Mcnulty Vs. Batty

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Decided On : 1850

Appeal No. : 51 U.S. 72

Appellant : Mcnulty

Respondent : Batty

Judgement :

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McNulty v. Batty

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SYLLABUS

Where a case had been brought up to this Court from the Supreme Court of the Territory of Wisconsin, and was pending in this Court at the time when Wisconsin was admitted as a state, the jurisdiction of this Court over it ceased when such admission took place.

Provision was made in the act of Congress for the transfer, from the territorial courts to the district court of the United States, of all cases appropriate to the

jurisdiction of the new district court, but none for cases appropriate to the jurisdiction of state tribunals.

By the admission of Wisconsin as a state, the territorial government ceased to exist, and all the authority under it, including the laws organizing its courts of justice and providing for a revision of their judgments in this Court.

The act of Congress passed in February, 1848, supplementary to that of February, 1847, applies only to cases which were pending in the territorial courts, and does not include such as were pending in this Court at the time of the admission of Wisconsin as a state.

Even if Congress had directed the transfer, to the district court of the United States, of cases appropriate to the jurisdiction of state courts, this Court could not have carried its judgment into effect by a mandate to the district court.

The facts in this case are stated in the opinion of the court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the late Territory of Wisconsin. The suit was commenced by a writ of attachment in the First Judicial District of that territory on 3 November, 1845, founded upon a judgment for $2,747.49 previously obtained against the defendants in a circuit court in the State of Illinois. A large amount of property was attached belonging to one of the defendants.

All the defendants appeared by attorney, and put in two special pleas to the declaration, upon which issues were joined, and such proceedings were afterwards had thereon, that at the October term, 1841, judgment was rendered in the said suit for the defendants. The cause was then removed to the supreme court of the territory on error, and at the July term of that court, to-wit, on 31 July, 1847, the judgment below was in all things affirmed. This judgment has been appealed from to this Court, and is now before us for review. The citation is signed

20 November, 1847.

The case has been submitted by counsel on written arguments under the fortieth and fifty-sixth rules of the Court.

The first question presented is whether or not this Court has jurisdiction to review the judgment below.

The Territory of Wisconsin was admitted into the Union as a state on 29 May, 1848. 9 Stat. 233

An act had been previously passed, on 2 March, 1847, assenting to the admission on certain terms and conditions to be first complied with and providing that upon a compliance with them and on the proclamation of the President announcing the fact, the admission should be considered complete. The admission did not take place under this act, and no proclamation was issued by the President in pursuance of it.

The people of the territory again assembled by a convention of delegates and formed their Constitution on 1 February, 1848, as is recited in the preamble of the act of Congress, passed 29 May, 1848, by the first section of which the state is declared to be admitted into the Union on an equal footing with the original states. The date of the admission, therefore, is 29 May, 1848.

The writ of error having been issued on 20 November, 1847, was therefore regularly issued during the existence of the territorial government, and the case was pending in this Court at the time when that government ceased, and with it

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the jurisdiction and power of the territorial courts. *Benner v. Porter,* 9 How. 235

The fourth section of the act of Congress admitting the state into the Union organized a district court of the United States for the state, *see also* 4 of the Act of 6 August, 1846, 9 Stat. 57, and the 5th section provided that the clerks of the district courts of the territory should transmit to the clerk of the above district court

"all records of all unsatisfied judgments, and suits pending in said courts, respectively, attaching thereto all papers connected therewith, in all cases arising under the laws or Constitution of the United States, or to which the United States shall be a party,"

and the said district court shall enter the same on its docket, and shall proceed therein to final judgment and execution, as if such suits or proceedings had originally been brought in said court.

The sixth section provides for the delivery by the clerk of the supreme court of the territory to the clerk of the district court, of all records and papers relating to proceedings in bankruptcy under the late bankrupt act, and also all records of judgments, and of proceedings in suits pending, and all papers connected therewith, in cases arising under the Constitution and laws of the United States.

These sections provide for the federal cases pending in the courts at the termination of the territorial government, and for unsatisfied judgments of that character, by transferring them to the federal court, there to be proceeded in and completed, or executed. But no provision is made for the class of cases pending, and unfinished, that belong to the state judicature after the admission of the territory into the Union. That class seems to have been left to be provided for by the state authorities. We had occasion to express our views on this subject in the recent case of *Benner v. Porter,* and need not repeat them.

The case before us is one of this character, and is therefore unaffected by the transfer of cases to the district court above provided for. And the question is whether, under these circumstances, this Court has jurisdiction to review it.

By the admission of the State of Wisconsin into the Union, on 29 May, 1848, the territorial government ceased to exist, and all the authority under it, including the laws organizing its courts of justice, and providing for a revision of their judgments in this Court by appeals or writs of error. This appellate power does not depend upon the Judiciary Act of 1789, but upon laws regulating the judicial proceedings of

the territory. And these necessarily ceased with the termination of the territorial government.

In the case of *United States v. Boisdore's Heirs,* 8 How. 121, it is said that, as this Court can exercise no appellate power over cases, unless conferred upon it by act of Congress, if the act conferring the jurisdiction has expired, the jurisdiction ceases, although the appeal or writ of error be actually pending in the court at the time of the expiration of the act.

The cases on this point are referred to in the brief in that case, and afford full authority for the principle, if any were needed. 1 Hill 328; 9 Barn. & C. 750; 3 Burr. 1456; 4 Moo. & P. 341

The writ of error therefore fell with the abrogation of the statute upon which it was founded.

Besides, since the termination of the territorial government, there is no court in existence to which the mandate of this Court could be sent to carry into effect our judgment. Our power, therefore, would be incomplete and ineffectual, were we to consent to a review of the case. *Palao v. Hunt,* 4 How. 589. And had the records been transferred to the district court, as in the federal cases, we do not see but that the result must have been the same, for the case being one not of federal jurisdiction, should the judgment be affirmed or reversed, and sent down to that court, it would possess no power to carry the mandate into execution, having no power over the case under the Constitution or laws of Congress conferring jurisdiction upon the federal courts. (Art. 3, 2, Const. U.S.; Judiciary Act of 1789, 11.)

There is another act of Congress bearing upon this question which it is material to notice, and that is, an act supplementary to the act entitled "An act to regulate the exercise of the appellate jurisdiction of the supreme court in certain cases, and for other purposes," passed 22 February, 1848, ch. 12, 9 Stat. 211.

The second section provides

"That all and singular the provisions of the said act to which this is a supplement, so far as may be, shall be and they hereby are made applicable to all cases which may be pending in the supreme or other superior court of and for any territory of the United States which may hereafter be admitted as a state into the Union at the time of its admission, and to all cases in which judgments or decrees shall have been rendered in such supreme or superior court at the time of such admission, and not previously removed by writ of error or appeal."

The act to which the above is a supplement was passed

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22 February, 1847, ch. 17, 9 Stat. 128, and its several provisions related to cases pending, and unsatisfied judgments existing in the courts of the Territory of Florida at the time of its admission into the Union as a state, and which were the subject of examination in the case of *Benner v. Porter,* already referred to.

As the Territory of Wisconsin has been admitted into the Union as a state since the passage of this supplementary act, the second section applies the provisions of the Florida act to the cases pending in its courts and to the judgments existing therein at the time of its admission.

But it will not be material to refer particularly to those provisions, as this second section does not bring the case before us within them. It applies them to all cases pending in the several courts of the territory, and to all cases in which judgments or decrees shall have been rendered at the time of the admission and not previously removed by writ of error or appeal to this Court. In this case, the judgment had been rendered and removed before the admission and was pending here at the time, and is therefore unaffected by this supplementary act.

The section was drawn, doubtless, under the supposition that if the suit was pending here at the time of the admission of a territory into the Union as a state, on appeal or writ of error, no legislation was necessary to preserve or give effect to

the jurisdiction of the court over it -- an opinion, as we have seen, founded in error.

In placing the want of jurisdiction, however, upon this ground we must not be understood as admitting that if the provisions of the Florida Act of 22 February, 1847, applied to the case, the jurisdiction could be upheld. For if we are right in the conclusion that, even assuming the record in the case had been transferred from the territorial to the district court of the state, our jurisdiction would still be incomplete and ineffectual, inasmuch as that court possessed no power to carry the mandate into execution, the case not being one of federal jurisdiction, the result would be the same as that at which we have arrived.

In every view, therefore, we have been able to take of the case, we are satisfied that our jurisdiction over it ceased with the termination of the territorial government and laws and that it has not been revived or preserved, if indeed it could have been, by any act or authority of Congress on the subject, and that

The writ of error must be abated.

ORDER

This cause came on to be heard on the transcript of the record

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from the Supreme Court of the Territory of Wisconsin, and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court that this writ of error be and the same is hereby abated.

Mr. WALKER, of counsel for the defendants in error, moved the court to direct the clerk to what court the mandate, or other process prescribed by the forty-third rule of court should be addressed. On consideration whereof it is now here ordered by the court that the clerk do not issue any mandate or other process in this case, but only a certified copy of the judgment this day rendered in this cause.