Freeborn Vs. Smith

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 160

Appellant : Freeborn

Respondent : Smith

Judgement :

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Freeborn v. Smith

69 U.S. (2 Wall.) 160

ERROR TO THE SUPREME COURT

OF NEVADA TERRITORY

SYLLABUS

1. When Congress has passed an act admitting a territory into the Union as a state but omitting to provide by such act for the disposal of cases pending in this Court on appeal or writ of error, it may constitutionally and properly pass a subsequent

act making such provision for them.

2. This Court will not hear, on writ of error, matters which are properly the subject of applications for new trial.

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This was a writ of error to the Supreme Court of Nevada Territory.

Smith had obtained a judgment against Freeborn and Shelden in the Supreme Court of Nevada; Nevada being at the time a territory only, not a state. To this judgment a writ of error went from this Court under the law organizing the territory, and the record of the case was filed here, December Term 1862. After the case was thus removed, the Territory of Nevada was admitted by act of Congress, March, 1864, into the Union as a state. The act admitting the territory contained, however, no provision for the disposal of cases then pending in this Court on writ of error or appeal from the territorial courts. *Mr. Cope and Mr. Browning,* in behalf of *the defendants in error,* accordingly moved to dismiss the writ in this and other cases similarly situated on the ground that, the territorial government having been extinguished by the formation of a state government in its stead, and the act of Congress which extinguished it having in no way saved the jurisdiction of the court as previously existing, nothing further could be done here. The territorial judiciary, it was urged, had fallen with the government of which it was part, and the jurisdiction of this Court had ceased with the termination of the act conferring it. *Hunt v. Palao* [Footnote 1] and *Benner v. Porter* [Footnote 2] were relied on to show that the court had no power over cases thus situated.

It being suggested by *Mr. O'Connor and Mr. Carlisle on the other side,* or as interested in other cases from Nevada similarly situated, that a bill was now before Congress supplying the omissions of the act of March, 1864, the hearing of the motion for dismissal was suspended till it was seen what Congress might do. Congress finally acted, and on the 27th of February, 1865, passed "An Act providing for a District Court of the United States for the District of Nevada," &c.;

The eighth section of this enacts:

"That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of the Territory of Nevada may be heard and determined by the Supreme Court of the United States, and the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the District Court of the United States for the District of Nevada or to the Supreme Court of the State of Nevada, as the nature of said appeal or writ of error may require, and each of these courts shall be the successor of the Supreme Court of Nevada Territory as to all such cases, with full power to hear and determine the same, and to award mesne or final process thereon."

The motion to dismiss the writ for want of jurisdiction was now renewed.

Assuming jurisdiction to exist, this case of *Smith v. Freeborn* was argued also on a question of merits. The judgment mentioned at the beginning of the case, which Smith had obtained against Freeborn and Shelden, he had obtained against them as secret surviving partners of a certain Shaw. One ground of the writ of error was that no evidence whatever had been offered of a partnership with Shaw between Freeborn *and* Shelden (a matter which was more or less patent on the record), and that judgment having gone against both (two jointly) and error as to one, the judgment would have to be reversed. A motion had been made and refused below for a new trial.

There was also another question of merits. To rebut the evidence of partnership, the defendants offered some letters between themselves and Shaw, and between themselves and one Eaton, an agent of theirs; which letters, though containing, as was urged, some admissions against their own interest, the court below refused to let go in evidence to disprove a partnership.

Its action on these two points was one matter argued, but the great question was that of jurisdiction, a matter affecting other cases as well as this.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The most important question of this case is that of jurisdiction.

It is objected to the Act of 27 February, just passed, that it is ineffectual for the purpose intended by it; that it is a retrospective act interfering directly with vested rights that the result of maintaining it would be to disturb and impair judgments which, at the time of its passage, were final and absolute; that the powers of Congress are strictly legislative, and this is an exercise of judicial power which Congress is not competent to exercise. But we are of opinion that these objections are not well founded.

The extinction of the territorial government and conversion of the territory into a state under our peculiar institutions necessarily produce some anomalous results and questions which cannot be solved by precedents from without.

It cannot be disputed that Congress has the exclusive power of legislation in and over the territories, and consequently that the Supreme Court has appellate jurisdiction over the courts established therein "under such regulations as Congress may make." [Footnote 3] In the case of *Benner v. Porter,* [Footnote 4] it is said:

"The territorial courts were the courts of the general government, and the records in the custody of their clerks were the records of that government, and it would seem to follow necessarily from the premises that no one

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could legally take possession or custody of the same without the assent, express or implied, of Congress."

The Act of 22 February, 1848, chapter 12, which provides for cases pending in the supreme or superior court of any territory thereafter admitted as a state, made no provision for cases pending in this Court on writ of error or appeal from a territorial court. In the case just mentioned, we have decided that it required the concurrent legislation of Congress and the state legislature, in cases of appellate state jurisdiction, to transfer such cases from the old to the new government.

The act of Congress admitting the State of Nevada omitted to make such provision, although the Constitution of Nevada had provided for their reception. Now it has not been and cannot be denied that if the provisions of the act now under consideration had been inserted in that act, the jurisdiction of this Court to decide this case could not have been questioned.

By this omission, cases like the present were left in a very anomalous situation. The state could not, *proprio vigore,* transfer to its courts the jurisdiction of a case whose record was removed to this Court without the concurrent action of Congress. Until such action was taken, the case was suspended and the parties left to renew their litigation in the state tribunal. What good reason can be given why Congress should not remove the impediment which suspended the remedy in this case between two tribunals, neither of which could afford relief? What obstacle was in the way of legislation to supply the omission to make provision for such cases in the original act? If it comes within the category of retrospective legislation, as has been argued, we find nothing in the Constitution limiting the power of Congress to amend or correct omissions in previous acts. It is well settled that where there is no direct constitutional prohibition, a state may pass retrospective laws such as, in their operation, may affect suits pending, and give to a party a remedy which he did not previously possess or modify an existing remedy, or remove an impediment in the way of

legal proceedings. [Footnote 5] The passage of the act now in question was absolutely necessary to remove an impediment in the way of any legal proceeding in the case.

The omission to provide for this accidental impediment to the action of this Court did not necessarily amount to the affirmance of the judgment, and it is hard to perceive what vested right the defendant in error had in having this case suspended between two tribunals, neither of which could take jurisdiction of it, or the value of such a right, if he was vested with it. If either party could be said to have a vested right, it was plaintiff in error, who had legally brought his case to this Court for review and whose remedy had been suspended by an accident or circumstance over which he had no control. If the judgment below was erroneous, the plaintiff in error had a moral right at least to have it set aside, and the defendant is only claiming a vested right in a wrong judgment. "The truth is," says Chief Justice Parker in *Foster v. Essex Bank,* [Footnote 6]

"there is no such thing as a vested right to do wrong, and the legislature which, in its acts, not expressly authorized by the Constitution, limits itself to correcting mistakes and to providing remedies for the furtherance of justice, cannot be charged with violating its duty, or exceeding its authority."

Such acts are of a remedial character, and are the peculiar subjects of legislation. They are not liable to the imputation of being assumptions of judicial power.

The constitutional difficulty attempted to be raised on the argument that Congress cannot authorize this Court to issue a mandate to a state court in a mere matter of state jurisdiction is factitious and imaginary. It is founded on the assumption, that all the questions which we have heretofore decided are contrary to law, and is but a repetition of the former objections which have been overruled by the court under another form of expression. For if it be true, as we

have shown, that Congress alone had the power of disposing of the territorial records, and providing for the further remedy in the newly organized courts -- if it requires the concurrent legislation of both Congress and the state to dispose of the cases in the peculiar predicament in which this case was heard -- if Congress had, as we have shown, the power to remove the impediments to its decision, and remit

it to a state court authorized by the Constitution of the state to take cognizance of it, they must necessarily regulate the conditions of its removal, so that the parties may have their just remedy respectively. If a state tribunal could not take possession of the record of a court removed legally to this Court, nor exercise jurisdiction in the case without authority of Congress (as we have decided), without the legislation of Congress, they must necessarily accept and exercise it subject to the conditions imposed by the act which authorizes them to receive the record. This Court would have the same right to issue its mandate as in cases where we have jurisdiction over the decisions of the state courts, under the 25th section of the Judiciary Act, and for the same reasons -- because we have jurisdiction to hear and decide the case.

II. Having disposed of the question of jurisdiction, the case presents no difficulty.

As to the case made on the motion for a new trial, our decision has always been that the granting or refusing a new trial is a matter of discretion with the court below which we cannot review on writ of error.

The single bill of exceptions in the case is to the refusal of the court to receive certain letters in evidence. The defendants were charged to have been partners of one George N. Shaw or to have held themselves out to the public as such. This was the only issue in the case. To rebut the plaintiffs' proof, the defendants offered a correspondence between themselves and some letters to them by one Eaton, their agent. It is hard to perceive on what grounds the parties should give their private conversations or correspondence with one another or their agent to establish their own case or show that they had not held themselves out to the

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public as partners of the deceased. Let judgment of affirmance be entered in the case, and a statement of this decision be certified to the Supreme Court of Nevada. [Footnote 7]

Affirmance and certificate accordingly.

[Footnote 1]

45 U. S. 4 How. 589.

[Footnote 2]

50 U. S. 9 How. 235.

[Footnote 3]

Constitution, Art. 3.

[Footnote 4]

50 U. S. 9 How. 235.

[Footnote 5]

See Hepburn v. Curts, 7 Watts 300, and *Shenly v. Commonwealth,* 36 Pa.St. 57.

[Footnote 6]

16 Mass. 245; *and see Rich v. Flanders,* 39 N.H. 325.

[Footnote 7]

See *Webster v. Reid,* 11 How. 461.