UNITED STATES V. GWYN, 1888-NMSC-012, 4 N.M. 635, 42 P. 167 (S. Ct. 1888)

UNITED STATES OF AMERICA, Complainants In Error,
vs.
JOHN GWYN, Defendant In Error.

No. 280

SUPREME COURT OF NEW MEXICO

1888-NMSC-012, 4 N.M. 635, 42 P. 167

January 28, 1888

ERROR, from a decree in favor of defendant, rendered in vacation, from the district court, sitting as a United States court in the exercise of its jurisdiction *{*636}* of cases arising under the constitution and laws of the United States. Motion to quash writ or error. Motion sustained.

COUNSEL

Fiske & Warren for complainants in error.

JUDGES

Elisha V. Long, C. J.; Wm. M. Brinker, A. J.; W. T. Henderson, A. J.

SYLLABUS

PATENT-BILL IN CHANCERY TO VACATE-FINAL DECREE, ERROR FROM-JURISDICTION OF SUPREME AND DISTRICT COURTS-POWER OF LEGISLATURE TO PASS ACT OF FEBRUARY 13, 1880. COMP. LAWS, N. M., SEC. 1829.- In a proceeding by bill in chancery in the district court, sitting as a United States court, a decree dismissing the bill upon the merits of the controversy, signed by the judge and filed with the clerk, in vacation, is a final decree within the meaning of the statute (act February 13, 1880, Comp. Laws, Sec. 1829) from which an appeal or writ of error will lie to the supreme court of the territory, which together with the district courts possesses chancery as well as common law jurisdiction (Organic Acts of September 9, 1850, and April 7, 1874, Comp. Laws, Sec. 1868). The legislature had the power to pass the act of February 13, 1880, regulating writs of error, bills of exception and appeal from the district courts to the supreme court of the territory, as a rightful subject of legislation, not inconsistent with the constitution and laws of the United States (Comp. Laws, p. 59, sec. 1851, Organic Acts; Hornbuckle v. Toombs, 18 Wall. 648); and it is not in contravention of the act of 1880 in relation to the practice in the district courts, or the order of the court in fixing the terms.

Id.-ERROR, WRIT OF-MOTION TO QUASH AND STRIKE CAUSE FROM THE DOCKET WILL BE SUSTAINED, WHEN.- On motion, on appeal by writ of error, in such a proceeding, to quash the writ and strike the cause from the docket, where the writ has not been sued out within one year from the date of filing of the decree, the motion will be sustained, and the writ dismissed.

POINT OF COUNSEL

FISKE & WARREN for complainants in error.

The act of 1880 (Session Laws, 1880, p. 54), declaring the district courts "at all times in session and open" for certain purposes including that of "rendering final decrees in equity," is void, being in contravention of the order of the judges fixing and limiting duration of the terms (Comp. Laws, 1884, p. 71, sec. 1915). In fixing the places and limiting the terms the judges are clothed with quasi legislative powers, beyond the control of the legislative assembly.

Aside from this statute of 1880, the vacation decree was unauthorized and void. District courts in equity cases follow the chancery practice in the United States court. Sec. 522, Comp. Laws, N. M., 1884; 2 N.M. p. 39.

The Unites States district and circuit courts, under the rules in equity prescribed by the supreme court of the United States, are always open for interlocutory orders, decrees, etc. 1 Abb. U. S. Practice, 16-26; id. 162; id. 178. Final decrees in those courts can only be extended in term.

Under the English chancery practice, a decree which has not been enrolled, although it is, in its nature, a final decree, is considered merely as interlocutory. 2 Dan. Ch. Pr., sec. 1019.

In the United States there is no formal enrollment, but the end of the term, in which the decree is passed, is deemed equivalent to a formal enrollment; and until the end of the term, the decree is subject to a control and modification by court. 2 Dan. Ch. Pr.,sec. 1019 and notes; Whiting v. Bank, 13 Pet. 6; Clapp v. Thaster, *{*637}* 7 Gray, 384, 386; McMicken v. Prin, 18 How. 507; R'y Co. v. Bradleys, 7 Wall. 577.

AUTHOR: REEVES

OPINION

{1} REEVES, J.- On the twenty-sixth day of December 1883, the United States by its attorney general, instituted this suit to vacate a patent to the defendant John Gwyn, for a tract of mineral land, patented as agricultural in character, as described in the bill of complaint.

{2} The district court dismissed the bill, and the complainants have brought the case into this court by writ of error.

{3} The motion of the defendant in error to quash the writ of error and strike the case from the docket is upon the ground that this court had no jurisdiction of the case and because the writ of error was not applied for or sued out within one year from the date of the final decree in the court below.

{4} The writ of error was sued out, January 16, 1886, returnable to the January term, 1887, of this court. The precipe for the writ of error bears the same date of the writ.

{5} On the ninth day of October, 1884, in vacation of the court, a decree was rendered dismissing the bill at the cost of the complaints.

{6} On March 27, 1885, the complainants in error filed in the clerk's office, their bill of exceptions as allowed by the judge, in which it is recited that issue having been joined upon the bill of complaint and the several answers of the defendants, and the replications to the answers: It was ordered by the court, and consented to by the parties to the suit, that the testimony in the cause, oral and written, of the parties should be submitted to the judge, at chambers in the county of Santa Fe; that on days mentioned, the parties by their solicitors appeared before the judge of said court at chambers in the county of Santa Fe and proceeded to *{*638}* offer evidence of said cause from day to day until completed when the cause was heard and submitted, and on October 9, 1884, in vacation of said district court a decree was signed and filed dismissing complainants' bill, which decree, as recited in the bill of exceptions, became final on February 28, 1885, the same being the last day of the February term, 1885, of said district court. Leave was given complainants to file a so-called, " Bill of Exceptions" by the first of June, 1885. The bill of exceptions bears date March 23, 1885, and is signed by the judge. At the regular June term of the court, the time to file the bill of exceptions was extended to July 10, 1885, which was so far complied with as to file a statement of the evidence and proceedings on the trial of the cause, and which contained the statement in the bill of exceptions of March 23, 1885, that the decree became final February 28, 1885, the same being the last day of the February term, 1885, of said district court and dated July 9, 1885, and signed by counsel in the case, but neither signed nor approved by the judge. In this decree, the judge says, the case was duly tried before him and that the proofs, allegations and arguments of the respective parties complainants and defendants were fully heard and considered by the court and the bill dismissed on the merits, at cost of the complainants. The decree was signed by the judge and filed in the clerk's office, on the same day it was pronounced.

{7} No objection was made to the decree at the time it was rendered. There was no recital in the decree that it was to become final at the February term of the court, or at any future time. There was no bill of exception to the proceedings at the time, and no extension of time asked to file exceptions or to make up a statement of facts. Bills of exceptions must be settled and signed within thirty days after the judgement is entered, unless the court or judge shall enlarge the time. *{*639}*

{8} Complied Laws, New Mexico, section 2198. In section 2197 it is provided "in equity causes no exception shall be required." The connection shows that in equity causes no exception is required to the decision of the court upon matters of the law arising during the progress of the cause. Williams v. Thomas, 9 Pacific Reporter, 356.

{9} But the complainants contend that the vacation decree was void for want of jurisdiction to render it, or that if not void it did not become in contemplation of law final in the sense of the statute properly construed, until the end of the next term in February, 1885, and that the writ of error was in time.

{10} The act of February 13, 1880, Complied Laws, New Mexico, section 1829, provides that "hereafter the district courts held in the several counties of this territory, shall be at all times in session and open at any place in the district, where the judge thereof may be for the purpose of hearing and determining motions, demurrers and petitions, granting rules and orders and interlocutory decrees, perfecting pleadings and putting causes at issue in all causes in law and equity as well, and rendering final decrees in equity as for granting all extraordinary writs, and issuing every kind and class of process that could or might be issued by said courts at a regular term.

{11} At common law, writs of error were allowed in law cases and appeals in chancery cases. But by section 2193, Complied Laws, New Mexico, "all cases either in law or equity, finally adjudged or determined in the district courts may be removed into the supreme court of the territory by appeal or writ of error."

{12} Appeals may be taken from the judgement of the district court at the term at which the judgement or decision appealed from was rendered, on requirements of the statute. Sections 2185-2186, 2187, Compiled Laws, New Mexico. *{*640}*

{13} Writs of error may be sued out within one year from the date of the judgment. Sections 2194, 2199, Compiled Laws, New Mexico.

{14} The power of the legislative assembly of this territory to pass the act of February 13, 1880, is called in question by counsel for the complainants, and hence it is necessary to refer to some of the provisions of the organic acts to ascertain the powers of the legislature in that respect.

{15} In general the powers of the legislature extend to all rightful subjects of legislation not inconsistent with the constitution and law of the United States. Act of September 9, 1850. See Compiled Laws of New Mexico, page 59, section 1851, Organic Acts.

"Writs of error, bills of exception and appeals shall be allowed in all cases from the final decisions of the district courts of the territory, under such regulations as may be prescribed by law." Organic Acts of September 9, 1850, and April 7, 1874 (Compiled Laws of New Mexico, page 62, section 1869).

"The judicial power of the territory is vested in the supreme court, in the district court, probate courts and in justices of the peace." Act of September 9, 1850, section 1907, Organic Acts. (See Compiled Laws of New Mexico, page 70.)

{16} The supreme court and the district courts of the territory possess chancery as well as common law jurisdiction. Organic Acts of September 9, 1850, and April 7, 1874. (See Compiled Laws of New Mexico, page 62, section 1868).

{17} All laws passed by the legislative assembly and governor of the territory must be submitted to congress, and if disapproved shall be null and void. Act of September 9, 1850, Organic Acts. (See Compiled Laws of New Mexico, page 59.)

{18} These citations, and others of like import, establish the power of the legislative assembly and the governor *{*641}* of this territory, to pass laws regulating writs of error, bill of exception and appeals for the removal of causes from the district courts to the supreme court of the territory as rightful subjects of legislation, and congress has not disapproved its exercise. Hornbuckle v. Toombs, 18 Wall. (U. S.) 648.

{19} The chancery and common law jurisdiction conferred on the supreme court and district courts by these acts of congress is coextensive with great power of the legislature to enact laws within the prescribed limits.

{20} The act of 1880, declaring that the district courts shall be at all times in session, with authority to render final decrees in equity, makes no such provision as that such decrees do not become final until the end of the next regular term of the court. "A decree which disposes of a cause without reserving anything for further consideration is final." Daniels' Chancery Pleading etc., Practice, page 993. "A decree dismissing a bill upon the merits of the controversy is a final determination of the cause." Durant v. The Assay Co., 7 Wall. (U. S.) 107.

{21} In the case of Clapp v. Thaxter 7 Gray (Mass.), 384, the court said: " Though judgments in the courts of law and final decrees in equity are in this country matters of record, they are deemed to be recorded as of the term of the court in which they are passed though not then actually spread upon the record; in substance and effect they are deemed to be enrolled as of the term." Referring to Whiting v. Bank of the United States, 13 Peters (U. S.), 6.

"Decrees are final at the end of the term at which they are rendered." 2 Daniels, Chancery Pleading and Practice, 994.

{22} Rules of practice relating to judgments and decrees rendered at regular terms of the court, with fixed *{*642}* periods of duration are not applicable to judgments and decrees rendered between terms. No action of the court at a regular term is required to give validity to decrees in vacation, and is not shown that any such action was taken in this case. The order to extend the time to settle the bill of exception and for other purposes could not change the character of the decree. The bill exception signed by the

judge and filed with the clerk for registration, could have no effect on the decree pronounced five months before the time. The complainants had a right to appeal from the decree as soon as it was rendered or prosecute a writ of error within one year from the date of the decree.

{23} Under the rules of Practice in the English Court of Chancery, "till a decree has been enrolled and thereby become a record, it is liable to be altered by the court itself upon a rehearing, whilst a decree which has been enrolled is not susceptible of alteration, except by the house of Lords or by bill of review." 2 Daniels, Chancery Pleadings and Practice, 1019.

{24} After the judge signed and filed with the clerk his decree in this case, it was final and he had no further control over it nor did he assume to have any such control, if that is not implied in his signing the bill of exception.

{25} The complainants, further contend, "that the act of 1880, declaring the district courts at all times in session and open for certain purposes clothed the judges with quasi legislative powers beyond the control of the legislative assembly. Organic Act, section 1915, Complied Laws, New Mexico, 71.

{26} All these different acts must be construed together, and when so construed, the act empowering the judges of the supreme court to fix and appoint the times and places of holding the courts and to limit their durations not in contravention of the act of 1880 in relation to *{*643}* practice in the district courts, or the order of the court in fixing the terms. This act does not change the times and places of holding the district courts, or their duration, but declares that such courts shall be at all times in session and open at any place in the district where the judge may be, for certain purposes, including that of rendering final decrees.

{27} RULE 1: Regulating practice in equity in the district court.

{28} It is further said that district courts in equity cases follow the chancery practice in the United States. In Hornbuckle v. Toombs, 18 Wallace, above referred to the court said: "The practice, pleadings and forms and modes of proceeding of the territorial courts as well as their respective jurisdictions were intended by congress to be left to the legislative action of the territorial assemblies and to the regulations which might be adopted by the courts themselves." * * *

{29} Our opinion is, that the decree was final when it was rendered and filed in the clerk's office for registration on the ninth day of October, 1884, and the writ of error not having been sued out or applied for within one year from that date, the motion of the defendant in error is sustained and the writ dismissed.

{30} And it so ordered.

CONCURRENCE

We Concur: Elisha V. Long, C. J. ; Wm. M. Brinker, A. J. ; W. T. Henderson, A. J. .