

Cotton Vs. Hawaii

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Court : US Supreme Court

Decided On : Nov-30-1908

Appeal No. : 211 U.S. 162

Appellant : Cotton

Respondent : Hawaii

Judgement :

Cotton v. Hawaii - 211 U.S. 162 (1908)

U.S. Supreme Court Cotton v. Hawaii, 211 U.S. 162 (1908)

Cotton v. Hawaii

No. 7

Argued October 27, 1908

Decided November 30, 1908

211 U.S. 162

ERROR TO THE SUPREME COURT

OF THE TERRITORY OF HAWAII

SYLLABUS

The elementary rule that the power of this Court to review judgments under 709 Rev.Stat. and under statutes relating to review of judgments from territorial courts extends only to final judgments also governs appeals from the Supreme Court of Hawaii under 86 of the Act of April 30, 1900, c. 339, 31 Stat. 141, 158, and the amendatory Act of March 3, 1905, c. 1465, 33 Stat. 1035.

The power of this Court to review the judgments of courts of the territories depends upon acts of Congress, and cannot be extended by territorial legislation.

The decisions of the Supreme Court of Hawaii in this case, overruling

Page 211 U. S. 163

exceptions and reversing order for new trial, were based on bill of exceptions which did not bring up the whole record, were not under the practice of Hawaii final judgments, and are not reviewable by this Court.

Writ of error to review 17 Haw. 618 dismissed.

The facts are stated in the opinion.

Page 211 U. S. 166

MR. JUSTICE WHITE delivered the opinion of the Court.

The errors assigned are directed to the action of the court below on two subjects. Jurisdiction to consider them is challenged by the defendant in error. To understand the question as to jurisdiction and the issues which it will be necessary to consider, if it be that we have power to decide the merits, requires us to state briefly proceedings which are referred to by both parties and which are embraced in the printed transcript, without determining at this moment how far all the proceedings thus to be referred to may be considered as properly embraced in the record in the legal sense.

On May 27, 1904, as the result of a trial before a jury of an action brought by the Territory of Hawaii to recover damages for the loss of a dredge boat belonging to the territory, through the negligence of the defendants (who are now plaintiffs in error), there was a verdict in favor of the territory for the sum of \$25,000. On May 31, 1904, the defendants filed a motion for a new trial, and gave notice that it would be called for a hearing on June 3. On that date, the motion was continued to June 7. On June 7, the territory objected to the court's entertaining the motion because the defendants had not complied with 1805, Revised Laws of Hawaii, requiring that the party against whom a verdict or judgment had been rendered should, as a prerequisite to moving for a new trial, "file within ten days after rendition of verdict or judgment" a bond securing the payment of costs, and conditioned against the removal or disposition of any property within the jurisdiction, subject to execution. The defendants thereupon asked further time to file the bond. On the same day, the court entered a formal judgment on the verdict, and also granted, over the exception of the plaintiff, the request of the defendants for further time to make and file the bond. The court was of the opinion that the statutory period commenced to run only from the date of the entry of judgment on the verdict. The bond was filed on June 7, the motion for a new trial was renewed on the same day, and was ultimately taken under advisement. The plaintiff, reserving the benefit of its exception as to the power of the court to consider the motion, agreed that the motion might be passed upon in vacation. Meanwhile, the defendants presented and filed a summary bill of exceptions relating to certain errors which it was alleged had been committed by the court during the trial. In February following, the judge who presided at the trial, and who was detained in San Francisco by sickness, telegraphed the clerk of the court that he granted the motion for a new trial, and had forwarded his grounds for doing so by mail. This telegram was filed by the clerk. The term

of office of the judge expired on March 2, 1905. A few days thereafter, viz., on March 4, 1905, the clerk received by mail the opinion of the judge, stating his reasons for granting a new trial, which opinion was also filed. In the following April, the defendants moved the court, then presided over by the successor in office of the judge who had tried the cause, to make a formal entry of the granting of the new trial, and this was done over the objection and exception of the plaintiff, who thereupon prosecuted a writ of error to the Supreme Court of Hawaii. The supreme court, after overruling a motion to quash the writ based on the ground that the action of the court in granting a new trial was not reviewable (17 Haw. 374), on March 8, 1906, reversed the order granting a new trial. Putting out of view all other questions, in substance, it was held that the filing of the bond within ten days, as required by the statute, was essential to give the court jurisdiction to entertain a motion for a new trial, and that the court had mistakenly decided that the ten days began to run only from the date of formal entry of the judgment. 17 Haw. 445.

The formal judgment entered in the supreme court was simply one reversing the order for a new trial. Thereupon, in the trial court, the defendants moved to be allowed to make the summary bill of exceptions which they had previously taken more specific. Over the objection of the plaintiff, this was allowed to be done, and the defendants thereupon filed an amended bill of exceptions, which was allowed, and upon this bill, conformably to the Hawaiian practice, the exceptions were taken by the defendants to the Supreme Court of Hawaii. In that court, a motion was made to quash the bill of exceptions, on the ground that, as amended, it embraced matters not legally included within the bill as originally filed, and which were, in consequence, not cognizable. This motion was overruled on the ground that, although nothing was open for review on the amended bill, but such questions as were legally incorporated in the original bill, the bill as amended could

Page 211 U. S. 169

not be quashed, as it undoubtedly presented matters which were embraced in the first or summary bill. 17 Haw. 645. Thereafter, on the hearing of the exceptions, the court -- excluding from consideration such matters as it held were not

contained in the original bill, although incorporated in the amended bill -- decided that the exceptions were without merit. 17 Haw. 618. Conformably to the opinion, an order was entered in the minutes on September 27, 1906, overruling the exceptions. Thereupon the present writ of error was allowed by the chief justice of the supreme court of the territory.

The two subjects to which, as at the outset we stated, all the assignments of error relate involve the correctness of the action of the supreme court on September 27, 1906, in refusing to consider certain of the exceptions because deemed not to have been embodied in the summary bill previously filed and its decision on the exceptions which were passed upon, and the correctness of the action of the same court, taken nearly six months previously, reversing the order of the trial court, granting a new trial. Have we jurisdiction to pass upon these issues is the first question for decision.

Our authority to review the judgments of the Supreme Court of the Territory of Hawaii is derived from the Act of April 30, 1900, 31 Stat. 158, c. 339, 86, and the amendatory Act of March 3, 1905, 33 Stat. 1035, c. 1465, 3. In the first act, jurisdiction is conferred over judgments or decrees of the supreme court of the territory only in cases like unto those where we would be empowered to review the judgments or decrees of the courts of the several states, conferred by 709, Revised Statutes. By the amendatory act, our jurisdiction was extended so as to embrace, in addition, all cases, irrespective of the nature of the questions presented, where the amount involved, exclusive of costs, exceeds the sum or value of \$5,000. In other words, whilst the first act conferred the power only in cases where it would exist if the decree or judgment had been rendered in a state court, the

Page 211 U. S. 170

second, adopting the principle and necessarily, therefore, carrying with it the rules generally prevailing as to the review of judgments or decrees of the supreme court of the incorporated territories of the United States, gives an additional right to review, depending solely upon the amount involved. *Bierce v. Hutchins*, [205 U. S.](#)

[340](#) , [205 U. S. 344](#) . As jurisdiction, if it exists in this cause, depends not upon the existence of questions under Rev.Stat. 709, but entirely upon the amount involved, the authority conferred by the act of 1900 may be at once put out of view. It is elementary, however, that the power to review, both under 709, Revised Statutes, and under the laws governing the right to review the judgments or decrees of the supreme courts of the incorporated territories generally, extends only to final judgments or decrees. It is apparent, therefore, that we have no jurisdiction to review the several rulings of the supreme court of the territory, the last one in September, 1906, overruling the exceptions, and the prior one in April, 1906, reversing the order granting a new trial, unless those rulings, independently considered, are final in the full sense of the term. Let us test their finality separately.

On its face, the proceeding by which the exceptions of the defendants were taken to the court of last resort in Hawaii for review did not purport to present to that court a consideration of the whole record in the cause, but only submitted the particular rulings embraced in the exceptions. The order which the court entered when it disposed of the exceptions was neither in substance nor did it purport in form to be a final judgment, conclusively disposing of the cause. As our power to review depends upon the acts of Congress, which it is beyond the authority of a territory, by forms of legal procedure, to modify or change, it results that, whatever may be the forms of procedure prevailing in the territory for the review of judgments or decrees, nothing in the territorial laws or procedure can have the effect of conferring upon this Court the power to consider causes coming from the territory by

Page 211 U. S. 171

piecemeal; that is, to review judgments or decrees which, in their essential nature, are not final within the intendment of the legislation of Congress -- in other words, extend our jurisdiction to judgments which do not completely dispose of the controversy. But the application of this latter principle is not now required, since it will appear from a review of the territorial legislation that the decision of the supreme court overruling the exceptions was not, under the territorial laws, in any

sense a final judgment. The relevant Hawaiian statutes are copied in the margin. [*](#)

It is clear that, under these statutes, the supreme court may

Page 211 U. S. 172

review the action of the trial courts by two separate forms of procedure, either by writ of error or appeal, which brings up the judgment or decree with the entire record, and the other by exceptions, which does not bring up the whole record, and calls upon the reviewing court merely to pass upon specific questions raised by the bill. The statutes, it will be observed, confer no express power upon the supreme court of the territory to enter a final judgment in a cause upon the overruling of exceptions, and, indeed, that the supreme court of the territory does not construe the territorial statutes as giving it such authority, and therefore that the court could not have intended to exert such power in this case, so conclusively appears from recent decisions of the Supreme Court of Hawaii as to leave the question not open to controversy.

Meheula v. Pioneer Mill Co., 17 Haw. 91, was brought

Page 211 U. S. 173

to the appellate court on exceptions. The exceptions were overruled. Thereupon counsel for the unsuccessful party, in order that the record might be in such form as to permit an appeal to this Court, moved in the appellate court that a final judgment be entered, affirming the judgment of the trial court, and remanding the cause, with directions to carry the judgment into execution. The motion was denied. The court rendered a lengthy opinion, in the course of which it was said (17 Haw. 93):

"If the exceptions are overruled, nothing further is required but to notify the circuit court, in the form of a remittitur. . . . A bill of exceptions, unlike a writ of error or an appeal, does not bring the entire case or its record to this Court. We have merely to decide whether the exceptions are good or bad. If they are overruled, that is the end of the functions of this Court relating thereto, nothing remaining but the order,

notice, or remittitur, on receipt of which the

Page 211 U. S. 174

judgment in the circuit court, if it had been entered, but suspended pending the exceptions, by the provisions of sections 1861 and 1865, Rev.Laws, remains in full force, requiring no affirmance or other recognition from this Court. If no judgment was entered on the verdict, it is entered by the circuit court upon notice of the overruling of the exceptions. This result follows as a matter of law, and not in consequence of any direction of this Court."

In the same case the court also took occasion to condemn the practice stated to be sometimes followed, of sending to the appellate court, with a bill of exceptions, "the records of the case and all papers filed in the circuit court."

So, also, as also said by the territorial court in this case, in passing upon the motion of the territory to quash or dismiss the exceptions (17 Haw. 374, 379):

"Exceptions and error are inherently proceedings of different character. On exceptions, various specific rulings, whether interlocutory or final, whether brought up immediately or only after final judgment, are made direct and independent subjects for review; only so much of the record is brought up as is necessary for passing upon the specific exceptions; the decision usually is that the exceptions be sustained or overruled and that such further proceedings be had as the rulings on the exceptions call for. On error the final judgment alone is brought up, and specific rulings, whether excepted to or not, are considered only incidentally in passing upon the correctness of the final judgment; the entire record is brought up, and the judgment of the appellate court is such as the facts and law warrant, as shown by the entire case."

Applying the construction thus given by the supreme court Hawaii to the statutes of the territory, there being no reason to doubt their correctness, it clearly follows that the mere entry by the clerk, on the minutes, of the decision of the court overruling the exceptions, did not constitute a final judgment, subject to review by this Court. Of course, our decision is confined to the case before us. We must not,

therefore,

Page 211 U. S. 175

be considered as holding that, if, on a case before it on exceptions, the supreme court of the territory, in sustaining exceptions, considered that the effect of its ruling was such as to justify the entry of a judgment finally disposing of the cause, under the discretionary power conferred by 1867 of the Revised Laws of Hawaii, previously cited in the margin, that such a judgment, depending upon the circumstances of the case, might not be a final judgment, within our competency to review.

Coming, then, to test whether we have jurisdiction to review the action of the supreme court of the territory reversing the order granting a new trial, it is apparent that our power must rest either upon the proposition that the order overruling the granting of a new trial was a final judgment in an independent proceeding, or was but an interlocutory step in the cause, which would be subject to our review because of jurisdiction to revise the action of the territorial court in ruling on the exceptions, under the assumption that such ruling was a final judgment. The latter is disposed of by what we have previously said. As to the former, if the premise upon which the proposition rests be assumed, it would follow that we are without power to review the judgment, for the reason that this writ is directed alone to the so-called judgment of September 27, 1906, and the record of that judgment cannot be regarded as embracing the proceedings had below in respect to the matter of a new trial.

Writ of error dismissed for want of jurisdiction.

* Revised Laws of Hawaii for 1905, c. 123, pp. 732 *et seq.*:

"EXCEPTIONS"

"SEC. 1862. QUESTIONS RESERVED BY COURT -- Whenever any question of law shall arise in any trial or other proceeding before a circuit court, the presiding judge may reserve the same for the consideration of the supreme court, and in

such case shall report the cause, or so much thereof as may be necessary to a full understanding of the questions, to the supreme court. (L. 1892, c. 57, s. 72; C.L. s. 1436.)"

"SEC. 1863. RESERVED ON MOTION -- Any question may be reserved in like manner upon the motion of either party, on account of any opinion, direction, instruction, ruling, or order of the judge in any matter of law. (L. 1892, c. 57, s. 73; C.L. s. 1437.)"

Following a paragraph prescribing the method of settling exceptions, it is provided in 1864 as follows:

"Bills of exceptions upon like terms as to filing bond and payment of costs may be certified to the supreme court from decisions overruling demurrers or from other interlocutory orders, decisions, or judgments, whenever the judge, in his discretion, may think the same advisable for a more speedy termination of the case. The refusal of the judge to certify an interlocutory bill of exceptions to the supreme court shall not be reviewable by any other court. (L. 1892, c. 57, s. 74; C.L. s. 1438; am. L. 1898, c. 40, s. 2; am. L. 1903, c. 32, s. 18.)"

"SEC. 1865. BOND -- Upon the allowance of such bill of exceptions and the deposit of twenty-five dollars, or a bond of the same amount, by the party excepting, with the clerk of such court, for costs to accrue in the supreme court, the questions arising thereon shall be considered by the supreme court; but judgment may be entered and may be enforced or arrested pending such exceptions, as provided in section 1861 in the case of an appeal, *mutatis mutandis*. (L. 1892, c. 57, s. 75; C L. 1439; am. L. 1903, c. 32, s. 19.)"

"SEC. 1866. EXCEPTIONS, FRIVOLOUS, IMMATERIAL -- When, upon the hearing of a cause brought before the supreme court upon exceptions, it shall appear that the exceptions are frivolous or immaterial, or were intended for delay, the court may award against the party taking the exceptions double costs from the time when the same were alleged, and also interest, from the same time at the rate of nine percent per annum on the sum, if any, found due for debt or damages;

or may award any part of such additional costs and interest as it may deem proper. (L. 1892, c. 57, s. 76; C.L. s. 1440.)"

"SEC. 1867. VACATING JUDGMENT BY SUPREME COURT -- When judgment has been entered in any cause in which exceptions have been allowed, the judgment may be vacated by the supreme court without any writ of error in like manner as if it had been entered by mistake, and thereupon such further proceedings shall be had in the cause as to law and justice shall appertain. (L. 1892, c. 57, s. 77; C.L. s. 1441.)"

"SEC. 1868. JURY TRIAL NOT DELAYED -- No trial by jury shall be prevented or delayed by the alleging, filing, or allowance of such exceptions; but the verdict shall be received and such further proceedings shall be had in the cause as the court may order, in pursuance of the foregoing provisions. (L. 1892, c. 57, s. 78; C.L. s. 1442.)"

WRITS OF ERROR

"SEC. 1869. HAD WHEN -- A writ of error may be had by any party deeming himself aggrieved by the decision of any justice, judge, or magistrate, or by the decision of any court except in the supreme court, or by the verdict of a jury at any time before execution thereon is fully satisfied, within six months from the rendition of judgment. (L. 1892, c. 95, s. 1; C.L. s. 1443.)"

"SEC. 1870. IN JURY WAIVED CASES -- Writs of error shall lie to any decision or ruling by a judge in any case in which jury has been waived. (L. 1892, c. 95, s. 2; C.L. s. 1444.)"

"SEC. 1871. TO CORRECT WHAT -- A writ of error may be had to correct any error appearing on the record, either of law or fact, or for any cause which might be assigned as error at common law; provided, however, that no writ of error shall issue for any defect of form merely in any declaration, nor for any matter held for the benefit of the plaintiff in error. (L. 1892, c. 95, s. 3; C.L. s. 1445.)"

"SEC. 1872. NO REVERSAL WHEN -- There shall be no reversal on error of any finding depending on the credibility of witnesses or the weight of evidence. (L. 1892, c. 95, s. 5; C.L. s. 447.)"

"SEC. 1873. RECORD -- For all purposes of sections 1869-1883, the record shall be deemed to include all pleadings, motions, notes, or bills of exceptions, exhibits, clerk's or magistrate's notes or proceedings, and, if so desired by the plaintiffs in error, a transcript of the evidence in the case. (L. 1892, c. 95, s. 4; C.L. s. 1446.)"

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