STANDARD OIL CO. v. BELL et al.

(Circuit Court of Appeals, Fifth Circuit. June 16, 1897.)

No. 598.

APPEAL AND ERROR—MOTION TO DISMISS AND AFFIRM.

Where the determination of a motion to dismiss a writ of error and affirm the judgment below involves the examination of a voluminous record, it will not be considered in advance of the regular call.

In Error to the Circuit Court of the United States for the Southern District of Florida.

On motion to dismiss the writ of error and affirm the judgment of the circuit court.

J. C. Cooper, W. W. Howe, W. B. Spencer, and C. P. Cocke, for plaintiff in error.

H. Bisbee, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and MAXEY, District Judge.

PER CURIAM. This is an action of ejectment, tried in the circuit court without a jury, and brought here for review on a transcript of 307 printed pages, with 12 assignments of error. Counsel for defendants in error have submitted the following motion, to wit:

"Come now the defendants in error, by H. Bisbee, their attorney, and move to dismiss the writ of error in the above-entitled cause upon the following grounds: First, because no exceptions were taken to any rulings or decisions of the court below in such manner and form as to entitle the plaintiff in error to any review thereof in this court. Second, because no exceptions were taken to the rulings and decisions of the court below upon which the assignments of error can be based. And defendants in error further move for the judgment of this court affirming the judgment of the court below on the ground that it is manifest that a writ of error was taken for delay only; second, on the ground that the objection to the jurisdiction of the court below is too frivolous to need argument."

The record plainly shows that, of the 12 assignments of error, at least half present rulings of the trial judge not reviewable on writ of error. The others, however, assign error as to the ruling of the court on the question of jurisdiction, and as to the rejection of evidence on the trial of the case, based upon exceptions duly taken, and in rulings on other questions, all proper subjects for review on writ of error. It is therefore clear that the writ of error cannot be dismissed for any of the reasons assigned in the motion. To pass upon the motion to affirm requires a careful examination of the entire record, which the court is indisposed to make in advance of the regular call, and without opportunity to the plaintiff in error to present argument on the points involved. The motion to dismiss and affirm is therefore denied.

CRYSTAL SPRINGS LAND & WATER CO. et al. v. CITY OF LOS ANGELES.

(Circuit Court, S. D. California. July 9, 1897.)

No. 583.

1. FEDERAL COURT—JURISDICTION—MEXICAN GRANTS.
When both parties claim under Mexican grants, confirmed and patented by the United States in accordance with the provisions of the treaty of Guadalupe Hidalgo, and the controversy is only as to what were the rights thus granted and confirmed, the suit is not one arising under said treaty, so as to confer jurisdiction on a federal court.

2. SAME—ALLEGATIONS OF BILL—EFFECT OF DISCLAIMER ON ANSWER.
When the only ground of federal jurisdiction grows out of allegations in the bill that defendant's claim of title is based in part on certain acts of a state legislature which attempt to transfer to him the title held by complainant's grantors at the time of their passage, the court will not retain jurisdiction when an answer is filed by the defendant denying such allegations and disclaiming any title or claim of title not held by him before the passage of said acts.

This was a suit in equity by the Crystal Springs Land & Water Company and S. G. Murphy against the city of Los Angeles to quiet title to certain waters, water rights, and works connected therewith. A demurrer to the bill was overruled (76 Fed. 148), and defendant now moves to dismiss the bill for want of jurisdiction.

White & Monroe and Chapman & Hendrick, for complainants.
W. E. Dunn, W. E. Lee, and Lee & Scott, for defendant.

WELLBORN, District Judge. The present hearing is on a motion to dismiss the bill for want of jurisdiction. Jurisdictional issues were raised at an earlier stage of the suit by demurrer. Complainants then maintained that the suit was one of federal cognizance, on two grounds: First, that the suit arose under the treaty of Guadalupe Hidalgo; second, that defendant's claim to the water properties described in the bill was based, in part, at least, on acts of the legislature of California, which acts, if construed as making the grants claimed by defendant, are repugnant to the constitution of the United States, and therefore the case is one arising under said constitution. Defendant controverted both grounds. The demurrer was overruled, the court resting its decision on the latter of the above-stated grounds, leaving the former undecided. See 76 Fed. 148. Defendant has since filed its answer, and entered a motion for a dismissal of the suit, on the ground that the answer disclaims, as against vested rights of complainants, any title to said waters through said acts of the legislature. On this motion to dismiss the argument has not been confined to the effect of defendant's alleged disclaimer, but by permission of the court the question as to whether or not the suit arises under the treaty above mentioned has been reargued. The allegations of the bill, as summarized in complainants' last brief, are these:

"On the 22d of March, 1843, a grant was made by the then Mexican governor to Maria Ygnacio Verdugo of a certain tract of land known as the 'Los Feliz Rancho,' which was subsequently confirmed by the proper authorities of the United States; and on the 18th of April, 1871, a patent was duly issued by the United States to the Mexican grantee. * * * And another grant was made