
Stevens v. Gladding & Proud.

JAMES STEVENS, PLAINTIFF IN ERROR, *v.* ROYAL GLADDING AND ISAAC T. PROUD, TRADING UNDER THE NAME AND FIRM OF GLADDING & PROUD, DEFENDANTS.

Where no error appears upon the record in the proceedings of the Circuit Court, the case having been left to a jury, and no instructions asked from the court, the judgment below must be affirmed.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Rhode Island.

The plaintiff in error, Stevens, was the same person who was the appellant in the case of *Stevens v. Cady*, reported in 14 Howard, 529.

In the present suit, he brought an action, being a citizen of Connecticut, against Gladding & Proud, booksellers of Providence, in Rhode Island. It was a *qui tam* action in which he claimed two thousand dollars, because the defendants published and sold two thousand copies of his map of the State of Rhode Island, for which he had obtained a copyright.

The defendants pleaded not guilty, and the case went on to trial before a jury, who found a verdict for the defendants. In the progress of the trial, there was no prayer to the court to instruct the jury upon a matter of law, nor any bill of exceptions whatever.

Stevens managed the case for himself, and it would be difficult to conjecture the reason for suing out a writ of error, if it were not for the following assignment of error which was attached to the record:

This was a *qui tam* action at law, in debt, for the forfeitures and penalties incurred by the defendants for the violation of a copyright granted to the plaintiff in error, on the 23d day of April, 1831, under an act of Congress entitled "An act to amend the several acts respecting copyrights, approved 3d February, 1831."

The plaintiff's title to this copyright is set forth in the declaration herein. The principal questions in this case are: Was the verdict and judgment correct? Was the sale of the engraved plates the sale of a copyright? Did such sale authorize the defendants, or any other person, to print and sell this literary production, still subsisting under a copyright in this complainant?

The very learned opinion of the Supreme Court of the United States, delivered by Mr. Justice Nelson, in bill in chancery, *James Stevens v. Isaac H. Cady*, 14 Howard, 528, is ample and decisive on this subject.

JAMES STEVENS,
For himself.

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In this court, the following brief was filed by *Mr. Ames*, no counsel appearing for the plaintiff in error:

The record in this case shows, that at the November term of the Circuit Court for the district of Rhode Island, 1848, the plaintiff in error brought a *qui tam* action against the defendants in error, to recover penalties and forfeitures alleged to have been incurred by them under the act of Congress passed February 3d, 1831, entitled "An act to amend the several acts respecting copyrights;" that at the June term of said court, 1850, the cause was submitted, upon the general issue, to a jury, who, in due form, returned a verdict in favor of the defendants in error, of "not guilty;" whereupon judgment was entered, that they have and recover their costs of suit.

The record discloses no error in law, nor, to the knowledge of the defendants in error or of their counsel, was any error of law brought upon the record by the allowance of a bill of exceptions. The court has no choice, therefore, but to confirm the judgment below, with costs.

SAMUEL AMES,
For Defendants in Error.

Mr. Justice McLEAN delivered the opinion of the court.

This is a writ of error to the Circuit Court for the district of Rhode Island.

An action was brought by the plaintiff in the Circuit Court, alleging that he was the author of a topographical map of the State of Rhode Island and Providence Plantations, surveyed trigonometrically by himself, the copyright of which he secured under the act of Congress of the 3d April, 1831, entitled "An act to amend the several acts respecting copyrights;" and he avers a special compliance with all the requisites of said act, to vest in him the copyright of said map or chart. And he charges the defendants with having published two thousand copies of his map, and sold them within two years before the commencement of the action, in violation of his right, secured as aforesaid, to his damage four thousand dollars.

The defendants pleaded not guilty. The case was submitted to a jury, who returned a verdict of not guilty. A judgment was entered against the plaintiff for costs.

A writ of error was procured, and bond given to prosecute it with effect.

The defendant in proper person assigns for error, "that the verdict and judgment were given against the plaintiff in error, whereas the verdict and judgment should have been given for the plaintiff, and he prays a reversal of the judgment on this ground."

In a very short argument, the plaintiff in error says, the

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principal questions are: Was the verdict and judgment correct? Was the sale of the engraved plate, on execution, the sale of the copyright? Did such sale authorize the defendants, or any other person, to print and sell this literary production, still subsisting under a copyright in the plaintiff. And he refers to 14 Howard, 528, *Stevens v. Cady*. In that case this court held that a sale of the copperplate for a map, on execution, does not authorize the purchaser to print the map.

Two or three depositions, not certified with the record, were handed to the court as having been omitted by the clerk in making up the record; but it does not appear that they were used in the trial before the Circuit Court; and if it did so appear, no instructions were asked of the court to the jury, to lay the foundation of error.

It is to be regretted that the plaintiff in error, in undertaking to manage his own case, has omitted to take the necessary steps to protect his interest. There is no error appearing on the record which can be noticed by this court; the judgment of the Circuit Court is therefore affirmed with costs.

C. C. LATHROP, PLAINTIFF IN ERROR, *v.* CHARLES JUDSON.

Where exceptions are not taken in the progress of the trial in the Circuit Court, and do not appear on the record, there is no ground for the action of this court.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the eastern district of Louisiana.

The suit was commenced by Charles Judson, a citizen of New York, to recover from Lathrop the amount of a judgment rendered by the Supreme Court of Louisiana, in June, 1851, for \$1,810, with interest from the 2d of May, 1845. The plaintiff attached to his petition a copy of the record of the judgment. The suit was commenced on 6th May, 1854.

On the 18th of May, the defendant filed the following exception and plea:

To the Hon. the Judges of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

The exception and plea to the jurisdiction of Charles C. Lathrop, of New Orleans, to the petition filed against him in this honorable court, by Charles Judson, of the State of New York.

This respondent alleges, that this honorable court has no jurisdiction of the suit instituted in this matter, the same