

**Phillips Vs. Negley**

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**Court :** US Supreme Court

**Decided On :** Apr-12-1886

**Appeal No. :** 117 U.S. 665

**Appellant :** Phillips

**Respondent :** Negley

**Judgement :**

Phillips v. Negley - 117 U.S. 665 (1886)

U.S. Supreme Court Phillips v. Negley, 117 U.S. 665 (1886)

**Phillips v. Negley**

**Argued March 25-26, 1886**

**Decided April 12, 1886**

**117 U.S. 665**

*ERROR TO THE SUPREME COURT*

*OF THE DISTRICT OF COLUMBIA*

**SYLLABUS**

Final judgments at law cannot, by proceedings taken after the close of the term at which they were entered, be reversed or annulled for errors of fact or law by the court which rendered them, except that clerical mistakes, and such mistakes of fact not put in issue or passed upon as may be corrected by writ of error *coram vobis* (or on motion in place of that writ where such practice prevails), and a mistake in the dismissal of a cause, may be corrected after that time; the same rule applies in equity excepting, further, the right to take jurisdiction of bills for review.

Page 117 U. S. 666

The appropriate remedy to set aside or enjoin the execution of judgments at law, wrongfully obtained, is by bill in equity.

So far as the rule prevails in Maryland that judgments may at a term subsequent to that at which they were entered, be amended in essential matters, reversed, or annulled by the court which rendered them, that rule, whether founded on a construction of the Maryland statute of 1787 by the highest court of the state or on an interpretation of the common law, is not binding on the courts of the United States in the District of Columbia.

Error to review an order vacating a judgment. After the cause was docketed here, plaintiff in error died and his executors were admitted to prosecute the writ of error.

The facts material to a determination of the questions arising in the cause were as follows:

Philip Phillips sued the defendant Negley, in the Supreme Court of the District of Columbia, on August 29, 1874, to recover \$4,368 alleged to be due upon a certain order in writing, signed by Simon Witkowski and by the defendant, as attorney for Mrs. Witkowski, addressed to Charles F. Peck and Charles E. Hovey, and by them accepted, payable out of money received by them from the United States arising from a judgment in the Court of Claims in favor of Witkowski. A copy of the order was attached to the declaration.

Process was served personally on the defendant on the same day.

On October 26, 1874, Negley filed an affidavit of defense denying his liability on the ground that the order was signed by him only as the agent and on behalf of Mrs. Witkowski, alleging that the plaintiff was not in fact holder of the same for value, and denying notice of nonpayment and any indebtedness whatever.

On May 3, 1877, the plaintiff joined issue on these pleas, and on April 3, 1879, the defendant not appearing, a jury was called who found a verdict for the plaintiff for the sum demanded, with interest, and judgment was rendered thereon.

On September 4, 1882, the defendant filed his motion

"to vacate the judgment and set aside the verdict entered herein *ex parte* on the 3d day of April, 1879, because of irregularity, surprise, fraud and deceit in the procurement of said verdict and judgment and the negligence of defendant's attorney, the

Page 117 U. S. 667

particulars of which appear in the affidavit of the defendant filed herewith and in the record and papers on file in this case."

In support of this motion, the affidavits of the defendant Negley and of Richard Harrington were filed. In that of the defendant, he denies his personal liability on the order and says that when served with process in the cause, he was temporarily in Washington, being at the time and always since a resident of Pittsburgh; that he employed Harrington as his attorney and filed his affidavit of defense, and received no further notice or information in reference to the suit from the fall of 1874 until about July 26, 1882, when he was served with process in a suit brought on the judgment in Allegheny County, Pennsylvania; that after he filed his affidavit of defense in the original suit -- that is, from October 26, 1874 -- the plaintiff "seemed to have abandoned the case, and thereby to mislead affiant's attorney;" that the plaintiff took no notice of the plea until May 3, 1877, when he joined issue, but gave no notice of trial; that in the meantime, without defendant's

knowledge, Harrington had removed from the City of Washington, as was well known to the plaintiff and his counsel, leaving the defendant without an attorney; that on April 3, 1879, without any notice to the defendant, the case was called for trial, and in his absence the plaintiff, with knowledge that the defendant was ignorant of the proceedings, called for a jury, and without other proof than the production of the order sued on procured the verdict and obtained the judgment thereon, and that by reason of the premises, the said proceedings and judgment are a fraud upon him.

Harrington states in his affidavit that he understood that the plaintiff had abandoned his suit, and that he believes he so informed his client, the defendant, and that he, Harrington, removed from the District of Columbia in March, 1875, and has not since resided or practiced law therein, and that on such removal he undertook to notify all his clients, but having considered this cause at an end by reason of the plaintiff's failure to join issue or take action on the plea therein, as required by the rules of the court, he did not notify the defendant, and that the plaintiff and his attorney well knew when said cause was

Page 117 U. S. 668

set down for trial that the affiant had removed to Dover, Delaware. Notice of this motion was served upon the plaintiff in the judgment, who appeared and filed counter-affidavits of himself and of his attorney, William F. Mattingly. The latter states that he mailed notices of the trial of the issues in the action for the May term, 1877, in due time, to what he understood to be the post office address both of Harrington and of the defendant, and that the cause stood for trial from thence until the January term, 1879. The plaintiff, in his affidavit, denies all charges of fraud and says that on the trial of the action the verdict was taken upon testimony showing that after the delivery to the plaintiff of the order sued on, the defendant obtained possession of the fund out of which the same was to have been paid, and failed to make the proper application of the same.

On December 2, 1882, the Supreme Court of the District, holding a special term and circuit court, entered the following order:

"Philip Phillips, Pl'ff"

"v. At Law. No. 12,890"

"James S. Negley, Def't"

"This cause coming on to be heard upon the defendant's motion to vacate the judgment and set aside the verdict entered herein *ex parte* on the 3d day of April, 1879, because of irregularity, surprise, fraud, and deceit, and the same having been argued by counsel on both sides and duly considered, it is considered by the court that said verdict and judgment be and the same is hereby vacated, set aside, and for nothing held, and a new trial granted."

From this order, an appeal was taken to the court in general term, December 9, 1882, and on February 15, 1883, the defendant moved the court to dismiss the appeal on the ground that an appeal would not lie from such an order made at the circuit court or special term. The proceedings in general term resulted in the following order, entered February 19, 1883:

Page 117 U. S. 669

"Now come here as well the plaintiff as the defendant, by their respective attorneys, whereupon, because it appears to the court here that there is no error in the record and proceedings of the special term, therefore the court remands the case to the special term, there to be proceeded with as if no appeal had been taken from its order of December 2, 1882, which appeal is hereby dismissed with costs, to be taxed by the clerks. The plaintiff gives notice that he will prosecute a writ of error, and the penalty of his supersedeas bond is fixed at \$500."

To reverse these proceedings and orders, this writ of error has been prosecuted.

Page 117 U. S. 671

MR. JUSTICE MATTHEWS, after stating the case as above reported, delivered the opinion of the Court.

There appears to be an ambiguity, if not an inconsistency, in the terms of the order or judgment of the general term. It affirms that there is no error in the record and proceedings of the special term, but does not affirm its order which was appealed from, but in fact dismisses the appeal, as though it had no jurisdiction either to affirm or reverse the order brought up by the appeal. Interpreting the judgment of the general term by the opinion of the learned judge who spoke for the court, *Phillips v. Negley*, 2 Mackey 236, we must infer that it was intended to dismiss the appeal for want of jurisdiction to entertain it, on the ground that the order of the special term, vacating its own judgment rendered at a previous term, was not only within the power of that court, but was so purely discretionary that it was not reviewable in an appellate court. The same consideration is urged upon us as a ground for dismissing the present writ of error for want of jurisdiction in this Court, it being alleged that the order of the Supreme Court of the district at special term is one not only within the discretion of that court, but that, as it merely vacates a judgment for the purpose of a new trial upon the merits of the original action, it is not a final judgment, and therefore not reviewable on writ of error. If properly considered the order in question was an order in the cause which the court had power to make at the term when it was made, the consequence may be admitted, that no appellate tribunal has jurisdiction to question its propriety, for if it had power to make it, and it was a power limited only by the discretion of the court making it, as in other cases of orders setting aside judgments at the same term at which they were rendered and granting new trials, there would be nothing left for the jurisdiction of an appellate court to act upon. The vacating of a judgment and granting a new trial, in the exercise of an acknowledged jurisdiction, leaves no judgment in force to be reviewed. If, on

Page 117 U. S. 672

the other hand, the order made was made without jurisdiction on the part of the court making it, then it is a proceeding which must be the subject of review by an appellate court. The question of the jurisdiction of this Court to entertain the present writ of error therefore necessarily involves the jurisdiction of the Supreme Court of the District, both at special and general term, and the nature and effect of

the order brought into review, so that the question of our jurisdiction is necessarily included in the question of the validity of the proceeding itself.

The legal proposition involved in the judgment complained of, and necessary to maintain it, is that the Supreme Court of this District at special term has the same discretionary power over its judgments rendered at a previous term of the court, without any motion or other proceeding to that end made or taken at that term, to set them aside and grant new trials of the actions in which they were rendered, which it has over judgments when such proceedings are taken during the term at which they were rendered, and that, this being true, the proceeding and order of the court, in the exercise of this jurisdiction and discretion, cannot be reviewed on appeal or writ of error. This proposition, it is argued, may be deduced from the inherent and implied powers of all courts of record according to the course of the common law, and, if that fails, is supplied by the law of Maryland, as to the Supreme Court in the District of Columbia, adopted by the Act of Congress of 27th February, 1801, 2 Stat. 103.

The first branch of this proposition is conclusively negated for this Court in regard to the powers of the courts of the United States by the decision in *Bronson v. Schulten*, [104 U. S. 410](#) , which is an authority directly upon the point. It was there said by MR. JUSTICE MILLER, speaking for the Court:

"In this country, all courts have terms and vacations. The time of the commencement of every term, if there be half a dozen a year, is fixed by statute, and the end of it by the final adjournment of the court for that term. This is the case with regard to all the courts of the United States, and if there be

Page 117 U. S. 673

exceptions in the state courts they are unimportant. It is a general rule of the law that all the judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified, or annulled by that court. But it is a rule equally well

established that after the term has ended, all final judgments and decrees of the court pass beyond its control unless steps be taken during that term, by motion or otherwise, to set aside, modify, or correct them, and if errors exist, they can only be corrected by such proceeding by a writ of error or appeal as may be allowed in a court which by law can review the decision. So strongly has this principle been upheld by this Court that, while realizing that there is no court which can review its decisions, it has invariably refused all applications for rehearing made after the adjournment of the Court for the term at which the judgment was rendered. And this is placed upon the ground that the case has passed beyond the control of the Court."

The opinion then notices an exception to this rule founded upon the common law writ of error *coram vobis*, by which errors of fact might be corrected, limited generally to the facts that one of the parties to the judgment had died before it was rendered, or was an infant and no guardian had appeared or been appointed, or was a *feme covert*, and the like, or error in the process through the fault of the clerk, for which writ, as was said in [Pickett's Heirs v. Legerwood](#), 7 Pet. 144, in practice, a motion is now substituted, heard in a summary manner upon affidavits. And it is then added that this remedy by motion has been extended in some states so as to embrace some of the cases where equitable relief had been administered by courts of chancery. "This practice," it was said,

"has been founded in the courts of many of the states on statutes which conferred a prescribed and limited control over the judgment of a court after the expiration of the term at which it was rendered. In other cases, the summary remedy by motion has been granted as founded in the inherent power of the

Page 117 U. S. 674

court over its own judgments, and to avoid the expense and delay of a formal suit in chancery."

But it is added:

"The question relates to the *power* of the courts, and not to the mode of procedure. It is whether there exists in the court the authority to set aside, vacate, and modify its final judgments after the term at which they were rendered, and this authority can neither be conferred upon nor withheld from the courts of the United States by the statutes of a state or the practice of its courts."

Although the opinion also shows that, upon the facts of that case, the action of the circuit court in vacating its judgment after the term could not be justified upon any rule authorizing such relief, whether by motion or by bill in equity, nevertheless the decision of the case rests upon the emphatic denial of the power of the court to set aside a judgment upon motion made after the term and grant a new trial except in the limited class of cases enumerated as reached by the previous practice under writs of error *coram vobis* or for the purpose of correcting the record according to the fact, where mistakes have occurred from the misprision of the clerk. We content ourselves with repeating the doctrine of this recent decision, without recapitulating previous cases in this Court, in which the point has been noticed for the purpose of showing their harmony. It has been the uniform doctrine of this Court. "No principle is better settled," it was said in [Sibbald v. United States](#), 12 Pet. 488, [37 U. S. 492](#) ,

"or of more universal application than that no court can reverse or annul its own final decrees or judgments for errors of fact or law after the term in which they have been rendered, unless for clerical mistakes, [Cameron v. McRoberts](#), 3 Wheat. 591; [Bank of Kentucky v. Wistar](#), 3 Pet. 431, or to reinstate a cause dismissed by mistake, [The Palmyra](#), 12 Wheat. 1, from which it follows that no change or modification can be made which may substantially vary or affect it in any material thing. Bills of review, in cases in equity and writs of *error coram vobis* at law are exceptions which cannot affect the present motion."

And see [47 U. S. Moss](#), 6 How. 31, [47 U. S. 38](#) ; [Schell v. Dodge](#), [107 U. S. 629](#) .

It is equally well established by the decisions of this Court

that the appropriate remedy for relief against judgments at law wrongfully obtained is by a bill in equity, and the cases in which that remedy is applicable have been clearly defined. That rule was formulated by Chief Justice Marshall in a case arising in this district, of [\*Marine Insurance Company of Alexandria v. Hodgson\*](#), 7 Cranch 332, and more tersely stated by Mr. Justice Curtis in [\*Hendrickson v. Hickley\*](#), 17 How. 443, as follows:

"A court of equity does not interfere with judgments at law unless the complainant has an equitable defense of which he could not avail himself at law, because it did not amount to a legal defense, or had a good defense at law, which he was prevented from availing himself of by fraud or accident unmixed with negligence of himself or his agents."

This rule is supported by [\*Creath v. Sims\*](#), 5 How. 192, and [\*Walker v. Robbins\*](#), 14 How. 584, and was followed in *Crim v. Handley*, [94 U. S. 652](#) . In *Brown v. County of Buena Vista*, [95 U. S. 157](#) , and *Embry v. Palmer*, [107 U. S. 3](#) , where it was considered and applied in a case in which the Supreme Court of Errors of Connecticut, having enjoined proceedings in that state upon a judgment of the Supreme Court of this District for causes not sufficient in law to have authorized the latter to set it aside, the judgment of the Connecticut court was reversed, although no question was made of the right of that court to entertain the jurisdiction to enjoin proceedings upon the judgment in question, equally with that of the court by which it was rendered. This independent jurisdiction in equity over judgments at law, by implication, negatives the remedy at law in the same courts where they are rendered, for the same causes, because that equitable jurisdiction is resorted to only because there was no adequate remedy at law, the jurisdiction of the courts of law over the cause and the parties having been exhausted when the judgment became final.

But it is argued that the power exercised in the present instance is vested in the Supreme Court of this District by virtue of the laws of Maryland in force February 27, 1801, adopted by the act of Congress of that date.

The statute of Maryland supposed to confer this power is an

Page 117 U. S. 676

act of 1787, c. 9, 2 Kilty, Laws, Thomp. Dig. 173, relating to continuances, the sixth section of which is as follows:

"In any case where a judgment shall be set aside for fraud, deceit, surprise, or irregularity in obtaining the same, the said courts respectively may direct the continuances to be entered from the court when such judgment was obtained until the court such judgment shall be set aside, and may also continue such cause for so long a time as they shall judge necessary for the trial of the merits between the parties, not exceeding two courts after such cause has been reinstated, unless,"

etc.

This statutory provision, it will be observed, is entirely silent as to the mode according to which a judgment may be set aside at a subsequent term, whether by a writ of error *coram vobis* or *coram nobis*, bill in equity, or other procedure, and does not, either in express terms or by any necessary implication, provide that it may be done by a motion and summary proceedings thereon, and also that it seems to proceed upon the idea that continuances should regularly be entered to show that the proceeding, if at law, to set a judgment aside, in theory at least, ought to originate at the same term at which the judgment was rendered.

The remedy by writ of error *coram nobis* continued in force and in use in Maryland. *Hawkins v. Bowie*, 9 G. & J. 437; *Bridendolph v. Zeller's Executors*, 3 Md. 325. And in the first of these cases, it was held that a reversal of a judgment upon such a writ was a final judgment from which an appeal would lie. The court said:

"Now if reversing the original judgment and awarding costs to the plaintiff in error in this proceeding in error *coram nobis*, was not so far final as to fall within that class of judicial acts from which an appeal will lie to this Court, we cannot see the reason, nor can we well conceive of any remedy the parties would have if the

county courts were to undertake to vacate and annul all the judgments in their records."

This remark equally applies whether the result is reached by this writ or by the more summary mode of a motion. It was so decided in *Graff v. Merchants' & Miners' Transportation Co.*, 18 Md. 364, and *Craig v. Wroth*, 47 Md. 281. In the last-named case, it was said by the

Page 117 U. S. 677

court:

"The power to set aside judgments upon motion for fraud, deceit, surprise, or irregularity in obtaining them is a common law power *incident* to courts of record in this state, and was not *conferred* upon them by the act of 1789, c. 9, 6, which is partially but not fully embodied in 38, art. 75, of the Code. This legislation *assumes* that the power resides in the courts, and provides for the entering of continuances when it is put in force. In deciding such motions made after the term is past, the court acts in the exercise of its *quasi* -equitable powers, and will therefore properly consider all the facts and circumstances of the case, and require that the party making the application shall appear to have acted in good faith and with ordinary diligence. Relief will not be granted when he has knowingly acquiesced in the judgment complained of, or has been guilty of *laches* and unreasonable delay in seeking his remedy."

This seems to be the settled doctrine of the Maryland courts, as shown by a series of decisions, all of which, however, have been made since the cession of the present territory within the District of Columbia. *Kemp v. Cook*, 18 Md. 130; *Montgomery v. Murphy*, 19 Md. 576. In *Kemp v. Cook*, the court said:

"The power of setting aside judgments upon motion is a common law power incident to courts of record, and usually exercised under restraints imposed by their own rules, and rarely after the term in which the judgment was rendered. . . . The judgment records of the state are the highest evidences of debt known to the law. They are presumed to have been made up after the most careful deliberation,

upon trial or hearing of both parties. To permit them to be altered or amended without the most solemn forms of proceeding would be contrary to law and good policy."

It appears also from the case of *Kearney v. Sascer*, 37 Md. 264, that the jurisdiction of the Court of Chancery, upon a bill in equity, to grant relief against a judgment on equitable grounds, constitutes part of the remedial system in that state, notwithstanding the practice to set aside judgments on motion made after the term, and in that case the court quoted and adopted the rule regulating the measure of relief, and the circumstances justifying the court in granting it, as

Page 117 U. S. 678

declared by Chief Justice Marshall in [\*Marine Ins. Co. v. Hodgson\*](#), 7 Cranch 336.

It thus appears that in Maryland prior to 1801, the only statute in existence referring to the subject, while it assumes the existence of a power in the courts to set aside their judgments after the term in which they were rendered for certain causes, does not specify the modes in which that relief may be administered, and does not enumerate a summary proceeding by motion as one of them; that the cases in which that relief has been administered in that way have all arisen and been decided since the date of the cession to the United States of the territory constituting the District of Columbia; that these decisions are based not upon the statute as creating or conferring such power, but upon an interpretation of the common law by which all courts of record are assumed to be possessed of it, as inherent in an incident to their constitution as courts of justice; that, in whatever form, the proceedings are regarded, not as interlocutory steps in the original case, but as independent applications to a legal discretion governed by fixed rules, and therefore terminating in final judgments, subject, as in other cases, to review or error in a court of appeal, and that the jurisdiction of chancery by a plenary suit in equity is not excluded, but is maintained and exercised in conformity with the general principles of equity jurisprudence.

It follows from this statement that these decisions of the Maryland courts, being founded upon general principles, and made since the organization of the District of Columbia, are not binding upon the courts of the District as authorities, though entitled to all the respect due to the opinions of the highest court of the state, a rule acted upon in this Court in *Ould v. Washington Hospital*, [95 U. S. 303](#) , and approved in *Russell v. Allen*, [107 U. S. 163](#) , [107 U. S. 171](#) . We feel at liberty, therefore, to follow our own convictions as to the power of the courts of the District over their judgments, and are of opinion, and so decide, that after the term at which they were rendered, the power of the court over the parties and over its record remains only in the excepted cases already noticed, when, on motion, it may be purged of clerical errors, or the judgment reversed by

Page 117 U. S. 679

proceedings for errors in fact in analogy to the practice in cases of writs of error *coram vobis*, unless it is invoked by a formal bill in equity upon grounds recognized as furnishing a title to relief. We are therefore of opinion that the Supreme Court of the District, both at special and general term, in entertaining and granting the motion to set aside the judgment in the present case, committed error, and the proceedings and judgment thereon are

*Reversed and the cause remanded with directions to dismiss the motion of the defendant, but without prejudice to his right to file a bill in equity.*

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