

Capron v. Van Noorden.

ought to have been, according to the principles by which the claim should be adjusted.

This court, therefore, is not satisfied with either the decree of the district or circuit court, and has directed me to report the following decree:

DECREE OF THE COURT.—This cause came on to be heard, on the transcript of the record of the circuit court, and was argued by counsel; on consideration whereof, it is adjudged, ordered and decreed as follows, to wit: That the decree of the circuit court, so far as it affirms the decree of the district court, which directed restitution of the vessel, and payment to the claimant of the net proceeds of the sale of the cargo in Martinique, deducting the costs and charges there, according to amount exhibited by Captain Murray's agent, being one of the exhibits in the cause, and so far as it directs the parties to bear their own costs, be affirmed; and that the residue of the said decree, whereby the claim of the owner to damages for the seizure and detention of his vessel was rejected, be reversed.

And the court, proceeding to give such further decree as the circuit court ought to have given, doth further adjudge, order and decree, that so much of the decree of the district court as adjudges the libellant to pay costs and damages, be affirmed; but that the residue thereof, by which the said damages are estimated at \$20,594.16, and by which the libellant was directed to pay that sum, be reversed and annulled. And this court does further order and decree, that the cause be remanded to the circuit court, with directions to refer it to commissioners, to ascertain the damages sustained by the claimants, in consequence of the refusal of the libellant to restore the vessel and cargo at Martinique, and in consequence of his sending her into a port of the United States for adjudication; and that the said commissioners be instructed to take the actual prime cost of the cargo and vessel, with interest thereon, including \*the insurance actually paid, and such expenses as [\*126 were necessarily sustained in consequence of bringing the vessel into the United States, as the standard by which the damages ought to be measured. Each party to pay his own costs in this court, and in the circuit court. All which is ordered and decreed accordingly. (a)

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*Absence of jurisdiction.*

A plaintiff may assign for error, the want of jurisdiction in that court to which he has chosen to resort.

A party may take advantage of an error in his favor, if it be an error of the court.

The courts of the United States have not jurisdiction, unless the record shows that the parties are citizens of different states, or that one is an alien, &c.

ERROR to the Circuit Court of North Carolina. The proceedings stated Van Noorden to be late of Pitt county, but did not allege Capron, the plaintiff, to be an alien, nor a citizen of any state, nor the place of his residence.

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(a) Captain Murray was reimbursed his damages, interest and charges, out of the treasury of the United States, by an act of congress, January 31st, 1805. (6 U. S. Stat. 56.)

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Upon the general issue, in an action of trespass on the case, a verdict was found for the defendant, Van Noorden, upon which judgment was rendered.

The writ of error was sued out by Capron, the plaintiff below, who assigned for error, among other things, first, "that the circuit court aforesaid is a court of limited jurisdiction, and that by the record aforesaid it doth not appear, as it ought to have done, that either the said George Capron, or the said Hadrianus Van Noorden, was an alien, at the time of the commencement of said suit, or at any other time, or that one of the said parties was, at that, or any other time, a citizen of the state of North Carolina where the suit was brought, and the other a citizen of another state; or that they, the said George and Hadrianus were, for any cause whatever, persons within the jurisdiction of the said court, and capable of suing and being \*127] sued there." \*And secondly, "that by the record aforesaid, it manifestly appeareth, that the said circuit court had not any jurisdiction of the cause aforesaid, nor ought to have held plea thereof, or given judgment therein, but ought to have dismissed the same, whereas, the said court hath proceeded to final judgment therein."

*Harper*, for the plaintiff in error, stated the only question to be, whether the plaintiff had a right to assign for error, the want of jurisdiction in that court to which he had chosen to resort?

It is true, as a general rule, that a man cannot reverse a judgment for error in process, or delay, unless he can show that the error was to his disadvantage; but it is also a rule, that he may reverse a judgment for an error of the court, even though it be for his advantage. As, if a verdict be found for the debt, damages and costs, and the judgment be only for the debt and damages, the defendant may assign for error that the judgment was not also for costs, although the error is for his advantage.

Here, it was the duty of the court to see that they had jurisdiction, for the consent of parties could not give it. It is, therefore, an error of the court, and the plaintiff has a right to take advantage of it. 2 Bac. Abr. tit. Error, K. 4; *Beecher's Case*, 8 Co. 59 a; 1 Roll. Abr. 759; Moore 692; *Bernard v. Bernard*, 1 Lev. 289.

The defendant in error did not appear, but the citation having been duly served, the judgment was reversed.