CASES DETERMINED

IN THE

SUPREME COURT OF THE UNITED STATES.

FEBRUARY TERM, 1813.

UNITED STATES *v.* GORDON and others. (*a*)

Appellate jurisdiction.—Embargo-bond.

A writ of error does not lie, to carry to the supreme court of the United States, a civil cause which has been carried from the district court to the circuit court by writ of error.[1]

Semble: It is a good defence to an action upon an embargo-bond, that it was given for more than double the value of the vessel and cargo, and that the master was constrained to execute it, by the refusal of a clearance.[2]

THIS was an action of debt, brought in the District Court of the United States for the district of Virginia, upon an embargo-bond, dated the 2d of November 1808, conditioned to reland the cargo of the Essex, in some port of the United States, the danger of the seas only excepted. The defendants, among other things, pleaded the following plea, viz:

"And the said defendants, for further plea why the United States ought not to have and maintain the said action, say, that the said bond was given and executed for more than double the value of the vessel and cargo, mentioned in the recital and condition of the said bond; to wit, in a sum of $8000 more than double the said value; and the said last-mentioned defendants aver, that the obligors were constrained to execute the said bond, by the refusal of the collector of the port of Tappahannock to clear and permit the said vessel and her cargo to depart from the port and district of Tappahannock, until the same bond was executed as aforesaid, and this they are ready to verify," &c.

*288] *To this plea, there was a general demurrer, which was overruled by the district judge (TYLER). The United States carried the cause up to the circuit court, by writ of error, where the judgment was affirmed by MARSHALL, C. J.

(*a*) February 16th, 1813. Absent, LIVINGSTON and TODD, Justices.

[1] Since remedied by statute: see R. S. § 691.

[2] So ruled in the court below. 1 Brock. 190. S. P. United States *v.* Morgan, 3 W. C. C. 10.

The United States brought another writ of error to the supreme court of the United States, which was dismissed for want of jurisdiction; upon the authority of the case of *United States* v. *Goodwin*, at the last term (*ante*, p. 108).

Writ of error dismissed.

Barton *v.* Petit & Bayard. (*a*)

Effect of reversal.

If the original judgment be reversed, the reversal of the dependent judgment on the "forthcoming bond," follows of course; but a special *certiorari* is necessary, to bring up the execution upon which the bond was given, so as to show the connection between the two judgments.

Error to the Circuit Court for the district of Virginia, on a judgment rendered on a bond (technically called in Virginia a "forthcoming bond"), given to the marshal, with condition to have certain goods forthcoming at the day of sale appointed by the marshal; being goods which he had seized under a *fi. fa.* issued upon a former judgment recovered by Petit & Bayard against Barton, which judgment was reversed at the last term of this court (*ante*, p. 194).

P. B. Key, for the plaintiff in error, contended, that the record of the former judgment being referred to in the condition of the bond, was to be considered as part of this record; and that the court could judicially take notice, that it was the same which was reversed by this court at the last term, the transcript of which record now remains with the clerk of this court. But if the court could not judicially notice that fact, he moved for a *certiorari* to the clerk below, to certify the record of the judgment on which the execution issued, upon which the bond was given.

E. J. Lee and *J. R. Ingersoll*, contrà, contended, that the former record was no part of the present record, and that the court could not judicially know it to be the same, and cited 4 Hen. & Munf. 293; 1 Wash. 94.

*February 11th, 1813. Washington, J., delivered the opinion of the court as follows:—This is a writ of error to a judgment of the circuit court of Virginia, rendered upon a bond given by the plaintiffs in error, with condition for the delivery, at a certain time and place, of property seized by the marshal, to satisfy an execution which had issued from the same court. The condition not having been complied with, this judgment was rendered upon motion, and notice thereof duly served upon the obligors in the bond, agreeable to the laws of Virginia. [*289

It is not pretended, that there is any intrinsic error in this judgment, to warrant its reversal; but it is contended, that the reversal of the original judgment, upon which the proceedings in this record took place, requires, necessarily, the reversal of this judgment. The general doctrine is undeniably so; but the application of it to this case is not admitted. That the judgment in this record is dependent upon some other judgment is apparent from the bond, which recites a prior execution, and seizure by the marshal of the property mentioned in the condition, for the purpose of satisfying it; but it

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(*a*) February 4th, 1813. Absent, Johnson and Todd, Justices.