

Cooper Vs. Telfair

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Court : US Supreme Court

Decided On : 1800

Appeal No. : 4 U.S. 14

Appellant : Cooper

Respondent : Telfair

Judgement :

Cooper v. Telfair - 4 U.S. 14 (1800)

U.S. Supreme Court Cooper v. Telfair, 4 U.S. 4 Dall. 14 14 (1800)

Cooper v. Telfair

4 U.S. (4 Dall.) 14

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF GEORGIA

SYLLABUS

By the Confiscation Act of Georgia, a debt due to the plaintiff on bond by a citizen of the State of Georgia had become forfeited to the state, he having been attainted by an act of the legislature of that state for adhering to the British cause in the war

of the Revolution. In a suit instituted by him for the debt, upon the act of the legislature being pleaded in bar by the obligor, he replied that the acts of the legislature were contrary to the constitution of that state and void. *Held* that the Confiscation Acts of Georgia were valid.

The presumption must always be in favor of the validity of laws if the contrary is not clearly demonstrated. WASHINGTON, JUSTICE.

The general principles contained in the Constitution are not to be regarded as rules to fetter and control, but as matter merely declaratory and directory, for even in the Constitution itself we may trace repeated departures from the theoretical doctrine that the legislative, executive, and judicial powers should be kept separate and distinct. CHASE, JUSTICE.

The power of confiscation and banishment does not belong to the judicial authority, whose process could not reach offenders, and yet it is a power that grows out of the very nature of the social compact, which must reside somewhere and which is so inherent in the legislature that it cannot be divested or transferred without an express provision of the Constitution.

The record exhibited the following case:

Basil Cooper, at present of the Island of Jamaica in the dominions of His Britannic Majesty, formerly an inhabitant of the State of Georgia, brought an action in the Circuit Court of Georgia to November term, 1797, against Edward Telfair, of the District of Georgia, upon a bond for 1,000 sterling, equal to \$4,285.70, dated 14 May, 1774.

After oyer of the bond and condition, the defendant pleaded in bar 1st, payment; 2d,

"That on 4 May 1782, an act was passed by the Legislature of the State of Georgia entitled 'An act for inflicting penalties on and confiscating the estate of such persons as are therein declared guilty of treason, and for other purposes therein mentioned,' by which it is among other things enacted and declared"

"that all and every the persons named and included in the said act are banished from the said state, and that all and singular the estate real and personal of each and every of the aforesaid persons which they held, possessed, or were entitled

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to in law or equity on 19 April, 1775, and which they have held since or do hold in possession or others holding in trust for them or to which they are or may be, entitled in law or equity, or which they may have, hold, or be possessed of in right of others, together with all debts, dues and demands of whatsoever nature that are or may be owing to the aforesaid persons or either of them be confiscated to and for the use and benefit of this state."

"That the said Basil Cooper is expressly named and included in the above in part recited acts, and that he was on the said 44 May, 1782, and for a long time before, a citizen of the State of Georgia and of the United States of America."

"That the said Basil Cooper, being a citizen, &c.;, owing allegiance, &c.;, on 4 May, 1782, and for a long time before, adhered to the troops of his Britannic Majesty, then at open war with the said State of Georgia and United States of America, and did take up arms with the said troops, &c.; That the said Basil Cooper hath never since returned within the limits and jurisdiction of the said United States or any of them. That by virtue of the above recited act, and also of an act entitled"

"An act to continue an act to authorize the auditor to liquidate the demands of such persons as have claims against the confiscated estates, and for other purposes therein mentioned,"

"passed 13 February, 1786, and of another act entitled"

"An act to compel the settlement of the public accounts, for inflicting penalties on the officers of this state who may neglect their duty, and for vesting the auditors with certain powers for the more speedy settlement of the accounts of this state with the United States,"

"passed 10 February 1787; the sum of money mentioned in the condition of the bond, and all interest thereon, have become forfeited and confiscated to the State of Georgia and the right of action attached thereto, and no cause of action hath accrued to the said Basil Cooper to demand and have of the said Edward Telfair the said sum of money. . . ."

To this plea the plaintiff replied

"That he was never tried, convicted, or attainted of the crime of treason alleged against him, and that by the constitution of the state (in force at the time of passing the acts in the said plea set forth, to-wit, on 4 May 1782), unanimously agreed to in a convention of the people of this state on 5 February, 1777, it is ordained that"

" Article 1. The legislative, executive, and judiciary, departments shall be separate and distinct, so that neither exercises the powers properly belonging to the other."

" Article 7. The house of assembly shall have power to make such laws and regulations as may be conducive to the good order and wellbeing of the state, provided such laws and regulations be not repugnant to the true intent and meaning of any rule or regulation contained in this Constitution. "

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" Article 39. All matters of breach of the peace, felony, murder, and treason against the state to be tried in the county where the crime was committed. . . ."

" Article 60. The principles of the habeas corpus act shall be part of this Constitution."

" Article 61. The freedom of the press and the trial by jury to remain inviolate forever."

"And that the said recited acts, so far as they can operate to bar the said Basil from maintaining his action, are repugnant to the true intent and meaning of divers rules and regulations contained in the said Constitution, and are as to the action of the said Basil null and void, without that. . . ."

The defendant demurred to the replication, and the plaintiff joined in demurrer.

On 2 May, 1799, the circuit court, composed of Ellsworth, Chief Justice, and Clay, District Judge, decided that the replication was insufficient, that the plea in bar was sufficient, and that judgment on the demurrer be entered for the defendant.

Upon this judgment the present writ of error was brought, and the following errors assigned:

1. The general errors.
2. That the plea does not set forth the constitutional power of the Legislature of Georgia to deprive the plaintiff of his rights as a citizen, and on its own authority to pass sentence of confiscation and banishment.
3. That the judgment decides that the legislature had cognizance of the treason alleged against the plaintiff and could legally try, convict, and banish him, whereas it had no such power on constitutional principles.
4. That by the judgment it appears the legislature could deprive individuals of their lives and property without trial by jury or inquest of office, contrary to the Constitution of Georgia.
5. That the judgment gives effect to an act of Georgia which is an union and usurpation of judicial as well as legislative powers, which powers the Constitution declares should be kept separate.

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On 13 February, 1800, the Judges (except THE CHIEF JUSTICE, who had decided the cause in the circuit court) delivered their opinions *seriatim* in substance as follows:

WASHINGTON, JUSTICE.

The Constitution of Georgia does not expressly interdict the passing of an act of attainder and confiscation by the authority of the legislature. Is such an act, then, so repugnant to any constitutional regulation as to be excepted from the legislative jurisdiction by a necessary implication? Where an offense is not committed within some county of the state, the Constitution makes no provision for a trial, neither as to the place nor as to the manner. Is such an offense (perhaps the most dangerous treason) to be considered as beyond the reach of the government, even to forfeit the property of the offender, within its territorial boundary? If the plaintiff in error had shown that the offense with which he was charged had been committed in any county of Georgia, he might have raised the question of conflict and collision between the Constitution and the law, but as that fact does not appear, there is no ground on which I could be prepared to say that the law is void. The presumption, indeed, must always be in favor of the validity of laws if the contrary is not clearly demonstrated.

CHASE, JUSTICE.

I agree, for the reason which has been assigned, to affirm the judgment. Before the plaintiff in error could claim the benefit of a trial by jury under the Constitution, it was at least incumbent upon him to show that the offense charged was committed in some county of Georgia, in which case alone the Constitution provides for the trial. But even if he had established that fact, I should not have thought the law a violation of the Constitution. The general principles contained in the Constitution are not to be regarded as rules to fetter and control, but as matter merely declaratory and directory, for even in the Constitution

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itself we may trace repeated departures from the theoretical doctrine that the legislative, executive, and judicial powers should be kept separate and distinct.

There is likewise a material difference between laws passed by the individual states during the Revolution and laws passed subsequent to the organization of the federal Constitution. Few of the revolutionary acts would stand the rigorous

test now applied, and although it is alleged that all acts of the legislature in direct opposition to the prohibitions of the Constitution, would be void, yet it still remains a question where the power resides to declare it void. It is indeed a general opinion -- it is expressly admitted by all this bar and some of the judges have, individually in the circuits decided, that the Supreme Court can declare an act of Congress to be unconstitutional, and therefore invalid, but there is no adjudication of the Supreme Court itself upon the point. I concur, however, in the general sentiment with reference to the period when the existing Constitution came into operation, but whether the power under the existing Constitution can be employed to invalidate laws previously enacted is a very different question, turning upon very different principles and with respect to which I abstain from giving an opinion, since, on other grounds I am satisfied with the correctness of the judgment of the circuit court.

PATERSON, JUSTICE.

I consider it as a sound political proposition that wherever the legislative power of a government is undefined, it includes the judicial and executive attributes. The legislative power of Georgia, though it is in some respects restricted and qualified, is not defined by the constitution of the state. Had, then, the legislature power to punish its citizens who had joined the enemy and could not be punished by the ordinary course of law? It is denied because it would be an exercise of judicial authority. But the power of confiscation and banishment does not belong to the judicial authority, whose process could not reach the offenders, and yet it is a power that grows out of the very nature of the social compact, which must reside somewhere and which is so inherent in the legislature that it cannot be divested or transferred without an express provision of the Constitution.

The Constitutions of several of the other states of the union contain the same general principles and restrictions, but it never was imagined that they applied to a case like the present, and to authorize this Court to pronounce any law void, it must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.

CUSHING, JUSTICE.

Although I am of opinion that this Court has the same power that a court of the State of Georgia would possess to declare the law void, I do not think that the occasion would warrant an exercise of the power. The right to confiscate and banish in the case of an offending citizen must belong to every government. It is not within the judicial power, as created and regulated by the Constitution of Georgia, and it naturally as well as tacitly belongs to the legislature.

By the Court:

Let the judgment be affirmed with costs.

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