U.S. Supreme Court

STATE OF WISCONSIN v. PELICAN INS. CO., 127 U.S. 265 (1888)

127 U.S. 265

STATE OF WISCONSIN
v.
PELICAN INS. CO. OF NEW ORLEANS.

May 14, 1888

[127 U.S. 265, 269] S. Shellabarger, J. M. Wilson, and H. W. Cheynowith, for plaintiff.

[127 U.S. 265, 286] J.A. Campbell, for defendant.

Mr. Justice GRAY, after stating the facts as above, delivered the opinion of the court.

This action is brought upon a judgment recovered by the state of Wisconsin in one of her own courts against the Pelican Insurance Company, a Louisiana corporation, for penalties imposed by a statute of Wisconsin for not making returns to [127 U.S. 265, 287] the insurance commissioner of the state, as required by that statute. The leading question argued at the bar is whether such an action is within the original jurisdiction of this court. The ground on which the jurisdiction is invoked, is not the nature of the cause, but the character of the parties; the plaintiff being one of the states of the Union, and the defendant a corporation of another of those states. The constitution of the United States, as originally established, ordains in article 3, 2, that the judicial power of the United States shall extend 'to controversies between two or more states, between a state and citizens of another state, between citizens of different states between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, the foreign states, citizens, or subjects;' and that in all cases 'in which a state shall be party' this court shall have original jurisdiction. The eleventh article of amendment simply declares that 'the judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.' By the constitution, therefore, this court has original jurisdiction of suits brought by a state against citizens of another state, as well as of controversies between two states; and it is well settled that a corporation created by a state is a citizen of the state, within the meaning of those provisions of the constitution and statutes of the United States which define the jurisdiction of the

federal courts. Railroad Co. v. Railroad Co., 112 U.S. 414 , 5 Sup. Ct. Rep. 208; Paul v. Virginia, 8 Wall. 168, 178; Pennsylvania v. Bridge Co., 13 How. 518. Yet, notwithstanding the comprehensive words of the constitution, the mere fact that a state is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another state or her citizens; and a consideration of the cases in which it has heretofore had occasion to pass upon the construction and effect of these provisions of the constitution may throw light on the determination of the question before us. [127 U.S. 265, 288] As to 'controversies between two or more states.' The most numerous class of which this court has entertained jurisdiction is that of controversies between two states as to the boundaries of their territory, such as were determined before the Revolution by the king in council, and under the articles of confederation (while there was no national judiciary) by committees or commissioners appointed by congress. 2 Story, Const. 1681; New Jersey v. New York, 3 Pet. 461, 5 Pet. 284, and 6 Pet. 323; Rhode Island v. Massachusetts, 12 Pet. 657, 724, 736, 754, 13 Pet. 23, 14 Pet. 210, 15 Pet. 233, and 4 How. 591, 628; Missouri v. Iowa, 7 How. 660, and 10 How. 1; Florida v. Georgia, 17 How. 478; Alabama v. Georgia, 23 How. 505; Virginia v. West Virginia, 11 Wall. 39; Missouri v. Kentucky, Id. 395. See, also, Georgia v. Stanton, 6 Wall. 50, 72, 73. The books of reports contain but few other cases in which the aid of this court has been invoked in controversies between two states. In Fowler v. Lindsey and Fowler v. Miller, actions of ejectment were pending in the circuit court of the United States for the district of Connecticut between private citizens for lands over which the states of Connecticut and New York both claimed jurisdiction; and a writ of certiorari to remove those actions into this court as belonging exclusively to its jurisdiction was refused, because a state was neither nominally nor substantially a party to them. 3 Dall. 411. Upon a bill in equity afterwards filed in this court by the state of New York against the state of Connecticut to stay the actions of ejectment, this court refused the injunction prayed for, because the state of New York was not a party to them, and had no such interest in their decision as would support the bill. New York v. Connecticut, 4 Dall. 1, 3. This court has declined to take jurisdiction of suits between states to compel the performance of obligations which, if the states had been independent nations, could not have been enforced judicially, but only through the political departments of their governments. Thus, in Kentucky v. Dennison, 24 How. 66, where the state of Kentucky, by her governor [127 U.S. 265, 289] applied to this court, in the exercise of its original jurisdiction, for a writ of mandamus to the governor of Ohio to compel him o surrender a fugitive from justice, this court, while holding that the case was a controversy between two states, decided that it had no authority to grant the writ. And in New Hampshire v. Louisiana, and New York v. Louisiana, 108 U.S. 76 , 2 Sup. Ct. Rep. 176, it was adjudged that a state to whom, pursuant to her statutes, some of her citizens, holding bonds of another state, had assigned them in order to enable her to sue on and collect them for the benefit of the assignors, could not maintain a suit against the other state in this court. See, also, Cherokee Nation v. Georgia, 5 Pet. 1, 20, 28, 51, 75. In South Carolina v. Georgia, 93 U.S. 4 , this court, speaking by Mr. Justice STRONG, left the question open whether 'a state, when suing in this court for the prevention of a nuisance in a navigable river of the United States, must not aver and show that it will sustain some special and peculiar injury therefrom, such as would enable a private person to maintain a similar action in another court;' and dismissed the bill because no unlawful obstruction of navigation was proved. Id. 14. As to 'controversies between a state and the citizens of another state.' The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid she partiality, or suspicion of partiality, which might exist if the plaintiff state were compelled to resort to the courts of the state of which the defendants were citizens. Federalist, No. 80; Chief Justice JAY, in Chisholm v. Georgia, 2 Dall. 419, 475; 2 Story, Const. 1638, 1682. The grant is of 'judicial power,' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all.

By the law of England and of the United States the penal laws of a country do not reach beyond its own territory [127 U.S. 265, 290] except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country. Wheat. Int. Law, (8th Ed.) 113, 121. Chief Justice MARSHALL stated the rule in the most condensed form, as an incontrovertible maxim, 'the courts of no country execute the penal laws of another.' The Antelope, 10 Wheat. 66, 123. The only cases in which the courts of the United States have entertained suits by a foreign state have been to enforce demands of a strictly civil nature. The Sapphire, 11 Wall. 164; King of Spain v. Oliver, 2 Wash. C. C. 429, and Pet. C. C. 217, 276. The case of The Sapphire was a libel in admiralty, filed by the late emperor of the French, and prosecuted by the French republic, after his deposition, to recover damages for a collision between an American ship and a French transport; and Mr. Justice BRADLEY, delivering the judgment of this court sustaining the suit, said: 'A foreign sovereign, as well as any other foreign person, who has a demand of a civil nature against any person here, may

prosecute it in our courts.' 11 Wall. 167. The case of King of Spain v. Oliver, although a suit to recover duties imposed by the revenue laws of Spain, was not founded upon those laws, or brought against a person who had broken them, but was in the nature of an action of assumpsit against other persons alleged to be bound by their own contract to pay the duties; and the action failed because no express or implied contract of the defendants was proved. Pet. C. C. 286-290. The rule that the courts of no country execute the penal laws of another applies, not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penalties for any violato n of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties. If this were not so, all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment. Whart. Confl. Law, 833; [127 U.S. 265, 291] West. Pr. Int. Law, (1st Ed.) 388; Pig. Judgm. 209, 210. Lord Kames, in his Principles of Equity, cited and approved by Mr. Justice Story in his Commentaries on the Conflict of Laws, after having said: 'The proper place for punishment is where the crime is committed, and no society takes concern in any crime but what is hurtful to itself,' and recognizing the duty to enforce foreign judgments or decrees for civil debts or damages, adds. 'But this includes not a decree decerning for a penalty, because no court reckons itself bound to punish, or to concur in punishing, any delict committed extra territorium.' 2 Kames, Eq. (3d Ed.) 326, 366; Story, Confl. Law, 600, 622. It is true that if the prosecution in the courts of one country for a violation of its municipal law is in rem, to obtain a forfeiture of specific property within its jurisdiction, a judgment of forfeiture, rendered after due notice, and vesting the title of the property in the state, will be recognized and upheld in the courts of any other country in which the title to the property is brought in issue. Rose v. Himely, 4 Cranch, 241; Hudson v. Guestier, Id. 293; Bradstreet v. Insurance Co., 3 Sum. 600, 605; Pig. Judgm. 264. But the recognition of a vested title in property is quite different from the en forcement of a claim for a pecuniary penalty. In the one case a complete title in the property has been acquired by the foreign judgment; in the other, further judicial action is sought to compel the payment by the defendant to the plaintiff of money in which the plaintiff has not as yet acquired any specific right. The application of the rule to the courts of the several states and of the United States is not affected by the provisions of the constitution and of the act of congress, by which the judgments of the courts of any state are to have such faith and credit given to them in every court within the United States as they have by law or usage in the state in which they were rendered. Const. art. 4, 1; Act May 26, 1790, c. 11, (1 St. 122;) Rev. St. 905. Those provisions establish a rule of evidence, rather than of [127 U.S. 265, 292] jurisdiction. While they make the record of a judgment, rendered after due notice in one state, conclusive evidence in the courts of another state, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one state of the Union, when proved in the courts of another government, whether state or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being re- examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties. Hanley v. Donoghue, 116 U.S. 1, 4 , 6 S. Sup. Ct. Rep. 242. In the words of Mr. Justice STORY, cited and approved by Mr. Justice BRADLEY speaking for this court: 'The constitution did not mean to confer any new power upon the states, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of other states domestic judgments to all intents and purposes, but only gave a general validity, faith, and credit to them as evidence. No execution can issue upon such judgments without a new suit in the tribunals of other states. And they enjoy not the right of priority or lien which they have in the state where they are pronounced, but that only which the lex fori gives to them by its own laws in their character of foreign judgments.'S tory, Confl. Law, 609; Thompson v. Whitman, 18 Wall. 457, 462, 463. A judgment recovered in one state, as was said by Mr. Justice WAYNE, delivering an earlier judgment of this court, 'does not carry with it, into another state, the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit.' McElmoyle v. Cohen, 13 Pet. 312, 325. The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the [127 U.S. 265, 293] technical rules which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim) from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it. Louisiana v. New Orleans, 109 U.S. 285, 288 , 291 S., 3 Sup. Ct. Rep. 211; Louisiana v. St. Martin's Parish, 111 U.S. 716 , 4 Sup. Ct. Rep. 648; Chase v. Curtis, 113 U.S. 452, 464 , 5 S. Sup. Ct. Rep. 554; Boynton v. Ball, 121 U.S. 457, 466 , 7 S. Sup. Ct. Rep. 981.

The only cases cited in the learned argument for the plaintiff which tend to support the view that the courts of one state

will maintain an action upon a judgment rendered in another state for a penalty incurred by a violation of her municipal laws are Spencer v. Brockway, 1 Ohio, 259, in which an action was sustained in Ohio upon a judgment rendered in Connecticut upon a forfeited recognizance to answer for a violation of the penal laws of that state; Healy v. Root, 11 Pick. 389, in which an action was sustained in Massachusetts upon a judgment rendered in Pennsylvania in a qui tam action on a penal statute for usury; and Indiana v. Helmer, 21 Iowa, 370, in which an action by the state of Indiana was sustained in the courts of Iowa upon a judgment rendered in Indiana in a prosecution for the maintenance of a bastard child. The decision in each of those cases appears to have been mainly based upon the supposed effect of the provisions of the constitution and the act of congress as to the faith and credit due to a judgment rendered in another state, which had not then received a full exposition from this court; and the other reasons assigned are not such as to induce us to accept those decisions as satisfactory precedents to guide our judgment in the present case. From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a state and citizens of another state, or of a foreign [127 U.S. 265, 294] country, does not extend to a suit by a state to recover penalties for a breach of her own municipal law. This is shown both by the nature of the cases in which relief has been granted or sought, and by acts of congress and opinions of this court more directly bearing upon the question. The earliest controversy in this court, so far as appears by the reports of its decisions, in which a state was the plaintiff, is that of Georgia v. Brailsford. At February term, 1792, the state of Georgia filed in this court a bill in equity against Brailsford, Powell, and Hopton, British merchants and copartners, alleging that on August 4, 1782, during the Revolutionary war, the state of Georgia enacted a law confiscating to the state all the property within it (including debts due to British merchants or others residing in Great Britain) of persons who had been declared guilty or convicted, in one or other of the United States, of offenses which induced a like confiscation of their property within the states of which they were citizens, and also sequestering, and directing to be collected for the benf it of the state, all debts due to merchants or others residing in Great Britain, and confiscating to the state all the property belonging and debts due to subjects of Great Britain, and that by the operation of this law all the debts due from citizens of Georgia to persons who had been subjected to the penalties of confiscation in other states, and of British merchants and others residing in Great Britain, and of all other British subjects, were vested in the state of Georgia. The bill further alleged that one Spalding, a citizen of Georgia, was indebted to the defendants upon a bond, which by virtue of this law was transferred from the obligees, and vested in the state; that Brailsford was a citizen of Great Britain, and resided there from 1767 till after the passing of the law, and that Hopton's and Powell's property (debts excepted) had been confiscated by acts of the legislature of South Carolina; that Brailsford, Hopton, and Powell had brought an action and recovered judgment against Spalding upon this bond, and had taken out execution against him, in the circuit court of the United States for the district of Georgia, and that the parties to that [127 U.S. 265, 295] action had confederated together to defraud the state. Upon the filing of the bill, this court, without expressing any opinion upon the merits of the case, granted a temporary injunction to stay the money in the hands of the marshal of the circuit court until the title to the bond as between the state of Georgia and the defendants could be tried. 2 Dall. 402. At February term, 1793, upon a motion to dissolve that injunction, this court held that, if the state of Georgia had the title in the debt, (upon which no opinion was then expressed,) she had an adequate remedy at law by action upon the bond; but, in order that the money might be kept for the party to whom it belonged, ordered the injunction to be continued till the next term, and, if Georgia should not then have instituted her action at common law, to be dissolved. Id. 415. Such an action was brought accordingly, and was tried by a jury at the bar of this court at February term, 1794, when the court was of opinion, and so charged the jury, that the act of the state of Georgia did not vest the title in the debt in the state at the time of passing it, and that by the terms of the act the debt was not confiscated, but only sequestered, and the right of the obligees to recover it revived on the treaty of peace; and the jury returned a verdict for the defendants. 3 Dall. 1. It thus appears that in Georgia v. Brailsford the state did not sue for a penalty, or upon a judgment for a penalty, imposed by her municipal law, but to assert a title, claimed to have absolutely vested in her, not under an ordinary act of municipal legislation, but by an act of war, done by the state of Georgia as one of the United States (the congress of which had not then been vested with the power of legislating to that effect) to assist them against their common enemy by confiscating the property of his subjects; and that the only point decided by this court, except as to matters of procedure, was that the title had not vested in the state of Georgia by the act in question. In Pennsylvania v. Wheeling Bridge Co., 13 How. 518, this court, upon a bill in equity by the state of Pennsylvania against a corporation of Virginia, ordered the taking down or [127 U.S. 265, 296] heightening of a bridge built by the defendant over the Ohio river, under a statute of Virginia, which the court held to have obstructed the navigation of the river, in violation of a compact of the state, confirmed by act of congress. Id. 561. See, also, Bridge Co. v. Hatch, 125 U.S. 1, 15 , 16 S., ante, 811. All the judges who took part in the decision in the Wheeling Bridge Case treated the suit as brought to protect the property of the state of Pennsylvania. Mr. Justice MCLEAN,

delivering the opinion of the majority of the court, said: 'In the present case, the state of Pennsylvania claims nothing con ected with the exercise of its sovereignty. It asks from the court a protection of its property on the same ground and to the same extent as a corporation or individual may ask it.' 13 How. 560, 561. So, Chief Justice TANEY, who dissented from the judgment, said: 'She proceeds, and is entitled to proceed, only for the private and particular injury to her property which this public nuisance has occasioned.' Id. 589. And Mr. Justice DANIEL, the other dissenting judge, took the same view. Id. 596. Mississippi v. Johnson, 4 Wall. 475, and Georgia v. Stanton, 6 Wall. 50, were cases of unsuccessful attempts by a state, by a bill in equity against the president or the secretary of war, described as a citizen of another state, to induce this court to restrain the defendant from executing, in the course of his official duty, an act of congress alleged to unconstitutionally affect the political rights of the state. Texas v. White, 7 Wall. 700, Florida v. Anderson, 91 U.S. 667 , and Alabama v. Burr, 115 U.S. 413 , 6 Sup. Ct. Rep. 81, were suits to protect rights of property of the state. In Texas v. White the bill was maintained to assert the title of the state of Texas to bonds belonging to her, and held by the defendants, citizens of other states, under an unlawful negotiation and transfer of the bonds. In Florida v. Anderson the suit concerned the title to a railroad, and was maintained because the state of Florida was the holder of bonds secured by a statutory lien upon the road, and had an interest in an internal improvement fund pledged to secure the payment of those bonds. In Alabama v. Burr the object of the suit was to indemnify the [127 U.S. 265, 297] state of Alabama against a pecuniary liability which she alleged that she had incurred by reason of fraudulent acts of the defendants, and upon the facts of the case the bill was not maintained. In Pennsylvania v. Quicksilver Co., 10 Wall. 553, an action brought in this court by the state of Pennsylvania was dismissed for want of jurisdiction, without considering the nature of the claim, because the record did not show that the defendant was a corporation created by another state. In Wisconsin v. Duluth, 96 U.S. 379 , the bill sought to restrain the improvement of a harbor on Lake Superior, according to a system adopted and put in execution under authority of congress, and was for that reason dismissed, without considering the general question whether a state, in order to maintain a suit in this court, must have some proprietary interest that has been affected by the defendant. The cases heretofore decided by this court in the exercise of its original jurisdiction have been referred to, not as fixing the outermost limit of that jurisdiction, but as showing that the jurisdiction has never been exercised, or even invoked, in any case resembling the case at bar.

The position that the jurisdiction conferred by the constitution upon this court, in cases to which a state is a party, is limited to controversies of a civil nature, does not depend upon mere inference from the want of any precedent to the contrary, but has express legislative and judicial sanction. By the judiciary act of September 24, 1789, c. 20, 13, it was enacted that 'the supreme court shall have exclusive jurisdiction of controversies of a civil nature where a state is a party, except between a state and its citizens, and except also between a state and citizens of other states or aliens, in which latter case it shall have original but not exclusive jurisdiction.' 1 St. 80. That act, which has continued in force ever since, and is embodied in section 687 of the Revised Statutes, was passed by the first congress assembled under the constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning. Ames v. Kansas, 111 U.S. 449, 463 , 464 S., 4 Sup. Ct. Rep. 437. [127 U.S. 265, 298] In Chisholm v. Georgia, 2 Dl l. 419, decided at August term, 1793, in which the judges delivered their opinions seriatim, Mr. Justice IREDELL, who spoke first, after citing the provisions of the original constitution, and of section 13 of the judiciary act of 1789, said: 'The constitution is particular in expressing the parties who may be the objects of the jurisdiction in any of these cases, but, in respect to the subject-matter upon which such jurisdiction is to be exercised, uses the word 'controversies' only. The act of congress more particularly mentions civil controversies, a qualification of the general word in the constitution, which I do not doubt every reasonable man will think was well warranted, for it cannot be presumed that the general word 'controversies' was intended to include any proceedings that relate to criminal cases, which, in all instances that respect the same government only are uniformly considered of a local nature, and to be decided by its particular laws.' 2 Dall. 431, 432. None of the other judges suggested any doubt upon this point; and Chief Justice JAY, in summing up the various classes of cases to which the judicial power of the United States extends, used 'demands' (a word quite inappropriate to designate criminal or penal proceedings) as including everything that a state could prosecute against citizens of another state in a national court. Id. 475. In Cohens v. Virginia, 6 Wheat. 264, (decided at October term, 1821,) Chief Justice MARSHALL, after showing that the constitution had given jurisdiction to the courts of the Union in two classes of cases, in one of which, comprehending cases arising under the constitution, laws, and treaties of the United States, the jurisdiction depended on the character of the cause, and in the other comprehending controversies between two or more states, or between a state and citizens of another state, the jurisdiction depended entirely on the character of the parties, said: 'The original jurisdiction of the supreme court, in cases where a state is a party, refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and an original suit

might be [127 U.S. 265, 299] instituted in any of the federal courts; not to those cases in which an original suit might not be instituted in a federal court. Of the last description is every case between a state and its citizens, and, perhaps, every case in which a state is enforcing its penal laws. In such cases, therefore, the supreme court cannot take original jurisdiction.' Id. 398, 399. The soundness of the definition, given in the judiciary act of 1789, of the cases coming within the original jurisdiction of this court by reason of a state being a party, as 'controversies of a civil nature,' was again recognized by this court in Rhode Island v. Massachusetts, 12 Pet. 657, 722, 731, (decided at January term, 1838.)

The statute of Wisconsin, under which the state recovered in one of her own courts the judgment now and here sued on, was, in the strictest sense, a penal statute, imposing a penalty upon any insurance company of another state doing business in the state of Wisconsin without having deposited with the proper officer of the state a full statement of its property and business during the previous year. Rev. St. Wis. 1920. The cause of action was not any private injury, but solely the offense committed against the state by violating her law. The prosecution was in the name of the state, and the whole penalty, when recovered, would accrue to the state, and be paid, one-half into her treasury, and the other half to her insurance commissioner, who pays all expenses of prosecuting for and collecting such forfeitures. St. Wis. 1885, c. 395. The real nature of the case is not affected by the forms provided by the law of the state for the punishment of the offense. It is immaterial whether, by the law of Wisconsin, the prosecution must be by indictment or by action; or whether, une r that law, a judgment there obtained for the penalty might be enforced by execution, by scire facias, or by a new suit. In whatever form the state pursues her right to punish the offense against her sovereignty, every step of the proceeding tends to one end,-the compelling the offender to pay a pecuniary fine by way of punishment for the offense. [127 U.S. 265, 300] This court, therefore, cannot entertain an original action to compel the defendant to pay to the state of Wisconsin a sum of money in satisfaction of the judgment for that fine. The original jurisdiction of this court is conferred by the constitution, without limit of the amount in controversy, and congress has never imposed (if, indeed, it could impose) any such limit. If this court has original jurisdiction of the present case, it must follow that any action upon a judgment obtained by a state in her own courts against a citizen of another state for the recovery of any sum of money, however small, by way of a fine for any offense, however petty, against her laws, could be brought in the first instance in the supreme court of the United States. That cannot have been the intention of the convention in framing, or of the people in adopting, the federal constitution. Judgment for the defendant on the demurrer.