

JOHN MCKINNEY, WILLIAM McCONNELL and KAY MOSS, Plaintiffs in error, v. JOHN CARROLL.

Error to state court—Practice.

To give the supreme court of the United States jurisdiction, under the 25th section of the judiciary act, in a case brought from the highest court of a state, it must be apparent in the record, that the state court did decide in favor of the validity of a statute of the state, the constitutionality of which is brought into question on the writ of error. Two things must be apparent in the record; first, that some one of the questions stated in the 25th section, did arise in the state court; and secondly, that a decision was actually made thereon by the same court, in the manner required by the section.

Where one of three parties, plaintiffs in a writ of error, dies, after the writ of error is issued, it is not necessary to make the heirs and representatives of the deceased, parties to the writ of error; as the cause of action survives to the two other plaintiffs in error.¹

ERROR to the Court of Appeals of the state of Kentucky.

This case was argued by *Jones*, for the plaintiffs in error, and by *Woodward*, for the defendant. The argument was upon points upon which the court expressed no opinion; as on consideration of the case, it was found not to be within the jurisdiction of the supreme court, to which it had been removed by a writ of error to the court of appeals of Kentucky. The arguments of the counsel are not, therefore, inserted in the report.

MCKINLEY, Justice, delivered the opinion of the court.—This is a writ of error to a judgment of the court of appeals of Kentucky, affirming a judgment of the Jessamine circuit court.(a) The heirs of John Moss recovered a judgment in ejectment, against the defendant in error, in the circuit court, at the October term 1815, for a tract of land in Jessamine county; and at the same term, commissioners were appointed, in conformity with the act of the 31st of January 1812, concerning occupying claimants *67] of lands, to value the land in controversy, the improvements thereon, &c. At a subsequent term of the court, the commissioners made their report; and among other things, reported the improvements on the land to be of the value of \$1698. At the October term 1819, of the said circuit court, on the motion of the defendant, judgment was rendered in his favor, against the plaintiffs in ejectment, for said sum of \$1698. And on the 25th day of October 1819, the plaintiffs in error, as sureties of the plaintiffs in ejectment, executed a bond to the defendant, with condition to pay said sum of \$1698, in two equal annual instalments, with interest, as authorized by said act; which bond had, by law, the force of a judgment; and execution was authorized to be issued thereon, as in case of replevin bonds.

On the 7th day of December 1821, an execution issued on the bond, against the plaintiffs in error; who, availing themselves of the benefit of a

(a) At the last term of this court, the death of John McKinney, one of the plaintiffs, was suggested, and the cause continued for revivor, under the mistaken opinion that he was the only plaintiff. On inspection of the record, it appeared, that there are two other plaintiffs; and as the cause of action survived to them, the revivor was unnecessary.

¹A writ of error abates, at common law, by the death of one of the plaintiffs in error, before errors assigned. *Boas v. Heister*, 3 S.

& R. 271. Otherwise, under the Pennsylvania statutes. *Ulshafer v. Stewart*, 71 Penn. St. 170. See *Clarke v. Rippon*, 1 B. & Ald. 586

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statute, then in force, replevied the debt for two years more. When execution issued against them, on the replevin bond, they applied to the judge of said circuit court, for a writ of error *coram vobis*; and in their petition, assigned, in substance, these errors: first, the act of the 31st of January 1812, concerning occupying claimants of lands, is a violation of the compact between Virginia and Kentucky, and a violation of the constitution of the United States, and therefore, the bond and other proceedings under it, are void; second, but one bond was given for both instalments, when there should have been a bond given for each instalment; third, but one execution issued for both instalments, when there should have been an execution issued for each instalment; fourth, the law under which the replevin bond was given, is a violation of the constitution of Kentucky, and a violation of the constitution of the United States, and therefore, the bond is void; fifth, the whole proceedings are erroneous, wanting form and substance.

The judge of the circuit court awarded the writ of error *coram vobis*, on the 15th day of March 1824, returnable to the next term of said circuit court. At which term, on the 28th day of April 1824, by judgment of the court the writ of error *coram vobis* was dismissed. From this judgment, the plaintiffs in error appealed to the court of appeals; and assigned there the following errors: first, the court erred in giving judgment upon the several matters and errors alleged in the petition for the writ of error *coram vobis* and the assignment *of errors therein contained; second, [*68 the court ought to have quashed the said execution, bond, &c., as prayed for in the petition and writ of error *coram vobis*. Upon the hearing of the cause, the court of appeals affirmed the judgment of the circuit court.

The jurisdiction of this court over this cause was not questioned at the bar; but the question appears necessarily to arise on the record, and must, therefore, be decided by the court. The 25th section of the judiciary act of 1789 confers appellate jurisdiction on this court, from final judgments and decrees, in any suit in the highest court of law or equity of a state, in which a decision of the suit could be had; where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption set up or claimed by either party.

In this case, two statutes of Kentucky have been drawn in question, on the ground of their repugnance to the constitution of the United States. But whether the court of appeals decided in favor of their validity, will depend, first, upon whether the questions arising under those statutes were not, or might have been, decided upon the authority of the state laws, without involving their validity under the constitution of the United States; and secondly, whether the record of this case shows that the court did decide in favor of their validity.

A question arose at the bar, whether the judgment of the circuit court,

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in favor of the defendant, and against the plaintiffs in ejectment, was before the court of appeals, on the trial there. The counsel for the plaintiffs in error insisted that it was ; and therefore, a proper subject of examination in this court. The plaintiffs in error were not parties to the judgment of the circuit court ; they became parties in the record, by being the sureties of the plaintiffs in ejectment, in the improvement bond ; which was subsequent to, and in fact, the fruit of, that judgment. The appeal which they took, was from the judgment of the circuit court, upon the writ of error *coram vobis* ; and the errors which they assigned in the court of appeals, limited *69] the inquiry before that court, to the correctness of that judgment. But independently of these grounds, the statutes of Kentucky, regulating the writ of error *coram vobis*, limit its operation, expressly, to errors arising subsequent to the judgment of the inferior court. Morehead & Brown's Digest, 1554-5.

The first error assigned in the petition for the writ of error *coram vobis*, draws in question the validity of the act of the 31st of January 1812, concerning occupying claimants of lands ; on the ground, that it is in derogation of the compact between Virginia and Kentucky, and repugnant to the constitution of the United States. Neither the plaintiffs in ejectment, nor the defendant, appear to have raised this question in any part of the proceedings between them. The plaintiffs in ejectment did not sign the improvement bond, and were not, therefore, parties to the suit in the court of appeals ; and consequently, are not parties here. They, and they alone, had a right to object to the judgment of the circuit court against them, and in favor of the defendant, and the proceedings under it, on the ground, that the act of the 31st of January 1812, was unconstitutional. By that act, they were deprived of the rents and profits of their land, while in the occupation of the defendant ; and compelled to pay him for all improvements which he had made thereon. And this is the ground of the decision of this court, in the case of *Green v. Biddle*, 8 Wheat. 1 ; which was relied on by the counsel for the plaintiffs in error. The plaintiffs in error were the mere sureties of the plaintiffs in ejectment, for the money adjudged to the defendant, for his improvements. The bond which they signed, was a voluntary act and a part of the means provided by the said law, to enable the defendant to obtain satisfaction of his judgment. The validity of the proceedings, so far as they were concerned, did not depend upon the constitutionality of the act concerning occupying claimants of land ; and therefore, they had no right to complain of it.

The fourth error in the petition draws in question the validity of the statute of Kentucky, authorizing defendants to give replevin bonds, payable in two years, upon the plaintiff's failing to cause to be indorsed on his execution, that he would take the notes of certain banks specified in the act, in discharge thereof. Had the plaintiffs in error paid the amount of the execution, which issued against them, on the improvement bond, in money, as they were bound to do, this question would never have arisen. Having availed themselves of the benefit of the credit extended to them by *70] that act, and delayed the defendant in error, in the payment of the debt they had thus voluntarily again assumed upon themselves ; is it proper, that at the end of the four years, they should be permitted to come into court, and set aside the whole proceedings against them, on the abstract

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principle, that the statute under which they had taken place, violated the constitution of the United States? The court of appeals of Kentucky has decided, that a replevin bond cannot be set aside, at the instance of the debtor, of the ground that the law under which it was given was unconstitutional. Let it be conceded, says the court, that the constitution of the United States, or of this state, is violated by the law in question; whose rights are infringed by it? Certainly, not those of the debtor, for the law is passed and operates exclusively for his benefit. *Small v. Hogden*, 1 Litt. 16. And in a subsequent case, the purchaser of a tract of land, under an execution sale, on a credit of one year, attempted to set aside the bond which he had given for the purchase-money, on the ground, that the law, under which the sale had been made, and the bond had been executed, violated the constitution of the United States. On the authority of the above case, the court refused to set aside the bond and sale. *Rudd v. Schlatter*, 1 Litt. 19.

Upon this view of the case, it may be fairly presumed, that the court of appeals decided upon some, or all, of the grounds here stated; and that it did not decide in favor of the validity of the statutes referred to. But to give this court jurisdiction, it is not sufficient to show, that the court below might have decided in favor of the validity of these statutes, or either of them; it must be apparent, in the record, that the court did so decide. In the cases of *Crowell v. Randell*, and *Shoemaker v. Randell*, 10 Pet. 391, the court went into a review of all the cases which it had previously decided, under the authority of the 25th section of the judiciary act of 1789. In delivering the opinion of the court, Mr. Justice STORY says: "In the interpretation of this section of the act of 1789, it has been uniformly held, that to give this court appellate jurisdiction, two things should have occurred, and be apparent in the record: first, that some one of the questions, stated in the section, did arise in the court below; and secondly, that a decision was actually made thereon by the same court, in the same manner required by the section. If both of these do not appear in the record, the appellate jurisdiction fails. It is not sufficient to show, that such a question might have *occurred, or such a decision might have been made, in the court below. It must be demonstrable, that they did exist, and were [*71 made."

As it nowhere appears in the record of the cause under consideration, that the court of appeals of Kentucky did decide in favor of the validity of either of the statutes drawn in question before it; but, on the contrary, it appearing to be reasonably certain, that its judgment was rendered on all the questions presented for its adjudication, on the authority of the state laws; this court has, therefore, no jurisdiction of this case. The writ of error must be dismissed.

ON consideration of the suggestion and motion made by Mr. Jones, of counsel for the plaintiffs in error, in this cause, on a prior day of the present term of this court, to wit, on Thursday, the 11th day of January, it is the opinion of this court, that it is unnecessary to make the heirs and representatives of John McKinney, whose death has been suggested on the record, parties to this writ of error; as the cause of action survives to the two other plaintiffs in error.

United States v. Coombs.

This cause came on to be heard, on the transcript of the record from the court of appeals for the state of Kentucky, and was argued by counsel: On consideration whereof, it is the opinion of this court, that this court has not jurisdiction in this cause; whereupon, it is now here ordered and adjudged by this court, that this writ of error be and the same is hereby dismissed, for the want of jurisdiction. All of which is hereby ordered to be certified to the said court of appeals, under the seal of this court.

*72] *UNITED STATES, Plaintiffs, v. LAWRENCE COOMBS.

Criminal jurisdiction—Construction of statutes—Regulation of commerce.

Indictment, in the circuit court of the United States for the southern district of New York, for feloniously stealing a quantity of merchandise belonging to the ship Bristol, the ship being in distress and cast away on a shoal of the sea, on the coast of the state of New York. The indictment was founded on the 9th section of the act, entitled "an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes, approved 3d March 1825." The goods were taken above high-water mark, upon the beach, in the county of Queens, in the state of New York: *Held*, that the offence committed was within the jurisdiction of the circuit court.

If a section of an act of congress admits of two interpretations, one of which brings it within, and the other presses it beyond, the constitutional authority of congress, it is the duty of the supreme court, to adopt the former construction; because a presumption never ought to be indulged, that congress meant to exercise or usurp any constitutional authority, unless that conclusion is forced on the court, by language altogether unambiguous.

In cases purely dependent upon the locality of the act done, the admiralty jurisdiction is limited to the sea, and to the tide-water, so far as the tide flows. Mixed cases may arise, and often do arise, where the act and services done are of a mixed nature; as, where salvage services are performed partly on tide-waters and partly on shore, for the preservation of the property; in which the admiralty jurisdiction has been constantly exercised, to the extent of decreeing salvage.

Under the clause of the constitution giving the power to congress "to regulate commerce with foreign nations, and among the several states," it possesses the power to punish offences of the sort enumerated in the ninth section of the act of 1825. The power to regulate commerce, includes the power to regulate navigation, as connected with the commerce with foreign nations and among the states; it does not stop at the mere boundary line of a state; nor is it confined to acts done on the waters or in the necessary course of the navigation thereof; it extends to such acts done on land which interfere with, obstruct or prevent the due exercise of the power to regulate commerce and navigation with foreign nations, and among the states. Any offence which thus interferes with, obstructs or prevents such commerce and navigation, though done on land, may be punished by congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers.¹

Upon the general principles of interpreting statutes, where the words are general, the court are not at liberty to insert limitations, not called for by the sense, or the objects, or the mischief of the enactment.

CERTIFICATE of Division from the Circuit Court for the Southern District of New York. Lawrence Coombs was indicted under the 9th section of the act entitled, *73] "an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes, approved the 3d of March 1825," for having, on the 21st of November 1836, feloniously stolen, at Rockaway beach, in the southern district of New York,

¹ United States v. Pitman, 1 Sprague 196. And see *Waring v. Clarke*, 5 How. 441.