

Mcilvaine Vs. Coxe's Lessee

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Court : US Supreme Court

Decided On : 1808

Appeal No. : 8 U.S. 209

Appellant : Mcilvaine

Respondent : Coxe's Lessee

Judgement :

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Mcilvaine v. Coxe's Lessee

8 U.S. (4 Cranch) 209

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF NEW JERSEY

SYLLABUS

On 4 October, 1776, the State of New Jersey was completely a sovereign and independent state, and had a right to compel the inhabitants of the state to become citizens thereof.

A person born in the Colony of New Jersey before the year 1775 and residing there until the year 1777, but who then joined the British army and ever since adhered to the British, claiming to be a British subject and demanding and receiving compensation from that government for his loyalty and his sufferings as a refugee has a right to take lands by descent, in the State of New Jersey.

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CUSHING, J. delivered the opinion of the Court, as follows:

The Court deems it unnecessary to declare an opinion upon a point which was much debated in this cause -- whether a real British subject born before 4 July, 1776, who never from the time of his birth resided within any of the American colonies or states, can, upon the principles of the common law, take lands by descent in the United States, because Daniel Coxe, under whom the lessor of the plaintiff claims, was born in the province of New Jersey long before the declaration of independence and resided there until sometime in the year 1777, when he joined the British forces.

Neither does this case produce the necessity of discriminating very nicely the precise point of time when

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Daniel Coxe lost his right of election to abandon the American cause and to adhere to his allegiance to the King of Great Britain, because he remained in the State of New Jersey not only after she had declared herself a sovereign state, but after she had passed laws by which she pronounced him to be a member of, and in allegiance to the new government. The court entertains no doubt that after 4 October, 1776, he became a member of the new society, entitled to the protection of its government and bound to that government by the ties of allegiance.

This opinion is predicated upon a principle which is believed to be undeniable -- that the several states which composed this union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared

themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British King. The treaty of peace contains a recognition of their independence, not a grant of it. From hence it results that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state from the time they were enacted. We do not mean to intimate an opinion that even the law of a state whose form of government had been organized prior to 4 July, 1776, and which passed prior to that period, would not have been obligatory. The present case renders it unnecessary to be more precise in stating the principle, for although the Constitution of New Jersey was formed previous to the general declaration of independence, the laws passed upon the subject now under consideration were posterior to it.

Having thus ascertained the situation of Daniel Coxe on 4 October, 1776, let us see whether it was in any respect changed by his subsequent conduct in relation to the new government. Without expressing an opinion upon the right of expatriation as founded on the common law or upon the application of that principle to a person born in the State of New Jersey before its separation from the mother country, we think it conclusive upon the point that the legislature of that state,

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by the most unequivocal declarations, asserted its right to the allegiance of such of its citizens as had left the state and had attempted to return to their former allegiance.

The Act of 5 June, 1777, contains an express declaration that all such persons were subjects of the state who had been seduced by the enemy from their allegiance. The law speaks of them as fugitives, not as aliens, and they are invited not to become subjects, but to return to their duty, which the legislature clearly considered as still subsisting and obligatory upon them.

The inquiry which the jury is directed to make by the Act of 18 April, 1778, in order to lay a foundation for the confiscation of the personal estates of these fugitives is whether the person had, between 4 October, 1776, and 5 June, 1777, joined the armies of the King of Great Britain or otherwise offended against the form of his allegiance to the state. The 7th section of this law is peculiarly important, because it provides not only for past cases, which had occurred since 5 June, 1777, but for all future cases, and in all of them the inquiry is to be whether the offender has joined the armies of the King or otherwise offended against the form of his allegiance to the state.

During all this time, the real estates of these persons remained vested in them, and when by the law of 11 December, 1778, the legislature thought proper to act upon this part of their property, it was declared to be forfeited for their offenses, not escheatable on the ground of alienage. This last act is particularly entitled to attention, as it contains a legislative declaration of the point of time when the right of election to adhere to the old allegiance ceased and the duties of allegiance to the new government commenced. Those who joined the enemy between 19 April, 1775, and 4 October, 1776 (when an express declaration upon the subject was made), and who had not since returned and become subjects in allegiance to the new government by taking the oaths of abjuration and allegiance are pronounced guilty of high treason -- not for the purpose of affecting them personally, which would have

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been most unjust, but with a view to the confiscation of their estates. And consistent with this distinction, the jury is to inquire in respect to these persons not as in the case of those who had left the state after 4 October, 1776, whether they had offended against the form of their allegiance, but whether they are offenders within this act -- that is, by having joined the enemy between 19 April, 1775, and 4 October, 1776, and not having returned and become subjects in allegiance to the state.

Having taken this view of the laws of New Jersey upon this subject, it may safely be asserted that prior to the treaty of peace, it would not have been competent even for that state to allege alienage in Daniel Coxe in the face of repeated declarations of the legitimate authority of the government that he continued to owe allegiance to the state notwithstanding all his attempts to throw it off. If he was an alien, he must have been so by the laws of New Jersey; but those laws had uniformly asserted that he was an offender against the form of his allegiance to the state. How then can this Court, acting upon the laws of New Jersey, declare him an alien? The conclusion is inevitable that prior to the treaty of peace, Daniel Coxe was entitled to hold and had a capacity to take lands in New Jersey by descent.

But it is insisted that the treaty of peace, operating upon his condition at that time or afterwards, he became an alien to the State of New Jersey in consequence of his election, then made to become a subject of the King, and his subsequent conduct confirming that election. In vain have we searched that instrument for some clause or expression which by any implication could work this effect.

It contains an acknowledgment of the independence and sovereignty of the United States in its political capacities, and a relinquishment on the part of his Britannic Majesty of all claim to the government, propriety and territorial rights of the same. These concessions amounted, no doubt, to a formal renunciation of all claim to the allegiance of the citizens of the United States. But the question who were at that period citizens of the United States

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is not decided or in the slightest degree alluded to in this instrument; it was left necessarily to depend upon the laws of the respective states, who in their sovereign capacities had acted authoritatively upon the subject. It left all such persons in the situation it found them, neither making those citizens who had by the laws of any of the states been declared aliens nor releasing from their allegiance any who had become and were claimed as citizens. It repeals no laws of any of the states which were then in force and operating upon this subject, but on the contrary it recognizes their validity by stipulating that Congress should

recommend to the states the reconsideration of such of them as had worked confiscations. If the laws relating to this subject were at that period, in the language of one of the counsel, temporary and *functi officio*, they certainly were not rendered so by the terms of the treaty nor by the political situation of the two nations in consequence of it. A contrary doctrine is not only inconsistent with the sovereignties of the states anterior to and independent of the treaty, but its indiscriminate adoption might be productive of more mischief than it is possible for us to foresee.

If, then, at the period of the treaty, the laws of New Jersey which had made Daniel Coxe a subject of that state were in full force and were not repealed or in any manner affected by that instrument, if by force of these laws he was incapable of throwing off his allegiance to the state and derived no right to do so by virtue of the treaty, it follows that he still retains the capacity which he possessed before the treaty to take lands by descent in New Jersey, and consequently that the lessor of the plaintiff is entitled to recover.

Judgment must be affirmed with costs.