

Leland Vs. Wilkinson

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Court : US Supreme Court

Decided On : 1832

Appeal No. : 31 U.S. 317

Appellant : Leland

Respondent : Wilkinson

Judgement :

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Leland v. Wilkinson

31 U.S. (6 Pet.) 317

*ON CERTIFICATE OF DIVISION IN OPINION OF THE JUDGES OF THE
CIRCUIT*

COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

A paper certified by the Secretary of State of Rhode Island and by the governor under the seal of the state, stating that certain laws were passed by the legislature

of that state and that certain matters were cognizable by the General Assembly of Rhode Island and of the practice of the Assembly of Rhode Island in cases of a particular description is not evidence on the argument of a cause before this Court. Usage and custom should be proved in the circuit court on the trial of the case in which it may be referred to, and evidence of the same is not admissible in this Court if not found in the record.

A certificate from the Secretary of State of the State of Rhode Island, also certified by the governor under the seal of the state, was offered to prove that certain proceedings have been had at different times in the Legislature of Rhode Island on private petitions relative to the administration and sale of the estates of deceased persons for the payment of their debts, and that there have been certain usages and proceedings in the legislature of that state in regard to the same.

By the Court:

"The public laws of a state may without question be read in this Court, and the exercise of any authority which they contain may be derived historically from them. But private laws and special proceedings of this"

character are governed by a different rule. They are matters of fact, to be proved as such in the ordinary manner. This Court cannot go into an inquiry as to the existence of such facts upon a writ of error if they are not found in the record.

The same cause was before the court on a writ of error at January term, 1829. The case was again tried in the Circuit Court of Rhode Island at June term, 1830, and the points on which the judges of that court were divided were certified to this Court.

After the case had been argued by Mr. Dutton for the plaintiff, with whom also was Mr. Webster; Mr. Whipple for the defendant, with whom also was Mr. Wirt, proposed to read, as evidence of the law of Rhode Island upon the probate of wills and granting of administration, and of the other matters therein stated, the following certificate:

"State of Rhode Island and Providence Plantations. Secretary's Office, January 7, 1832. I certify that from an examination of the records of said state it appears that on 1 March, 1663, an act was passed entitled 'An act for

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the probate of wills and granting of administrations.' That in and by said act, the probate of wills and granting administrations was vested in the town councils of the respective towns; that an appeal lay to the governor and council as supreme ordinary or judge of probates, who continued to exercise such jurisdiction until June, 1802, when all appeals then pending, with the jurisdiction thereof, were transferred to the Supreme Judicial Court, by whom it is now exercised."

"I further certify that from the year 1666 until June 1729, the general assembly took cognizance of and tried appeals from the general court of trials; which court was composed of the governor, deputy governor, and assistants. That at June session 1729, an act was passed establishing a superior court of judicature, consisting of the governor, deputy governor, and assistants. That thereby an appeal in personal actions was allowed from said superior court to the general assembly. That the general assembly continued to try appeals therefrom until June, 1741, when a court of equity was established and authorized to hear appeals in personal actions from the superior court of judicature agreeable to law and equity, in as full and extensive manner as the general assembly had been accustomed to do. That in February, 1743, an act was passed abolishing said court of equity and authorizing said superior court to review causes by them decided."

"I further certify that the general assembly of the colony and also of the state have been and now are accustomed to exercise a revisory power in granting new trials upon petition therefor."

"That the assembly have and now do license the sales of real estate for the payment of debts of persons deceased upon petition of the executor or administrator, and also license the sale of the real estate of minors upon petition of

the guardian."

"Witness,"

"HENRY BOWEN, Secretary"

"By his Excellency, Lemuel H. Arnold, Governor, Captain General, and Commander-in-Chief of the State of Rhode Island and Providence Plantations. Be it known that the name 'Henry Bowen,' to the aforesaid written attestation subscribed, is the proper hand writing of Henry Bowen, Esquire, who, at the time of subscribing the same, was secretary of the state aforesaid, duly elected and qualified according to law,

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wherefore, unto his said attestation full faith and credit are to be rendered."

"In testimony whereof I have hereunto set my hand and caused the seal of said state to be affixed at Providence this seventh day of January in the year of our Lord one thousand eight hundred and thirty-two, and of independence the fifty-sixth."

"LEMUEL H. ARNOLD"

"By his Excellency's command HENRY BOWEN, Secretary"

Mr. Webster objected to the introduction of this paper in evidence.

MR. JUSTICE BALDWIN. It is evidence of local law.

MR. JUSTICE THOMPSON. The paper is evidence of the dates of the laws, but it is otherwise inadmissible. If it is offered as evidence of a custom in Rhode Island, it should have been laid before the jury, by whom the question whether such was the custom should have been decided. The facts stated in the certificate cannot be inquired into by this Court in this form.

MR. JUSTICE STORY. It is incompetent evidence. The laws must be produced to show what they are, and their dates. They may be certified by the officer. If the usage of the State of Rhode Island is to be inquired into, it should be established in the court below.

MR. JUSTICE DUVALL and MR. JUSTICE Mc LEAN concurred with MR. JUSTICE STORY.

MR. CHIEF JUSTICE MARSHALL considered the certificate evidence that there were such laws as those stated in it; but the laws should be produced. He would have been willing that the paper should be read unless objected to, but being objected to, it was not evidence.

Mr. Whipple then offered in evidence, to show the course of legislation in Rhode Island in particular cases, a copy of the proceedings of the legislature upon petitions presented for relief in the cases stated in them. The copy of the proceedings

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in each case was certified by Henry Bowen, Secretary of State of the State of Rhode Island, and to the whole was subjoined the certificate of Lemuel Arnold, "Governor, Captain General and Commander-in-Chief of the State of Rhode Island and Providence Plantations," under the seal of the state, that "Henry Bowen was Secretary of the State," duly elected and qualified according to law.

The paper thus certified and offered in evidence, contained a copy of a petition to the Legislature of Rhode Island, dated New York, 29 November, 1784, signed by "Grace Babcock, of Philipsborough in the State of New York, widow, relict of Luke Babcock, clerk." The petitioner prayed the legislature to authorize her to dispose of a mortgage held by her husband at the time of his decease, on one-fourth part of a lot and dwelling house in New York. Luke Babcock left three minor children. On 3 March, 1785, the prayer of the petition was granted, and by resolution it was declared that a deed of the mortgaged premises should "convey to the purchaser all the right and title of said Luke Babcock, at the time of his decease, in and unto

the said premises."

2. Also the petition of John Read of the County of Bristol, in the State of Massachusetts, presented on the last Monday in June, 1785. John Read was the executor of William Read of the same county and state, deceased.

The petition stated, that the property of the deceased had, on the report of a commissioner, been adjudged capable of paying no more than twelve shillings and sixpence in the pound. That an attachment had been issued against the real estate of the deceased in Newport, and against his heirs and devisees by one of the creditors, for money alleged to be due to him and a judgment obtained thereon. The petition prayed that the action so brought might be stayed, the demand of the plaintiff should be "examined, and for such sum as should be found due to him, he may be admitted to receive his proportion with the other creditors of the said estate," and that such part of the real estate of William Read situate in the County of Newport should be sold as should be sufficient to pay his debts under the direction and with the approbation of the Judge of Probate for the City of Newport or the town council in which the estate laid, and that the deed or deeds for the

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same should convey to the purchaser a good and indefeasible estate of inheritance in fee simple. The legislature, by a resolution passed July 1, 1785, granted the prayer of the petition, and also "resolved, with the consent of the attaching creditor, that the proceeding on his aforesaid action be stayed."

3. Also the petition of Lucy Jenks, "widow and relict of Gideon Jenks of Brookfield, in the County of Worcester, Massachusetts, deceased, and administratrix to the said deceased's estate." The petition stated that

"There were debts against the estate of the deceased, amounting to two hundred and twenty-eight pounds sixteen shillings and sixpence, and that selling the personal estate to discharge them, would greatly distress the petitioner and her children, being eleven in number, all in their minority excepting one daughter."

The petition prayed leave to dispose of all the real estate of the deceased in North Providence, in the County of Providence, to be appropriated towards the payment of the said debts, as recommended by the Judge of Probate for the County of Worcester aforesaid. On 8 September, 1790, the legislature voted "that the petition be received, and the prayer thereof be granted."

The proceedings of the Legislature of Rhode Island, in six other cases, on the petitions of individuals in matters of a private nature, were also certified in the same manner.

The judges having severally expressed their opinion, MR. CHIEF JUSTICE MARSHALL said the evidence objected to is understood to be offered to prove that certain proceedings have

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been had at different times in the Legislature of Rhode Island, on private petitions of a similar nature with that before the Court, and that there have been certain usages and proceedings in the Legislature of Rhode Island in regard to the administration and sale of the estates of deceased persons for their debts which will establish that it has for a long period by usage, and rightfully, exercised the authority contended for by the defendant. The public laws of a state may without question be read in this Court, and the exercise of any authority which they contain may be deduced historically from them, but private laws and special proceedings of the character spoken of are governed by a different rule. They are matters of fact, to be proved as such in the ordinary manner. This Court cannot go into an inquiry as to the existence of such facts upon a writ of error if they are not found on the record. The evidence, if not objected to, might have been heard, but since it is controverted, the matter of fact must be ascertained in the circuit court.

MR. JUSTICE BALDWIN dissented.

[Upon this decision, the parties consented to remand the cause to the circuit court for further inquiry into the facts.]

