judgment of the Pulaski County Court was for the defendant, and on appeal taken by the plaintiffs the judgment was reversed in the supreme court of the state. In the meantime, Pennywit died, and the suit was revived against his executors, and judgment was rendered against them in pursuance of the mandate of the supreme court. This latter judgment was affirmed in the supreme court, and the case was brought by writ of error to this Court.

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THE CHIEF JUSTICE delivered the opinion of the Court.

Two questions are presented, both of which have been adjudicated. The first relates to the proceeding of the court of Louisiana by which the original judgment was rendered. It is claimed that this was a proceeding in admiralty. It was in fact a proceeding against the persons of the defendants instituted by attachment. Such a suit, we have held, is not proceeding in admiralty. [[Footnote 1](#)]

The second question relates to the validity of the appointment of the judge who presided in the court of the Fourth District of New Orleans. His commission came from the military governor, who was appointed by the President during the late war. We have already decided that such appointments were within the power of

such a governor. [[Footnote 2](#)]

There can have been no good ground for the writ of error under the former adjudications of this Court, and there is no attempt to question these adjudications. We are obliged, therefore, to regard this writ of error as prosecuted for delay.

The judgment of the Supreme Court of Arkansas must be

Affirmed with ten percent damages.

[[Footnote 1](#)]

[The Genesee Chief v. Fitzhugh](#), 12 How. 443; [Jackson v. Steamboat Magnolia](#), 20 How. 296; [Taylor v. Carryl](#), 20 How. 583; [The Hine v. Trevor](#), 4 Wall. 555; [The Belfast](#), 7 Wall. 624; [Leon v. Galceran](#), 11 Wall. 185.

[[Footnote 2](#)]

[Handlin v. Wickliffe](#), 12 Wall. 173; [Leitensdorfer v. Webb](#), 20 How. 177; [The Grapeshot](#), 9 Wall. 133.

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