PARCELS v. JOHNSON.

A writ of error from this court will not lie to remove the judgment of an inferior appellate court, where the judgment of that court remands a case to another below it for new trial and hearing, and where it is evident that the parties have not exhausted the power of these inferior courts.

ERROR to the Supreme Court of Missouri.

Mrs. Johnson brought suit against one Parcels, in one of the Circuit Courts of Adair County, Missouri, to have an assignment of dower in a certain one hundred and twenty acres of land, of which she alleged that her husband had been seized in fee simple and in such way as that she was dowable of the land.

The facts appeared to be, that her husband, before his marriage with her, had been a soldier in the infantry service of the United States in the war of 1812, and as such was entitled under acts of Congress to one hundred and twenty acres of land; that a warrant for this quantity of land was issued to him; that the plaintiff was afterwards married to him; that they had one child; that the husband died, his wife and child surviving; that afterwards, under an act of Congress, the warrant was located on the land in which the dower was claimed; that a patent soon afterwards, and before this suit was brought, issued in the name of the husband, for it; and that the curator of the child, under certain judicial proceedings, sold the land to Parcels, the defendant. The defence was—

1st. That the husband in his lifetime had no such seizin or estate as authorized his wife to be endowed.

2d. That the curator had reserved one-third of the proceeds of the sale of the land for the wife's use and benefit, and as her supposed dower in the money.

The second defence, however, was not proved, the defendant relying chiefly on the first.

The Circuit Court of Adair County adjudged that the

husband had not been seized of any such estate as Mrs. Johnson could be endowed of.

From this judgment Mrs. Johnson took the case to the Supreme Court of Missouri. That court was of a different view, and having delivered and filed a learned opinion, found in the record, ordered the judgment of the Adair County Court to be reversed; and that—

"The said cause be remanded to the aforesaid Adair Circuit Court for *further proceedings to be had therein in conformity with the opinion of this court herein delivered and filed.*"

From this judgment Parcels now brought the case here, where it was elaborately argued upon the merits.

Mr. B. G. Barrow (with whom was Mr. M. H. Carpenter), for the plaintiff in error; Mr. J. F. Benjamin, contra.

The CHIEF JUSTICE delivered the opinion of the court.

This writ of error is dismissed, upon the authority of *Moore* v. *Robbins*,* *St. Clair County* v. *Lovingston*,† *Tracy* v. *Holcombe*,‡ *Pepper* v. *Dunlap*,§ *Brown* v. *Union Bank*.‖

A writ of error can only issue from this court to the highest court of a State for a review of the final judgment or decree of that court in a suit. In other words, it is only the last judgment or the last decree which the State courts can give in a suit, until that judgment or decree is set aside or reversed, that this court can, even in the prescribed cases, bring here for re-examination.

The judgment of the Supreme Court of Missouri, brought up in this case, is one of reversal only and remanding the suit to the inferior court for further proceedings in accordance with the opinion delivered and filed. The cause was sent back, therefore, for a new trial or a new hearing. Upon such trial or hearing the inferior court can proceed to render a new judgment, not inconsistent with the opinion, and

* 18 Wallace, 588. † Ib. 628. ‡ 24 Howard, 426.
§ 5 Id. 51. ‖ 4 Id. 465.

that judgment may in its turn be taken to the Supreme Court for examination.

From the record it appears that one of the defences set up in the answer, to wit, that which was based upon the implied acceptance of one-third of the proceeds of the guardian's sale in lieu of dower in the land, was not proven. On a new trial that proof may be supplied and a judgment rendered thereon satisfactory to the now complaining party. In that manner the present supposed Federal question may be put out of the case. So, too, the present pleadings may be amended and a new case made, which will render unnecessary the consideration of any question that can give this court jurisdiction.

Thus it is apparent that the parties have not as yet exhausted the power of the State courts in the premises, and until that is done our power cannot be called into action. This court must be the last resort of litigants in State courts.

WRIT DISMISSED.

LOAN ASSOCIATION v. TOPEKA.

1. A statute which authorizes towns to contract debts or other obligations payable in money implies the duty to levy taxes to pay them, unless some other fund or source of payment is provided.
2. If there is no power in the legislature which passed such a statute to authorize the levy of taxes in aid of the purpose for which the obligation is to be contracted, the statute is void, and so are the bonds or other forms of contract based on the statute.
3. There is no such thing in the theory of our governments, State and National, as unlimited power in any of their branches. The executive, the legislative, and the judicial departments are all of limited and defined powers.
4. There are limitations of such powers which arise out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.
5. Among these is the limitation of the right of taxation, that it can only be used in aid of a public object, an object which is within the purpose for which governments are established.