
Statement of the case.

The CHIEF JUSTICE, with NELSON and DAVIS, JJ., dissented, Mr. Justice DAVIS saying for himself and them, that they thought that there was a contract between the People's Passenger Railway Company and the City of Memphis which could not be impaired by State legislation, but that he did not go into the question at length, as it was of no general interest, and of importance only to the parties to the suit.

Justices STRONG and BRADLEY had not taken their seats on the Bench when this case was adjudged.

REILLY v. GOLDING.

1. By the practice of the courts of Louisiana, a practice which has been adopted in the Circuit Court in that district, the mode of proceeding in an attachment suit against a surety on a forthcoming bond given to obtain a release of property attached, is by rule to show cause; and this proceeding being merely incidental to the original suit, a jurisdiction existing in such suit will not cease, because the parties to the *rule* are citizens of the same State.
2. Especially is this true where the defendant in the rule has appeared and answered on merits, and the case has gone to judgment.
3. A judgment affirmed where there was no finding of facts in the case.

ERROR to the Circuit Court for the District of Louisiana.

Golding, a citizen of Louisiana, brought suit against Milne & Co., of Mississippi, to recover a certain sum due for machinery furnished the last-named parties. The suit was commenced by an attachment against the property of the defendants, situate within the former State, and then in possession of the factors of the defendants, Bradly & Co. Bradly & Co. intervened, and obtained the redelivery of the property to them on executing a forthcoming bond, one Reilly being the surety. Afterwards the defendants, Milne & Co., appeared and removed the cause to the Circuit Court of the United States, and put in an answer to the suit. Judgment was subsequently rendered in favor of the plaintiff against

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the defendants for the amount claimed, and execution issued, which was returned unsatisfied. Afterwards judgment was rendered against the intervenors by default, dismissing the proceedings with costs, reserving the plaintiff's right under the forthcoming bond. Subsequently a rule was entered against Reilly, the surety upon the forthcoming bond, to show cause why he should not be condemned to pay the debt of the plaintiff according to the condition of the bond. Reilly appeared, and excepted to the jurisdiction of the court, on the ground that the proceedings to enforce payment of the bond was a new suit, and the plaintiff and defendant were both citizens of Louisiana. The court overruled these objections. Reilly then put in an answer to the rule on the merits, after hearing which the court below gave judgment against them.

To obtain a review of the action of the court in both particulars, Reilly sued out this writ of error. The record contained no bill of exceptions, demurrer, or statement of facts.

Messrs. Miles Taylor, Lacey, and Butler, for the plaintiff in error, maintained, by brief, that the exception taken by Reilly below was well founded, and that even if the Circuit Court had jurisdiction over the original suit, the proceeding to enforce payment was a separate action, over which the Circuit Court had no jurisdiction, Golding, the plaintiff, and Reilly being confessedly both citizens of Louisiana.

Mr. Durant, contra.

Mr. Justice NELSON delivered the opinion of the court.

The answer to the exception to the jurisdiction of the court is, that according to the practice of the courts in Louisiana, and which has been adopted by the Circuit Court of the United States, the court proceeds against the surety on a forthcoming bond by a rule to show cause, as in the present case. The proceeding is merely incidental to the principal suit.

Reilly, also, put in answer on the merits which was tried.

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The court made the rule absolute, and rendered judgment against the surety for the whole amount of the claim of the plaintiff.

There is no finding of the facts in this case, and no reason for taking it out of the general rule on the subject, which, under like circumstances, as is well settled, is to

AFFIRM THE JUDGMENT.

BOYLAN v. UNITED STATES.

1. Under the 96th section of the Excise Act of June 30th, 1864, exempting from a tax laid on sundry articles of dress by section 95, clothes manufactured of materials on which a duty had been paid, unless "the increased value" exceeds *five per cent. ad valorem*, such "increased value" is to be ascertained by a comparison between the market value of the materials at the time the tax on them was paid, with the market value of the manufactured goods at the time of the assessment of the tax upon them.
2. When the sale and delivery is to the government which imposes and collects the tax, the market value of the goods may be well enough determined by the price which the government agrees to pay, and the contractor agrees to receive.

ERROR to the Circuit Court of New York, the case being this:

By the 95th section of the act of June 30th, 1864, a tax of five per cent. was imposed on ready-made clothing, and sundry other articles of dress.* But the 96th section of the same act exempted from the tax goods manufactured of materials on which duties had been paid, unless the increased value of such goods exceeded *five per cent. ad valorem*.†

These provisions of the statute being in force, Boylan, a manufacturer of clothing, on the 10th of May, 1864, entered into a contract with the United States to manufacture and deliver to it at times specified, a certain amount of army clothing, for which he was to receive a price fixed. He did

* 13 Stat at Large, 269.

† Ib. 272.