

Calkin Vs. Cocke

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Appellant : Calkin

Respondent : Cocke

Judgement :

Calkin v. Cocke - 55 U.S. 227 (1852)

U.S. Supreme Court Calkin v. Cocke, 55 U.S. 14 How. 227 227 (1852)

Calkin v. Cocke

55 U.S. (14 How.) 227

ERROR TO THE SUPREME COURT OF ERRORS

AND APPEALS FOR THE STATE OF TEXAS

SYLLABUS

The State of Texas was admitted into the Union on the 29th of December, 1845, 9 Stat. 108, and from that day the laws of the United States were extended over it.

Consequently, on the 30th of January, 1846, the revenue laws of Texas were not in force there, and goods seized for a noncompliance with those laws were illegally seized.

Calkin & Company were merchants of the County of Galveston, Texas, and Cocke was Collector of Galveston under the Republic of Texas.

By a joint resolution of Congress, approved on 1 March, 1845, the President of the United States was authorized to submit one of two alternative propositions to the Republic of Texas as an overture for her admission as a state into the Union. One of these contemplated the completion of this measure and the adjustment of its terms by legislation, and the other by negotiation. The President selected the former, and presented to Texas the proposals contained in the first and second sections of the said resolutions. The first section declared

"That Congress doth consent that the Territory of Texas may be erected into a state, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the states of this Union."

And the second section declares that this consent on the part of the United States was given upon several conditions, one of which required the constitution, which was to be framed by the convention, to be transmitted, with the proper evidences of its adoption by the people of the said Republic of Texas, to the President of the United States, to be laid before the Congress

Page 55 U. S. 228

of the Union for its final action, on or before the first day of January, one thousand eight hundred and forty-six. This consent, with the conditions on which it was given, was communicated to the Republic of Texas, and in the course of the following summer and autumn the people of Texas, by deputies in Convention assembled, with the consent of the then existing government, erected it into a new state, with a republican form of government, as shown by the constitution then

adopted by them for its government, and declared and ordained that they accepted the proposal contained in the resolutions just spoken of, and assented to the conditions on which it was made. The constitution adopted by the people of Texas, with the evidence of its adoption, and of their acceptance of the proposal made by Congress, and their assent to the conditions with which it was accompanied, was laid before Congress at the opening of the session of 1845-1846, and on the 29th of December, 1845, the Congress of the United States, after taking cognizance of the acceptance of the proposal and of the conditions annexed to it by the people of Texas, and of the constitution adopted by them, declared that the State of Texas "shall be one and is hereby declared to be one of the United States of America," &c.;

This Constitution of Texas, thus adopted by that state and laid before Congress, contained, amongst others, the following provisions. By the first section of the twelfth article of the said constitution, it was declared that

"All process which shall be issued in the name of the Republic of Texas, prior to the organization of the state government under this constitution, shall be as valid as if issued in the name of the State of Texas."

In the second section of the same article it was provided that

"All criminal prosecutions or penal actions which shall have arisen prior to the organization of the state government under this Constitution, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution in the name of the state,"

&c.; The sixth section contained a provision that if it should appear, on the second Monday of November, 1845, from the returns, that a majority of the votes polled of the people of Texas were given for the adoption of the constitution, the President should make proclamation of that fact, and thenceforth the constitution was ordained and established as the constitution of the state, to go into operation, and be of force and effect, from and after the organization of the state government under the said constitution. By section ten, it was declared

"That the laws of this Republic relative to the duties of officers, both civil and military, of the same, shall remain in full force, and the duties of their several offices shall be performed in conformity with the existing laws, until the organization of the

Page 55 U. S. 229

government of the state under this constitution, or until the first day of the meeting of the legislature,"

&c.;

On the same day that Congress declared that Texas shall be and is hereby declared to be one of the United States, viz., on the 29th of December, 1845, 9 Stat. 108, Congress passed an act extending the laws of the United States over Texas and declaring them to have full force and effect within the state. It provided also for the establishment of a court of the United States, with its necessary officers. And on the 31st of December, 1845, another law was passed constituting Texas a collection district, and making Galveston a port of entry.

The Legislature of Texas did not meet, nor was the state government completely organized under its new constitution, until the 16th of February, 1846.

On the 30th of January, 1846, Calkin & Company imported into Galveston from New Orleans a large amount of merchandise, principally the growth and manufacture of the United States.

These goods were seized by Cocke, claiming one thousand dollars as duty, under the revenue laws of Texas. Calkin & Company protested against this, and demanded that the goods should be delivered to them in accordance with an Act of Congress of the United States of the 31st December, 1845, and of a circular of the Secretary of the Treasury of the United States of 9th January, 1846, declaring that

"Vessels and their cargoes arriving in any port of the State of Texas either from a foreign port or a port in any other state or territory of the United States, are to be

placed on a similar footing with vessels and their cargoes arriving at ports in any of the states of the Union."

On the trial of the case in the District Court of the State of Texas, on the 5th of January, 1847, a judgment was rendered therein in favor of plaintiffs, restraining the defendant from claiming any duties on the merchandise, and condemning him to pay to the plaintiffs the sum of two hundred and fifty dollars, the damages assessed by the jury, as damages for the unlawful detention of the merchandise, and the costs of the suit. From this judgment a writ of error was prosecuted to the Supreme Court of Texas, and by that tribunal the judgment was reversed and one given in favor of the defendant for the sum of nine hundred and sixteen dollars, the amount of duties unpaid, and the amount of costs expended in and about the suit.

A writ of error brought this judgment up to this Court.

Page 55 U. S. 235

MR. JUSTICE NELSON delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the State of Texas. The suit was originally brought by the plaintiffs in error before the District Court of Galveston County, to recover the possession of a stock of goods from the defendant, who had seized them at Galveston as collector of that port under the authority of the Republic of Texas for nonpayment of duties. They recovered a judgment in that court, but, on a writ of error from the supreme court the judgment was reversed and the goods held liable to the duties.

The case was this:

The plaintiffs shipped from New Orleans into Galveston the stock of goods, on the 30th January, 1846, and the defendant, claiming to act as collector under the Republic of Texas and also that the revenue laws of that government were then in force, charged them with a rate of duty in conformity with those laws, and for the nonpayment by the plaintiffs, they insisting that the goods were not liable to any rate of duty since the admission of Texas into the Union, he seized and took

possession of and detained them until they were redelivered to the plaintiffs by the order of the district court.

The question in the case is whether the revenue laws of this government were in force in the State of Texas at the date of the importation, or those of the former government of that country. The supreme court held the latter were in force, and charged the goods with the customary duties.

The State of Texas was admitted into the Union on the 29th December, 1845, on an equal footing with the original states in all respects whatever. 9 Stat. 108. And by the 1st section of an act of Congress, passed the same day, all the laws of the United States were declared to be extended over and to have full force and effect within the state. And by the 2d section the state was declared to constitute one judicial district, called the District of Texas, for which a judge should be appointed and should hold the first term of his Court at Galveston on the first Monday of February then next. The remaining part of the section confers upon the court the usual powers belonging to a district court, and also of a circuit court of the United States. The 3d section provides for the

Page 55 U. S. 236

appointment of a district attorney, and marshal for the district, and for a clerk of the court. *Id.*, 1, 2.

On the 31st December, 1845, the next day after the admission into the Union, Congress passed an act declaring the state to be one collection district and making the city of Galveston a port of entry, and to which was annexed several other places as ports of delivery. The 2d section provides for the appointment of a collector for the port of Galveston, and the 3d section for the appointment of a surveyor for each port of delivery.

Now it is quite apparent from the joint resolution of Congress admitting the State of Texas into the Union and the acts passed organizing the federal courts and revenue system over it, that the old system of government, so far as it conflicted with the federal authority, became abrogated immediately on her admission as a

state. This is clearly so unless some provision is found in the act of admission postponing the time when it shall take effect, and, as applied to the case before us, postponing it until after 31 January, 1846, when these goods were shipped to the port of Galveston.

This has been attempted on the part of the defendant in error.

We have been referred to the 1st section of the 13th article of the Constitution of Texas, which provides

"That all process which shall be issued in the name of the Republic of Texas prior to the organization of the state government under this constitution shall be as valid as if issued in the name of the State of Texas."

And also to the 2d section of the same article, which provides that

"All criminal prosecutions or penal actions which shall have arisen prior to the organization of the state government under this constitution in any of the courts of the Republic shall be prosecuted to judgment and execution in the name of the state."

And also to the 6th section, which provides, upon its appearing that a majority of the votes of the people given is for the adoption of the constitution,

"it shall be the duty of the President of the Republic of Texas to make proclamation of the fact, and thenceforth this constitution shall be ordained and established as the constitution of the state, to go into operation and be of force and effect, from and after the organization of the state government."

And also to the 10th section, which declares

"That the laws of the Republic relative to the duties of officers, both civil and military, of the same shall remain in full force, and the duties of the several offices shall be performed in conformity with the existing laws until the organization of the government of the state under this constitution or until the first day of the meeting of the legislature. "

It is supposed that these several provisions of the Constitution of Texas, and which is the one accepted when she was admitted into the Union by Congress, have the effect to postpone and fix the period of admission to the time of the first meeting of the legislature of the state and organization of the government under the constitution, which was on 16 February, 1846, and of course to postpone the operation of the laws of the Union over her till that period.

But the obvious answer to this view is that these several provisions in the constitution were designed and intended, and had the effect, to organize a government at once on the adoption of the constitution by the people, and thereby to avoid an interregnum between the abrogation of the old and the erection of the new system and until the legislative body could meet and put the government in operation in conformity with the requirements of the organic law.

The whole of the 10th section, a part of which has been already referred to, affords an illustration of the design of the framers of the constitution. It is as follows:

"That no inconvenience may result from the change of government, it is declared that the laws of the Republic relative to the duties of officers, both civil, and military, of the same shall remain in full force, and the duties of the several offices shall be performed in conformity with existing laws, until the organization of the government of the state under this constitution or until the first day of the meeting of the legislature."

This section, taken in connection with the 3d section of the same article, completed an organization which effectually prevented any interval between the old and new systems when the laws did not operate or an organized government was not in force. That section provides, that

"All laws and parts of laws now in force in the Republic of Texas which are not repugnant to the Constitution of the United States, the joint resolutions for annexing Texas to the United States, or to the provisions of this constitution shall remain in force as the laws of this state until they expire by their own limitation or

repealed by the legislature."

This section, as it will be seen, also negatives the idea that the Constitution and laws of the Union were not in force within the state as soon as her admission into the Union took place.

This subject was very fully considered in [*Benner v. Porter*](#), 9 How. 235, which involved an inquiry into the affect of the admission of Florida into the Union as a state. Some of the questions there were very similar to those raised in this case, as the machinery of the territorial government had been adopted by an ordinance in the constitution until the organization was effected under the constitution by the legislature.

Page 55 U. S. 238

We there said

"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 the appointment of the territorial functionaries for the time being."

That

"The convention being the fountain of all political power, from which flowed that 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 in 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."

An argument is attempted to be drawn against the conclusion that the laws of the Union were extended over Texas as soon as she was admitted into it, founded

upon certain acts of Congress concerning the establishment and regulation of the post office system over the state. On 6 February, 1846, various post routes were established in Texas, and the Postmaster General was authorized to contract for conveying the mail on them as soon as could be conveniently done, after the passage of the act. A joint resolution was also passed on 20 May, 1846, authorizing the Postmaster General to continue the mail service existing in the state under the laws and authority of Texas or such part as, in his judgment, the public interest required, from the time that Texas became a state in the Union and until contracts could be made and the mail service put in operation on post routes established by Congress at its then session. And on the 29th of the same month, another act was passed establishing several post routes and repealing the act of the 6th February, referred to. The second section of this act authorizes the Postmaster General to continue in operation the existing mail service in Texas, established under its former laws, upon any of the routes mentioned, as he may deem expedient, not to extend, however, beyond 30 June, 1850. And the third section provides for the payment of mail contractors in Texas for service performed by them since 16 February, 1846, and also the officers employed in superintending the mail service, with a proviso, that such payment shall in no case exceed the compensation agreed upon with the late authorities of Texas. The act then provides that the several postmasters in Texas appointed by the late government shall account to the Postmaster General for all balances accruing at their offices respectively, after 16 February, 1846.

Page 55 U. S. 239

We perceive nothing in these several acts expressing or implying that Congress possessed no power to extend the system of mail service over the state from the time of its admission into the Union, or that the date of the admission is to be limited to 16 February, 1846.

There was necessarily some delay in putting the system into practical operation, and to avoid any inconvenience in the meantime, the existing system under the laws of the former government was recognized and adopted, until the several post

routes were designated by Congress and contracts made for the performance of the service in the usual way. The period fixed when the payment of the old contractors and superintendents of the service should commence, and also when the existing postmasters should begin to account to the Postmaster General for the money collected, and the allowance of compensation, to-wit, 16 February, 1846, relate simply to the arrangement as to compensation and as to the adjustment of the accounts of these several officers. The system, as established under the Republic of Texas, was recognized and not interfered with in the adjustment down to the period mentioned; after that it was placed under the laws and regulations of the Post Office department of the general government.

That these acts do not admit the want of powers in Congress to extend the post office laws over Texas until 16 February, 1846, is shown by the act passed the 5th of that month designating several post routes and conferring the power upon the Postmaster General to enter into contracts for conveying the mail over them. This act continued in force until repealed on 29 May following, when a new and somewhat different arrangement of mail routes was provided for.

Without pursuing the case farther, our opinion is that the admission of Texas into the Union is to take date from 29 December, 1845, the time of its admission by Congress, and that the laws of the Union extended over it from that time, and, consequently the seizure of the stock of goods in question by the defendant under the revenue laws of the Republic on 30 January, 1846, was without authority of law.

The judgment of the supreme court below, must therefore be reversed with costs, and that the proceedings be remitted to that court with directions that the judgment of the district court be affirmed with costs in supreme court and district court.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of Errors and Appeals for the

State of Texas, 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 of Errors and Appeals in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court of Errors and Appeals with directions to affirm the judgment of the District Court for the county of Galveston in said cause, with costs in said supreme and district courts.

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