Diggs & Keith *v.* Wolcott.

Injunction.

A court of the United States cannot enjoin proceedings in a state court.[1]

This was an appeal from a decree of the Circuit Court for the district of Connecticut, in a suit in chancery.

The appellants, Diggs & Keith, had commenced a suit at law against Alexander Wolcott, the appellee, in the county court for the county of Middlesex, in the state of Connecticut, upon two promissory notes given by Wolcott to one Richard Matthews, for the purchase of lands in Virginia, and by him indorsed to the appellants; whereupon, Wolcott filed a bill in chancery in the superior court of the state, against the appellants, Diggs & Keith, and also against Robert Young and Richard Matthews, praying that Diggs & Keith might be compelled to give up the two notes to be cancelled, or be perpetually enjoined from proceeding at law for the recovery thereof, &c.

This suit in chancery was removed by the appellants from the state court into the circuit court of the United States for the district of Connecticut, where it was decreed that Diggs & Keith should, on or before a certain day, deliver the notes to the clerk of the court, and in default thereof should forfeit and pay to Wolcott $1500; and that they should be perpetually enjoined, &c.; and that Robert Young should repay to the appellee the amount of principal and interest which the latter had paid on account of the purchase of the lands; and that the appellee should deliver up to the clerk the surveys of the lands, and the bond of conveyance; and in default thereof should pay to R. Young the sum of $20,000.

*180] *The case was argued upon its merits by *C. Lee* and *Swann*, for the appellants, and by *P. C. Key*, for the appellee; but The Court being of opinion, that a circuit court of the United States had not jurisdiction to enjoin proceedings in a state court,

Reversed the decree.

Wood *v.* Lide.

Practice in error.

If a writ of error be served before the return-day, it may be returned after, even at a subsequent term; and the appearance of the defendant in error waives all objection to the irregularity of the return.

The service of a writ of error is the lodging a copy thereof for the adverse party, in the office of the court where the judgment was rendered.

Error to the Circuit Court for the district of Georgia. The writ of error was dated the 23d of December 1805, and returnable to February term 1806; the citation also bore the same date, and commanded the defendant in error to appear at the same term. The writ of error was filed in the

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[1] Rogers *v.* Cincinnati, 5 McLean 337; City Bank *v.* Skelton, 2 Bl. C. C. 14, 26; Ex parte Campbell, 1 Abb. U. S. 185; Butchers' Association *v.* Slaughter-house Co., Id. 388; Ex parte Dudley, 1 Clarke (Pa.) 96; United States *v.* Collins, 21 Law Rep. 37. And see Watson *v.* Jones, 13 Wall. 679.

clerk's office of the court below on the same 23d of December. The judgment below was not signed, until the 4th day of January 1806. The writ of error was not returned and filed in the clerk's office of the supreme court, until the 18th of March 1806, after the court had closed its session.

P. C. Key, for the plaintiff in error, suggested, that in such a case, the writ of error ought to be dismissed, of course.

The Court, however, inclined to be of a contrary opinion, but informed *Key* that they would give him an opportunity to show the contrary.

On a subsequent day, he contended, that the writ could not be returned at any other term than that to which it was returnable, and to which the defendant in error had been cited to appear. After the expiration of the term, it was void. The execution of a writ of error is the sending up the record, according to its command, and to send the record up at another term is no execution of the writ. *He relied upon the case of *Clair* v. *Miller*, 4 Dall. 21, as being decisive. [*181

February 28th, 1807. The Chief Justice stated, that there had been some difference of opinion among the judges, which arose from their not understanding perfectly the facts of the case. If the writ of error had been served, when it was not in force (that is, after its return-day), such service would have been void. But if served, while in force, a return afterwards will be good. The service of a writ of error is the lodging a copy thereof for the adverse party, in the office of the clerk of the court where the judgment was rendered. (1 U. S. Stat. 85, § 23.) If it be so served, before the return-day, the service is good.

In the case cited from 4 Dall., it does not appear which party made the motion, nor whether there was an appearance for the opposite party. In the present case, the writ of error having been served, when in full force, and the writ of error returned, although not at the first term, the appearance of the defendant in error has waived all objection to the irregularity of the return.

The judgment was affirmed.(*a*)

(*a*) No notice was taken of the fact that the writ of error was served, before the judgment below was signed.