

Gregory Vs. Mcveigh

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SooperKanoon Citation : sooperkanoon.com/82744

Court : US Supreme Court

Decided On : 1874

Appeal No. : 90 U.S. 294

Appellant : Gregory

Respondent : Mcveigh

Judgement :

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Gregory v. McVeigh

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*ON MOTION TO DISMISS, FOR WANT OF JURISDICTION, A WRIT OF
ERROR TO THE CORPORATION COURT OF ALEXANDRIA, VIRGINIA*

SYLLABUS

1. Where, by the laws of a state, an appeal can be taken from an inferior court of the state to the highest court of the same only with leave of this latter or of a judge thereof, and that leave has been refused in any particular case, in the regular

order of proceeding -- the refusal not being the subject of appeal to this Court -- a writ of error, if there be in the case a "federal question," properly lies, under section 709 of the Revised Statutes, to the inferior court, and not to the highest one.

2. A federal question exists when -- in a suit by a person who seeks to recover property on the ground that a judgment and execution on it by a court of the United States, interpreting a statute of the United States, has deprived him of the property in violation of the first principles of law -- the defendant sets up a title under that judgment and execution and the decision is against the title so set up.

The case was thus:

Towards the close of the late rebellion, the United States filed a libel of information, under the Act of 17th July, 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes" -- the act commonly known as "the Confiscation Act" -- against certain real estate in Alexandria, Virginia, a state then within the government lines, belonging to one McVeigh, a person then in the rebel lines, to confiscate it.

This act authorized a seizure by the President of the property in the then loyal states of any person giving aid and comfort to the rebellion, and directed that after the property had been seized, proceedings *in rem* should be instituted in any district court of the United States, "which proceedings," said the act, "shall conform as nearly as may be to proceedings in admiralty *or revenue cases*." The act further directed that if, on such proceedings had, the property, whether real or personal, should be found to belong to a person giving aid and comfort to the rebellion, the same should be condemned "as enemies' property," and become

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the property of the United States, and be disposed of as the court should direct.

This "Confiscation Act" was the subject of interpretation by this Court in several cases which arose in December Term, 1867, [[Footnote 1](#)] and in which it was

adjudged that where the proceedings under the act relate to a seizure of *land*, they present a case of common law jurisdiction, and are to be conformed in respect to trial by jury to the course of the common law.

In the particular proceedings now before the Court, that is to say, the proceedings against McVeigh's land, McVeigh appeared by attorney, interposed a claim to the property, and filed an answer. The District Attorney of the United States submitted a motion that the appearance, answer, and claim should be stricken from the records for the reason that the respondent was a resident of a place specified, within the Confederate lines, and a rebel. The court (Underwood, J.) granted this motion. A decree *pro confesso* was subsequently entered, the life interest of McVeigh in the property condemned and ordered to be sold, and sold accordingly, one Gregory being the purchaser. McVeigh then brought the case on error to this Court; it is reported in 11th Wall. page [78 U. S. 267](#) . The Court, by SWAYNE, J., then said:

"The district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no *locus standi* in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and our civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice."

This Court accordingly reversed the judgment and remanded the case with directions to proceed "in conformity to law."

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With this judgment and opinion in his hand, McVeigh now brought ejectment against Gregory, the purchaser, in the Corporation Court of Alexandria, which was the proper court to sue in, to recover the lands in which his life estate had been sold, under the decree in the proceedings under the Confiscation Act.

On the trial, the defendant set up the purchase made under the decree in the suit in confiscation, and requested the court to charge that the decree of condemnation divested McVeigh of his life estate. The court refused so to charge, and, contrariwise, charged that

"The sentence of condemnation was void, and the plaintiff was not divested of any part of his title in the premises by reason of the sentence, sale, and deed of the marshal, because the answer, claim, and appearance of McVeigh were struck from the files by the court before the decree was entered, and the said McVeigh was thus denied a hearing, and his property condemned without any opportunity of defense on his part."

The defendant excepted to this charge.

Judgment was rendered, of course, in favor of McVeigh, the plaintiff.

The defendant then addressed a petition to the different *judges* of the Supreme Court of Appeals, of Virginia, praying for a writ of error and supersedeas to the said judgment. The petition was not to the court in its corporate capacity.

The provisions of statute in Virginia [[Footnote 2](#)] on this subject of writ of error &c., to the court just named are as follows:

" *When and in what case petition for appeal may be presented, time* "

" *excluded from the computation.* "

"SECTION 2. Any person who thinks himself aggrieved by an order in a controversy concerning the . . . possession of title of property to be changed, or adjudicating the principles of a cause, or to any civil case wherein there is a final judgment, decree, or order, may present a petition . . . for a writ of error or supersedeas to the judgment or order. "

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" *Record exhibited with petition; how it is made up; what shall not be copied.* "

"SECTION 5. With such petition there shall be a transcript of the record, of so much of the case wherein the judgment, decree, or order is, as will enable the court or judge to whom the petition is to be presented properly to decide on such petition, and to enable the court, if the petition be granted, properly to decide the questions that may arise before it."

" *To whom presented.* "

"SECTION 9. The petition may be presented to the court wherein the case is to be docketed if the writ of error or supersedeas be allowed, or to a judge thereof, or, if the judgment, decree, or order be of a county court, to any circuit judge."

" *When petition to be rejected, and when rejection final.* "

"SECTION 10. . . . In a case wherein the court or judge to whom a petition is duly presented shall deem the judgment, decree, or order plainly right, and reject it on that ground, if the order of rejection so state, no other petition shall afterwards be presented to the same purpose."

The judges of the Supreme Court of Appeals deeming the judgment complained of to be "plainly right," each and all rejected the petition and refused to grant any writ of error or supersedeas.

This was therefore the end to all further proceedings in appeal in the courts of the state.

The defendant now got a writ of error from this Court to *the Corporation Court of Alexandria*, assuming the case to come within section 709 of the Revised Statutes (the 25th section of the old Judiciary Act), which enacts that:

"A final judgment or decree in any suit in *the highest court of the state in which a decision in the suit could be had*, where is drawn in question the validity of a treaty or statute of, *an authority exercised under the United States*, and the decision is against its validity . . . may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error."

The Corporation Court of Virginia is not the highest court

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of the State of Virginia. That court is the Supreme Court of Appeals.

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The CHIEF JUSTICE delivered the opinion of the Court.

The motion to dismiss this cause for want of jurisdiction is denied.

"A final judgment or decree in any suit, in the highest

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court of a state in which a decision in the suit could be had,"

may in a proper case be reexamined in this Court. [[Footnote 3](#)]

The Court of Appeals is the highest court in the state of Virginia. If a decision of a suit could be had in that court, we must wait for such a decision before we can take jurisdiction, and then can only examine the judgment of that court. If, however, the suit is one of which that court cannot take jurisdiction, we may reexamine the judgment of the highest court which, under laws of the state, could decide it. [[Footnote 4](#)]

The Court of Appeals has revisory jurisdiction over the judgments of the Corporation Court of the City of Alexandria, but parties are not permitted, in the class of cases to which this belongs, to take such judgments there for review as a matter of right. Leave for that purpose must first be obtained. Two modes of obtaining this leave are provided. One by petition to the Court of Appeals itself, and the other by petition to a judge thereof. If the petition is presented to a judge and he denies it generally, without more, it may be again presented to the court. But if the judge to whom the application is made "shall deem the judgment &c., plainly right," and reject it on that ground, if the order of rejection shall so state, no

other petition shall afterwards be presented to the same purpose. [[Footnote 5](#)]
The parties are left free to present their petitions to the court or to a judge thereof, as they may find it most convenient or desirable.

It has long been settled that if a cause cannot be taken to the highest court of a state, except by leave of the court itself, a refusal of the court upon proper application made to grant the leave, is equivalent to a judgment of affirmance, and is such a final judgment as may be made the basis of proceedings under the appellate jurisdiction of this Court. [[Footnote 6](#)]

In the present case, the Court of Appeals has now no power to review the judgment of the court below. It cannot

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even entertain a motion for leave to proceed. A judgment has been rendered by the highest court of the state in which a decision can be had. The Court of Appeals has never in fact had jurisdiction. A suit cannot be taken there except upon leave, and that leave has, in the regular order of proceeding, been refused in this case. From this refusal there can be no appeal. Everything has been done that can be to effect the transfer of the cause. The rejection of a petition by one judge does not prevent its presentation to another. Here the petition has been presented to each and everyone of the judges, and they have all rejected it because the judgment was "plainly right." Thus the doors of the Court of Appeals have been forever closed against the suit, not through neglect, but in the regular order of proceeding under the law governing the practice.

We think, therefore, that the judgment of the Corporation Court of the city of Alexandria is the judgment of the highest court of the state in which a decision of the suit could be had, and that we may reexamine it upon error.

Without stopping to discuss the other question presented by the motion, it is sufficient to say that we think the case involves the consideration of a federal question. The proceeding in the district court was under the authority of the United States, and its validity is drawn in question.

Motion denied.

[[Footnote 1](#)]

Union Insurance Company v. United States, Armstrong's Foundry, and [United States v. Hart](#), 6 Wall. 759, [73 U. S. 766](#) , [73 U. S. 770](#) .

[[Footnote 2](#)]

Code of Virginia, 1873, Chap. 178.

[[Footnote 3](#)]

Revised Statutes, 709.

[[Footnote 4](#)]

[Downham v. Alexandria](#), 9 Wall. 659.

[[Footnote 5](#)]

Code of Virginia, 1873, chapter 178, 10.

[[Footnote 6](#)]

[Railroad Co. v. Railroad Co.](#), 13 How. 80.