

Pierce Vs. Wade

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Court : US Supreme Court

Decided On : 1879

Appeal No. : 100 U.S. 444

Appellant : Pierce

Respondent : Wade

Judgement :

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U.S. Supreme Court Pierce v. Wade, 100 U.S. 444 (1879)

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100 U.S. 444

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KANSAS

SYLLABUS

Where, in replevin, judgment was rendered in favor of the plaintiff for a portion of the property delivered under the writ and in favor of the defendant for a return of the residue or its value, the same not being \$5,000, and the plaintiff sued out a writ

of error to this Court, *held* that the writ must be dismissed for want of jurisdiction.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court.

This was a suit in replevin brought by Pierce and Reed, the plaintiffs, in error, against Wade to recover a large number

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of cattle branded in a particular way. In executing the writ, the marshal, by mistake, took from the defendant sixty-two head of Texas steers not having the proper brand and delivered them with the other cattle to the plaintiffs on receiving the requisite bond. On the trial, it was found that the plaintiffs were the owners, and entitled to the immediate possession of all thus delivered over to them, except the Texas steers taken by mistake. It was thereupon adjudged that they "have and recover from the said defendant the possession of all the cattle, . . . except sixty-two head of Texas steers," and as to these it was adjudged that they be returned by the plaintiffs to the defendant, or if that could not be done, "that the defendant have and recover from the plaintiffs the said sum of \$1,400, the value thereof." From that judgment the plaintiffs below have taken this writ of error.

Upon this state of facts it is clear we have no jurisdiction. The matter in dispute is the sixty-two head of Texas steers, the value of which is only \$1,400. The plaintiffs recovered every thing else which they claimed, and the judgment against them is less than \$5,000. We have always held that when a case is brought here by the defendant below, the amount of the recovery against him is the measure of our jurisdiction, except when he has asked affirmative relief, and that has been denied. The same rule is applicable to plaintiffs in replevin suits, where the defendant gets judgment for a return of property taken and delivered under the writ, or its value.

Writ of error dismissed.