

Ogle v. Lee.

this; that the rents reserved in the lease in the proceedings mentioned, bearing date the 5th day of August, in the year of our Lord, one thousand seven hundred and seventy-nine, and which were in arrear and unpaid, were decreed to be paid at their value according to the scale of depreciation when the same became due; and that those rents which accrued after the first of January 1782, are decreed to be paid according to the nominal sum mentioned in the lease; whereas, the annual rent reserved in the said lease ought to be reduced to such a sum in specie, as the property conveyed was, at the date of the contract, actually worth; to ascertain which, the evidence of the cause not being sufficient for that purpose, an issue ought to have been directed, according to the verdict on which, if satisfactory to the court, the final decree ought to have been rendered.

This court is, therefore, of opinion, that the decree rendered in this cause in the circuit court for the county \*of Alexandria, ought to be reversed, and it is hereby reversed and annulled; and the court, proceeding to [\*33 give such decree as the circuit court ought to have given, doth decree and order, that an issue be directed between the parties, to be tried at the bar of the said circuit court, in order to ascertain what was the actual annual value in specie, or in any other money equivalent thereto, of the half-acre lot of ground which was conveyed, by the executors of John Alexander, deceased, to Abraham Faw, on the 5th day of August 1779, and that in the account between the parties, in order to a final decree, the representatives of said Philip Marsteller be allowed a credit for the rent which has accrued, and which remains unpaid, estimating the said annual rent at such sum as the verdict of a jury, to be approved of by the said circuit court, shall ascertain the half-acre lot of ground before mentioned to have been fairly worth, at the date of the contract under which the same is claimed by the said Abraham Faw.

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OGLE v. LEE.

*Certificate of division.—Error to final judgment.*

If a question upon which the judges below differ in opinion be certified to this court, and here decided, the parties are not precluded from a writ of error on the final judgment, when the whole cause will be before the court.

THIS cause came up to this court, upon a question on which the opinions of the judges of the Circuit Court were opposed.

It was made a question, whether this court would consider the whole case, or only the question upon which the court below divided.

THE COURT were unanimously of opinion, that they could only consider the single question upon which the judges below divided in opinion;<sup>1</sup> but that the parties will not be precluded from bringing a writ of error upon

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<sup>1</sup> If the whole case be sent up, the cause will be remanded. *Saunders v. Gould*, 4 Pet. 392; *Harris v. Elliott*, 10 Id. 25; *Adams v. Jones*, 12 Id. 207; *Dennistoun v. Stewart*, 18 How. 565; *Daniels v. Rock Island Railroad*

Co., 350. Neither can the whole case be broken up into points, some of which may never arise. *Nesmith v. Sheldon*, 6 How. 41; *Luther v. Borden*, 7 Id. 1; *Webster v. Cooper*, 10 Id. 54. But see *United States v. Chicago*, 7 Id. 185.

Pennington v. Coxe.

the final judgment below; and the whole cause will then be before the court. A court may at any time reverse an interlocutory decree.

The case was afterwards settled by the parties.

PENNINGTON v. COXE.

*Internal taxes.*

Sugar refined, but not sold and sent out of the manufactory, before the 1st of July 1802, is not liable to any duty, upon being sent out after that day.

Coxe v. Pennington, 1 W. C. C. 65, reversed.

THIS was a feigned issue, between Tench Coxe, a citizen of the state of Pennsylvania, and Edward Pennington, a citizen of the state of New York, \*34] to try the question, \*whether sugar actually refined, but not sold and sent out of the manufactory, before the 1st of July 1802, is liable to any duty to the United States, upon being sent out after that day. (Reported, below, 1 W. C. C. 65.)

This question arose upon the act of congress, entitled "An act to repeal the internal taxes," passed April 6th, 1802. (2 U. S. Stat. 148.)

The declaration was upon a wager that the United States were entitled to collect the duty, and stated the following facts: That Pennington was a refiner of sugar, within the meaning of the several acts of congress imposing a duty on refined sugars; that he had refined a quantity of sugar between the 31st of March and the 1st of July 1802, which, if the act for repealing the internal taxes had not been made, would have been liable to a duty, exceeding in the whole, the sum of \$2500; that he did, from day to day, enter in a book or paper kept for that purpose, all the sugar refined by him as aforesaid, but that he did not, on the 1st of October 1802, render any account of the sugar which he had so refined, to any officer of the revenue, nor did he produce to any such officer (though required) the original book or paper whereon the entries from day to day were made as aforesaid, nor did he, on the said 1st of October, nor at any time, before or since, pay or secure any duties upon the said quantity of sugar so refined by him as aforesaid, during the period aforesaid; that the same was not sent out of the manufactory before the 1st of July 1802, but that the whole had been since sent out, viz., on the 30th of September 1802. To this declaration, there was a general demurrer and joinder; and it was agreed, that no advantage should be taken of want of form in the proceedings.

The judgment of the circuit court of the district of Pennsylvania was for the plaintiff below, and the defendant brought the writ of error.

The act imposing the duty was passed June 5th, 1794 (1 U. S. Stat. 384), and is entitled "An act laying certain duties upon snuff and refined sugars." The 2d section enacts, that from and after the 30th of September 1794, \*35] "there be levied, collected and paid, \*upon all sugar which shall be refined within the United States, a duty of two cents per pound." The third section directs, "that the duties aforesaid shall be levied, collected and accounted for," by certain officers therein described. The 5th section directs, that every refiner of sugar shall make true and exact entry and report in writing, at the office of inspection, of every house or building where