

## West v. Brashear.

state." Now, if it were admitted that the second decree is in collision with the first (which we certainly do not mean to say is the case), yet the article of the constitution above quoted cannot, by any just construction of its words, be held to embrace an error of that description, nor give this court the right to review the decree. The writ of error must, therefore, be dismissed, for want of jurisdiction.

THIS cause came on to be heard, on the transcript of the record of the court of chancery of the state of New York, returned with the writ of error in this case, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that this writ of error to the court of chancery of the state of New York be and the same is hereby dismissed, for the want of jurisdiction; and that this cause be and the same is hereby remanded to the said court of chancery.

---

\*FRANCIS WEST and others, Appellants, *v.* WALTER BRASHEAR, [\*51 Appellee.

*Mandate.*

The mandate of the supreme court to the circuit court must be its guide in executing the judgment or decree on which it issued; the mandate is the judgment of the supreme court, transmitted to the circuit court; and where the direction contained in it is precise and unambiguous, it is the duty of the circuit court to carry it into execution, and not to look elsewhere for authority to change its meaning. But when the circuit court are referred to testimony to ascertain the amount to be decreed, and are authorized to take more evidence on the point, it may sometimes happen, that there will be some uncertainty and ambiguity in the mandate; and in such a case, the court below have unquestionably the right to resort to the opinion of the supreme court, delivered at the time of the decree, in order to assist them in expounding it.

APPEAL from the Circuit Court of Kentucky. This case was before the court on appeals by both the parties; and the proceedings and decision on the case are reported in 7 Pet. 608.

The proceedings in the circuit court of Kentucky, subsequent to the mandate issued from the supreme court, were the only matters in controversy on this appeal. The mandate of the supreme court was as follows:

"Whereas, lately, in the circuit court of the United States for the district of Kentucky, before you or some of you, in a cause between Walter Brashear, complainant, and Francis West and John Lapsley, and Samuel Mifflin and Henry Nixon, trustees of said West, and Thomas M. Willing and Henry Nixon, executors of John Nixon, deceased, defendants in chancery, the decree of the said circuit court was in the following words, to wit: 'It is the opinion of the court, that the complainant is, in equity, entitled to a credit or set-off against the judgments at law obtained against him in the name of West, for the sum of \$4011.68, being the amount of the judgment obtained against the complainant, as special bail for West, by George Anderson; but the complainant is not entitled to any of the other credits or set-offs claimed in his bill, and amended bill. It is, therefore, decreed and ordered, that the said \$4011.68, or so much thereof as will extinguish the same, shall be and is hereby credited and set off as payment, on the 22d of October 1810, against the judgment at law, not against or not

West v. Brashear.

covered by the injunction bond ; and that the residue of the said \$4011.68, if any, and the costs of the complainant in this suit, shall be and is hereby credited and set off against so much of the other judgment at law ; the costs to be credited as of this day : and the clerk is hereby directed to tax the costs of this suit, and make the necessary calculations, and enter said credits accordingly ; and \*it is further decreed and ordered, that as <sup>\*52]</sup> to the residue of the said judgments or judgment, as the case may be, after entering and giving the credits as aforesaid, the complainant's injunction shall be and the same is hereby dissolved, with ten per centum damages upon the amount of such residue, at the time the injunction was granted, and that the complainants may proceed to recover by execution at law, the said residue, and also the damages aforesaid, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the United States by virtue of an appeal, agreeable to an act of congress in such cases made and provided, fully and at large appears.' And whereas, at the present term of January, in the year of our Lord 1833, the said cause came on to be heard before the said supreme court, on the said transcript of the record, and was argued by counsel ; on consideration whereof, this court was of opinion, that there is error in the decree of the said circuit court, in allowing to the said Walter Brashear credit for the money paid by him as special bail for Francis West, at the suit of George Anderson, and also in refusing to allow the said Walter Brashear credit for the value of the ginseng shipped and sold by the said James Latimer, with the assent of the said assignees of Francis West, after the same had been attached in his hands by the said assignees: It is therefore decreed and ordered, that the decree pronounced in this cause by the court of the United States for the seventh circuit, in the district of Kentucky, be reversed and annulled, and that the cause be remanded to that court, with instructions to perpetuate the injunction as to the sum which shall be equal to the amount of the ginseng shipped and sold by the said James Latimer, after the attachment sued out by Francis West, for the use of Samuel Mifflin, John Lapsley and Henry Nixon, assignees for the benefit of his creditors, was levied, and to dismiss the bill as to the residue ; and it is further ordered, that the parties pay their own costs in this court. You, therefore, are hereby commanded, that such further proceedings be had in said cause, in conformity with the opinion and decree of this court, as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding."

The cause being before the circuit court on the mandate, in November 1833, it was referred to a commissioner to state the accounts between the parties, in conformity thereto ; and general leave was also given to take the deposition of James Latimer. Under this order of the court, the commissioner made a report, and stated that he gave credit to Brashear, under date of May 11th, 1809, for \$2873.50, the amount of ginseng shipped by Latimer & Redwood. On exceptions filed to this report, it was set aside by the court, on account of a sufficient sum not having been allowed for the ginseng shipped by Latimer, after a foreign attachment, sued out by West, <sup>\*53]</sup> \*had been levied on the ginseng in the hands of Latimer. The commissioner, to whom it was recommitted, was instructed to examine and ascertain all the ginseng shipped and sold by Latimer, after the attach-

## West v. Brashear.

ment, and all the charges on the same. The commissioner reported the value of the ginseng was \$5593.50, and the charges amounting to \$361.60. Exceptions were filed to this report, which were overruled ; and the circuit court gave a decree in favor of Walter Brashear in conformity with the same. The complainants prosecuted this appeal.

The case was argued by *Coxe*, for the appellants ; and by *Crittenden*, for the appellees.

For the appellants, *Coxe* contended, that the mandate of this court did not authorize the allowance of the whole amount of the ginseng belonging to Brashear, which had been shipped to Canton by Mr. Latimer ; but only that part of it shipped after the attachment laid by the appellants. The whole value of it is allowed in the decree of the circuit court.

*Crittenden* claimed, that by a true interpretation of the mandate, the sum allowed in the decree was the amount reported by the commissioner.

The counsel for both parties supported their allegations by a reference to the report of the case in 7 Peters, and to the proceedings of the circuit court under the mandate ; which are referred to in the opinion of the court.

**TANEY**, Ch. J., delivered the opinion of the court.—This case was formerly before the court, and was then fully considered and decided, and is reported in 7 Pet. 608. Upon that occasion, the decree of the circuit court was reversed ; and a mandate was issued from this court, directing the circuit court to disallow certain credits which had been given to Walter Brashear, the present appellee, and to allow him a credit equal to the amount of certain ginseng, shipped and sold by James Latimer, after attachments had been laid in his hands, by Francis West, the present appellant, and others.

Brashear resided in Kentucky, and Latimer was his consignee and agent in Philadelphia, and had received from him, on consignment, a large quantity of ginseng ; and had also made advances for him to a considerable amount, but not equal to the value of the consignment. Francis West was a creditor of Brashear, and, together with other creditors, laid attachments on his property and credits, in the hands of Latimer ; and these were a part of the matters in controversy in the former suit. The mandate of this court will be found in page 624 of the report above mentioned, \*and [\*\*54 the controversy in this case turns upon the construction of that mandate.

There is no contest here in relation to the items which this court directed to be disallowed. But a dispute arose in the circuit court as to the amount of the sum directed to be credited to Brashear, and some further testimony was taken on that point, in the proceedings under the mandate. It finally appeared, that the value of the ginseng shipped and sold by Latimer, after the attachments were laid in his hands, amounted to \$5599.90 ; and for this sum Brashear was credited by the decree of the circuit court. The appellants object to this decree, and insist, that although a strict construction of the mandate might justify the credit, yet the mandate must be taken in

West v. Brashear.

connection with the opinion pronounced at the same time ; and when thus expounded, it will not, as they contend, warrant the decree.

The point of the appellant's objection consists in this : that although the ginseng shipped and sold by Latimer, after the attachments were laid in his hands, amounted to the sum decreed by the court below, yet that a part of it had before been taken by Latimer, at a stipulated price, agreed on between him and Brashear ; and that the value of the quantity actually owned by Brashear, and shipped and sold as aforesaid, amounted only to the sum of \$2753.80 ; and that the residue so shipped and sold was owned by Latimer as above mentioned. And the appellants contend, that it is apparent from the opinion pronounced by this court, when the case was formerly before them, that the imputed negligence and misconduct which in the judgment of the court made them liable to Brashear, was confined to the ginseng seized by the attachment, and did not extend to the money due from Latimer for the quantity taken by him as above mentioned, although that money was also subsequently lost by Latimer's insolvency ; and they contend, that the credit allowed under the mandate ought to have been \$2753.80, and that the court erred in allowing more.

There has been some discussion at the bar, as to the principles by which a circuit court of the United States is to be governed, when executing a mandate from the supreme court. Undoubtedly, the mandate must be its guide. It is the judgment of this court, transmitted to the circuit court. And when the direction contained in the mandate is precise and unambiguous, it is the duty of the circuit court to carry it into execution, and not to look elsewhere for authority to change its meaning. But when, as in this case, the circuit court are referred to testimony to ascertain the amount to be decreed, and are authorized to take new evidence on the point, it may sometimes happen, that there will be some uncertainty and ambiguity in the mandate ; and in such a case, the court below have, unquestionably, the right to resort to the opinion delivered at the \*time, in order to assist them in expounding it. And if, in this case, it had appeared from the opinion delivered, that in speaking of the ginseng shipped and sold by Latimer, the court intended to confine the credit to the value of that portion of it owned by Brashear, at the time of the shipment, and to exclude that alleged to have been taken by Latimer, it would have been the duty of the circuit court to execute the mandate in conformity with this intention.

But there is no discrepancy between the mandate, and the opinion pronounced at the time. It is evident, that the court were under the impression, that all of the ginseng taken by Latimer to pay his own debt, and been shipped before the attachments were laid. This appears from a paragraph in the opinion of the court, in page 610 of the reported case. In stating the facts of the case, as in the judgment of the court they were proved by the testimony, the chief justice, who delivered the opinion, says : "Early in the year 1809, he (Latimer) took a large part of the ginseng to himself, as purchaser, at six months' credit, which he shipped on his own account to China, in March of that year. In the following May, he shipped the residue on account of himself and William Redwood." This latter shipment was made after the attachments were levied, and the court were manifestly of the opinion, that the value of the whole parcel thus shipped was liable in Latimer's hands to the attaching-creditors. And believing from the testimony,

Bank of Kentucky v. Griffith.

that it was lost by the negligence and misconduct of these creditors, and the subsequent insolvency of Latimer, they directed Brashear to be credited with the whole amount thus shipped. The intention of the court, therefore, as gathered from the opinion, is in unison with the direction contained in the mandate ; and, in our judgment, the circuit court have rightly expounded it. The decree of the court below is affirmed.

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 now here ordered and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

---

\*THE COMMONWEALTH BANK OF KENTUCKY, Plaintiff in error, v. [\*56  
THOMAS GRIFFITH and others, Defendants in error.

*Error to state courts.*

Under the 25th section of the judiciary act of 1789, three things are necessary to give the supreme court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of an authority exercised under a state, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties or laws of the United States. 3. The decision of the state court must be in favor of its validity.

Where the decision of a state court is against the validity of a state statute, as contrary to the constitution of the United States, a writ of error does not lie to the supreme court upon such a judgment.<sup>1</sup>

ERROR to the Supreme Court of the First Judicial District of the State of Missouri.

*Mc Ginnis*, of counsel for the defendant in error, moved the court to dismiss this writ of error, for want of jurisdiction. The action was originally instituted in the ninth judicial circuit of the state of Missouri, on a promissory note given by the defendant in error to the Commonwealth Bank of Kentucky, for the notes of that bank, to the amount of the promissory note. To this action the defendant pleaded several pleas ; and among them was one which presented the questions whether the charter of the Commonwealth Bank of Kentucky was a violation of the constitution of the United States, and whether the notes of the bank were not "bills of credit." The judgment of the circuit court was given in favor of the plaintiff, and the defendant removed the cause to the supreme court of Missouri by a writ of error. In the supreme court, the judgment of the circuit court was reversed ; the court deciding that the notes of the bank were "bills of credit," and prohibited by the constitution of the United States. The Bank of the Commonwealth prosecuted this writ of error, under the 25th section of the judiciary act of 1789.

Mr. McGinnis stated, that the only question in the case was, the constitutionality of the charter of the Commonwealth Bank. The supreme court of Missouri decided that it was void. This is not a case within the

---

<sup>1</sup> *Walker v. Taylor*, 5 How. 64.