

Porter Vs. Bushrod

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Court : US Supreme Court

Decided On : 1860

Appeal No. : 65 U.S. 415

Appellant : Porter

Respondent : Bushrod

Judgement :

Porter v. Bushrod - 65 U.S. 415 (1860)

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Porter v. Bushrod

65 U.S. (24 How.) 415

ERROR TO THE COURT OF APPEALS

FOR THE STATE OF KENTUCKY

SYLLABUS

Where an act of assembly of the state of Kentucky was objected to in the state court because said act and supplement were unconstitutional and void, the court properly considered the question as relating to the power of the legislature to pass

the act under the constitution of the state, and not under the Constitution of the United States.

There is therefore no ground for the exercise of jurisdiction by this Court under the 25th section of the Judiciary act.

A motion was made by Mr. Mooar to dismiss it for want of jurisdiction, under the following circumstances:

Porter and others, the plaintiffs in error, filed a petition in the state court to recover the title and possession of a lot of land in the Town of Covington. They claimed under a grant

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from the Commonwealth of Virginia in 1787 to James Welsh, and a series of mesne conveyances to themselves.

The defendants below claimed under the same original title, and also under two acts of the Legislature of Kentucky passed on November 10 and November 26, 1823, by which William Porter was authorized to sell and convey certain parcels of ground which had been conveyed to his children. The plaintiffs objected to the admission of these acts as being unconstitutional and void. The court below, however, and the court of appeals sustained them.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The record of this case does not show that any question arose or was decided by the state court which this Court has authority to reexamine by virtue of the 25th section of the Judiciary Act.

Without entering into a tedious analysis of the case, it is sufficient to state that the chief or only question in it was whether an act of assembly of Kentucky authorizing an executor to sell the real estate of minors was a valid exercise of power by the

legislature.

The counsel for plaintiff objected to the admission of the deed made in pursuance of such authority "because said act and supplement were unconstitutional and void."

This objection was very properly construed by the court as having reference to the validity of the act of the Legislature of Kentucky, not as contrary to any provision of the Constitution of the United States, but as raising the question whether the legislature had a power under the Constitution of that state, by general or special enactment, to authorize the sale of real estate of infants. The court decided that it had such power, and if it had, it is abundantly evident that there is no article nor clause in the Constitution of the United States which could interfere with it.

Let the writ of error be dismissed.

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