UNITED STATES v. BELT ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

No. 919. Decided June 7, 1943.

Section 5 of the Act of April 27, 1912, allowing appeals directly to this Court from final decrees of the "Supreme Court of the District of Columbia," was repealed by § 238 of the Judicial Code, as amended by the Act of February 13, 1925. P. 522.

47 F. Supp. 239, vacated and remanded.

APPEAL from a judgment for the defendants in a suit brought by the United States to quiet title.

Solicitor General Fahy and *Mr. Alex. H. Bell, Jr.* were on the brief for the United States.

Messrs. Milton D. Campbell and *Walter M. Bastian* were on the brief for appellees.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This suit in the District Court for the District of Columbia was brought by the United States under the Act of April 27, 1912, c. 96, 37 Stat. 93, to establish and make clear its title to certain parcels of land adjacent to the Anacostia River. The District Court entered judgment for the defendants, and the United States seeks a direct appeal to this Court under § 5 of that Act, which provides: "That from the final decree of the Supreme Court of the District of Columbia . . . an appeal shall be allowed to the United States, and to any other party in the cause complaining of such decree, to the Supreme Court of the United States. . . ."

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C.

§ 345, permits direct review by this Court of the judgments of the district courts in only five specified categories, "and not otherwise." The case at bar is within neither those categories nor that recognized by *Ex parte Kawato,* 317 U. S. 69, and *Ex parte Peru,* 318 U. S. 578, *viz.,* the use of auxiliary writs in exceptional cases in aid of this Court's appellate jurisdiction. The Government seeks to remove this case from the restrictions of the Act of 1925 on the ground that it was not intended to affect such special instances of direct review as that afforded by the Act of April 27, 1912. But we cannot read such an exception into the 1925 Act.

Nor is the contrary result required because the District Court for the District of Columbia was known as the "Supreme Court of the District of Columbia" when the Act of 1925 became law. At that time the Supreme Court of the District of Columbia possessed the jurisdiction of a district court of the United States, see Code of Law for the District of Columbia (1924) §§ 61, 62, 84, and it was treated as a "district court" for purposes of the Anti-Trust Acts, see *Federal Trade Comm'n* v. *Klesner,* 274 U. S. 145, 153–54, and *Swift & Co.* v. *United States,* 276 U. S. 311, 324–25. Considerations no less controlling exist for treating it as a "district court" within the scope of § 238. The dominating policy of the Act of 1925 was to restrict direct review to this Court as a matter of right, and more particularly to shut off such direct review of the judgments of federal *nisi prius* courts. It would be wholly inconsistent with that Act to exclude the District Court for the District of Columbia from the scope of its provisions merely because that court did not become a district court in name until the Act of June 25, 1936, c. 804, 49 Stat. 1921. Cf. H. R. Rep. No. 1075, 68th Cong., 2d Sess., pp. 6–7.

We hold, therefore, that the provisions for direct review to this Court contained in § 5 of the Act of April 27, 1912, were repealed by § 13 of the Judiciary Act of 1925, because

they were "inconsistent therewith." The judgment appealed from is vacated and the cause is remanded to the District Court so that it may enter a new judgment from which the United States may, if it wishes, perfect a timely appeal to the Court of Appeals for the District of Columbia. Cf. *Phillips* v. *United States,* 312 U. S. 246, 254.

So ordered.

MR. JUSTICE DOUGLAS and MR. JUSTICE MURPHY dissent.

VIRGINIAN HOTEL CORPORATION *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 766. Argued May 12, 13, 1942.—Decided June 7, 1943.

Under the Revenue Act of 1938, which provides that the basis on which depreciation shall be "allowed" as a deduction in computing net income is the cost of the property with proper adjustments for depreciation to the extent "allowed (but not less than the amount allowable)" under that and prior income tax laws, excessive amounts claimed by the taxpayer for depreciation in his returns for earlier years were properly deducted from cost in readjusting the depreciation basis of the property in question, although in those years no tax benefit resulted to the taxpayer from the use of depreciation as a deduction. P. 526.

132 F. 2d 909, affirmed.

CERTIORARI, 318 U. S. 754, to review the reversal of a ruling of the Tax Court against a deficiency assessment of income tax.

Mr. W. A. Sutherland, with whom *Messrs. F. G. Davidson, Jr., Noah A. Stancliffe, Theodore L. Harrison,* and *J. Donald Rawlings* were on the brief, for petitioner.

Mr. Samuel H. Levy, with whom *Solicitor General Fahy, Assistant Attorney General Samuel O. Clark, Jr.,* and