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American Insurance Company v. Canter

26 U.S. (1 Pet.) 511

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF SOUTH CAROLINA

Syllabus

The Constitution of the United States confers absolutely on the government of the Union the power of making war and of making treaties. Consequently, that government possesses the power of acquiring territory either by conquest or by treaty.

The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose. On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it, and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state.

The treaty with Spain by which Florida was ceded to the United States is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. They do not, however, participate in political power; they do not share in the government until Florida shall become a state. In the meantime, Florida continues to be a territory of the United States, governed by virtue of that clause in the Constitution which empowers "Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States."

The powers of the Territorial Legislature of Florida extend to all rightful objects of legislation, subject to the restriction that their laws shall not be "inconsistent With the laws and Constitution of the United States."

All the laws which were in force in Florida while a province of Spain, those excepted which were political in their character, which concerned the relations between the people and their sovereign, remained in force until altered by the government of the United States. Congress recognizes this principle by using the words "laws of the territory now in force therein." No laws could then have been in force but those enacted by the Spanish government. If among them there existed a law on the subject of salvage, and it is scarcely possible there should not have been such a law, jurisdiction over it was conferred by the act of Congress relative to the Territory of Florida on the superior court, but that jurisdiction was not exclusive. A territorial act conferring jurisdiction over the same cases as an inferior court would not have been inconsistent with the seventh section of the act, vesting the whole judicial power of the territory in two superior courts and in such inferior courts and justices of the peace as the legislative council of the territory may from time to time establish.

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The eleventh section of the act declares

"That the laws of the United States relating to the revenue and its collection, and all other public acts not inconsistent or repugnant to the act, shall extend to and have full force and effect in the Territory of Florida."

The laws which are extended to the territory by this section were either for the punishment of crimes or for civil purposes. Jurisdiction is given in all criminal cases by the seventh section, but in civil cases that section gives jurisdiction only in those which arise under and are cognizable by the laws of the territory. Consequently all civil cases arising under the laws which are extended to the territory by the eleventh section are cognizable in the territorial courts by virtue of the eighth section, and in those cases the superior courts may exercise the same jurisdiction as is exercised by the Court for the Kentucky District.

The Constitution and laws of the United States give jurisdiction to the district courts over all cases in admiralty, but jurisdiction over the case does not constitute the case itself.

The Constitution declares that

"The judicial power shall extend to all cases in law and equity arising under it, the laws of the United States and treaties made or which shall be made under their authority, to ail cases affecting ambassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction."

The Constitution certainly contemplates these as three *distinct classes of cases,* and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two. The discrimination made between them is conclusive against their identity.

A case in admiralty does not in fact arise under the Constitution or laws of the United States. These cases are as old as navigation itself, and the law admiralty and maritime, as it existed for ages, is applied by our courts to the cases as they arise. It is not, then, to the eighth section of the territorial act that we are to look for the grant of admiralty and maritime jurisdiction in the territorial courts of Florida. Consequently, it that jurisdiction is exclusive, it is not made so by the reference in the act of Congress to the

District Court of Kentucky.

The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts in which the judicial powers conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right, of sovereignty which exists in the government or in virtue of that clause which enables Congress to make laws regulating the territories belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the Third Article of the Constitution, but is conferred by Congress in the exercise of its powers over the territories of the United States.

Although admiralty jurisdiction can be exercised in the states in those courts only which are established in pursuance of the Third Article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and state governments.

The act of the Territorial Legislature of Florida erecting a court which proceeded under the provisions of the law to decree for salvage the sale of a cargo of a vessel which had

been stranded, and which cargo had been brought within the territorial limits is not inconsistent with the laws and Constitution of the United States, and is valid, and consequently a sale of the property made in pursuance of it changed the property.

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The libel filed in this cause in the District Court of South Carolina on 18 April, 1825, alleged that 584 bales of cotton insured by the libellants were shipped on board the ship *Point a Petre* on a voyage from New Orleans to Havre de Grace in France, and was in February, 1825, wrecked on the coast of Florida, from which it was saved and carried into Key West in the Territory of Florida, where it was sold, without any previous adjudication by a court of competent jurisdiction, for the ostensible purpose of satisfying a claim for salvage, amounting to seventy-six percent of the property saved. That the cotton thus insured was abandoned to the underwriters, the libellants, and the abandonment was accepted by them on 10 March, 1825. That part of the cargo, amounting to one hundred and forty bales, subsequently arrived in the port of New York and was there proceeded against by the libellants as their property under the abandonment. That another part of the cargo, amounting to between 300 and 356 bales, had arrived in the port of Charleston, within the jurisdiction of the court, in the possession of one David Canter, and was fraudulently sold in Charleston at auction on 13 April, 1825. Restitution of this last-mentioned part was therefore prayed by the libellants, and process was issued against the said Canter *in personam.*

The marshal returned to the warrant that he had taken 160 bales of cotton, and the person of Canter. 54 bales of the cotton, specifically brought into court, were ordered to be sold and the proceeds paid into the registry, and the supposed value of the remainder in dispute, to be secured by stipulation.

David Canter filed his answer claiming 356 bales of cotton as a *bona fide* purchaser under a sale at public auction at Key West by virtue of the decree of a certain court consisting of a notary and five jurors, proceeding under an Act of the Governor and Legislative Council of Florida passed 4 July, 1823, which decree awarded to the salvors seventy-six percent on the net proceeds of sale.

The testimony of witnesses was taken and other evidence produced relating to the title of the libellants under the insurances and abandonments thereon and to the proceedings in the court at Key West.

The district judge pronounced the proceedings in the court at Key West a nullity, but decreed restitution to the libellants of 39 bales of the cotton only, deducting a salvage of

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fifty percent, considering the evidence of the identity of the residue as insufficient to establish their proprietary interest.

The libellants and claimant both appealed from this decree to the circuit court.

Further testimony was taken in the circuit court, and at the hearing the decree of the district court was reversed and the entire cotton decreed to the claimant with costs upon the ground that the proceedings of the court at Key West were legal and transferred the property to the alleged purchaser under them.

From this decree the libellants appealed to this Court.

The documents exhibited and evidence taken in the case showed that three 333 bales of the cotton on board the *Point a Petre* were insured by the American, and 351 by the Ocean office. The whole cargo of the ship consisted of 891 bales, but to whom the other 317 bales belonged did not appear. The ship sailed on the voyage insured on 17 February, 1825, and was wrecked on Carysforth Reef on the east coast of West Florida, about eight miles from the shore. She filled with water and was abandoned by the captain and crew.

In the depositions taken in the cause it was stated that when the vessel was first seen, she was filled with water, abandoned, bilged, and lying on her broadside. The cotton was taken out of her, hove into the sea, rafts made of it, towed inside of the reef, and then put on board of vessels. The captain of the ship was picked up on the shore with his men about fourteen miles from the wreck, and he went with the salvors to Key West, where the property saved was carried, and the proceedings for salvage were at Key West, carried on, as was alleged, with the cooperation and concurrence of the master of the ship.

The danger in saving the property was said to have been very great, the weather to have been stormy, some of the men were injured, and the saving was done during the night as well as the day; most of the cotton was much injured.

After the sale, the agent of the appellants, Mr. Ogden, came on from New York to Key West for the purpose of attending the sale, and he expressed his willingness to pay to the purchasers of the cotton a considerable sum beyond what had been paid for it at the sale.

It was also in evidence that the marks on the cotton were defaced, and that the efforts to ascertain the particular marks on that imported into Charleston by the appellee were to a great extent without success. A large portion of the cotton brought to Charleston by the claimant was sold at auction as

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damaged cotton. An agreement between the two insurance companies, the appellants, was made previous to the institution of the suit that the same should be for their joint benefit. David Canter, the appellee, claimed 356 bales of the cotton as a *bona fide* purchaser under the decree of the court of Key West, instituted by and proceeding under a law of the Legislative Council of Florida passed 4 July, 1823, which decree awarded seventy-six percent to the salvors of the net proceeds of the sale.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.:

The plaintiffs filed their libel in this cause in the District Court of South Carolina to obtain restitution of 356 bales of cotton, part of the cargo of the ship *Point a Petre,* which had been insured by them on a voyage from New Orleans to Havre de Grace in France. The*Point a Petre* was wrecked on the coast of Florida, the cargo saved by the inhabitants, and carried into Key West, where it was sold for the purpose of satisfying the salvors by virtue of a decree of a court consisting of a notary and five jurors which was erected by an act of the Territorial Legislature of Florida. The owners abandoned to the underwriters, who, having accepted the same, proceeded against the property, alleging that the sale was not made by order of a court competent to change the property.

David Canter claimed the cotton as a *bona fide* purchaser under the decree of a competent court which awarded seventy-six percent to the salvors on the value of the property saved.

The district judge pronounced the decree of the territorial court a nullity and awarded restitution to the libellants of such part of the cargo as he supposed to be identified by the evidence, deducting therefrom a salvage of fifty percent

The libellants and claimant both appealed. The circuit court reversed the decree of the district court and decreed the whole cotton to the claimant with costs on the ground that the proceedings of the court at Key West were legal, and transferred the property to the purchaser.

From this decree the libellants have appealed to this Court.

The cause depends mainly on the question whether the property in the cargo saved was changed by the sale at Key West. The conformity of that sale to the order under which it was made has not been controverted. Its validity has been denied on the ground that it was ordered by an incompetent tribunal.

The tribunal was constituted by an Act of the Territorial Legislature of Florida passed on 4 July, 1823, which is inserted in the record. That act purports to give the power which has been exercised; consequently the sale is valid if the territorial legislature was competent to enact the law.

The course which the argument has taken will require that,

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in deciding this question, the Court should take into view the relation in which Florida stands to the United States.

The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory either by conquest or by treaty.

The usage of the world is if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose. On such transfer of territory, it has never been held that the relations of the inhabitants with each

other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it, and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state.

On 2 February, 1819, Spain ceded Florida to the United States. The 6th article of the treaty of cession contains the following provision:

"The inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the federal Constitution and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States."

This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition independent of stipulation. They do not, however, participate in political power; they do not share in the government till Florida shall become a state. In the meantime, Florida continues to be a territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress "to make all needful rules and regulations, respecting the territory or other property belonging to the United States."

Perhaps the power of governing a territory belonging to the United States which has not, by becoming a state, acquired the means of self-government may result necessarily from the facts that it is not within the jurisdiction of any particular state and is within the power and jurisdiction of the United

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States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned. In execution of it, Congress, in 1822, passed "an act for the establishment of a territorial government in Florida," and, on 3 March, 1823, passed another act to amend the act of 1822. Under this act, the territorial legislature enacted the law now under consideration.

The 5th section of the act of 1823 creates a territorial legislature which shall have legislative powers over all rightful objects of legislation, but no law shall be valid which is inconsistent with the laws and Constitution of the United States.

The 7th section enacts

"That the judicial power shall be vested in two superior courts and in such inferior courts and justices of the peace as the legislative council of the territory may from time to time establish."

After prescribing the place of cession and the jurisdictional limits of each court, the act proceeds to say

"Within its limits herein described, each court shall have jurisdiction in all criminal cases and exclusive jurisdiction in all capital offenses and original jurisdiction in all civil cases of the value of one hundred dollars, arising under and cognizable by the laws of the territory now in force therein or which may at any time be enacted by the legislative council thereof."

The 8th section enacts

"That each of the said superior courts shall moreover have and exercise the same jurisdiction within its limits in all cases arising under the laws and Constitution of the United States which, by an act to establish the judicial courts of the United States approved 24 September, 1789, and an act in addition to the act entitled an act to establish the judicial courts of the United States, approved 2 March, 1793, was vested in the Court of Kentucky District."

The powers of the territorial legislature extend to all rightful objects of legislation, subject to the restriction that their laws shall not be "inconsistent with the laws and Constitution of the United States." As salvage is admitted to come within this description, the act is valid unless it can be brought within the restriction.

The counsel for the libellants contend that it is inconsistent with both the law and the Constitution; that it is inconsistent with the provisions of the law by which the territorial government was created, and with the amendatory act of March, 1823. It vests, they say, in an inferior tribunal a jurisdiction, which is by those acts vested exclusively in the superior courts of the territory.

This argument requires an attentive consideration of the sections which define the jurisdiction of the superior courts.

The 7th section of the act of 1823 vests the whole judicial power of the territory "in two superior courts, and in such inferior courts and justices of the peace as the legislative council of the territory may from time to time establish." This general grant is common to the superior and inferior courts, and their jurisdiction is concurrent except so far as it may be made exclusive in either by other provisions of the statute. The jurisdiction of the superior courts is declared to be exclusive over capital offenses; on every other question over which those courts may take cognizance by virtue of this section, concurrent jurisdiction may be given to the inferior courts. Among these subjects are

"all civil cases arising under and cognizable by the laws of the territory now in force therein or which may at any time be enacted by the legislative council thereof."

It has been already stated that all the laws which were in force in Florida while a province of Spain, those excepted which were political in their character, which concerned the relations between the people and their sovereign, remained in force, until altered by the government of the United States. Congress recognizes this principle by using the words "laws of the territory now in force therein." No laws could then have been in force but those enacted by the Spanish government. If among these a law existed on the subject of salvage, and it is scarcely possible there should not have been such a law, jurisdiction over cases arising under it was conferred on the superior courts, but that jurisdiction was not exclusive. A territorial act conferring jurisdiction over the same cases on a inferior court would not have been inconsistent with this section.

The 8th section extends the jurisdiction of the superior courts in terms which admit of more doubt. The words are

"That each of the said superior courts shall moreover have and exercise the same jurisdiction within its limits in all cases arising under the laws and Constitution of the United States which, by an act to establish the judicial courts of the United States, was vested in the Court of the Kentucky District."

The 11th section of the act declares

"That the laws of the United States relating to the revenue and its collection and all other public acts of the United States not inconsistent or repugnant to this act shall extend to and have full force and effect in the territory aforesaid."

The laws which are extended to the territory by this section were either for the punishment of crime or for civil

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purposes. Jurisdiction is given in all criminal cases by the 7th section, but in civil cases, that section gives jurisdiction only in those which arise under and are cognizable by the laws of the territory; consequently all civil cases arising under the laws which are extended to the territory by the 11th section are cognizable in the territorial courts by virtue of the 8th section, and in those cases the superior courts may exercise the same jurisdiction as is exercised by the court for the Kentucky district.

The question suggested by this view of the subject, on which the case under consideration must depend, is this:

Is the admiralty jurisdiction of the district courts of the United States vested in the superior courts of Florida under the words of the 8th section, declaring that each of the said courts "shall moreover have and exercise the same jurisdiction within its limits, in all cases arising under the laws and Constitution of the United States," which was vested in the courts of the Kentucky District?

It is observable that this clause does not confer on the territorial courts all the jurisdiction which is vested in the Court of the Kentucky District, but that part of it only which applies to "cases arising under the laws and Constitution of the United States." Is a case of admiralty of this description?

The Constitution and laws of the United States give jurisdiction to the district courts over all cases in admiralty, but jurisdiction over the case does not constitute the case itself. We are therefore to inquire whether cases in admiralty, and cases arising under the laws and Constitution of the United States, are identical.

If we have recourse to that pure fountain from which all the jurisdiction of the federal courts is derived, we find language employed which cannot well be misunderstood. The Constitution declares that

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction."

The Constitution certainly contemplates these as three distinct classes of cases, and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two. The discrimination made between them in the Constitution is, we think, conclusive against their identity. If it were not so -- if this were a point open to inquiry -- it would be difficult to maintain the proposition that they are the same. A case in admiralty does not in fact arise under the Constitution or laws of the United States. These cases

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are as old as navigation itself, and the law, admiralty and maritime, as it has existed for ages is applied by our courts to the cases as they arise. It is not, *then,* to the 8th section of the territorial law that we are to look for the grant of admiralty and maritime jurisdiction to the territorial courts. Consequently, if that jurisdiction is exclusive, it is not made so by the reference to the District Court of Kentucky.

It has been contended that by the Constitution, the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and that the whole of this judicial power must be vested "in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish." Hence it has been argued that Congress cannot vest admiralty jurisdiction in courts created by the territorial legislature.

We have only to pursue this subject one step further to perceive that this provision of the Constitution does not apply to it. The next sentence declares that "the judges both of the Supreme and inferior courts shall hold their offices during good behavior." The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States. The jurisdiction with which they are invested is not a part of that

judicial power which is defined in the 3d Article of the Constitution, but is conferred by Congress in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the states in those courts only which are established in pursuance of the 3d Article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and of a state government.

We think, then, that the act of the territorial legislature erecting the court by whose decree the cargo of the *Point a Petre* was sold is not "inconsistent with the laws and Constitution of the United States," and is valid. Consequently the sale made in pursuance of it changed the property, and the decree of the circuit court awarding restitution of the property to the claimant ought to be

Affirmed with costs.