Brashear Vs. Mason

Brashear Vs. Mason

SooperKanoon Citation : sooperkanoon.com/80020

Court : US Supreme Court

Decided On : 1848

Appeal No. : 47 U.S. 92

Appellant : Brashear

Respondent : Mason

Judgement :

Brashear v. Mason - 47 U.S. 92 (1848)
U.S. Supreme Court Brashear v. Mason, 47 U.S. 6 How. 92 92 (1848)

Brashear v. Mason

47 U.S. (6 How.) 92

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Under the joint resolutions of Congress providing for the annexation of Texas to the United States, the officers of the Navy of Texas did not pass into the naval service of the United States. The transfer of the Navy of Texas related exclusively

to the ships of war and their armaments.

A mandamus against the Secretary of the Navy will not lie at the instance of an officer to enforce the payment of his pay.

This was an application to the circuit court for a mandamus under circumstances which are thus stated by that court in its opinion.

William C. Brashear petitioned the court for a rule on John Y. Mason Secretary of the Navy of the United States, to show cause why a mandamus should not issue commanding him, as Secretary of the Department of the Navy, to cause payment to the petitioner of his just dues as an officer in the navy for the time past since the annexation of Texas to the United States.

The petitioner states that in pursuance of the Constitution and laws of the Republic of Texas, he was, on 23 June, 1845, by the then president of the said republic, commissioned as a commander in the navy of the republic, and forthwith entered into service under orders from the Department of War in Texas, and continued in that service from 23 September, 1844, thenceforth, and was so in service when the joint resolution of the Congress of the United States passed for annexing Texas to the United States was approved and when the said State of Texas was admitted into the Union and Confederacy of the United States of America, and was actually in service and a commander in the Navy of Texas when the ship *Austin,* brigs *Wharton* and *Archer,* and schooner *San Bernard,* armed vessels of war of and belonging to the Texan Navy, were delivered over to the United States under the terms and articles of compact and agreement between the United States of America and the Republic of Texas, and as such he is advised that he is in good faith, and in accordance with the said articles of agreement, compact, and treaty of annexation, an officer in the navy and entitled to his pay and emoluments from the United States.

The petitioner further states that he never has resigned his commission nor been cashiered nor dismissed, that he has regularly reported himself for duty under the said commission

to the Secretary of the Navy of the United States, and has demanded his pay as an officer, but the Secretary of the Navy of the United States has hitherto refused and yet refuses to pay him or to recognize him as an officer of the navy. He states further that he is informed and advised by counsel learned in the law that for his pay and emoluments as an officer of the Navy of Texas, transferred to the United States by the terms of the annexation aforesaid, he is entitled to have and receive, up to 1 October, 1847, the sum of $2,100, whereof he has received from the Treasury of the United States no more than the sum of $689.20, which was paid him by order of the Secretary of the Navy of 19 March, 1847. And he is also advised that he is entitled to his continuing pay and rank as an officer in the Navy of the United States by virtue of the said agreement, compact, treaty, and transfer before mentioned.

Notwithstanding all which, the Secretary of the Navy of the United States refuses to order payment to him for the time past since the said annexation and transfer or to recognize him as an officer in the Navy of the United States.

That part of the second section of the joint resolution of 1 March, 1845, for annexing Texas to the United States, which is applicable to this case, is in the following words:

"Said state, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defense belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to, or may be due and owing, said republic, and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of the said Republic of Texas, and the residue of said lands, after discharging the said debts and liabilities, to be disposed of as the said state may direct, but in no event are said debts and liabilities to become a charge upon the government of the United States."

The circuit court overruled the motion for a mandamus and rejected the prayer of the petition, to which judgment Brashear excepted, and upon this exception the case came up to this Court.

Page 47 U. S. 99

MR. JUSTICE NELSON delivered the opinion of the Court.

The plaintiff made application to the court below for a mandamus against the defendant, to compel the payment of $2,100 arrearages of pay due him from the government as a commander in the Navy of the United States, which application was founded on the following state of facts.

The plaintiff was appointed a commander in the Navy of the Republic of Texas on 23 September, 1844, and continued in its service down to the annexation of the republic to the United States in pursuance of the joint resolutions of Congress, March 1, 1845, and until Texas was admitted into the Union as one of the states of the confederacy, and was in the actual service of that republic at the time when its navy, consisting of four vessels of war, was delivered over to the authorities of the United States, according to the terms of annexation.

The plaintiff insists that, according to the terms and conditions of the compact between the two countries, on the transfer of the Navy of Texas to the United States, and their acceptance of the same, he became an officer of the United States Navy, and entitled to his pay and emoluments as such.

He further states that he had reported himself to the Secretary of the Navy for duty, and had demanded his pay of the same, but that the secretary had refused to recognize him as an officer of the navy or to make any payment to him as such.

The court below refused the mandamus, and dismissed the application.

The case is now before us for review.

It is not pretended that there has been any stipulation either by act of Congress or by treaty between this government and Texas by which the officers of her navy were to become incorporated into the Navy of the United States as a consequence of the annexation, but it is supposed to result from a proper construction and understanding of one of the stipulations contained in the second joint resolution of March 1, 1845. The part material is as follows:

"Said state [Texas], when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines,

Page 47 U. S. 100

arms, armaments, and all other property and means pertaining to the public defense belonging to Texas, shall retain all the public funds,"

&c.; 5 Stat. 797.

The argument is that the term "navy" properly includes not only the vessels of war, their armaments and equipments, but also the usual complement of officers and crew on board the respective vessels, and that it is in this sense the term is used and should be understood in the joint resolutions.

We think not, but, on the contrary, are of opinion that it relates exclusively to the ships of war and their armaments belonging to the naval establishment of Texas, which, according to the compact, were to become the property of the United States.

The two governments were not negotiating about persons holding public employments in Texas, or in respect to any place or provision for that class, on the breaking up of the old government and its reconstruction for admission into the Union, but in respect to her public property, which she was generally disabled from holding under the Constitution of the United States after her admission, as it fell under the jurisdiction and direction of the federal government.

The resolution provides for ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines &c.;, and all other property and means pertaining to the public defense.

The phraseology is appropriate for the purpose of conveying the property of the one government to the other, but exceedingly inapt and unfortunate if intended to embrace persons or public officers, as contended for by the plaintiff.

The argument in favor of including the officers of the Navy of Texas in the transfer of the ships might be urged with equal force by the officers and hands in charge of the navy yard, or of those at the time in charge of the fortifications, for the term "navy," in the connection in which it is used, no more includes, *ex vi termini,* the officers and crew on board than the term "navy yard" includes the officers and hands in charge of that part of the public property, or the term "fortifications" includes the officers and soldiers of the republic engaged in manning them.

The construction contended for we think altogether inadmissible, and properly rejected by the court below.

We are also of opinion that if the plaintiff had made out a title to his pay as an officer of the United States Navy, a mandamus would not lie in the court below to enforce the payment.

The Constitution provides that no money shall be drawn from the Treasury but in consequence of appropriations made

Page 47 U. S. 101

by law. Art. I. 9. And it is declared by Act of Congress, 3 Stat. 689, 3, that all moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of these departments, countersigned by the Second Comptroller.

And by the Act of 1817, 3 Stat. 367, 8, 9, it is made the duty of the comptrollers to countersign the warrants only in cases when they shall be warranted by law. And

all warrants drawn by the Secretary of the Treasury upon the Treasurer shall specify the particular appropriations to which the same shall be charged, and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriations in the books kept by the comptrollers; and the sums appropriated for each branch of expenditure in the several departments shall be solely applied to the object for which they are respectively appropriated, and no others. 2 Stat. 535, 1.

Formerly, the moneys appropriated for the War and Navy Departments were placed in the Treasury to the credit of the respective secretaries. That practice has been changed, and all the moneys in the Treasury are in to the credit or in the custody of the treasurers, and can be drawn out, as we have seen, only on the warrant of the Secretary of the Treasury, countersigned by the comptroller.

In the case of *Decatur v. Paulding,* 14 Pet. 497, it was held by this Court that a mandamus would not lie from the circuit court of this district to the Secretary of the Navy to compel him to pay to the plaintiff a sum of money claimed to be due her as a pension under a resolution of Congress. There was no question as to the amount due if the plaintiff was properly entitled to the pension, and it was made to appear in that case affirmatively on the application that the pension fund was ample to satisfy the claim. The fund also was under the control of the Secretary, and the moneys payable on his own warrant.

Still the Court refused to inquire into the merits of the claim of Mrs. D. to the pension or to determine whether it was rightfully withheld or not by the Secretary on the ground that the court below had no jurisdiction over the case, and therefore the question not properly before this Court on the writ of error.

The Court said that the duty required of the Secretary by the resolution was to be performed by him as the head of one of the executive departments of the government in the ordinary discharge of his official duties; that in general such

duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties; that the head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion, and that the Court could not by mandamus act directly upon the officer and guide and control his judgment or discretion in matters committed to his care in the ordinary discharge of his official duties.

The Court distinguish the case from *Kendall v. United States,* 12 Pet. 524, where there was a mandamus to enforce the performance of a mere ministerial act not involving on the part of the officer the exercise of any judgment or discretion.

The principle of the case of Mrs. Decatur is decisive of the present one. The facts here are much stronger to illustrate the inconvenience and unfitness of the remedy.

Besides the duty of inquiring into and ascertaining the rate of compensation that may be due to the officers under the laws of Congress, no payment can be made unless there has been an appropriation for the purpose. And if made, it may have become already exhausted or prior requisitions may have been issued sufficient to exhaust it.

The secretary is obliged to inquire into the condition of the fund, and the claims already charged upon it, in order to ascertain if there is money enough to pay all the accruing demands, and if not enough, how it shall be apportioned among the parties entitled to it.

These are important duties, calling for the exercise of judgment and discretion on the part of the officer, and in which the general creditors of the government, to the payment of whose demands the particular fund is applicable, are interested, as well as the government itself. At most, the secretary is but a trustee of the fund for the benefit of all those who have claims chargeable upon it, and, like other trustees, is bound to administer it with a view to the rights and interests of all concerned.

It will not do to say that the result of the proceeding by mandamus would show the title of the relator to his pay, the amount, and whether there were any moneys in the Treasury applicable to the demand, for upon this ground any creditor of the government would be enabled to enforce his claim against it through the head of the proper department by means of this writ, and the proceeding by mandamus would become as common in the enforcement of demands upon the government as the action of assumpsit to enforce like demands against individuals.

For these reasons we think the writ of mandamus would

Page 47 U. S. 103

not lie in the case, and therefore, also, properly refused by the court below, and that the judgment should be

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.