Commonwealth Vs. Boutwell

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Appeal No. : 80 U.S. 526

Appellant : Commonwealth

Respondent : Boutwell

Judgement :

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Commonwealth v. Boutwell

80 U.S. (13 Wall.) 526

PETITION FOR WRIT OF MANDAMUS

SYLLABUS

Mandamus to the Secretary of the Treasury to compel him to deliver a warrant under the act of July 27, 1861, directing him to refund to the governor of any state the expenses properly incurred in raising troops to aid in suppressing the rebellion, refused, the Secretary not having been asked to pay the money until the time limited in the appropriation act for the appropriation to take effect had expired, the

right of the court to issue such order under other circumstances not being meant to be passed upon.

This was a petition by the State of Kentucky, through its constituted authority, asking this Court, in the exercise of its original jurisdiction, for a writ of mandamus to compel

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the Honorable G. S. Boutwell, Secretary of the Treasury of the United States, to deliver to the said state a warrant to which it alleged itself entitled for expenses incurred in defense of the Union. The application was founded on the provisions of an Act of Congress of July 27, 1861, [Footnote 1] directing the Secretary of the Treasury to refund to the governor of any state the expenses properly incurred in raising troops to aid in the suppression of the late rebellion, an act which, having been in force and acted on for several years, was repealed from the 1st July, 1871, by Act of the 12th July, 1870. [Footnote 2]

The petition, after setting forth the nature of the claim of Kentucky under this law, its approval by the Secretary of War and the accounting officers of the Treasury Department, alleged that the Acting Secretary of the Treasury, on the 30th of June, 1871, caused to be issued and signed a warrant upon the Treasurer of the United States for the sum due the state, which, after being countersigned by the First Comptroller, was withheld from the relator by direction of the defendant.

The purpose of the petition was to obtain possession of this warrant, or, if this could not be done, to procure the delivery to the agent of the state of another warrant of like amount.

The court having ordered an alternative writ of mandamus, the defendant, in his return to it, among other things, denied that the Acting Secretary of the Treasury, on the 30th day of June, 1871, or on any other day, caused to be issued the warrant as alleged in the petition, but asserted that as he was informed and believed, the facts in regard to the said pretended warrant were these, to-wit:

That on said 30 June, one Fayette Hewitt, the agent of the State of Kentucky, about the close of business hours, applied to the chief of the warrant division in the office of respondent to prepare a warrant for the said sum claimed, and that the said chief declined to prepare such warrant at

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that time, unless specially directed to do so by the Acting Secretary; that the agent applied to the Acting Secretary, who determined not to issue such warrant, on the ground that, by the Act of July 27, 1861, the matter was lodged specially in the discretion and judgment of the Secretary himself, who was absent, and that the propriety of issuing the said warrant would be determined by him on his return; but that in view of the urgent request of the agent, and representations by him that, after said 30th of June, an appropriation made in the matter would be no longer available for the payment of the said claim, the Acting Secretary determined to confer with the officers of the department, and, if it was by them deemed advisable and proper, to prepare and sign a warrant on the said day in order to save the appropriation, which warrant should not be issued, nor registered, nor recorded, but should be retained in the office of the Acting Secretary subject to approval or rejection by the Secretary on his return; that the Acting Secretary did accordingly call together the said officers at his office at about eight o'clock on the evening of said day, and that it was then and there agreed that a warrant should be prepared and signed, and should not be registered nor delivered, but should be retained and submitted to the Secretary on his return, to be by him either approved and issued or cancelled, as he should determine, and that the said warrant was accordingly prepared and signed, and countersigned at the office of the Acting Secretary, and was so retained; that, on the Secretary's return to Washington, about the middle of July, 1871, the warrant prepared was presented to him for approval by the Acting Secretary, in accordance with the understanding between him and the said agent, Hewitt, and that upon mature consideration the claim was rejected and the warrant cancelled by him.

And as a conclusion from these facts, the defendant in the case denied that it was the legal right of the said Commonwealth of Kentucky to have the said warrant,

and to receive the sum of money as alleged, and asserted that he, the said defendant, could not now deliver the warrant, conditionally

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signed as aforesaid, as prayed for by the State of Kentucky, because the same was officially cancelled by him on rejection of the claim, and that he could not now prepare and deliver another warrant upon the Treasurer of the United States, because there was not now any appropriation out of which it could be paid.

To this answer the State of Kentucky demurred.

MR. JUSTICE DAVIS delivered the opinion of the Court.

The answer of the respondent must, in the state of the pleadings, be taken as true so far as its statement of facts is concerned, and therefore presents a complete defense against the demand of the writ.

It seems very clear, if no warrant were ever issued and the condition of the law on the subject at the present time does not authorize the Secretary to issue one, that the prayer of the petition cannot be granted. If it be conceded, as is argued by the counsel for the petitioner, that the decision of the accounting officers was conclusive upon the Secretary and that he should have paid the money, if applied to in proper season, still the fact exists that he was not asked to pay the money until the time limited in the law for the appropriation to take effect had expired. It will not do to say that the proceedings by the Acting Secretary vested a right in the state which could not be defeated by the refusal of the Secretary to approve the prepared warrant, because the validity of this proceeding depended entirely on the future action of the Secretary. By the very terms of the agreement, the warrant was to be retained in the office subject to the approval or rejection by the Secretary on his return to Washington. If the Acting Secretary had the power, in the absence of his principal, to sign and deliver the warrant -- a

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point on which we express no opinion -- he did not choose to exercise it, but preferred in a matter of such consequence to leave the ultimate decision of the question to the Secretary himself. Nothing fairer than the arrangement which was made could have been expected of a subordinate officer anxious to preserve the rights of all the parties concerned but unwilling to take the responsibility of paying so large a claim during the temporary absence of the head of the department, and nothing better for the interest of the state could have been looked for under the circumstances. As the appropriation was not available after the 30th of June, the papers were arranged to save it, if the Secretary should on his return approve the warrant and order it to be issued. On the contrary, if the transaction did not meet with his approbation, the warrant was to be cancelled and held for nought. In this state of case, it is quite clear that the warrant could have no effect without the Secretary's approval, and as he decided adversely so soon as his attention was called to the subject, it follows as a necessary consequence that this warrant, if it had any life before, ceased to have it after this decision was made, and that the allegation in the petition that the warrant was wrongfully withheld from the relator is not sustained.

It is insisted, however, that the Court should now order the Secretary of the Treasury to deliver to the relator another warrant in place of the one thus cancelled.

This proposition would present an important question if there were money in the Treasury appropriated to pay this claim, but as Congress has seen fit to withdraw the appropriation for refunding to states expenses incurred in raising volunteers during the late rebellion, it is difficult to see on what ground it can be based. If it be conceded that the state had a right, on the 30th of June, 1871, to demand of the Secretary of the Treasury, in person, payment of the amount due her under the terms of the Act of July 27, 1861, and that the claim was in such a condition of settlement that he had no power to revise it, still it is manifest that he was justified in refusing compliance with a demand

made after that day. Congress, on the 12th of July, 1870, repealed the law on which this claim is founded. It cannot be supposed that this legislation was directed against the ultimate payment of the promised indemnity, for the repealing act did not go into operation until the 1st of July, 1871. For nearly a year, therefore, the appropriation was continued and the constituted authorities of the states were told to hasten their action if they wished to avail themselves of the benefits of the law. It was easy for them to see that if by delay or from any other cause they suffered the appropriation to expire without getting a settlement of their claims, that additional legislation would be necessary to furnish them relief, for the effect of the repealing law after the limitation expired was not only to take the subject out of the control of the Secretary, but to place it within the control of Congress.

These views dispose of this case. It is proper to observe in conclusion that many important questions are presented in the pleadings and were argued at the bar on which we have purposely refrained from expressing an opinion and which are open for consideration in any future case that may arise where they are applicable.

Demurrer overruled and a peremptory writ of mandamus denied.

[Footnote 1]

12 Stat. at Large 276.

[Footnote 2]

16 *id.* 250.