

Winn v. Jackson.

six years ; and that, consequently, the act of limitations, constituted no bar to the action. This court perfectly accords in opinion with the supreme court of the state.

If it be true, that the condition of the bond was broken, at the time the marshal failed to bring the money into court, to be deposited in the bank, or pay it over to Hernandez & Co.; and if it be true, that the breach of the condition of the bond was to the injury of Hernandez & Co., yet, it is not true, that Hernandez & Co. had, at that time, any right of action. The record of the proceedings in the court of admiralty shows that the Estrella and cargo were sold, and the proceeds received by the marshal ; and that the suit was finally decided in the district court, on the — day of —, 1817 ; by which final decree the proceeds were ordered to be paid over to Hernandez & Co. An appeal was presented from that decree in this court ; where it was affirmed at the February term in the year 1819, within less than six years before the institution of this suit. It is perfectly clear, that Hernandez & Co. had no right to demand of the marshal the proceeds of the sales, or to sue for the recovery thereof, until after the affirmance in this court. The right of action was suspended, during the pendency of the appeal in this court ; and during such suspension, the statute of limitations did not run against him.

We are, therefore, of opinion, that the supreme court of Louisiana have misconstrued neither the act of congress limiting actions upon marshals' bonds to six years from the time the right of actions accrues, nor any other act of congress, to the prejudice of the plaintiff in error.

Judgment affirmed, with costs and six per cent. damages.

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\*WINN'S Heirs v. JACKSON and others.

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*Final judgment.*

The judgment of the highest court of law of a state, deciding in favor of the validity of a statute of a state, drawn in question on the ground of its being repugnant to the constitution of the United States, is not a final judgment, within the 25th section of the judiciary act of 1789, ch. 20, if the suit has been remanded to the inferior state court, where it originated, for further proceedings, not inconsistent with the judgment of the highest court.

ERROR to the Court of Appeals of Kentucky. This was an ejectment, originally brought in the Harrison circuit court of the state of Kentucky, by the plaintiffs in error, against the defendants in error, and judgment being rendered for the plaintiffs, the cause was carried, by writ of error, to the court of appeals, being the highest court of law and equity of that state. The judgment was reversed in the court of appeals, and the cause remanded to the Harrison circuit court, for further proceedings, not inconsistent with the decision of the court of appeals. Whereupon, the plaintiffs sued out their writ of error, under the 25th section of the judiciary act of 1789, c. 20, and brought the cause before this court, as being a suit where was drawn in question the validity of a statute of the state of Kentucky, on the ground of its being repugnant to the constitution of the United States, and the decision being in favor of its validity.

Postmaster-General v. Early.

February 1st, 1827. *Wickliffe* moved to quash the writ of error, upon the ground, that although the decision of the court of appeals was in favor of the validity of the statute which had been drawn in question, as being repugnant to the constitution of the United States, the judgment of that court was not "a final judgment," within the true meaning of the 25th section \*of the judiciary act of 1789, ch. 20, the case having been \*136] remanded to the circuit court of Harrison for further proceedings. (a)

Motion allowed.

The POSTMASTER-GENERAL OF THE UNITED STATES v. EARLY and others.

*Suits by the postmaster-general.—Postmaster's bond.*

The circuit courts of the Union have jurisdiction, under the constitution, and the acts of April 30th, 1810, ch. 262, § 29, and of March 3d, 1815, ch. 782, § 4, of suits brought in the name of "the postmaster-general of the United States," on bonds given to the postmaster-general, by a deputy postmaster, conditioned "to pay all moneys that shall come to his hands for the postages of whatever is by law chargeable with postage, to the postmaster-general of the United States for the time being, deducting only the commission and allowances made by law for his care, trouble and charges, in managing the said office," &c.

The postmaster-general has authority to take such a bond, under the different acts establishing and regulating the post-office department, and particularly under the act of April 30th, 1810, ch. 262, § 29, 42.<sup>1</sup>

CERTIFICATE of Division from the Circuit Court of Georgia. This was an action of debt, commenced in the circuit court for the district of Georgia, by the district-attorney of the United States for that district, in the name of the postmaster-general of the United States, against the defendants, on a bond executed by them, in June 1820, to the postmaster-general of the United States, the condition of which, after reciting that Eleazer Early (one of the co-obligors and defendants in the suit) is postmaster, at Savannah, provides, that if he shall perform the duties of his office, "and shall pay all moneys that shall come to his hands for the postages of whatever is by law chargeable \*with postage, to the postmaster-general of the United \*137] States for the time being, deducting only the commission and allowances, made by law, for his care, trouble and charges, in managing the said office," &c., "then the above obligation shall be void."

(a) He cited *Gibbons v. Ogden*, 6 Wheat. 448.

<sup>1</sup> Postmaster-General v. Reeder, 4 W. C. C. 678; Postmaster-General v. Rice, Gilpin 554; Postmaster-General v. Appleback, 16 Haz. Pa. Reg. 8. This last case was a suit in the district court for the eastern district of Pennsylvania, upon the bond of the postmaster of Cherryville, to recover a balance in his hands. The action was brought in 1831, and the defendant set up the presumption of payment arising from lapse of time. On the 19th of May 1835, the following opinion was delivered by—

HOPKINSON, J.—When the bond was taken, there was no law requiring one; it was customary to take it, and the supreme court have decided, that the postmaster-general had a right to

take such bond. Lapse of time is alleged by the defendants; but it has not been such, in this case, as to raise a presumption of payment. The next question is, what is the effect of the proviso in the 3d section of the act of 1825. The law of 1825 is the first which requires a bond, and that proviso, or clause fixing two years for suit, applies to such bonds only. If otherwise, the plaintiff would be disabled from recovering, because he had not brought a suit, when he was not bound to do it. Before the act of 1825, he was not required to sue within two years, yet, for not suing within that time, he would, by the defendant's construction, lose his remedy. Verdict for plaintiff.