Mcclellan Vs. Carland

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SooperKanoon Citation : sooperkanoon.com/90871

Court : US Supreme Court

Decided On : Apr-11-1910

Appeal No. : 217 U.S. 268

Appellant : Mcclellan

Respondent : Carland

Judgement :

McClellan v. Carland - 217 U.S. 268 (1910)
U.S. Supreme Court McClellan v. Carland, 217 U.S. 268 (1910)

McClellan v. Carland

No. 630

Argued January 25, 26, 1910

Decided April 11, 1910

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CERTIORARI TO THE CIRCUIT COURT

OF APPEALS FOR THE EIGHTH CIRCUIT

SYLLABUS

The power of this Court to issue writs of certiorari to the circuit court of appeals is not limited to the provisions of the Court of Appeals Act. It may issue them under 716, Rev.Stat. *In re Chetwood,* 165 U. S. 443 ; *Whitney v. Dick,* 202 U. S. 132 .

Under 716, Rev.Stat., and 12 of the Court of Appeals Act, the circuit court of appeals has authority to issue writs of *scire facias* and all writs not specifically provided for by statute and necessary for the exercise of the court's jurisdiction, and agreeable to the usages and principles of law.

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Where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below, and so *held* that the circuit court of appeals may issue mandamus to compel the circuit court to vacate a stay pending proceedings in the state court to determine, and thus render *res judicata* questions within the jurisdiction of the circuit court and involved in the action in which the stay was granted.

The constitutional grant of chancery jurisdiction to federal courts in cases where diverse citizenship exists, to determine interests in estates, is the same as that possessed by the chancery courts of England, and it cannot be impaired by subsequent state legislation creating courts of probate. *Waterman v. Canal-Louisiana Bank,* 215 U. S. 33 .

A federal court cannot abandon its jurisdiction already properly obtained of a suit and turn the matter over for adjudication to the state court. *Chicot County v. Sherwood,* 148 U. S. 529 .

The pendency of a suit in the state court is no bar to proceedings concerning the same matter in a federal court having jurisdiction thereover.

The judgment in a suit between claimants of an estate and the administrator does not conclude the rights of the state claiming an escheat so long as it is not a party and has not been allowed to intervene on its own behalf.

On certiorari this Court will consider only the record in the circuit court of appeals as certified here in return to the writ, and it decides the case solely as presented in such return.

In this case, *held* that the circuit court of appeals should have issued an alternative writ of mandamus to, or order to show cause why, the circuit judge should not vacate a stay in an action brought against an administrator by one claiming to be an heir while and until proceedings brought by the state for escheat in the state court should be finally determined.

The facts are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case comes here upon a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. In that court, McClellan and others, petitioners, filed a petition for a writ of mandamus against the United States district judge for the District of South Dakota praying a writ of mandamus to said judge, sitting as a judge of the circuit court of said district, commanding him to set aside and vacate certain orders staying proceedings in an action pending in the

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circuit court, and to proceed to try and determine the suit in the usual course of procedure, without regard to the pendency of certain proceedings, to be hereinafter referred to, in the courts of the State of South Dakota. The circuit court of appeals, upon the petition for a writ of mandamus being presented to it, denied the prayer thereof and dismissed it. Thereafter this Court granted the writ of certiorari.

From the transcript of the record of the case in the circuit court of appeals, it appears that petitioners and others, on the eighth day of September, 1908, commenced suit against George T. Blackman, special administrator of the estate of John C. McClellan, deceased, and others, in the Circuit Court of the United States for the District of South Dakota, in which suit complainants were citizens of states other than South Dakota, and respondent, George T. Blackman, a citizen of South Dakota, was sued as special administrator of the estate of John C. McClellan, deceased. The bill set up that complainants were the sole surviving heirs at law and next of kin of John C. McClellan, deceased, who died on or about the thirty-first of August, 1899, intestate, in the City of Sioux Falls, County of Minnehaha, South Dakota, leaving an estate of real and personal property of the value of about $33,000. The bill sets out the issuing of letters of administration to one William Van Eps, who held possession of the estate until July 12, 1906, when he died; that. subsequently thereto. special letters of administration were issued to George T. Blackman, the respondent. The bill further avers that there were in possession of said Blackman, as said special administrator, belonging to said estate, assets in excess of the sum of $35,000, consisting of real estate, cash on hand, etc. The bill avers that there were no claims against the estate, and that all the creditors of John C. McClellan had been paid, and that the estate was ready for distribution according to the laws of South Dakota. The bill further prayed that the complainants might be adjudicated the sole heirs at law and next of kin of said decedent, and entitled to

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inherit the estate, real and personal, and that the said Blackman render a just and true account of the property in his hands belonging to said estate, and, after deducting his lawful fees and expenses, be required to distribute the same in certain proportions to the complainants, as heirs at law of the decedent. The defendant Blackman appeared and answered the bill, admitting certain allegations thereof, and denying others and demanding proof thereof, and stating that he held the property described in the bill of complaint subject to the order of the court. A general replication was filed to the answer, and thereupon it appears that the State

of South Dakota came, by its attorney general and its attorney for the County of Minnehaha, and special counsel, and asked leave to intervene in the case, and, upon hearing, the circuit court of the United States overruled the motion, and ordered that the further prosecution of the action then pending before it be stayed for the period of ninety days, for the purpose of allowing the State of South Dakota to commence a proper action or proceeding to establish its title and interest in and to the property in the estate of the decedent, and that, in the event that such action be commenced within that time, then the pending action to be stayed until the determination of such action brought by the State of South Dakota. Afterwards, the complainants filed an application for the vacation of the orders staying the prosecution of their suit until the determination of the suit in the state court, but the same was denied, and thereafter the petition for mandamus in the circuit court of appeals was filed, with the result already stated.

The matters we have stated constitute the entire record before the circuit court of appeals. Upon that record, it appears that the circuit court of the United States, having an action before it to determine the interest of the complainants in the estate of John C. McClellan, upon which issue had been joined, upon application of the State of South Dakota refused to permit it to intervene in the case to set

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up its right and title to the property in the estate of the decedent, upon the claim that he died without legal heirs, and stayed the proceedings in the case before it until the State of South Dakota could bring an action in the state court for the purpose of determining such rights, and afterwards, it appearing that the state had commenced such action against all persons having or claiming a right, title, or interest therein, stayed the pending action until the determination of the action in the state court.

It is first objected on behalf of the respondent herein that this is not a case in which this Court has the authority to issue the writ of certiorari. It is contended that the application for the writ in this case was under the Act of March 3, 1891, 26 Stat. 826, c. 517, and that the right to grant writs of certiorari to the circuit court of

appeals is limited by the act to certain cases made final in the circuit court of appeals, and that, by 10 of the Court of Appeals Act, it is declared that, whenever, on appeal, writ of error or otherwise, a case coming from the circuit court of appeals shall be reviewed and determined in the Supreme Court, it shall be remanded to the proper district or circuit court for further proceedings in pursuance of such determination.

These provisions, it is contended, show that a writ of certiorari is not warranted in this case, it being an original application in mandamus in the court of appeals, and the jurisdiction in the circuit court not depending upon the opposite parties to the suit being citizens of different states, and therefore the judgment not final in the circuit court of appeals, nor could the case be remanded to the proper district or circuit court, as it was an original proceeding in mandamus in the circuit court of appeals. But the power of this Court to issue writs of certiorari is not limited to the Court of Appeals Act. Section 716 of the Revised Statutes of the United States provides:

"The Supreme Court and the circuit and district courts shall have power to issue writs of *scire facias.* They shall

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also have power to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law."

Of this section it was said in *In re Chetwood,* 165 U. S. 443 , 165 U. S. 461 :

"By section 14 of the Judiciary Act of September 24, 1789, 1 Stat. 81, c. 20, carried forward as 716 of the Revised Statutes, this Court and the circuit and district courts of the United States were empowered by Congress to issue all writs, not specifically provided for by statute, which may be agreeable to the usages and principles of law, and, under this provision, we can undoubtedly issue writs of certiorari in all proper cases. *Amer. Construction Co. v. Jacksonville Railway,* 148 U. S. 372 , 148 U. S. 380 . And although, as observed in that case, this writ has

not been issued as freely by this Court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891 c. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition, the writ may be allowed, as at common law, to correct excesses of jurisdiction, and in furtherance of justice. Tidd's Prac. 398; Bacon's Abr. 'Certiorari.'"

In *Whitney v. Dick,* 202 U. S. 132 , a writ of certiorari was granted to the Circuit Court of Appeals for the Ninth Circuit to review the judgment of that court where an original application had been made for the writ of habeas corpus and a writ of certiorari in that court. This Court held, upon the question of jurisdiction, that there could be no appeal from the circuit court of appeals in such a case, but that a writ of certiorari might issue to bring the case here from the circuit court of appeals, upon the authority of *In re Chetwood, supra.* The case at bar being a petition for mandamus, there is no amount in controversy, and consequently there could be no appeal to this Court; and, as in *Whitney v. Dick, supra,* the judgment of the circuit court of appeals was not final because

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of the diversity of citizenship in the court below, and, consequently, certiorari would not issue under the Act of 1891. In *Whitney v. Dick,* the case was remanded to the circuit court of appeals with instructions to quash the writ of certiorari issued by that court, and to dismiss the petition for habeas corpus.

In the present case, we have no doubt of the authority of this Court to issue the writ of certiorari, under 716 of the Revised Statutes of the United States, as construed and applied in the cases just cited -- *In re Chetwood,* 165 U.S., and *Whitney v. Dick,* 202 U.S., *supra.* The suggestion, therefore, that this case should be dismissed for want of power in this Court to grant the writ of certiorari cannot be entertained. While the power to grant this writ will be sparingly used, as has been frequently declared by this Court, we should be slow to reach a conclusion which would deprive the court of the power to issue the writ in proper cases to review the action of the federal courts inferior in jurisdiction to this Court.

It is further objected that the circuit court of appeals had no jurisdiction to issue the writ of mandamus, as that writ can only be issued in aid of the appellate jurisdiction of the circuit court of appeals, and, it is contended, as that court had no jurisdiction of the suit when the application for mandamus was filed, it ought to have been dismissed. Section 12 of the Court of Appeals Act declares that the circuit court of appeals shall have the powers specified in 716 of the Revised Statutes of the United States. That section we have already had occasion to quote, and when read in connection with 12 of the Court of Appeals Act, it gives to the circuit court of appeals the authority, as this Court has, to issue writs of *scire facias,* and all writs not specially provided for by statute and necessary for the exercise of the court's jurisdiction and agreeable to the usages and principles of law.

In this case, it appears that the original action commenced in the circuit court of the United States might have been taken on appeal to the circuit court of appeals. The suit involved over $2,000 in amount, and was between citizens of

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different states. There are not wanting decisions in the federal courts holding different views as to the right to issue such writs as are involved in this case before the appellate court has actually obtained jurisdiction of the case. There are expressions in opinions of this Court to the effect that such writs issue in aid of a jurisdiction actually acquired. But we think it the true rule that, where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below. This rule was distinctly stated and the previous cases referred to, in *Insurance Company v. Comstock,* 16 Wall. 258, 83 U. S. 270 . In that case, the rule was recognized that this Court had the power to issue the writ of mandamus to compel the circuit courts to proceed to final judgment in order that this Court may exercise the jurisdiction of review given by law. In that case, the Court said:

"Repeated decisions of this Court have established the rule that this Court has power to issue a mandamus in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate federal court to decide a pending cause."

In *Ex Parte Bradstreet,* 7 Pet. 647, the same rule was laid down by Chief Justice Marshall, speaking for the Court, requiring a federal court of inferior jurisdiction to reinstate a case and to proceed to try and adjudicate the same. *And see In re Pennsylvania Co.,* 137 U. S. 451 , 137 U. S. 452 ; *Virginia v. Rives,* 100 U. S. 313 ; *United States, Petitioner,* 194 U. S. 194 ; *Barber Asphalt Co. v. Morris,* 132 F. 945.

Inasmuch as the order of the circuit court staying the proceeding until after final judgment in the state court might prevent the adjudication of the questions involved, and thereby prevent a review thereof in the circuit court of appeals, which had jurisdiction for that purpose, we think that court had power to issue the writ of mandamus to require the circuit court to proceed with and determine the action pending before it.

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The question then arises, was the circuit court justified in staying the proceedings in the case and withholding further action until the case involving the same question might be brought and determined in the state court? We think that there can be but one answer to this question. The case made upon the bill was within the original jurisdiction of the circuit court of the United States. The right of the circuit court to maintain such actions, notwithstanding the legislation of the state creating probate courts, has been so recently before this Court as to require no further consideration now. *Waterman v. Canal-Louisiana Bank,* 215 U. S. 33 . In that case, following previous decisions of this Court, it was held that the chancery jurisdiction of the federal courts to entertain suits between citizens of different states to determine interests in estates, and to have the same fixed and declared, having existed from the beginning of the federal government, and created by the

grant of equity jurisdiction to such courts as it existed in the chancery courts of England, could not be impaired by subsequent state legislation creating courts of probate. The action was therefore within the jurisdiction of the circuit court of the United States.

So far as the record presented to the circuit court of appeals shows, the only ground upon which the circuit court acted in postponing the suit was because the State of South Dakota, which had applied to be made a party, and which application was denied, was about to begin a suit in the state court to determine an escheat of the estate of John C. McClellan; therefore the action was stayed, first, until the beginning of such suit, and then until it was determined. It therefore appeared upon the record presented to the circuit court of appeals that the circuit court had practically abandoned its jurisdiction over a case of which it had cognizance, and turned the matter over for adjudication to the state court. This, it has been steadily held, a federal court may not do. *Chicot County v. Sherwood,* 148 U. S. 529 , 148 U. S. 534 .

It cannot be denied that a circuit court of the United

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states, like other courts, had power to postpone the trial of cases for good reasons, but, by the orders made in this case, the federal court withheld the further exercise of its authority until the state court, by its action in a case involving all the parties, might render a judgment which would be *res judicata,* and thus prevent further proceedings in the federal court.

The rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction, for both the state and federal courts have certain concurrent jurisdiction over such controversies, and, when they arise between citizens of different states, the federal jurisdiction may be invoked, and the cause carried to judgment, notwithstanding a state court may also have taken jurisdiction of the same case. In the present case, so far as the record before the circuit court of

appeals discloses, the circuit court of the United States had acquired jurisdiction, the issues were made up, and when the state intervened, the federal court practically turned the case over for determination to the state court. We think it had no authority to do this, and that the circuit court of appeals, upon the record before it, should have issued the writ of mandamus to require the judge of the circuit court of the United States to show cause why he did not proceed to hear and determine the case.

Whether the state ought to have been allowed to intervene in the federal court is not a question now before us, but, if not made a party to the suit, its rights would not have been concluded by any adjudication made therein. *Tindal v. Wesley,* 167 U. S. 204 , 167 U. S. 223 .

We have thus far considered the case upon the record made in the circuit court of appeals, and certified here upon the writ of certiorari. In this Court, the honorable judge of the district court enters special appearance, and filed an affidavit as to the proceedings before him, in which much appears which is not in the record presented to the circuit court of appeals. In that appearance and affidavit, the petition in intervention,

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filed in the circuit court of the United States, is set forth in full, as well as certain affidavits which were filed. We shall not enter upon a consideration of these papers, because they are not in the record as the same has been certified to us from the circuit court of appeals as the one upon which it acted and declined to issue the writ of mandamus. They set forth at length certain proceedings in the state courts of South Dakota in which it is alleged that the issue of the right of the complainants in the equity suit to take the estate of John C. McClellan as his heirs at law was determined adversely to them, and that such proceedings were had as showed that further proceedings in reference to the escheat of the estate of McClellan for want of legal heirs ought to be determined by proceedings in the state court. In making his appearance in this Court, and in presenting these papers, it is evident that the district judge was much influenced in ordering the stay

of proceedings, and withholding judgment until the state court had rendered its judgment, by the proceedings already had in the state courts of South Dakota.

As we have said, we do not pass upon the sufficiency of those proceedings to authorize the orders in question. We must take the case as it is presented here upon the stipulated return to the writ of certiorari on the record as presented to the circuit court of appeals. Upon that record, we think the circuit court of appeals should not have dismissed the writ of mandamus, but should have ordered the alternative writ, or an order to show cause, to issue in order that the district judge might have been fully heard before the question was determined as to whether mandamus should issue or not.

We shall therefore reverse the judgment of the circuit court of appeals and remand the case to that court with directions to issue the alternative writ, or an order to show cause. All we decide is that, upon the petition and record made in the circuit court of appeals, and as now presented by the transcript filed in this Court, such alternative writ or order to show cause ought to have issued. The judgment dismissing

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the petition is reversed, and the case is remanded to the circuit court of appeals for further proceedings as herein indicated.

Reversed.