Gordon v. Ogden.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel: On consideration whereof, it is considered, ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

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*33] *ALEXANDER GORDON and others *v.* FRANCIS B. OGDEN.

Appellate jurisdiction.

The plaintiff below claimed more than $2000 in his declaration, but obtained a judgment for a less sum.

The jurisdiction of this court depends on the sum of value in dispute between the parties, as the case stands upon the writ of error in this court; not on that which was in dispute in the circuit court. p. 34.

If the writ of error be brought by the plaintiff below, then the sum which the declaration shows to be due, may be still recovered, should the judgment for a smaller sum be reversed; and consequently, the old sum claimed is still in dispute. p. 34.

But if the writ of error be brought by the defendant in the original action, the judgment of this court can only affirm that of the circuit court, and consequently, the matter in dispute cannot exceed the amount of that judgment; nothing but that judgment is in dispute between the parties.[1] p. 34.

ERROR to the Circuit Court for the District of Louisiana.

Ogden moved to dismiss the writ of error in this case, on the ground that the court had not jurisdiction of the cause, the sum in controversy not amounting to $2000, the amount for which a writ of error is allowed. He stated, that the action was instituted for the violation of a patent, and the amount of the recovery in damages was $400, by the verdict of the jury. If, under the provision of the patent law, the damages are to be trebled, it will not amount to a sum authorizing the writ of error.

Although the damages laid in the declaration are $2000, yet, after verdict, as the writ of error is taken by the defendant below, the only matter in dispute here is the amount of the verdict, or at most, treble that sum, being $1200. If the sum stated in the declaration shall be allowed to ascertain the amount in dispute, in every case of tort, or of claims of uncertain damages, the plaintiff, who might insert any sum in his declaration, could secure the right to a writ of error to this court.

Coxe, for the plaintiff in error, the defendant below, on the authority of *Wilson* v. *Daniel*, 3 Dall. 401, *contended, that the matter in dispute
*34] originally determined the jurisdiction; and in this case, the sum stated in the declaration ascertains the amount. He also cited *Peyton* v. *Robertson*, 9 Wheat. 527; *Cooke* v. *Woodrow*, 5 Cranch 14.

MARSHALL, Ch. J., delivered the opinion of the court.—A motion has been made to dismiss this writ of error because the court has no jurisdiction

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[1] Smith *v.* Honey, *post*, p. 469; Knapp *v.* Banks, 2 How. 73; Walker *v.* United States, 4 Wall. 164; Merrill *v.* Petty, 16 Id. 344-5; Thompson *v.* Butler, 95 U. S. 695.

over it. The plaintiff below claimed more than $2000 in his declaration, but obtained a judgment for a less sum. The defendant below has sued out a writ of error, and contends now, that the matter in dispute is not determined by the judgment, but by the sum claimed in the declaration.

The court has jurisdiction over final judgments and decrees of the circuit court, where the matter in dispute exceeds the sum or value of $2000. The jurisdiction of the court has been supposed to depend on the sum or value of the matter in dispute in this court, not on that which was in dispute in the circuit court. If the writ of error be brought by the plaintiff below, then the sum which his declaration shows to be due, may still be recovered, should the judgment for a smaller sum be reversed ; and consequently, the whole sum claimed is still in dispute. But if the writ of error be brought by the defendant in the original action, the judgment of this court can only affirm that of the circuit court, and consequently, the matter in dispute cannot exceed the amount of that judgment. Nothing but that judgment is in dispute between the parties. The counsel for the plaintiff in error relies on the case of *Wilson* v. *Daniel*, 3 Dall. 401. That case, it is admitted, is in point. It turns on the principle, that the jurisdiction of this court depends on the sum which was in dispute before the judgment was rendered in the circuit court. Although that case was decided by a divided court, and although we think, that upon the true construction of the 22d section of the judiciary act, the jurisdiction of the court depends upon the sum in dispute between the parties, as the case stands upon the writ of error, we should be much inclined to adhere to the decision in *Wilson* v. *Daniel*, had not a contrary practice since prevailed. In *Cooke* v. * *Woodrow*, 5 Cranch 13, this court said, "if the judgment below be for the plaintiff, that judg- [*35 ment ascertains the value of the matter in dispute." This, however, was said in a case in which the defendant below was plaintiff in error, and in which the judgment was a sufficient sum to give jurisdiction. The case of *Wise and Lynn* v. *Columbian Turnpike Company*, 7 Cranch 276, was dismissed, because the sum for which judgment was rendered in the circuit court, was not sufficient to give jurisdiction, although the claim before the commissioners of the road, which was the cause of action and the matter in dispute in the circuit court, was sufficient. The reporter adds, that all the judges were present.

Since this decision, we do not recollect, that the question has been ever made. The silent practice of the court has conformed to it. The reason of the limitation is, that the expense of litigation in this court ought not to be incurred, unless the matter in dispute exceeds $2000. This reason applies only to the matter in dispute between the parties in this court. We are all of opinion, that the writ of error be dismissed, the court having no jurisdiction of the cause.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the district of East Louisiana, and was argued by counsel : On consideration whereof, and of the motion made by Mr. *Ogden* in this cause, on a prior day of this term, to wit, on Thursday, the 28th of January, of the present term of this court, to dismiss this writ of error for want of jurisdiction, the amount in controversy not exceed-

ing the sum of $2000; it is ordered and adjudged by this court, that the writ of error in this cause be and the same is hereby dismissed, for want of jurisdiction, on the ground, that the sum in controversy does not exceed the sum of $2000; and the same is dismissed accordingly.

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*36] *Anna Maria Thornton, Executrix of William Thornton, Plaintiff in error, *v.* Bank of Washington.

Demurrer to evidence.—Usury.

The party who demurs to evidence seeks thereby to withdraw the consideration of the facts from the jury; and is, therefore, bound to admit not only the truth of the evidence, but every fact which that evidence may legally conduce to prove, in favor of the other party; and if, upon any view of the facts, the jury might have given a verdict against the party demurring, the court is also at liberty to give judgment against him. p. 40.

The taking of interest in advance, upon the discount of a note, in the usual course of business, by a banker, is not usury; this has been long settled, and is not now open to controversy. p. 40.

The taking of interest for sixty-four days on a note, is not usury, if the note, given for sixty days, according to the custom and usage in the banks of Washington, was not due and payable until the sixty-four day. In the case of Renner *v.* Bank of Columbia, 9 Wheat. 581, it was expressly held, that under that custom, the note was not due and payable before the sixty-fourth day, for until that time the maker could not be in default. p. 40.

Where it was the practice of the party who had a sixty-day note discounted at the Bank of Washington, to renew the note, by the discount of another note, on the sixty-third day, the maker not being in fact bound to pay the note, according to the custom prevailing in the district of Columbia; such a transaction on the part of the banker, is not usurious, although on each note the discount for sixty-four days was deducted. Each note is considered as a distinct and substantive transaction; if no more than legal interest be taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note, before it comes due, does not, of itself, make the transaction usurious. Something more must occur; there must be a contract between the bank and the party, at the time of such discount, that the party shall not have the use and benefit of the proceeds, until the former note becomes due, or that the bank shall have the use and benefit of them in the mean time.[1]

Error to the Circuit Court of the District of Columbia, for the county of Washington.

This case was brought before the court to reverse the judgment of the circuit court on a demurrer to the evidence offered by the defendants in error, the plaintiffs below, to sustain a claim on Mr. Thornton, as indorser on a promissory note, discounted at the Bank of Washington, for the benefit of one Bailey, the maker of the note. The facts of the case are stated in the opinion of the court, delivered by Mr. Justice Story.

*37] *C. C. Lee* and *Jones*, for the plaintiff in error, contended, that the evidence offered by the plaintiffs below proved that usury had

[1] S. P. Walker *v.* Bank of Washington, 3 How. 62. But discounting a note, on the theory that 360 days make a year, though the practice be universal, is usurious. New York Firemen Ins. Co. *v.* Ely, 2 Cow. 678; Bank of Utica *v.* Wager, Id. 712; s. c. 8 Id. 308; Utica Ins. Co. *v.* Tilman, 1 Wend. 555; Bullock *v.* Boyd, Hoffm. Ch. 294. Usury being a defence that must be strictly proved, it will not be presumed, that a note dated on one day, with interest from a previous day, was for money lent on the date of the note. Ewing *v.* Howard, 7 Wall. 499.