

Moore Vs. Mississippi

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SooperKanoon Citation : sooperkanoon.com/82673

Court : US Supreme Court

Decided On : 1874

Appeal No. : 88 U.S. 636

Appellant : Moore

Respondent : Mississippi

Judgement :

Moore v. Mississippi - 88 U.S. 636 (1874)

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Moore v. Mississippi

88 U.S. (21 Wall.) 636

ERROR TO THE SUPREME

COURT OF MISSISSIPPI

SYLLABUS

1. Where a case is brought here from the highest court of the state under the assumption that it is within section 709 of the Revised Statutes, if the record shows upon its face that a federal question was not necessarily involved, and does

not show that one was raised, this Court will not go outside of it -- to the opinion or elsewhere -- to ascertain whether one was in fact decided.

2. Hence, when a record from such a court disclosed the fact that a person had been indicted on an indictment which contained certain counts charging him with selling lottery tickets and certain others charging him with keeping a gaming table, both in violation of statute, and that he pleaded in bar to the whole indictment a statute of earlier date which went to justify his issuing of the lottery tickets but not to justify his keeping of a gaming table, and the plea, on demurrer, was held bad, and on his then pleading not guilty, he was found guilty, generally, and a proper judgment entered against him; this Court held -- there having been no bill of exception taken at the trial and no error specifically stated in the record -- that it would not look out of the record -- into the opinion of the court (made part of the transcript) or elsewhere -- to see that the defendant had set up that the statute under which he was indicted and convicted violated the obligation, of a contract made by the prior one, which he had set up in bar to the whole indictment. The record showing that the plea had answered but part of the indictment, the judgment had a proper base for it, and no other matter being properly alleged for error it was rightly to be affirmed.

The present Constitution of Mississippi, ratified in 1869, ordains,

"That the legislature shall not authorize any lottery, nor shall any lottery *heretofore authorized* be permitted to be drawn or tickets therein to be sold."

And to give effect to this provision, an act of the legislature of the state, passed in 1870, enacted,

"That every lottery and gift enterprise, of whatever name or description, *regardless of the authority of law heretofore creating the same*, be, and the same is hereby prohibited, and declared a nuisance and misdemeanor, against the public policy of the state, and that whoever is concerned . . . in any way or manner whatsoever therein . . . shall upon conviction be fined,"

&c.;

This statute being on the statute book, Moore was indicted in one of the circuit courts of the state. The indictment charged him in five counts with selling lottery tickets and *in two with keeping a gaming table*. He pleaded in bar to the *whole* indictment

"that in issuing the ticket or certificate mentioned and specified in the indictment, he was acting as the agent of the Mississippi Agricultural, Educational, and Manufacturing Aid Society, a body politic and corporate, which was duly incorporated by an act of the Legislature of the State of Mississippi, approved February 16, 1867, and that prior to the adoption of the present Constitution of the state, said Mississippi Agricultural, Educational, and Manufacturing Aid Society fully complied with all the provisions of said act of incorporation."

The charge of issuing tickets or certificates was made, as already said, only in five out of the seven counts in the indictment. The state demurred to the plea because 1, it showed no valid bar to the prosecution and 2, it amounted to the general issue, and nothing more. The court sustained the demurrer.

Moore then pleaded not guilty and went to trial. The jury returned a verdict of guilty generally, and the proper judgment was entered thereon. No bill of exceptions was taken at the trial, and no error was specifically stated on the record.

The case was taken to the supreme court of the state by writ of error, and the judgment of the court below was there affirmed. The record proper did not show what errors were assigned in the Supreme Court. Appended to the transcript of the record, or as a part of it, was the opinion of the supreme court of the state preceding the judgment now brought here on error.

The present writ of error was prosecuted under section 709 of the Revised Statutes, [[Footnote 1](#)] to obtain a reexamination of the case.

THE CHIEF JUSTICE delivered the opinion of the Court.

The only error relied upon in the argument here relates to the action of the circuit court of the state in sustaining the demurrer to the plea.

We are not required to reexamine the judgment of a state court simply because a federal question may have been decided. To give us jurisdiction, it must appear that such a question "was necessarily involved in the decision." [[Footnote 2](#)] The old rule, established by early cases, restricted our inquiries as to the existence and decision of the question "to the face of the record." Previous to the Act of 1867, [[Footnote 3](#)] it was

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uniformly held, except as to the State of Louisiana, where a peculiar practice prevails, that we would not look into the opinions of the courts to ascertain what had been decided. [[Footnote 4](#)] Since that act, however, in *Murdock v. Memphis*, [[Footnote 5](#)] we intimated that we might under some circumstances examine those opinions, when properly authenticated, as far as might be useful for the purpose of ascertaining that fact, but at the same time were careful to say that,

"after all, the record of the case, its pleadings, bills of exceptions, judgments, evidence, in short, its record, whether it be a case in law or equity, must be the chief foundation of inquiry; and while we are not prepared to fix any absolute limit to the sources of inquiry under the new act, we feel quite sure it was not intended to open the scope of it to any loose range of investigation."

We are not now called upon to fix this limit. It is sufficient for all the purposes of this case to hold as we do, that if the record shows upon its face that a federal question was not necessarily involved and does not show that one was raised, we will not go outside of it, to the opinion or elsewhere, to ascertain whether one was in fact decided.

In this case, the record shows clearly upon its face that the decision of such a question was not required. The indictment was for selling lottery tickets and

keeping a gaming table. The plea, although to the whole indictment, met only part of it. The charge of keeping a gaming table was left entirely unanswered.

A plea to be good as a bar to the whole indictment must meet the whole case. If it does not it will be held bad upon demurrer.

The demurrer to this plea was, therefore, properly sustained upon this ground. Such being the case it is a matter of no consequence to us that the court may have gone further and decided a federal question. The decision of such a

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question was not necessarily involved in the determination of the cause.

It follows that this writ of error must be

Dismissed.

[[Footnote 1](#)]

See the section in the Appendix.

[[Footnote 2](#)]

[*Armstrong v. Treasurer of Athens County*](#), 16 Pet. 282.

[[Footnote 3](#)]

Revised Statutes 709.

[[Footnote 4](#)]

[*Gibson v. Chouteau*](#), 8 Wall. 317; [*Rector v. Ashley*](#), 6 Wall. 142; [*Williams v. Norris*](#), 12 Wheat. 117; [*Railroad Company v. Marshall*](#), 12 How. 165; [*Cousin v. Blanc*](#), 19 Wall. 202.

[[Footnote 5](#)]

[87 U. S. 20](#) Wall. 633.

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