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Conde Vs. York

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Decided On : Jan-08-1898

Appeal No. : 168 U.S. 642

Appellant : Conde

Respondent : York

Judgement :

Conde v. York - 168 U.S. 642 (1898)
U.S. Supreme Court Conde v. York, 168 U.S. 642 (1898)

Conde v. York

No. 148

Argued December 8, 1897

Decided January 8, 1898

168 U.S. 642

ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

In order to give this Court jurisdiction to review the judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be

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a title or right of the plaintiff in error and not of a third person only, and the statute or authority must be directly in issue. In this case, the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved, and plaintiffs in error asserted no right to the money based upon it.

In September, 1889, Witherby & Gaffney entered into a contract with the government of the United States to construct certain buildings at Sackett's Harbor, New York. Thereafter they purchased from York & Starkweather lumber and materials, which were used in the construction of the buildings, and on March 27, 1890, were indebted on account of these materials in the sum of more than $3,000. Being so indebted, Witherby & Gaffney on that date executed and delivered to York & Starkweather an instrument in writing, as follows:

"Whereas we have a contract with the United States government for the construction of buildings and officers' quarters at Madison Barracks, Sackett's Harbor, Jefferson County, N.Y."

"And whereas, we are indebted to York & Starkweather, of Watertown, N.Y., in the sum of three thousand dollars and more on account of materials furnished us by them, that were used in said buildings and quarters."

"And whereas, there will be due and payable to us, on account of our work etc., from the government, considerable sums of money before and on the completion of our said work,"

"Now therefore of the moneys due and to become due us from the said government we do hereby, for value received, assign and transfer to said York & Starkweather the sum of three thousand dollars, and do hereby authorize, empower, request, and direct Lieutenant J. E. Macklin, R.Q.M. Eleventh infantry, U.S.A., through whom payments are made for such construction, to pay to said York & Starkweather, on our account, for such construction, the full sum of three thousand dollars, as follows: first, $500 from the next estimate and payment due or to become due us, and the sum of $2,500 on the completion of said work by us, and when the

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balance of our contract with the government becomes due and payable to us."

On the seventh of April, Witherby & Gaffney paid York & Starkweather, $500, but no further payment was made by them. On May 15, 1890, Lieutenant Macklin, the disbursing agent of the United States government at Sackett's Harbor, gave a draft on the Treasury to the amount of $4,400 to Witherby & Gaffney, which was turned over by them on that day to Conde & Streeter. Before Conde & Streeter received this draft, they had been fully notified of the paper delivered to York & Starkweather, and, while the draft was in their hands, York & Starkweather demanded $2,500 thereof from them, which they refused to pay, or any part thereof. Conde & Streeter asserted a prior right to the draft and moneys in question by virtue of an alleged oral agreement with Witherby & Gaffney to secure the payment of certain notes upon which they were liable as endorsers, and for individual claims they held against them. Conde was one of the sureties on Witherby & Gaffney's bond to the government, and it seems to be conceded that Witherby & Gaffney obtained the money on Conde & Streeter's accommodation endorsements for the purpose of enabling them to carry on the work under the contract. Conde & Streeter applied the money to pay notes to the amount of $3,200 which they had endorsed, and individual claims to the amount of $600, and about $600 was returned to Witherby & Gaffney.

April 16, 1890, Witherby & Gaffney executed to Conde & Streeter an agreement by which they promised to pay off and discharge, from the money to be received by them from the government, certain notes endorsed by Conde & Streeter, and certain individual indebtedness held by them against Witherby & Gaffney. On April 18th, Witherby & Gaffney made a written assignment to Conde & Streeter of sufficient of the money in question to pay the notes and claims mentioned, in these words:

"That there may be no misunderstanding about the intention of the foregoing agreement, we hereby assign, for value

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received, to John C. Streeter and Wm. W. Conde, sufficient of the moneys coming to us from Lieut. Macklin, R.Q.M., to pay the claims as specified in the aforegoing agreement."

York & Starkweather brought suit against Conde & Streeter in the Supreme Court of New York for the County of Jefferson. Two defenses were set up by Conde & Streeter, the second of which was

"that the money, claim, and property claimed by the plaintiffs in this action to have been assigned to them by Witherby & Gaffney at the time of the pretended assignment thereof, constituted and was a claim against the United States government, which had not been allowed, or the amount due thereon ascertained, or the warrant issued for the payment thereof, and that the pretended assignment thereof does not recite the warrant for payment issued by the United States, and is not acknowledged by the person making the same before an officer having authority to take acknowledgments of deeds, and is not certified by such officer, and that said pretended assignment is in violation of the laws of the United States and of the State of New York, and that the plaintiffs never derived any interest in the said contract with the United States by virtue of the said pretended assignment or otherwise, and are not the real parties in interest in this action, and ought not therefore to maintain the same; that said Witherby & Gaffney never transferred

any interest in the said contract to the said plaintiffs."

The trial resulted in a verdict in favor of York & Starkweather, upon which judgment was entered, which was affirmed by the general term, and that judgment affirmed by the Court of Appeals. *York v. Conde,* 147 N.Y. 486. A writ of error was then allowed from this Court.

MR. CHIEF JUSTICE FULLER, after stating the facts in the foregoing language, delivered the opinion of the Court.

Plaintiffs in error contended in the courts below that they were entitled to the fund in question by virtue of an oral

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transfer prior to the assignment to defendants in error, and of the writings executed subsequently thereto, and that defendants in error acquired no right to the fund by their assignment, because such assignment was in violation of 3477 of the Revised Statutes of the United States. But they did not claim that they acquired any right or title to the fund by reason of the section, nor was its validity questioned in any way.

In delivering the opinion of the Court of Appeals of New York, its able and experienced Chief Judge said:

"The claim set up by the defendants in their answer, that, prior to the assignment to the plaintiffs, Witherby & Gaffney had verbally assigned to them the money to become due on the contract as security for their endorsements, was tried before the jury and found against them, and need not be further considered. There can be no doubt that under the general rule of law prevailing in this state, the plaintiffs, under the assignment of March 27, 1890, acquired an equitable, if not a legal, title to the money payable on the contract of Witherby & Gaffney with the government to the extent of $3,000, and that the defendants, having acquired possession of the draft for the final payment on the contract, by delivery from Witherby & Gaffney, to secure an antecedent liability, on being notified of the claim of the

plaintiffs, held the draft and the fund it represented, as trustee of the plaintiffs, to the extent of their claim. *Field v. Mayor, &c.;* 6 N.Y. 179; *Devlin v. Mayor, &c.;* 63 N.Y. 8."

"But the contention is that the plaintiffs took nothing under the assignment to them because, as is claimed, the transaction was void under 3477 of the Revised Statutes of the United States, to which reference has been made. That section is as follows:"

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed

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in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment and must be acknowledged by the person making them before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer, and it must appear by the certificate that the officer at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

"This section has been considered in several cases by the Supreme Court of the United States. If that court has construed the section so as to determine the point involved in this case, we should deem it our duty to follow its decision. The judgment we shall render will not, we suppose, be subject to review by the Supreme Court. We do not question the validity of the section in question, nor will our decision affect any right of the defendants based thereon. Their right, if any, rests upon the transfer of the draft after it came to the hands of Witherby &

Gaffney. They seek to defeat the right of the plaintiffs under their prior assignment of a portion of the fund, and invoke section 3477 to establish that the assignment was void and conferred no right. But on a question of statutory construction of an act of Congress which has been determined by the Supreme Court of the United States, subsequently arising in this Court, we should feel bound to adopt and follow the construction of that tribunal on the principle of comity, although in a case where the ultimate jurisdiction is vested in this Court."

Many decisions of this Court in respect of section 3477 were then considered, and the conclusion reached that the section had been so construed as to permit transfers made in the legitimate course of business, in good faith, to secure an honest debt, while they might be disregarded by the government, to be sustained as between the parties so far as to enable the transferees, after the government had paid over the money to its contractors, to enforce them against the latter or those taking

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with notice. The court held in effect that such was the transaction in the case at bar, and that the transfer to York & Starkweather was simply to secure them for material actually used by the contractors in performing their contract with the government, and amounted to nothing more than the giving of security, and not to the assignment of a claim to be enforced against the government. The United States had in due course paid over the money to the contractors, and between them there was no dispute; nor had the United States any concern in the question as to which of the rival claimants was entitled to the fund the proper distribution of which depended on the equities between them. What the New York courts determined was that the equities of York & Starkweather were superior to those of Conde & Streeter, and judgment went accordingly.

In order to give this Court jurisdiction to review the judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error, and not of a third person only, and the statute or authority must be

directly in issue. In this case, the controversy was merely as to which of the claimants had the superior equity in the fund. The statute was only collaterally involved, and plaintiffs in error asserted no right to the money based upon it.

In *Aldrich v. Aetna Company,* 8 Wall. 491, the question was whether the mortgage of a vessel, properly recorded under an act of Congress, gave a better lien than an attachment issued under a state statute, and the decision by the state court was that it did not. The construction of the act of Congress, and its force and effect as it respected the mortgage security under which defendants claimed a right or title paramount to that of the attachment creditor, were necessarily directly involved, and a proper case for review existed.

In *Railroads v. Richmond,* 15 Wall. 3, in a suit on a contract, defendants set up that the contract had been rendered void and of no force and effect by provisions of the Constitution of the United States and of certain acts of Congress, and

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the decision of the Supreme Court of Iowa was adverse to that defense. The case being brought here, a motion to dismiss the writ of error was denied.

In each of these cases, the defense was rested upon a title or right of defendants specially claimed under the Constitution or laws of the United States, and, being adversely disposed of, jurisdiction obtained.

Here, no such contention was put forward. The materials of plaintiffs below had gone into the buildings, while, on the credit of defendants, money had been raised for their construction. Both held written agreements from the same source for the money when paid over, but that of defendants below was subsequent in date to the other. Neither asserted any right under section 3477.

In *Walworth v. Kneeland,* 15 How. 348, it was ruled, where a case was decided in a state court against a party who was ordered to convey certain land, and he brought the case up to this Court on the ground that the contract for the conveyance of the land was contrary to the laws of the United States, that this was

not enough to give jurisdiction to this Court under the twenty-fifth section of the Judiciary Act. The state court decided against him on the ground that the opposite party was innocent of all design to contravene the laws of the United States. Mr. Chief Justice Taney, however, said:

"But if it had been otherwise, and the state court had committed so gross an error as to say that a contract forbidden by an act of Congress or against its policy was not fraudulent and void, and that it might be enforced in a court of justice, it would not follow that this writ of error could be maintained. In order to bring himself within the twenty-fifth section of the act of 1789, he must show that he claimed some right -- some interest -- which the law recognizes and protects and which was denied to him in the state court. But this act of Congress certainly gives him no right to protection from the consequences of a contract made in violation of law. Such a contract, it is true, would not be enforced against him in a court of justice; not on account of his own rights or merits, but from the want of merits and good conscience in

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the party asking the aid of the court. But, to support this writ of error, he must claim a right which, if well founded, he would be able to assert in a court of justice, upon its own merits and by its own strength. No such right is claimed in the answer of the plaintiff in error. . . . Neither can the writ of error be supported on the ground that Walworth was unable to purchase, at one dollar and twenty-five cents per acre, another portion of the land mentioned in the contracts in consequence of its subsequent cession by the United States to the Territory of Wisconsin. Whether that cession, and the enhanced price at which it was held, absolved him from the obligation of performing any part of the contract depended altogether upon its construction. The rights of the parties did not depend on the act of Congress making the cession, but upon the contract into which they had entered, and the construction of that agreement, and the rights and obligations of the parties under it, were questions exclusively for the state court, and over its decree in this respect this Court has no control."

In *Jersey City & Bergen Railroad v. Morgan,* 160 U. S. 288 , in an action brought in a state court against a railroad company for ejecting the plaintiff from a car, the defense was that a silver coin offered by him in payment of his fare was so abraded as to be no longer legal tender, and that defense was overruled, and, a writ of error having been sued out by the railroad company from this Court to review the judgment thereupon rendered against it, we held that the writ could not be maintained. It was there said:

"The claim which defendant now states it relied on is that the coin in question was not legal tender under the laws of the United States. This, however, is only a denial of the claim by plaintiff that the coin was such, and as, upon the facts determined by the verdict, the state courts so adjudged, the decision was in favor of, and not against, the right thus claimed under the laws of the United States, if such a right could be treated as involved on this record, and this Court has no jurisdiction to review it. *Missouri v. Andriano,* 138 U. S. 496 , and cases cited. And, although denying plaintiff's claim, defendant did

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not pretend to set up any right it had under any statute of the United States in reference to the effect of the reduction in weight of silver coin by natural abrasion."

Writ of error dismissed.

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