

Moses Vs. the Mayor

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Court : US Supreme Court

Decided On : 1872

Appeal No. : 82 U.S. 387

Appellant : Moses

Respondent : The Mayor

Judgement :

Moses v. The Mayor - 82 U.S. 387 (1872)

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Moses v. The Mayor

82 U.S. (15 Wall.) 387

ON MOTION TO DISMISS FOR

WANT OF JURISDICTION

SYLLABUS

The rule redeclared that a decree of the highest court of a state which, merely dissolving an injunction granted in an inferior court, leaves the whole case to be disposed of on its merits is not a "final decree," and therefore does not come

within the 25th section of the Judiciary Act of 1789 or the 2d section of the act of 1867, giving revisory powers to this Court over final decrees or judgments rendered in certain cases in such highest court.

Moses and another had filed their bill in a state court of Alabama asserting that a law of that state authorized them, on payment of a certain sum, to establish a lottery; that they had paid the sum and established a lottery accordingly. They now complained that they had been several times arrested

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by the mayor's police, charged with gambling, and had been thus obstructed in the pursuit of their business. The bill then prayed an injunction to restrain the mayor from interfering in their "carrying on the scheme of the roulette table and ball, or in the use of the scheme of the revolving oblong box and balls on the principle of the game called keno," &c.; The chancellor granted the injunction as prayed for. The answer of the mayor denied among other things that the complainants had fulfilled the conditions of the act under which they claimed the right of lottery, and asserted that, under pretext of its authority, they were carrying on a corrupting system of gambling, which it was admitted the mayor was determined to put down. It insisted that after a default of payment as required by the act, while it was still due and before it was paid, the legislature repealed the said act under which the complainants claimed this right to carry on the lottery or "system of gambling" described in the bill, and further, that the mode used in conducting this business was unauthorized by the act.

Upon the coming in of the answer, a motion was made to dissolve the preliminary injunction, but this was denied. An appeal was taken from this order refusing to dissolve to the supreme court of the state, and the order of the chancery court was reversed and the said injunction dissolved. From this decree Moses and the other took an appeal to this Court under the assumption that the case came within the first paragraph of the 25th section of the Judiciary Act of 1789 (quoted supra, p. [82 U. S. 3](#)), or the similar section of the act of 1867, [*](#) for that the complainants having paid the sum required by the act authorizing the lottery had "a contract"

with the state, and that the subsequent act of the state repealing the former one impaired the obligation of that contract.

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THE CHIEF JUSTICE:

The motion to dismiss is rested upon two grounds: first that none of the questions specified in the Judiciary Act of 1867 was raised in the Supreme Court of Alabama; second, that there was no final judgment.

As we are clearly of opinion that we have no jurisdiction of the case for the second reason, it is unnecessary to consider the first. Obviously there was no final decree. The only decree rendered in the Supreme Court was that the injunction of the court below be dissolved. That decree was in no sense final. It left the whole case to be disposed of upon its merits. This has been frequently decided.

Writ dismissed.

* See the two acts, [79 U. S. 12](#) Wall. 689.

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