
Tracy v. Holcombe.

Dig., art. 3,230. The testimony adduced by the plaintiff, it would seem, would have authorized a suit in the courts of Texas, where rights, whether legal or equitable, are disposed of in the same suit. But this court has established, after full consideration, that in the courts of the United States suits for the recovery of land can only be maintained upon a legal title. It is not contended in this case that the plaintiff has more than an incipient equity. This question was so fully considered by the court in *Fenn v. Holme*, 20 How., 481, that a further discussion is unnecessary.

Judgment of the District Court affirmed.

ALFRED TRACY, SURVIVING PARTNER OF EDWARD TRACY, PLAINTIFF IN ERROR, *v.* WILLIAM HOLCOMBE.

Where the judgment of the court below reverses the decision of the inferior court and awards a new trial, it is not a final judgment from which a writ of error will lie to this court.

THIS case was brought up by writ of error from the Supreme Court of the State of Minnesota.

The record showed that a suit was brought by Tracy as surviving partner against Holcombe, and on the 30th of December, 1857, the judgment of the court was entered that he should recover \$2,340.71, with costs.

On the 13th of July, 1859, the Supreme Court ordered that "the judgment of the court below be, in all things, reversed, and a new trial granted."

On the 8th of October, 1859, a writ of error was issued pursuant to section third of the act of Congress entitled, "An act for the admission of Minnesota into the Union," passed May 11, 1858, and section eighteen of the act of Congress entitled, "An act making appropriations for sundry civil expenses of the Government for the year ending 30th June, 1859," passed June 12, 1858.

It was submitted on the record by *Mr. Phillips* for the plaintiff in error.

Suydam v. Williamson.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case has been brought here by a writ of error directed to the Supreme Court of the State of Minnesota. But upon looking into the transcript, it appears that the judgment which it is proposed to revise is a judgment reversing the decision of the court below, and awarding a new trial. There is, therefore, no final judgment in the case, and the writ must be dismissed for want of jurisdiction in this court.

JAMES H. SUYDAM, PLAINTIFF IN ERROR, *v.* WILLIAM H. WILLIAMSON.

Subsequently to the decisions of this court in the cases of *Williamson v. Berry*, *Williamson v. the Irish Presbyterian Church*, and *Williamson v. Ball*, reported in 8 Howard, the Court of Appeals of the State of New York affirmed a different opinion from that of this court respecting the title to the real property involved in those decisions.

This court now adopts the decision of the court of New York in conformity with the rule which has uniformly governed this court, that where any principle of law establishing a rule of real property has been settled in the State courts, the same rule will be applied by this court that would be applied by the State tribunals.

Cases cited in support of this rule, and the cases in 8 Howard commented on.

THIS case was brought up writ of error from the Circuit Court of the United States for the southern district of New York.

The facts of the case are stated in the opinion of the court, and also in the report of the cases in 8 Howard.

It was submitted on printed argument by *Mr. Ellingwood* for the plaintiff in error, and argued by *Mr. David Dudley Field* for the defendant.

The points of law involved in the case are fully stated in the reports in 8 Howard, and it is unnecessary to repeat them in the arguments of counsel now. And, moreover, the decision of this court turned upon another point, which is fully explained in the opinion.