Caperton Vs. Bowyer

Caperton Vs. Bowyer

SooperKanoon Citation : sooperkanoon.com/82150

Court : US Supreme Court

Decided On : 1871

Appeal No. : 81 U.S. 216

Appellant : Caperton

Respondent : Bowyer

Judgement :

Caperton v. Bowyer - 81 U.S. 216 (1871)
U.S. Supreme Court Caperton v. Bowyer, 81 U.S. 14 Wall. 216 216 (1871)

Caperton v. Bowyer

81 U.S. (14 Wall) 216

ERROR TO THE SUPREME COURT OF APPEALS

OF THE STATE OF WEST VIRGINIA

SYLLABUS

1. A southern state passed in 1865 a statute of limitations enacting that in computing the time in which any civil suit, proceeding, or appeal should be barred by any statute of limitation, the term of time from the 17th April, 1861, to the 1st

March, 1865, should not be computed. It then passed another enacting that the time from 1 March, 1865, to 27 February, 1866, should not be. The courts of that state were closed to loyal suitors by the rebellion between the 17th April, 1861, and the 27th February, 1866. On suit brought in May, 1866, for a cause of action which arose in 1862, and which but for this deduction of time would have been barred in one year from 1862, by older statutes of limitation, the defendant asked the court to charge that if the jury believed that the right to bring the suit accrued more than one year before the

Page 81 U. S. 217

1st of March, 1865, their verdict should be for the defendant. *Held,* in view of previous decisions of this Court and of congressional legislation (referred to *infra,* p. 81 U. S. 218), that it could not be inferred that the Court meant to declare the state statutes consistent with the federal Constitution, when it simply told the jury that in computing the statute of limitations they ought to exclude the time between the 17th of April, 1861, and the 27th February, 1866, and that if the cause of action arose in 1862, it was not barred.

2. Although a certificate of the presiding justice of the highest court of a state that there was drawn in question the validity of an act of the state on the ground that it was repugnant to the Constitution of the United States and that the decision was in favor of its validity is entitled to much weight, yet where evidently that court had nothing before it but an exception taken and signed in the subordinate court which was clearly insufficient to raise such a question, or to show that it was decided in a way to give this Court jurisdiction, such certificate is not conclusive to show that a federal question was raised in the case.

When a certificate of the presiding justice of the highest court of a state mentions that a certain federal question was raised and decided in his court, and does not state that any other was, this silence justifies the conclusion that none other was, especially when a decision on the matter where a second federal question is alleged to have been passed on may have been well decided on many other grounds not federal.

3. A federal question cannot be assumed to have been raised and passed on in a state court so as to give jurisdiction to this Court under the 25th section when nothing appears in the record to show on what grounds the decision of the matter in which the federal question is alleged to be involved was made.

In July, 1862, the State of Virginia (with the exception of certain counties, not including that of Monroe), being in rebellion against the United States, and being so proclaimed by the President on the 1st of that month, one Caperton, provost marshal under the Confederate forces of Monroe County (in which martial law had been declared by Jefferson Davis, March 29, 1862), caused a certain Bowyer, who had remained faithful to his allegiance, to be arrested and thrown into prison, and there kept for a considerable time upon a charge of giving information to the forces of the United States.

At this time, the right to bring civil suits for false imprisonment

Page 81 U. S. 218

was limited by the Virginia Code to apparently one year. [Footnote 1]

In 1863, certain western counties of Virginia, including Monroe County, aforesaid, having formed themselves into a new state were duly received as such into the Union, and in 1865 and 1866 the new state passed two statutes, thus:

" *An Act in relation to the Statutes of Limitation, passed March 1, 1865* "

" *Be it enacted by the Legislature of West Virginia,* in computing the time in which any civil suit, proceeding or appeal shall be barred by any statute of limitations, the period from the 17th day of April, 1861, to the date of the passage of this act shall be excluded from such computation."

" *An Act in relation to the Statutes of Limitation, passed February 27, 1866* "

" *Be it enacted by the Legislature of West Virginia,* in computing the time within which any civil suit or proceeding in trespass or case shall be debarred by any statute of limitation in the Counties of Monroe [&c.;, other counties named], the

period from the first day of March, 1865, to the date of the passage of this act shall be excluded from such computation."

Prior to the dates of either of these acts -- that is to say on the 11th of June, 1864 -- the Congress of the United States passed "An act in relation to the limitation of actions in certain cases," thus:

"That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who by reason of resistance to the execution of the laws of the United States or the interruption of the ordinary course of judicial proceedings cannot be served with process for the commencement of such action or arrest of such person;"

"Or whenever, after such action, civil or criminal, shall have accrued, such person cannot, by reason of such resistance of the laws or such interruption of judicial proceedings be served with process for the commencement of the action;"

"The time during which such person shall be beyond the

Page 81 U. S. 219

reach of judicial process, shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

And in December Term, 1867, this Court, in *Hanger v. Abbott,* [Footnote 2] decided that the time during which the courts in the then lately rebellious states were closed to citizens of the loyal states was, in suits brought by them afterwards, to be excluded from the computation of the time fixed by statutes of limitation within which such suits may be brought -- a principle subsequently affirmed, and perhaps extended, A.D. 1870, in *The Protector* [Footnote 3] and in *Levy v. Stewart.* [Footnote 4]

The rebellion being declared, by the President's proclamation of April 2, 1866, suppressed in Virginia, and the courts of West Virginia open to all persons, Bowyer, on the 11th May, 1866, sued Caperton in the state Circuit Court of Monroe County in trespass for the false imprisonment which as Confederate

provost marshal he had made in 1862, during the rebellion.

Caperton having demurred to the declaration and pleaded the general issue, put in six special pleas:

1st. That the action was barred because not brought within one year next after the cause of it accrued.

2d. That it was not so brought within two years.

3d. That more than two years had elapsed after the right of action accrued, and before March 1, 1865, when the first of the above-quoted statutes of West Virginia was passed.

4th. That at the time of the supposed grievance, both the plaintiff and defendant were citizens and residents of Virginia, and that the whole time of limitation prescribed for this action by the law of that state had run while the defendant resided in it, and before the said 1st of March, 1865, when the act of that date was passed.

Then came a plea, thus:

"5th. That before the time of the supposed grievances, the defendant had, on oath made in conformity with the law

Page 81 U. S. 220

long existing in the Commonwealth of Virginia, declared himself a citizen of the said commonwealth and solemnly swore that he would be faithful and true to the said commonwealth, and would support the constitution thereof so long as he continued to be a citizen of the same, and until and at and after the time of the said supposed grievances he continued to be a citizen of the same, and before and at the time of the said supposed grievances the said commonwealth was engaged in actual war, and an army consisting of a large number, to-wit, __ thousand soldiers, was raised within the then territory of the said commonwealth, for the safeguard and defense of the same against those who then, by those then

acting at the City of Richmond, in said commonwealth, as the authorities of said commonwealth, were deemed the enemies thereof; and during the time that the said army was in actual service within said territory for such safeguard and defense, and while the then actual authorities of said commonwealth and those in the same confederacy therewith were not only belligerents, but recognized as such by the government of the United States, General H. Heth, the general and commander of troops forming part of said army in actual service, did, under the authority of the executive power then in fact exercised over said commonwealth and over those in the same confederacy therewith, appoint this defendant provost marshal of the County of Monroe; and while this defendant was such provost marshal under said appointment, the plaintiff was, without any special order from or instigation of this defendant, taken and imprisoned upon a charge of harboring deserters, and was, by this defendant, discharged from imprisonment upon his giving surety for his good behavior; and all the supposed grievances whereof the plaintiff has complained, so far as this defendant did or procured, caused, directed, ordered, instigated others to do the same, were acts done while this defendant was such provost marshal under said appointment, and done in what was then in fact the territory of said commonwealth, and done in pursuance of the executive authority, which then in fact governed in said commonwealth,

Page 81 U. S. 221

and in accordance with such laws, rules, and regulations as then in fact prevailed therein."

This was followed by another plea, the

6th. That on the 7th September, 1865, the President had granted him, the defendant, a full pardon and amnesty for all offenses by him committed, arising from participation, direct or implied, in the said rebellion, and the defendant took the oath prescribed in the proclamation of the President, dated May 29, 1865, and the defendant duly notified the Secretary of state in writing that he had received and accepted the said pardon. And further, that all the grievances complained of in the declaration were acts arising from participation, direct and implied, in the said

rebellion.

The court sustained the declaration, and issue being tendered to the country on the general issue and the first three of the special pleas, and the court having, without assigning any reasons, decided the three remaining ones to be bad, on general demurrer, the case came on to be tried.

The plaintiff having shown the imprisonment, the defendant offered in evidence, "both in mitigation of damages and as justification of the acts complained of," the already-mentioned pardon of the President. This pardon had five conditions annexed to it: (1) that Caperton should take a certain oath; (2) that he should not acquire slaves &c.; (3) that he should pay certain costs; (4) that he should not claim certain property, or its proceeds; (5) that he should notify the Secretary of state in writing that he accepted the pardon. It was shown that Caperton had given the required notice and had taken the required oath. What had been done in the other matters did not appear. The court excluded the pardon.

The defendant then requested the court to charge as follows:

"1st. If the jury believe that this action was not brought within one year next before the right to bring the same accrued, the verdict should be for the defendant."

"2d. If the jury believe that the right to bring this action accrued more than one year before the 1st day of March, 1865,

Page 81 U. S. 222

and that this action was not brought until after the 1st day of March, 1865, the verdict should be for the defendant."

The court refused so to charge, and charged thus:

"In computing the time of the statute of limitations in this cause, the jury ought to exclude from the computation all that term of time between the 17th of April, 1861, and 27th of February, 1866, and if the cause of action arose in 1862, as alleged in the declaration, then it is not barred by either of the statutes of limitations upon

which issues have been joined."

Verdict and judgment having, on the 25th July, 1867, gone for the plaintiff, the judgment was taken from the Circuit Court of Monroe County, where the suit was brought, to the Supreme Court of Appeals of the State of West Virginia. All that now was shown by the record as to the action of that court or the reasons of it appeared in a certificate from its clerk, thus:

"The court having maturely considered the transcript of the record of the judgment aforesaid, together with the arguments of counsel thereupon, is of opinion, for reasons stated in writing and filed with the record, that there is no error in said judgment; therefore it is considered by the court that the judgment aforesaid be affirmed, and that the defendant in error recover from the plaintiff in error damages according to law, together with his costs about his defense in this behalf expended."

"And the court doth certify that in the aforesaid judgment there was drawn in question the validity of the statute of the State of West Virginia, passed March 1st, 1865, entitled 'An act in relation to the statutes of limitation,' on the ground that it was repugnant to the Constitution of the United States, and the decision of this, the highest court of law and equity in this state in which a decision in said suit could be had, was in favor of the validity of said statute."

From the affirmance by the Supreme Court of Appeals, the case was brought here on the assumption that it came within the 25th section of the Judiciary Act, quoted *supra,* pp. 81 U. S. 5 -6. A motion to dismiss for want of jurisdiction having been made, the question of jurisdiction was argued.

Page 81 U. S. 231

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Special jurisdiction only is given to this Court by virtue of a writ of error to a state court, and unless the record shows that the case falls within the conditions annexed to the right of a party to invoke the exercise of the jurisdiction, the writ of

error must be dismissed. Primarily those conditions are two:

(1) That it shall appear that someone of the questions specified in the twenty-fifth section of the Judiciary Act, or the second section of the amendatory act, did arise in the case.

(2) That the question which did so arise in the case was decided by the court in the way therein required to give this Court jurisdiction to reexamine the question, and the rule is settled that unless both those things appear, the jurisdiction does not attach. [Footnote 5]

On the sixth day of August, 1866, the plaintiff brought an action of trespass for false imprisonment against the defendant in the state court, in which he alleged that the defendant, on the twenty-ninth of June, 1862, with force and arms, seized the plaintiff and incarcerated him in a dungeon, and imprisoned him there for twenty-four days, separated from his home and family, and that he subjected him to great danger and many hardships, and seriously impaired his health and put him to great pain and distress, both of body and mind.

Service having been made the defendant appeared and demurred to the declaration, and filed seven other pleas, as follows: (1) that he was not guilty in manner and form as alleged; (2) that the action was not brought within one year next after the right to bring the same accrued; (3)

Page 81 U. S. 232

that the action was not brought within two years next after the right to bring the same accrued; (4) that more than two years had elapsed after the right to bring the action accrued, and before the present limitation act of the state was passed; (5) that the plaintiff and defendant were citizens of the same state, and that the whole time prescribed as a limitation had elapsed before the present act modifying the preexisting law was passed; (6) that the supposed grievances were acts done by the defendant as provost marshal under the military orders of the state, in time of actual war, as more fully set forth in the plea; (7) that the President, on the seventh of September, 1865, granted the defendant a full pardon and amnesty for all

offenses by him committed, arising from participation, direct or indirect, in the rebellion.

Subsequently the plaintiff filed a joinder to the demurrer, joined the issue tendered under the plea of not guilty, and filed a replication to the six special pleas as follows: (1) that the action is not barred as alleged, and tendered an issue to the country; (2) that the action is not barred as alleged in the second special plea, and also tendered an issue to the country; (3) that the action is not barred as alleged in the third special plea, and tendered an issue to the country; (4) plaintiff filed a demurrer to the fourth, fifth, and sixth special pleas, and the defendant demurred to the replication of the plaintiff to the defendant's first special plea.

All the issues of law were determined by the court in favor of the plaintiff, that is, the court overruled the demurrer to the declaration, sustained the demurrers of the plaintiff to the fourth, fifth, and sixth special pleas of the defendant, and also overruled the demurrer or the defendant to the plaintiff's replication to the defendant's first special plea, which left nothing for trial but the issues of fact, which were submitted to a jury, and the jury found all the issues of fact in favor of the plaintiff, and that the defendant was guilty as alleged in the declaration, and assessed damages for the plaintiff in the sum of eight hundred and thirty-three dollars. Judgment was rendered for the plaintiff, and

Page 81 U. S. 233

the defendant excepted and removed the case into the Court of Appeals of the state, where the judgment was in all things affirmed. Whereupon the defendant sued out the present writ of error and removed the cause into this Court for reexamination under the twenty-fifth section of the Judiciary Act.

Jurisdiction, it is claimed by the defendant, may be sustained in this case upon three grounds, which will be separately considered: (1) because the judge told the jury that, in computing the time of the statute of limitations, they ought to exclude from the computation all that period of time between the seventeenth of April, 1861, and the twenty-seventh of February, 1866, as that ruling, as he contends,

was equivalent to a ruling that the recent acts passed by the state upon that subject are valid laws, which he denies; (2) because the court sustained the demurrer of the plaintiff to the fifth special plea of the defendant, setting up belligerent rights as a defense to the action; (3) because the court excluded the pardon granted to him by the President when offered in evidence under the plea of not guilty.

1. Two acts of limitation have recently been passed by the state legislature. By the first, which was passed on the first day of March, 1865, it was enacted that, in computing the time within which any civil suit, proceeding, or appeal, shall be barred by any statute of limitations, the period from the seventeenth day of April, 1861, to the date of the passage of the act, shall be excluded from such computation. [Footnote 6] By a subsequent act passed on the twenty-seventh of February, 1866, it is provided that, in computing the time within which any civil suit, or proceeding in trespass or case, shall be barred by any statute of limitations in certain counties, including the county in which this suit was brought, the period from the first day of March, 1865, to the date of the passage of the act shall be excluded from such computation. [Footnote 7]

Two prayers for instruction upon that subject were also presented by the defendant which were refused by the court,

Page 81 U. S. 234

but it is not necessary to reproduce them, as the question involved is as fully raised by the instruction given to the jury as by the refusal to give those instructions.

Exception was taken by the defendant to the refusal to instruct and to the instruction given, but the grounds of the exception are not stated, nor are the reasons for the ruling given by the court. Such an exception is not sufficient to show that anyone of the questions mentioned in the twenty-fifth section of the Judiciary Act was either raised or decided in the manner therein required to give this Court jurisdiction under a writ of error to a state court. Unless both those

things appear; that is, unless it appears that the question was raised and that it was decided in the way required, the jurisdiction does not attach, and it is clear that the exception is not sufficient to show that either occurred at the trial. Nothing further was done upon the subject in the court of original jurisdiction, but the cause was removed into the Court of Appeals of the state, where the judgment was affirmed. Appended to the judgment in that court is a certificate signed by the clerk and certified by the presiding justice of the court, that there was drawn in question the validity of the act of the state passed March, 1865, in relation to the statute of limitations, on the ground that it was repugnant to the Constitution of the United States, and that the decision of the highest court of law and equity in the state was in favor of its validity. Evidently that court had before it nothing but the exception taken and signed in the subordinate court, which is clearly insufficient to raise such a question or to show that it was decided in a way to give this Court jurisdiction in such a case. Undoubtedly such a certificate is entitled to much weight, as showing that the question was decided by the court which gives it, and in the manner required to give jurisdiction, but it is not conclusive to show that the question was raised in the case, as the latter question may depend upon the construction of the pleadings, or, as in this case, upon the proper construction of the language of the bill of exceptions.

Necessary implication, it is said, will suffice, which may

Page 81 U. S. 235

be granted, but it can hardly be said in this case that it must necessarily be implied that the judge instructed the jury that the state statute was consistent with the federal Constitution. What he did tell the jury was that a certain period of time should be excluded from the computation in determining the issues of fact presented by the pleadings, whether the action was barred by the one or two years' limitations. Three years before that, this Court had decided that the period during which the courts of the state where the defendant resided were closed by reason of the insurrection and rebellion should not be deemed and taken as a part of such a limitation. [Footnote 8]

Congress allowed one year from the date of the act to the time allowed for suing out writs of error and taking appeals in districts where the sessions of the courts had been suspended or interrupted by insurrection or rebellion, and this Court decided that the act of Congress was a remedial and not a restraining one, and applied the rule laid down in the prior case that in computing the five years allowed for the purpose, the period for which the courts were closed by insurrection or rebellion must be excluded from the computation. [Footnote 9] Provision was also made by Congress that the time during which any person was beyond the reach of legal process by reason of resistance to the execution of the laws or the interruption of the ordinary course of judicial proceedings shall not be deemed or taken as any part of the time limited by law for the commencement of any action, civil or criminal. Objection was taken to the validity of that provision, but this Court unanimously held it to be constitutional. [Footnote 10]

Prior to these decisions, founded upon acts of Congress, this Court had decided, as before remarked, that the period during which the courts were closed by the insurrection must be excluded from every such computation, and this

Page 81 U. S. 236

Court has twice since that decided in the same way, every Justice of the Court concurring in the opinion. [Footnote 11] Enemy creditors cannot prosecute their claims subsequent to the commencement of hostilities, as the rule is universal and peremptory that they are totally incapable of sustaining any action in the tribunals of the other belligerent. Absolute suspension of the right to sue and prohibition to exercise it exist during war by the law of nations, but the restoration of peace removes the disability and opens the doors of the courts.

Tested by these considerations, this Court is of the opinion that the judge of the state court may well have followed the decisions of this Court in the instruction he gave to the jury without having intended to express any opinion as to the constitutionality of the state law, and that it does not appear with sufficient certainty that the supposed federal question did arise in the case, or that it was decided in the manner required to give this Court jurisdiction under a writ of error

to a state court.

2. Next ground assumed is that the court erred in sustaining the demurrer of the plaintiff to the fifth special plea of the defendant, setting up belligerent rights as a defense to the action.

Unquestionably it does appear that the plaintiff demurred to that plea and that the court sustained the demurrer to the plea, but it nowhere appears that the court held the plea bad for the reason supposed by the defendant. On the contrary, the plea is very defectively drawn, and it may be that it was held bad for many other sufficient reasons, and the fact that the certificate filed by the chief justice makes no mention of this point justifies the conclusion that it was not decided by the court of last resort. Questions presented in a subordinate court are frequently waived in the appellate court, and it is plain law that questions not presented in the court of last resort do not give jurisdiction in a case like the one before the Court. Such a question may be raised in a

Page 81 U. S. 237

bill of exceptions, but sufficient of the proceedings must be stated to show not only that it was raised, but that it was decided in the manner required to give the jurisdiction.

3. All that remains to be considered is the question respecting the pardon. By the bill of exceptions it appears that the defendant offered the pardon, both in mitigation of damages and as a justification of the alleged wrongful acts, and it appears that the plaintiff objected to the introduction of the instrument and that the court sustained the objection, and that the pardon was excluded. Enough appears to show for what purpose the pardon was offered, but nothing appears to show upon what grounds it was rejected at the trial or that the question was ever examined or decided by the Court of Appeals. Five conditions are embodied in the pardon, but the record shows that the defendant complied with the first and fifth, and it does not show that he has ever violated anyone of the others. No mention is made of that ruling in the certificate of the chief justice, nor is there anything in the

record to show that the exception was presented to the Court of Appeals, unless that may be inferred from the fact that the Court of Appeals found that there was no error in the record and affirmed the judgment. Questions not decided in the state court because not raised or presented by the complaining party will not be reexamined in this Court on a writ of error sued out under the twenty-fifth section of the Judiciary Act. [Footnote 12] Such is the settled practice, and the act of Congress provides that it must appear that the question presented for decision in this Court was raised in the state court, and that the decision of the state court was given as required by that section. [Footnote 13] Repeated decisions have established that rule, and inasmuch as the point has been several times ruled at the present session, we forbear to extend the discussion.

Dismissed for want of jurisdiction.

[Footnote 1]

Code of Virginia, 1860, p. 638, 11.

[Footnote 2]

73 U. S. 6 Wall. 532.

[Footnote 3]

76 U. S. 9 Wall. 687.

[Footnote 4]

78 U. S. 11 Wall. 244.

[Footnote 5]

1 Stat. at Large 85; 14 *id.* 386.

[Footnote 6]

Sess.Acts of West Virginia, 1865, p. 72.

[Footnote 7]

Ib., 1866, p. 92.

[Footnote 8]

Hanger v. Abbott, 6 Wall. 534.

[Footnote 9]

14 Stat. at Large 545; *The Protector,* 9 Wall. 687.

[Footnote 10]

13 Stat. at Large 123; *Stewart v. Kahn,* 11 Wall. 500.

[Footnote 11]

Levy v. Stewart, 11 Wall. 249; *Steinbach v. Stewart,* 11 Wall. 572.

[Footnote 12]

Hamilton Co. v. Massachusetts, 6 Wall. 636.

[Footnote 13]

Steines v. Franklin County, supra, p. 81 U. S. 15 .