

Butler Vs. Pennsylvania

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 51 U.S. 402

Appellant : Butler

Respondent : Pennsylvania

Judgement :

Butler v. Pennsylvania - 51 U.S. 402 (1850)

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Butler v. Pennsylvania

51 U.S. (10 How.) 402

ERROR TO THE SUPREME

COURT OF PENNSYLVANIA

SYLLABUS

In 1836, the State of Pennsylvania passed a law directing canal commissioners to be appointed, annually, by the governor, and that their term of office should commence on the 1st of February in every year. The pay was four dollars *per*

diem.

In April, 1843, certain persons being then in office as commissioners, the legislature passed another law providing, amongst other things, that the *per diem* should be only three dollars, the reduction to take effect upon the passage of the law, and that, in the following October, commissioners should be elected by the people.

The commissioners claimed the full allowance during their entire year, upon the

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ground that the state had no right to pass a law impairing the obligation of a contract.

There was no contract between the state and the commissioners, within the meaning of the Constitution of the United States.

The object was to test the constitutionality of an act passed by the Legislature of Pennsylvania on 18 April, 1843, entitled "An act to reduce the expenses and provide for the election of the Board of Canal commissioners." The allegation was that the act was repugnant to the Constitution of the United States.

The plaintiffs in error were, on 1 February, 1843, severally appointed and commissioned by the governor of Pennsylvania to be canal commissioners for one year, by separate commissions from the governor, all of similar tenor and date, of one of which the following is a copy:

"PENNSYLVANIA, ss. "

"David R. Porter Governor of the said commonwealth, to John B. Butler sends greeting: "

"Whereas, in and by an act of the general assembly of this commonwealth, passed 28 January, 1836, the governor is empowered and required, on or after the first day of February, 1836, and annually thereafter, to appoint three canal

commissioners, and, in case of vacancy, to supply the same by new appointments, whose powers, duties, and compensation shall be the same as those of the then present board, and shall commence on the first day of February, 1836, and on the first day of February annually thereafter, and whose term of service shall continue for one year: "

"Now, therefore, be it known, that, having full confidence in your integrity and ability, I, the said David R. Porter Governor of said commonwealth, in pursuance of the power and authority to me by law given, have, and by these presents do, appoint you, the said John B. Butler, to be a canal commissioner for the term of one year from the day of the date of these presents, if you shall so long behave yourself well. Hereby giving and granting to you, in conjunction with the other commissioners, all the rights, powers, and emoluments of the said office, and authorizing and requiring you to unite with the said commissioners in the execution and performance of all the duties of a canal commissioner, agreeably to the several laws of this commonwealth."

"Given under my hand and the great seal of the said commonwealth &c., the first day of February, A.D. 1843. "

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This appointment was made in pursuance of the act of assembly passed 6 April, 1830 Pamph.Laws, 218; Internal Improvement Laws 65, and of the Act of 28 January, 1836 Pamph.Laws 23; Int.Imp.Laws 145.

The first of these acts, 1, provides,

"That on or before the first Monday of June next, and annually thereafter, the governor shall appoint three canal commissioners, and, in case of vacancy, supply the same by new appointments, whose powers and duties shall be the same as those of the present board, and shall commence on the first Monday in June, and shall continue in office for one year, and who shall receive, as a full compensation for their services and expenses, the sum of four dollars each per day,"

&c.;

The second act provides

"That it shall be the duty of the governor, on or after the first day of February next 1836 and annually thereafter, to appoint three canal commissioners, and in case of vacancy supply the same by new appointments, whose powers, duties, and compensation shall be the same as the present board, and shall commence on the 1st of February next, and whose term of service shall continue for one year,"

&c.;

On 18 April, 1843, the Legislature of Pennsylvania passed an act in the following words, to-wit:

"An act to reduce the expenses and provide for the election of the board of canal commissioners."

" 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same that, at the next annual election, the qualified voters of the several counties of this commonwealth shall vote for three persons as canal commissioners, who shall perform all the duties now by law enjoined upon the canal commissioners of this commonwealth; the persons so elected shall decide by drawing from a box ballots numbered one, two, and three, which of them shall hold his office one, which two, and which three years; the commissioner who shall draw the ballot numbered three shall hold his office three years; he who shall draw the ballot numbered two shall hold his office two years; and the other shall hold his office one year; on the second Tuesday in October in each year thereafter, there shall be elected one person as canal commissioner, who shall hold his office for three years; the elections of canal commissioners shall be conducted by the officers authorized by law to conduct the general elections in the several election districts; a return of the votes given for said office shall be made to the secretary

of the commonwealth in the manner now provided for the transmission of returns of elections of Representatives; the secretary of the commonwealth, on receipt of all the returns, shall notify the persons so elected, who shall enter upon the duties of their office on the second Tuesday in January succeeding their election; if any vacancy shall occur in the said Board of canal commissioners by death, resignation, or otherwise, the governor shall appoint a suitable person to supply the vacancy until the next general election, when a person shall be elected for the unexpired term of him whose death, resignation, or removal shall have caused a vacancy, and that the pay of the said canal commissioners, as well as the present canal commissioners, from and after the passage of this act, shall each be three dollars per day."

The remaining sections are omitted as relating to the subordinate officers.

At the annual election in October, 1843, three gentlemen were elected canal commissioners, who, on 9 January, 1844, assumed upon themselves the duties of the office to which they had been elected.

The plaintiffs error continued in the exercise of the duties of the office the said 9 January, 1844, and were ready and willing to serve out the balance of the term for which they were commissioned, but were then superseded by the persons elected in October, 1843, pursuant to the said statute of 18 April, 1843.

On 22 March, 1844, the Auditor General and State Treasurer settled the accounts of the plaintiffs in error, as late canal commissioners, in which they allowed them each \$4 per day from 1 February, 1843, to 18 April, 1843, inclusive, and \$3 per day from 18 April, 1843, to 8 January, 1844, resulting in a balance due the commonwealth of \$1,071.

From this settlement the plaintiffs in error appealed to the Court of Common Pleas of Dauphin County, pursuant to the provisions of the act of assembly.

The cause came on for trial in the Common Pleas of Dauphin County on 25 October, 1847, when the foregoing facts were given in evidence, when the court charged the jury as follows:

"The defendants were appointed canal commissioners for the term of one year commencing on the first day of February, 1843, at which time their compensation was fixed by law at four dollars per day. On 18 April, 1843, the legislature, by an act entitled 'An act to reduce the expenses, and provide for the election of canal commissioners,' Pamphlet

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Laws of 1843,p. 337, reduced the pay of canal commissioners from four to three dollars per day. The Auditor General and State Treasurer settled the accounts of the canal commissioners in pursuance of this act. The canal commissioners contend that this act is unconstitutional, so far as it relates to reducing their pay after their appointment to office, and this is the only question that is presented in this case. The court instruct the jury that the act in question is not unconstitutional; and, as there is no other dispute, they should find for the commonwealth. To this charge the defendants' counsel excepts, and it is filed at their request."

"N. B. ELDRED, *Pres. Judge* "

The jury, under this charge, found a verdict in favor of the commonwealth for \$1,301.26, the amount stated to be due from the plaintiffs in error by the Auditor General and State Treasurer, with interest accrued thereon.

The commissioners carried the case to the Supreme Court of Pennsylvania, which, on 30 June, 1848, affirmed the judgment of the court of common pleas.

A writ of error brought the case up to this Court.

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MR. JUSTICE DANIEL delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the State of Pennsylvania under the twenty-fifth section of the Judiciary Act of 1789 for the purpose of revising a judgment rendered by the court above mentioned at the May term of that court in

the year 1848, against the plaintiffs in error, in a certain action of assumpsit instituted against those plaintiffs on behalf of the Commonwealth of Pennsylvania.

By authority of a statute of Pennsylvania of 28 January, 1836, the plaintiffs in error were by the governor of the state appointed to the place of canal commissioners, and by the same statute, the appointment was directed to be made annually on 1 February, and the compensation of the commissioners regulated at four dollars *per diem* each. Under this law, the plaintiffs in error, in virtue of an appointment of 1 February, 1843, accepted and took upon themselves the office and duties of canal commissioners. By a subsequent statute, of 18 April, 1843, the appointment of canal commissioners was transferred from the governor to the people upon election by the latter, and the *per diem* allowance to be made to all the commissioners was by this law reduced from four to three dollars, this reduction to take effect from the passage of the act of April 18, 1843, which as to the rest of its provisions went into operation on the second Tuesday of January following its passage, that is, on the second Tuesday of January in the year 1844. Upon a settlement of their account as canal commissioners, made before the Auditor General of the state, the plaintiffs in error, out of money of the state then in their hands, claimed the right to retain compensation for their services at the rate of four dollars *per diem*, for the full term of twelve months from the date of their appointment by the governor; whilst for the state, on the other hand, it was refused to allow that rate of compensation beyond 18 April, 1843, the period of time at which, by the new law, the emoluments of the appointment were changed. In consequence of this difference, and of the refusal of the plaintiffs in error to pay over the balance appearing against them on the account as stated by the Auditor General, an action was instituted against them in the name of the state, in the Court of Common

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Pleas of Dauphin County, and a judgment obtained for that balance. This judgment, having been carried by writ of error before the supreme court, was there affirmed, and from that tribunal, as the highest in the state, this cause is brought hither for revision.

The grounds on which this Court is asked to interpose between the judgment on behalf of the state and the plaintiffs in error are these. That the appointment of these plaintiffs by the Governor of Pennsylvania, under the law of January 28, 1836, was a positive obligation or contract on the part of the state to employ the plaintiffs for the entire period of one year, at the stipulated rate of four dollars *per diem*; and that the change in the tenure of office and in the rate of compensation made by the law of April 18, 1843 within the space of one year from the first of February, 1843, was a violation of this contract, and therefore an infraction of the tenth section of the first article of the Constitution of the United States. In order to determine with accuracy whether this case is within the just scope of the constitutional provision which has thus been invoked, it is proper carefully to consider the character and relative positions of the parties to this controversy, and the nature and objects of the transaction which it is sought to draw within the influence of that provision.

The high conservative power of the federal government here appealed to is one necessarily involving inquiries of the most delicate character. The states of this Union, consistently with their original sovereign capacity, could recognize no power to control either their rights or obligations, beyond their own sense of duty or the dictates of natural or national law. When, therefore, they have delegated to a common arbiter amongst them the power to question or to countervail their own acts or their own discretion in conceded instances, such instances should fall within the fair and unequivocal limits of the concession made. Accordingly it has been repeatedly said by this Court, that to pronounce a law of one of the sovereign states of this Union to be a violation of the Constitution is a solemn function, demanding the gravest and most deliberate consideration, and that a law of one of the states should never be so denominated, if it can upon any other principle be correctly explained. Indeed it would seem that if there could be any course of proceeding more than all others calculated to excite dissatisfaction, to awaken a natural jealousy on the part of the states, and to estrange them from the federal government, it would be the practice, for slight and insufficient causes, of calling on those states to justify, before tribunals in some sense foreign to themselves, their acts of general legislation. And

the extreme of such an abuse would appear to exist in the arraignment of their control over officers and subordinates in the regulation of their internal and exclusive polity, and over the modes and extent in which that polity should be varied to meet the exigencies of their peculiar condition. Such an abuse would prevent all action in the state governments, or refer the modes and details of their action to the tribunals and authorities of the federal government. These surely could never have been the legitimate purposes of the federal Constitution. The contracts designed to be protected by the tenth section of the first article of that instrument are contracts by which *perfect rights, certain definite, fixed private rights* of property, are vested. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or state government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require.

The selection of officers, who are nothing more than agents for the effectuating of such public purposes, is matter of public convenience or necessity, and so too are the periods for the appointment of such agents; but neither the one nor the other of these arrangements can constitute any obligation to continue such agents, or to reappoint them, after the measures which brought them into being shall have been found useless, shall have been fulfilled, or shall have been abrogated as even detrimental to the wellbeing of the public. The promised compensation for services actually performed and accepted during the continuance of the particular agency may undoubtedly be claimed, both upon principles of compact and of equity, but to insist beyond this on the perpetuation of a public policy either useless or detrimental, and upon a reward for acts neither desired nor performed, would appear to be reconcilable with neither common justice nor common sense. The establishment of such a principle would arrest necessarily everything like progress or improvement in government, or if changes should be ventured upon, the government would have to become one great pension establishment on which to quarter a host of sinecures. It would especially be difficult, if not impracticable, in this view ever to remodel the organic law of a state, as constitutional ordinances

must be of higher authority and more immutable than common legislative enactments, and there could not exist conflicting constitutional ordinances under one and the same system. It follows, then, upon principle that in every perfect or competent government there must exist a general power to enact and to repeal laws and to create, and change or discontinue, the agents designated for the execution

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of those laws. Such a power is indispensable for the preservation of the body politic and for the safety of the individuals of the community.

It is true that this power or the extent of its exercise may be controlled by the higher organic law or constitution of the state, as is the case in some instances in the state constitutions, and as is exemplified in the provision of the federal Constitution relied on in this case by the plaintiffs in error, and in some other clauses of the same instrument; but where no such restriction is imposed, the power must rest in the discretion of the government alone. The Constitution of Pennsylvania contains no limit upon the discretion of the legislature, either in the augmentation or diminution of salaries, with the exceptions of those of the governor, the judges of the supreme court, and the presidents of the several courts of common pleas. The salaries of these officers cannot, under the Constitution, be diminished during their continuance in office. Those of all other officers in the state are dependent upon legislative discretion. We have already shown that the appointment to and the tenure of an office created for the public use, and the regulation of the salary affixed to such an office, do not fall within the meaning of the section of the Constitution relied on by the plaintiffs in error; do not come within the import of the term "contracts," or, in other words, the vested, private personal rights thereby intended to be protected. They are functions appropriate to that class of powers and obligations by which governments are enabled, and are called upon, to foster and promote the general good; functions therefore which governments cannot be presumed to have surrendered, if indeed they can under any circumstances be justified in surrendering them. This doctrine is in strictest accordance with the rulings of this Court in many instances, from

amongst which may be cited its reasoning in the important and leading case of [Charles River Bridge v. Warren Bridge](#), in 11 Pet. 420, and in the case of [State of Maryland v. Baltimore & Ohio Railroad Company](#), 3 How. 552, to which might be added other decisions upon claims to monopoly, as ferry privileges, in restraint of legislative action for public improvement and accommodation. In illustration of the doctrine here laid down may also be cited the very elaborate opinion of the supreme court of New York in the case of *People v. Morris*, reported in 13 Wend. 325. The precise question before us appears to have been one of familiar practice in the State of Pennsylvania -- so familiar, indeed, and so long acquiesced in as to render its agitation at this day somewhat a subject of surprise, and the reasoning of the supreme court upon it in the case of *Commonwealth*

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v. Bacon, 6 Serg. & R. 322, is at once so clear and compendious as to render it well worthy of quotation here. "These services," says Duncan, Justice, in delivering the opinion,

"rendered by public officers do not in this particular partake of the nature of contracts, nor have they the remotest affinity thereto. As to a stipulated allowance, that allowance, whether annual, *per diem*, or particular fees for particular services, depends on the will of the lawmakers, and this whether it be the legislature of the state or a municipal body empowered to make laws for the government of a corporation. This has been the universal construction, and the constitution puts this question at rest in the provision for the salary of the governor and judges of the supreme court and of the presidents of the courts of common pleas. The governor is to receive at stated times, for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected. The judges and presidents shall at stated times receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office. These provisions are borrowed from the Constitution of the United States. It is apparent that the compensation of the governor and judges is a matter of constitutional provision -- that of all other officers is left open to the legislature. The allowances, the compensation, the

salary, the fees of all other officers and members of the legislature, depend on the legislature, which can and which does change them from time to time as they conceive just and right."

So in the case of *Commonwealth v. Mann*, 5 Watts & S. 418, the court said

"that if the salaries of judges and their title to office could be put on the ground of contract, then a most grievous wrong has been done them by the people by the reduction of a tenure during good behavior to a tenure for a term of years. The point that it is a contract, or partakes of the nature of a contract, will not bear the test of examination."

And again, in the case of *Barker v. City of Pittsburgh*, the court declared it as the law

"that there is no contract express or implied for the permanence of a salary is shown by the constitutional provision for the permanence of the salaries of the governor and judges as exceptions."

4 Pa.St. 51. We consider these decisions of the state court as having correctly expounded the law of the question involved in the case before us, as being concurrent with the doctrines heretofore ruled and still approved by this Court -- concurrent, too, with the decision of the Supreme Court of Pennsylvania now under review, which decision we hereby adjudge and order to be

Affirmed.

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MR. JUSTICE Mc LEAN.

In this case, I think we have no jurisdiction. There was no contract which could be impaired within the provision of the Constitution of the United States. This is clearly shown in the opinion of the Court. In such a case, I suppose the proper entry would be to dismiss the writ of error. By the affirmance of the judgment of the

Supreme Court of Pennsylvania, we take jurisdiction.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of Pennsylvania and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said supreme court in this cause be and the same is hereby affirmed with costs.

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