

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-

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stances, legally come before us on appeal ; but must come up by writ of error in order to give us jurisdiction to try it.

There is also another objection, equally fatal to this proceeding. In cases at law, removed from the district court to the circuit court, the judgment of the circuit court is final between the parties. It is otherwise in cases in equity, and of admiralty and maritime jurisdiction ; and although the reason for this distinction may not be entirely obvious, yet it is our duty to conform to the provisions of the law : and this court have repeatedly decided, that, in civil cases at law, the judgment of the circuit court is final, where the case is removed by writ of error, from the district court to the circuit court. The point was fully considered and decided in the case of the *United States v. Goodwin*, 7 Cranch 108 ; and the opinion there given has been since re-affirmed in several cases. *Ibid.* 287 ; 2 Wheat. 248, 395. The question must be regarded as too well settled to be now open for argument ; and as this court would not have jurisdiction, in any form of proceeding, to review the judgment in this case by the circuit court ; it would be evidently improper to hear an argument on the question decided there, or to express any opinion concerning them. The appeal is, therefore, dismissed.

Appeal dismissed.

*145] *CHARLES SCOTT, Bailiff of WILLIAM S. MOORE, Plaintiff in error,
v. JOHN LLOYD, Defendant in error.

Competency of witness.

Where the grantor of annuity by deed, has conveyed all his interest in the property charged therewith, and an allegation of usury in the granting thereof is afterwards made, he may be a witness to prove usury ; if he is not a party to the suit, and has conveyed all his right and title to the property to others, his creditors, thus divesting himself of all interest arising out of the original agreement, and is released from his debts by them, and is not liable to the costs of the suit.¹

The decision in *Willings v. Consequa*, Pet. C. C. 301 ; where the court held that a party named on the record might be released, so as to constitute him a competent witness, was cited in the argument. The court said, such a rule would hold out to parties a strong temptation to perjury ; and we think it is not sustained either by principle or authority.

ERROR to the Circuit Court of the District of Columbia, and county of Washington. This case was before the court, at the January term 1830 (4 Pet. 205) ; and again at January term 1835 (9 *Ibid.* 418). It now came up on a writ of error, prosecuted by the plaintiff in the circuit court. The questions involved in the case when it was before the court in 1830 and 1835, and also in this case, are stated in the opinion of the court. The

¹ It is now provided by statute, that in the courts of the United States, no witness shall be excluded, in any civil action, because he is a party to, or interested in, the issue to be tried : provided, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or state-

ment by, the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the courts. In all other respects, the laws of the state in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at common law, in equity, and in admiralty. 1 R. S. § 858. See *Texas v. Chiles*, 21 Wall. 488