

Benner Vs. Porter

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Decided On : 1850

Appeal No. : 50 U.S. 235

Appellant : Benner

Respondent : Porter

Judgement :

Benner v. Porter - 50 U.S. 235 (1850)

U.S. Supreme Court Benner v. Porter, 50 U.S. 9 How. 235 235 (1850)

Benner v. Porter

50 U.S. (9 How.) 235

APPEAL FROM THE DISTRICT COURT

OF THE UNITED STATES FOR FLORIDA

SYLLABUS

Whilst Florida was a territory, Congress established courts there, in which cases appropriate to federal and state jurisdictions were tried indiscriminately.

Florida was admitted into the Union as a state on the 3 March, 1845.

The constitution of the state provided that all officers, civil and military, then holding their offices under the authority of the United States, should continue to hold them until superseded under the state constitution.

But this article did not continue the existence of courts which had been created as part of the territorial government by Congress.

In 1845, the legislature of the state passed an act for the transfer from the territorial to the state courts of all cases except those cognizance by the federal courts, and in 1847, Congress provided for the transfer of these to the federal courts.

Therefore, where the territorial court took cognizance, in 1846, of a case of libel, it acted without any jurisdiction.

The case of [Hunt v. Palao](#), 4 How. 589, commented on and explained.

This action originated in the Superior court for the Southern District of Florida in March, 1846, and was transferred to the United States District Court for Florida on 14 May, 1847.

On 24 March, 1846, Joseph Y. Porter filed a libel in admiralty against the appellants in the Superior Court for the Southern District of the Territory of Florida for the proceeds of the sloop *Texas*, charging that he had furnished supplies and stores to the master at the port of Key West whilst the vessel was engaged in the business of wrecking.

On 22 May, 1846, the superior court gave judgment for the libellant for the sum of \$1,223.02.

On 14 May, 1847, the cause was transferred to the district court of the United States and an appeal prayed by the defendants to this Court.

Upon this appeal the case came up.

MR. JUSTICE NELSON delivered the opinion of the Court.

Joseph Y. Porter the appellee, filed a libel in admiralty on 24 March, 1846, against the respondents in the Superior Court for the Southern District of the Territory of Florida for the proceeds of the sloop *Texas*, charging that he had furnished supplies and stores to the master at the port of Key West while she was engaged in the business of wrecking upon the Florida coast and on the high seas.

The respondents, among other grounds of defense, denied the jurisdiction of the court. As the conclusion at which we

Page 50 U. S. 240

have arrived upon this branch of the defense disposes of the case, it will be unnecessary to set out the pleadings at large or to refer more particularly to the facts.

The territorial government of Florida was established by the Act of Congress of March 30, 1822, amended by the Act of March 3, 1823, and the judicial power vested in two superior courts and such inferior courts and justices of the peace as the legislative council of the territory might from time to time establish. One of these courts was held in West and the other in East Florida. The judges were appointed by the president and senate for the term of four years, and possessed civil and criminal jurisdiction within their respective districts, and also the same jurisdiction in all cases arising under the laws and Constitution of the United States, which the Acts of 24 September, 1789, and 7 March, 1793, vested in the court of the Kentucky district. 3 Stat. 654; *id.* 750.

The number of judges was afterwards increased to five, and original and exclusive cognizance of all cases of admiralty jurisdiction within the territory in terms conferred upon them. Act of Cong., May 26, 1824, 4 Stat. 45; Act of Cong., May 15, 1826, *id.* 164; Act of Cong., May 23, 1828, *id.* 291; Act of Cong., July 7, 1838, 5 Stat. 294; Thompson's Dig. 585, App'x, where all the acts of Congress

concerning the Territory of Florida are collected

Exclusive jurisdiction in these cases was specifically conferred by the Act of May 15, 1826, probably on account of the case of [*American Insurance Co. v. Canter*](#), 1 Pet. 511, in which it was held that the jurisdiction was not, as originally prescribed, exclusive, but might be vested by the legislative council of the territory in subordinate courts. The case arose in 1825.

The court for the Southern District, in which the present case arose and was decided, was established by the Act of Congress of May 23, 1828, at Key West, and had conferred upon it all the jurisdiction within the district which belonged to the other superior courts of the territory, besides a considerable enlargement of admiralty powers which became necessary on account of the numerous wrecks usually happening upon that coast.

The objection to the jurisdiction taken by the respondents, however, is not that the acts of Congress were insufficient to confer the power exercised by the courts, but that the acts had been abrogated and the jurisdiction superseded at the time of the rendition of the decree by the admission of the Territory of Florida as a state into the Union, and were no longer in force. The admission was on 3 March, 1845.

Page 50 U. S. 241

The suit was commenced on March 24, 1846, and the decree in favor of the libellant pronounced on May 22 of the same year. All the proceedings, therefore, took place before the court after the passage of the act of Congress admitting Florida into the Union, and must be upheld, if upheld at all, upon the ground that the jurisdiction still continued under the territorial authority notwithstanding the erection of the territory into a state.

The people of the territory, claiming a right to an admission into the Union under the pledge given by the sixth article of the Treaty with Spain of 22 February, 1819, met in convention and adopted their constitution 11 January, 1839, but it was not acted upon by Congress till March 3, 1845. It was then accepted, and the territory

admitted, in the language of the act, "into the Union on an equal footing with the original states in all respects whatsoever." No conditions were annexed except that she should not interfere with the disposal of the public lands nor levy any tax on the same while they remained the property of the United States.

Her Constitution distributed the powers of the government into three separate and distinct departments -- executive, legislative, and judicial -- and prescribed the organic law of each. The judicial power was vested in a supreme court, courts of chancery circuit courts, and justices of the peace, and the jurisdiction of each of them either defined or provided for by imposing the duty upon the general assembly. The state was to be divided into at least four convenient circuits, and until others were created by the proper authority, were to be arranged as the Western, Middle, Eastern, and Southern Circuits, for each of which a circuit judge was to be appointed. And in order to avoid any inconvenience or delay in the organization of the government, an ordinance was adopted, art. 17 of the Constitution,

"That all laws and parts of laws now then in force or which may hereafter be passed by the Governor and Legislative Council of the Territory of Florida not repugnant to the provisions of this Constitution shall continue in force until, by operation of their provisions or limitation, the same shall cease to be in force or until the general assembly of this state shall alter or repeal the same,"

and further that

"All officers, civil and military, now holding their offices and appointments in the territory under the authority of the United States or under the authority of the territory shall continue to hold and exercise their respective offices and appointments until superseded under this constitution."

It will be seen, therefore, under this ordinance of the convention,

that on the admission of Florida as a state into the Union, the organization of the government under the new Constitution became complete, as every department became filled at once by the adoption of the territorial laws and appointment of the territorial functionaries for the time being.

The convention being the fountain of all political power, from which flowed that which was embodied in the organic law, were, of course, competent to prescribe the laws and appoint the officers under the Constitution, by means whereof the government could be put into immediate operation, and thus avoid an interregnum that must have intervened if left to an organization according to the provisions of that instrument. This was accomplished by a few lines, adopting the machinery of the territorial government for the time being, and until superseded by the agency and authority of the Constitution itself.

After the unconditional admission of the territory into the Union as a state, on 3 March, 1845, with her constitution, and complete organization of the government under it, by which the authority of the state was established throughout her limits, it is difficult to see upon what ground it can be maintained that any portion of the territorial government or jurisdiction remained still in force.

The distinction between the federal and state jurisdictions, under the Constitution of the United States, has no foundation in these territorial governments, and consequently no such distinction exists either in respect to the jurisdiction of their courts or the subjects submitted to their cognizance. They are legislative governments, and their courts legislative courts, Congress, in the exercise of its powers in the organization and government of the territories, combining the powers of both the federal and state authorities. There is but one system of government, or of laws operating within their limits, as neither is subject to the constitutional provisions in respect to state and federal jurisdiction.

They are not organized under the Constitution, nor subject to its complex distribution of the powers of government, as the organic law, but are the creations, exclusively, of the legislative department, and subject to its supervision and control. Whether or not there are provisions in that instrument which extend to and

act upon these territorial governments it is not now material to examine. We are speaking here of those provisions that refer particularly to the distinction between federal and state jurisdiction.

We think it clear, therefore, that on the unconditional admission

Page 50 U. S. 243

of Florida into the Union as a state on 3 March, 1845, the territorial government was displaced, abrogated, every part of it, and that no power of jurisdiction existed within her limits except that derived from the state authority, and that by force and operation of the federal Constitution and laws of Congress, and, especially no jurisdiction in federal cases until Congress interfered and extended the judicial tribunals of the Union over it.

The only pretext for a different conclusion is that matters of exclusive federal jurisdiction within the territory, which, under our system, did not and could not pass under the state authority, still remained, and that with it, to that extent, and for the purposes of federal jurisdiction, the territorial organization continued. But in the view we have already presented, and which need not be repeated, no such distinction existed in the territorial government. Matters of this description had been blended together with those belonging to state jurisdiction, and were incorporated into, and became part and parcel of, the same system. The federal causes of action were subject to the same tribunals as others, and to the same remedies, including writs of error and appeals to the appellate court of the territory, and through which alone cases could be brought up for revision to the Supreme Court of the United States. This appellate court consisted of the judges of the superior courts of the several judicial districts.

The position taken in support of the jurisdiction assumes that the admission of the state, and consequent transfer of all actions and causes of action belonging to the state authorities, had the effect not only to separate the federal from the state subjects of jurisdiction, but also to remodel the judicial system of the territory itself and adapt its jurisdiction to the trial of federal causes -- assumptions that need

only to be stated to carry with them their refutation. And besides, were this admitted, and we could suppose that the jurisdiction of the courts was left untouched as it respected the federal cases pending or accruing, nothing would be gained in the argument in favor of its validity.

The admission of the state into the Union brought the territory under the full and complete operation of the federal Constitution, and the judicial power of the Union could be exercised only in conformity to the provisions of that instrument. By art. 3, 1,

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. The judges both of the supreme and inferior courts shall hold their offices during good behavior. "

Page 50 U. S. 244

Congress must not only ordain and establish inferior courts within a state and prescribe their jurisdiction, but the judges appointed to administer them must possess the constitutional tenure of office before they can become invested with any portion of the judicial power of the Union. There is no exception to this rule in the Constitution. The territorial courts therefore were not courts in which the judicial power conferred by the Constitution on the federal government could be deposited. They were incapable of receiving it, as the tenure of the incumbents was but for four years. [26 U. S. 1](#) Pet. 546. Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state.

Another answer, also, to the ground taken is that Congress on the same day on which the act passed admitting Florida as a state organized the state into a judicial district, to be called the District of Florida, and ordained and established a district court within the same, and conferred upon it the judicial powers belonging to the general government within the state. The act also provided for the appointment of

a judge, together with other officers necessary to its complete and efficient organization. The laws of the United States not locally inapplicable were also extended over the state. Act of Congress, March 3, 1845, 5 Stat. 788.

It is true the judge was not appointed to fill the office until 8 July, 1846, a year and five months afterwards, but the court was established, and invested with jurisdiction over the federal cases. The powers remained in abeyance until the office was constitutionally filled. The vesting of the judicial power did not depend upon the appointment of the officer to administer it, as the grant in the Constitution to Congress to ordain and establish inferior courts and to invest them with the judicial power of the Union, is complete in itself, and they had acted and established the court and invested it with the power without condition or qualification.

Without, then, pursuing the examination further, we are satisfied that in any aspect in which the question can be viewed, whether we look at the effect of the act of Congress admitting the Territory of Florida as a state into the Union, with her constitution and organized government under it, alone or in connection with the establishment of a federal court within her limits, her admission immediately and by constitutional necessity displaced the territorial government and abrogated all its powers and jurisdiction. The state authority was destructive

Page 50 U. S. 245

of the territorial, and in connection with the establishment of the federal jurisdiction, the organization of the government, state and federal, under the Constitution of the Union became complete throughout her limits. No place was left unoccupied for the territorial organization.

We have chosen to place the decision upon the effect of the admission of the state with a government already organized under the Constitution and prepared to go into immediate operation, because such is the case presented on the record; but we do not thereby intend to imply or admit that a different conclusion would have been reached if it had been otherwise and the state had come into the Union with

nothing but her organic law, leaving the organization of her government under it to a future period.

We conclude therefore that the court below possessed no jurisdiction of the case, and that the decree must be reversed.

Neither the act of Congress admitting the Territory of Florida as a state into the Union nor the one organizing the district court within it made any provision for the transfer into the district court of the cases of federal jurisdiction pending at the time in the territorial courts. Those cases were therefore left in the state in which they stood at the change of government until the Act of Congress of 22 February, 1847, Sess.Laws, ch. 17. That act provided for a transfer to the district court, and also for a review of the judgments and final decrees on writs of error, or appeal, as the case might be, in the proper cases, to this Court. It also provided for a review of the judgments or final decrees that had been rendered in federal cases in the territorial courts after the change of government, upon the idea that this jurisdiction still continued. And when the District Court for the Southern District of the State of Florida was established by an Act of Congress, 23 February, 1847 Sess.Laws, ch. 20, the like transfer was made to that court of all cases pending in that district, with like power to review, on writ of error or appeal, judgments and final decrees rendered by the territorial courts after the change of government.

The case now before us was brought up for review by virtue of the authority of these acts, which have removed the objections that existed to our jurisdiction in the case of [Hunt v. Palao](#), 4 How. 589. Provision was made by the ordinance of the convention of Florida for the transfer of all actions at law or suits in chancery pending in the territorial courts at the time of her admission into such court of the state as had jurisdiction of the subject matter. In pursuance of this injunction,

Page 50 U. S. 246

the general assembly of the state passed an Act, 22 July, 1845, transferring all cases to the proper courts of the state except cases cognizable by the federal courts. Acts of General Assembly, 1 Sess., 9, 5, 8, and 13, 13, 14.

The case of *Hunt v. Palao*, already referred to, was one that had been transferred by this act of the general assembly from the territorial court in which the judgment had been rendered to the supreme court of the state, and we held on an application for a writ of error to review the judgment that we possessed no power over it without further legislation by Congress, for the reason that the territorial court in which the judgment was rendered no longer existed, and that the state court to which it had been transferred could exercise no judicial power over it, as the law of the state directing the transfer of the record could not make it a record of the court nor authorize any proceedings upon it.

The subsequent legislation of Congress respecting the transfer of these records to the district courts, to which we have referred, grew out of this decision. That was a case of federal jurisdiction, which the state government, confessedly, had no power over; but the language of the court was general, and applicable to all cases pending in the territorial courts at the change of government.

We perceive no ground for qualifying the opinion expressed on that occasion, believing it sound and incontrovertible; but it may be proper to state with a little more fullness the effect of it, as it respects cases of state jurisdiction. The territorial courts were the courts of the general government, and the records in the custody of their clerks the records of that government, and it would seem to follow necessarily from these premises that no one could legally take the possession or custody of the same without the assent, express or implied, of Congress. Such assent is essential, upon the plainest principles, to an authorized change of their custody.

On the admission of a territorial government into the Union as a state, the concurrence of both the federal and state governments would seem to be required in the transfer of the records, in cases of appropriate state jurisdiction, from the old to the new government. An act of Congress would be incapable of passing them under the state jurisdiction, as would be an act of the legislature of the state to take the records out of the custody of the federal government. Both should concur.

The like concurrent legislation would also seem to be required in respect to cases pending in this Court for review on writs of error or appeal from the territorial courts, which appropriately

Page 50 U. S. 247

belonged to state jurisdiction, to enable us to send down the mandate to the proper state tribunal for any further proceedings that might be necessary in the cause. Otherwise Congress itself should specially provide for the execution of the mandate.

We have said that the assent of Congress was essential to the authorized transfer of the records of the territorial courts, in suits pending at the time of the change of government, to the custody of state tribunals. It is proper to add, to avoid misconstruction, that we do not mean thereby to imply or express any opinion on the question whether or not, without such assent, the state judicatures would acquire jurisdiction. That is altogether a different question. And besides, the acts of Congress that have been passed in several instances on the admission of a state, providing for the transfers of the federal causes to the district court, as in the case of the admission of Florida, already referred to, and saying nothing at the time in respect to those belonging to state authority, may very well imply an assent to the transfer of them by the state to the appropriate tribunal. Even the omission on the part of Congress to interfere at all in the matter may be subject to a like implication. And a subsequent assent would doubtless operate upon past acts of transfer by the state authority.

It is to be regretted that proper provision has not always been made by Congress, upon a change of government, in respect to the pending business in the territorial tribunals, so as to remove all embarrassment and perplexity on the subject.

From the examination we have given to the legislation upon the admission of several of the new states into the Union, we have found but few instances of any provision's having been made in respect to the cases pending in the old government, and those are limited to the transfer of the federal cases to the district

court organized in the new state. In some of the constitutions of the states provision had been made for the pending business of appropriate state jurisdiction, but not in all of them. A very slight attention to the subject by Congress at the time would remove all the difficulties that have occurred in several of the states recently admitted.

Upon the whole, we are satisfied that the territorial government of Florida became superseded on the unconditional admission of the territory into the Union as a state on 3 March, 1845, and consequently, that the court below, whose authority depended upon the government, had no jurisdiction to render the decree in the case, and that the decree must be reversed.

Page 50 U. S. 248

A doubt was suggested on the argument as to the proper disposition of the case in the event of our arriving at the conclusion that the jurisdiction of the court below ceased at the termination of the territorial government. But the Acts of Congress of February 22 and 23, 1847, Sess.Laws, ch. 17, 8, and ch. 20, 7, which provided specially for a review of this class of cases in this Court have also provided for the execution of any judgment that may be given in them by directing that the mandate shall be issued to the district court of the state into which the same acts had already transferred the records.

The case therefore can take the usual direction in cases where this Court determines that the court below acted without jurisdiction in the matters before it, and that is, to

Reverse the decree and remit the case with directions that the court dismiss the proceedings, which direction is given accordingly.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Florida and was argued by counsel.

On consideration whereof it is now here ordered and decreed by this Court that the decree of the said district court in this cause be and the same is hereby reversed and annulled for the want of jurisdiction in that court, and that this cause be and the same is hereby remanded to the said district court with directions to dismiss the libel in this cause.

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