

Wilson's Heirs v. New York Life and Fire Ins. Co.

in this case was pronounced, does not entitle me to speak further in his behalf.

BALDWIN, Justice, concurred with Mr. Justice STORY in the opinion delivered by him; and with the majority of the court, in affirming the judgment of the court of appeals.

MCLEAN, Justice, concurred with Mr. Justice STORY.

THIS cause came on to be heard, on the transcript of the record from the court of appeals for the eastern shore of Maryland, and was argued by counsel: On consideration whereof, it is now here adjudged and ordered by this court, that the judgment of the said court of appeals in this cause be and the same is hereby affirmed, with costs.

*The Heirs of NICHOLAS WILSON v. The LIFE AND FIRE INSURANCE [*140
COMPANY OF NEW YORK.

Practice.

In certain proceedings for the sale of property mortgaged, the widow and children of the deceased owner of the property were made defendants; the district court of Louisiana gave a judgment in favor of the plaintiffs; the widow was entitled to her community in the property mortgaged, and had taken the property at the appraisement and estimation. The writ of error to the district court of Louisiana was issued in the name of "the heirs of Nicholas Wilson," without naming any person as plaintiff; the widow of Nicholas Wilson did not join in the writ of error. The writ of error was dismissed on the two grounds: that no person was named in it; and that the widow of Nicholas Wilson had not joined in it. The rule of court is, that where there is a substantial defect in the appeal or writ of error, the objection may be taken at any time before the judgment; on the ground, that the case is not legally before the court, and that it has not jurisdiction to try it. *Deneale v. Stump's Executors*, 8 Pet. 526; and *Owings v. Kincannon*, 7 Ibid. 399, cited.

ERROR to the District Court for the Eastern District of Louisiana.

Butler, for the defendants, moved to dismiss the writ of error. 1. Because no persons are named in the writ as plaintiffs; but they are described, generally, as the Heirs of Nicholas Wilson. 2. That the widow of Nicholas Wilson, who is interested in the suit, did not join in the application for the writ of error.

The motion was opposed by *Coze* and *Webster*.

TANEY, Ch. J., delivered the opinion of the court.—The proceedings in this case were instituted in the district court for the eastern district of Louisiana, for the purpose of procuring the sale of certain property mortgaged by Nicholas Wilson, in his lifetime, to the Life and Fire Insurance Company of New York. The widow and children of the deceased were made defendants in the petition, and the judgment in the district court was in favor of the plaintiffs. The widow, it appears, was entitled to her community *in the property mortgaged; and had taken the property of the deceased, as she had a right to do, at the appraisement and estimation. [*141

The counsel for the defendant in error has moved to dismiss this case: 1st, Because no persons are named as plaintiffs in the writ of error; but

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they are described generally in the writ as "the Heirs of Nicholas Wilson." 2d, If this general description is sufficient, yet it appears by the petition for the writ, which is referred to in the appeal bond, that the widow did not join in the application for the writ of error: and as the judgment against the defendants was a joint one, they must all join in a writ of error, unless there is a summons and severance. We think the writ of error must be dismissed on both grounds; and that the points raised have already been decided by this court.

In the case in 8 Pet. 526, the writ of error issued in the name of "Mary Deneale, executrix of George Deneale, and others." It was dismissed on the motion of the defendants in error, and the court said, "the present writ of error is brought by Mary Deneale *and others* as plaintiffs; but who the *others* are cannot be known to the court, for their names are not given in the writ of error, as they ought to be. Mary Deneale cannot alone maintain a writ of error on this judgment; but all the parties must be joined and their names set forth, in order that the court may proceed to give a proper judgment in the case." In the case now before the court, the name of no one of the parties is set forth in the writ of error; and according to the rule laid down in the case referred to, this writ of error cannot be maintained.

The second objection above stated, falls within the principle decided in *Owings v. Kincannon*, 7 Pet. 399. In that case, a joint decree was passed by the circuit court for the district of Kentucky, against six defendants. An appeal was prayed, generally, from the decree; but in the appeal bond, it was stated, that two had prayed an appeal, and nothing was there said of the others. The court considered the statement in the bond as explaining the general entry granting the appeal; and dismissed the case, because all of the defendants in the court below had not joined in it. In the case before the court, if the omission to name the plaintiffs in error in the writ was not regarded as an insuperable objection, and if the general description of "the Heirs of Nicholas Wilson," could be supposed, under the laws of Louisiana, to include his widow; yet the statement in the petition for the writ of error *142] which is referred to in the bond, would explain the general description in the writ. and bring this case within the principle decided in *Owings v. Kincannon*.

In both of the cases referred to, it appears, that the motions to dismiss were not made at the first term, or at the time of appearance in this court; but each of the cases had been depending here two years, before the motion was made. The rule of this court, therefore, is, that where there is a substantial defect in the appeal or writ of error, the objection may be taken, at any time before judgment, on the ground that the case is not legally before us; and that we have not jurisdiction to try it. It follows, that the writ of error in the case under consideration must be dismissed.

BALDWIN, Justice, dissented.

ON consideration of the motion made in this cause by Mr. Butler, to dismiss this case for irregularity, on the ground, that the writ of error does not set forth the names of all the parties, and of the arguments of counsel thereupon had, as well in support of, as against the motion: It is now here ordered and adjudged by this court, that this writ of error to the district

Sarchet v. United States.

court of the United States for the eastern district of Louisiana be and the same is hereby dismissed, and that it be so certified to the said district court.

*EDWARD SARCHET and others, Appellants, v. UNITED STATES. [*143

Appellate jurisdiction.

The United States instituted a suit, on a bond for duties, in the district court of the southern district of New York; and after a trial and verdict for the United States, judgment was given against the defendant; who thereupon prosecuted a writ of error to the circuit court, for the southern district of New York, where the judgment of the district court was affirmed; the defendant then appealed to the supreme court: *Held*, that cases at law can only be brought from the circuit court by writ of error, and cannot be brought by appeal. In cases at law, removed from the district to the circuit court, the judgment of the circuit court is final and conclusive; it is otherwise, in cases of admiralty and maritime jurisdiction. *United States v. Hudson*, 7 Cranch 108; and the several cases, 7 *Ibid*. 287; and 2 *Wheat*. 248, 395, cited.

APPEAL from the Circuit Court for the Southern District of New York.

Butler, Attorney-General, moved to dismiss the appeal, on two grounds. 1. That this was originally a proceeding at law, on a bond for duties, in the district court of New York for the southern district; and was, after a judgment of that court for the United States, taken by a writ of error to the circuit court for the southern circuit, by the defendant: where the judgment of the district court was affirmed. The judgment of the circuit was final in such a case. 2. This is a proceeding at law; and the defendant has brought the case from the circuit court by an appeal, and not by a writ of error. *Butler* cited *United States v. Goodwin*, 7 Cranch 108; 7 *Ibid*. 287; 3 *Wheat*. 248, &c.

Sarchet, opposed the motion, in person: cited, 3 *Dall*. 171; 2 *Wheat*. 259.

TANEY, Ch. J., delivered the opinion of the court.—In this case, an action was brought by the United States against Edward Sarchet and others, in the district court for the southern district of New York, upon a bond for duties charged by the collector upon certain iron imported into the United States. The duties *claimed were contested by the defendants, upon [*144 the ground, that iron of the description imported was not by law chargeable with that duty, and that the bond was, therefore, improperly taken. The judgment in the district court was against the defendants; and they removed it, by writ of error, to the circuit court for the southern district of New York, in the second circuit, where the judgment of the district court was affirmed; and the case is now brought here by appeal from the judgment of the circuit court. The attorney-general has moved to dismiss the case for want of jurisdiction in this court: and we think the *appeal* cannot be sustained.

It has been repeatedly determined that, under the acts of congress regulating the appellate jurisdiction of this court from the circuit courts, cases must be brought here by writ of error, and cannot be brought here by appeal. And as this was a suit at law on a bond, it could not, under any circum-