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Nesmith Vs. Sheldon

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Court : US Supreme Court

Decided On : 1849

Appeal No. : 48 U.S. 812

Appellant : Nesmith

Respondent : Sheldon

Judgement :

Nesmith v. Sheldon - 48 U.S. 812 (1849)
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Nesmith v. Sheldon

48 U.S. (7 How.) 812

CERTIFICATE OF DIVISION IN OPINION BETWEEN JUDGES

OF THE CIRCUIT COURT FOR THE DISTRICT OF MICHIGAN

SYLLABUS

The Legislature of Michigan passed an Act on 15 March, 1837, entitled "An act to organize and regulate banking associations," and on 30 December, 1837, an act to amend the former act. By the first, any persons were allowed to form

associations for the purposes of banking upon the terms specified in the law; and by the second, the stockholders were made liable, in their individual character, under certain circumstances, for the debts of the association.

The associations formed under these acts are corporations within the meaning of the Constitution of Michigan, and the acts are unconstitutional and void.

The second section of the twelfth article of the Constitution forbidding the legislature from "passing any act of incorporation unless with the assent of at least two-thirds of each house," the judgment of the legislature is required to be exercised upon the propriety of creating each particular corporation, and two-thirds of each house must sanction and approve each individual charter.

The Supreme Court of the State of Michigan has so construed its Constitution, and it is the established doctrine of this Court, that it will adopt and follow the decisions of the state courts in the construction of their own statutes where that construction has been settled by the decision of their highest judicial tribunal.

This case was formerly before this Court, on a certificate of division in opinion between the judges of the Circuit Court for the District of Michigan. Its facts and the reasons for its dismissal will be found in 47 U. S. 6 How. 41.

It now came up upon the following certificate of division in opinion.

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"This case having been remanded by the supreme court on the ground that it had not been properly certified on certain points under the act of Congress, and the cause being brought before the court for their consideration and decision, the opinions of the judges are opposed on the following point:"

"Whether the banking associations organized under the act of the Legislature of the State of Michigan entitled "An act to organize and regulate banking associations," approved March 15, 1837, and the amended act entitled "An act to amend an act entitled *An Act to regulate banking associations and for other*

purposes,'" approved December 30, 1837, were or were not corporations or bodies corporate, within the meaning of the Constitution of the State of Michigan."

Article fourth, section first, of the Constitution of the State of Michigan is as follows: "The legislative power shall be vested in a Senate and House of Representatives."

Section second of article twelfth of said Constitution is as follows: "The legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house."

The first act referred to in the question upon which the judges decided, namely, that of March 15, 1837, authorized any persons to form associations for the purpose of banking upon the terms specified in the law. It was passed by a vote of two-thirds of each branch of the legislature.

The second act referred to provided as follows:

"That for all debts of such banking association, the directors thereof, if such association shall become insolvent, in the first place shall be liable in their individual capacity to the full amount which such insolvent association may be indebted, and each other stockholder shall thereafter be also in like manner, in proportion to his or her amount of stock, for the payment of the full amount of the debts of such insolvent association."

The bill filed by the Nesmiths claimed to hold the defendants responsible, as stockholders, for the debts due by the Detroit City Bank.

The bill was demurred to, and, upon the hearing, the division between the judges occurred as above mentioned, and was certified to this Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

In this case, the Circuit Court for the District of Michigan have certified that the following point arose in this case, upon which the justices were opposed in

opinion:

"Whether the banking associations organized under the act of the Legislature of the State of Michigan, entitled "An Act to organize and regulate banking associations," approved March 15, 1837, and the amended act, entitled "An Act to amend an act, entitled *An act to regulate banking associations and for other purposes,'" approved December 30, 1837, were or were not corporations or bodies corporate, within the meaning of the Constitution of the State of Michigan."*

This question, it appears, depends on the construction of the Constitution of Michigan, which declares that the legislature shall pass no act of incorporation unless with the assent of at least two-thirds of each house.

The legislature chosen under this Constitution, with the assent of two-thirds of each house, passed an act authorizing any persons resident in any county in the state to form associations for banking business, upon the terms and conditions prescribed in the law, and declaring the stockholders in such associations to be a body politic and corporate, by such name as they should designate and assume, and conferring upon them the usual powers of banking corporations.

Under this act of the legislature, an association of persons was organized, under the name of the Detroit City Bank.

Another act was afterwards passed by the legislature, under a power reserved in the first, to amend its provisions. And this act, under certain circumstances, made the stockholders liable for the debts of the association.

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The complainants in this case, having become creditors of the association, filed their bill in equity, to charge the defendants as stockholders, under the provisions of the last-mentioned act. And in the progress of this suit, the question arose which has been certified as above mentioned.

If we regarded the question as an open one, a more particular statement of the provisions of these acts of the legislature would be necessary, and also of the transactions which led to this suit. And the point certified would require a very careful and deliberate examination by this Court.

But it appears that the same question has arisen in the state courts of Michigan, and been decided in its supreme court, upon full argument and consideration. We refer to the case of *Green v. Graves,* decided in 1844, and reported in 1 Doug. Michigan Reports 351. In that case the court held, that the banking associations organized under the acts of the legislature mentioned in the certificate of division were corporations within the meaning of the Constitution of Michigan; and that these acts were unconstitutional and void.

The point certified is precisely the same. It relates altogether to the construction and legal effect of the constitution of that state, and of the two acts passed by its legislature. And it is the established doctrine of this Court, that it will adopt and follow the decisions of the state courts in the construction of their own constitution and statutes, when that construction has been settled by the decision of its highest judicial tribunal. After the decision above mentioned, therefore, the question certified cannot be considered as open for argument in this Court. The cases of *Groves v. Slaughter,* 15 Pet. 449, and the two cases of *Rowan v. Runnels,* 5 How. 134, in relation to the construction of the Constitution of Mississippi, stand on very different grounds, as will be seen by a reference to the cases.

Upon this view of the subject, it will be

Certified to the circuit court as the opinion of this Court that the banking associations organized under the acts of the legislature mentioned in the certificate of division were corporations within the meaning of the Constitution of Michigan, and that these acts of the legislature are unconstitutional and void.

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 Michigan, and on the point and

question on which the judges of the said circuit court were opposed in opinion, and which was certified to this Court for its opinion, agreeably to

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the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court, that the banking associations organized under the act of the legislature of the State of Michigan, entitled "An act to organize and regulate banking associations," approved March 15, 1837, and the amended act entitled "An act to regulate banking associations, and for other purposes," approved December 30, 1837, were corporations or bodies corporate within the meaning of the Constitution of the State of Michigan, and that these acts of the legislature are unconstitutional and void; whereupon it is now here ordered and decreed by this Court, that it be so certified to the said circuit court.

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