
Preston et al. v. Bracken.

SYLVESTER B. PRESTON, WILLIAM KENDALL, WILLIAM NICHOLS, AND WILLIAM T. PHILLIPS, PLAINTIFFS IN ERROR, v. CHARLES BRACKEN.

This case was decided on the same ground as the preceding case of *McNulty v. Batty* and others.

THIS was a writ of error to the Supreme Court of the late Territory of Wisconsin.

An action of ejectment was commenced at the April term, 1845, of the Iowa County Court, by the defendant in error, against the plaintiffs in error, to recover a lot of land situate in that county. The venue was afterwards changed to the county of Milwaukee. Issue having been joined, and a jury impanelled and sworn, a verdict was found for the plaintiff, upon which a judgment was entered.

On the 19th of July, 1847, the case was carried by writ of error to the Supreme Court of Wisconsin Territory, and on the 2d day of August, the judgment of the County Court was affirmed by a divided court.

Whereupon a writ of error to the Supreme Court of the Territory of Wisconsin was sued out of this court, and the citation served on the 24th of November, 1847.

Wisconsin was admitted into the Union as a state by the act of Congress approved 29th May, 1848.

The cause was submitted on printed arguments by *Mr. May*, for the plaintiffs in error, and *Mr. Walker*, for the defendant in error. As the case was determined upon the point of jurisdiction, and as the argument for the plaintiffs in error was upon the merits, and as the argument for the defendant in error on the question of jurisdiction, assumed substantially the same ground as was taken by the counsel for the defendant in error in the case of *McNulty v. Batty, et al., ante*, p. 72, the arguments are not here inserted.

Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the Supreme Court of the late Territory of Wisconsin.

The suit was an action of ejectment brought by the plaintiff *below, the defendant in error, in the second; and re- [*82 moved to the third judicial district of the territory, to recover possession of a small piece of land; and was commenced on the 15th of April, 1845.

Issue being joined between the parties, such proceedings

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were had thereon, that judgment was afterwards rendered against the defendants in the June term of said court in the year 1846.

The case was afterwards removed to the Supreme Court of the territory, and the judgment of the court below affirmed by a divided opinion at the July term of that court, to wit, on the 2d of August, 1847.

The judgment was afterwards removed to this court by a writ of error for review. The citation is signed 22d November, 1847.

The case was, therefore, pending here on the 29th of May, 1848, at the time of the admission of the territory into the Union as a state. It is one not of a Federal character, but belonging to the state judicature, and therefore falls within the decision of the case of *McNulty v. Batty* and others, just made, and the writ of error must be abated.

Order.

This cause came on to be heard on the transcript of the record from the Supreme Court of the Territory of Wisconsin, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that this writ of error be, and the same is hereby, abated.

MR. WALKER, of counsel for the defendant in error, moved the court to direct the clerk to what court the mandate, or other process prescribed by the forty-third rule of court, should be addressed. On consideration whereof, it is now here ordered by the court, that the clerk do not issue any mandate or other process in this case, but only a certified copy of the judgment this day rendered in this cause.

JACOB STRADER, JAMES GORMAN, AND JOHN ARMSTRONG,
PLAINTIFFS IN ERROR, v. CHRISTOPHER GRAHAM.

Under the 25th section of the Judiciary Act, this court has no jurisdiction over the following questions, viz., "Whether slaves who had been permitted by their master to pass occasionally from Kentucky into Ohio acquired thereby a right to freedom after their return to Kentucky?" The laws of Kentucky alone could decide upon the domestic and social condition of the persons domiciled within its territory, except so far as the powers of the states in this respect are restrained or duties and obligations imposed upon them by the Constitution of the United States.¹

¹ FOLLOWED. *Dred Scott v. Sandford*, 19 How., 452 (but see *Id.*, 462); *Van Fossen v. State*, 37 Ohio St., 320. CITED. *East Hartford v. Hartford Bridge Co.*, 10 How., 539.