

## Syllabus.

testimony to the effect that in arriving at the latter amount those claims included in the former, which did not represent cash, such as commissions to trustees, were to be reduced, though apparently not by any uniform ratio. Russell, who had a claim for \$50,000 under the first arrangement, settled at a much less figure paid in stock. It may fairly be said that the plaintiffs have not proven that their claim was to be exempted from a reduction corresponding to that made in others of like character, and of course the burden is on them to make out their case. If it be said that the amount of \$38,000 was agreed upon in the first instance, a sufficient reply is that that agreement was not made with the creditors, and was only in view of the proposed sale to the English syndicate. There is no testimony as to the real value of those services. Equity would seem to say that the claim of plaintiffs should be scaled down proportionately to the amount allotted to Wilson under the two contracts, which, as we figure it, would reduce the sum to \$25,440. A majority of the court are of the opinion that in view of the peculiar circumstances of the case the plaintiffs should not be allowed interest.

*The decree of the court below must, therefore, be reversed and the case remanded, with instructions to enter a decree in favor of the plaintiffs, awarding to them the sum of \$25,440, and adjudging it a lien upon the stock of the Lake Superior Ship Canal, Railway and Iron Company remaining in the hands of defendant.*

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WERNER *v.* CHARLESTON.

ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

No. 941. Submitted January 15, 1894.—Decided January 22, 1894.

This case is dismissed on the authority of *Meagher v. Minnesota Thresher Mfg. Co.*, 145 U. S. 608, (and other cases named in the opinion,) in which it was held that a judgment of the highest court of a State, overruling a demurrer, and remanding the case to the trial court for further proceedings, is not a final judgment.

## Opinion of the Court.

**MOTION TO DISMISS.** The motion stated that "the judgment brought here by writ of error for review, is a judgment of the Supreme Court of the State of South Carolina, which simply affirmed a decision of the lower court overruling a demurrer, and thereby remanded the case to the court below for a hearing on the merits. It is therefore an interlocutory judgment and is in no sense a final decree."

To this the plaintiff in error replied: "The judgment brought here by writ of error for review is the judgment of the Supreme Court of the State of South Carolina holding that a certain act of the General Assembly of the State of South Carolina, entitled 'An act to authorize the City Council of Charleston to fill up low lots and grounds in the city of Charleston in certain cases and for other purposes,' approved on the 18th of December, 1830, is not in violation of the Constitution of the United States, thereby affirming the judgment of the trial court and so ending the constitutional defence interposed by the plaintiff in error.

"An examination of the record will show that the main ground of the demurrer interposed in the court below by the plaintiff in error was the unconstitutionality of the act of 1830. It was claimed both there and in the court above, as well as in this court, to be in violation of due process of law."

*Mr. Charles Inglesby* for the motion.

*Mr. T. Moultrie Mordecai* opposing.

**THE CHIEF JUSTICE:** The writ of error is dismissed. *Meagher v. Minnesota Thresher Co.*, 145 U. S. 608; *Rice v. Sanger*, 144 U. S. 197; *Hume v. Bowie*, 148 U. S. 245.