State of Md

vs

Jarrett & Stanwood.

Opinion of

Tuck J.

Filed Oct 8th 1861.

State.
"
Jarrett &al

I concur in the affirmance of the order refusing the injunction, for the reasons stated in the opinion filed by the Ch. J, in behalf of the court; but I deem it unnecessary, in this case, to express any opinion on the title to the office of Comptroller —

H. H. J

30 Sides

State of Md

vs.

Jarrett & Hammond

L. T. B. G.

Opinion

Legrand J.

Argued & Sub. Oct. 1871

State of Md
vs.
Janett Harwood.

This is an appeal from an order of the Circuit Court of Harford County refusing an injunction as prayed for in an information filed by Thomas S. Alexander, Solicitor for the State of Maryland appointed by the Governor of Maryland. The information, after detailing certain facts in connection with the office of Comptroller, sets forth that Francis Claude was on the 8th day of May 1861 appointed by the Governor Comptroller to fill a vacancy occasioned by the resignation of William H. Purnell who up to that time held the office of Comptroller; and that since the said 8th day of May said Claude has been and now is in possession of the said office of Comptroller, actually occupying the Chambers in the record office building, which were appropriated to the use of the Comptroller, and possessing and using all the books of accounts and other documents and Monuments appertaining to said office including the Stamp or Seal belonging thereto, and that during all the said term has been exercising the powers and duties belonging to the said office, and is distinguished therein by A. Lingan Jarrett, and Spigg Harwood the first claiming to be the Comptroller, and the other the Treasurer of the State, refusing to ~~acknowledge~~

pay a warrant drawn by said Claude as Comptroller in favor of one Thomas J. Wilson. The information then proceeds to show that the said Harwood is aiding and abetting the said Jarrett in his proclamations and has declared that that he will disburse the moneys of the State on the warrants of the said Jarrett as Comptroller and will receive moneys into the Treasury on the warrants of the said Jarrett, and that he will not recognize the validity of any warrant which may be issued by the said Claude as Comptroller, and as a consequence of such conduct" the fiscal interests of the State are placed in imminent hazard, since it will be impossible for any one advisedly to adjust the account of any debtor of the State, or to ascertain who is creditor of the State, ~~creditor~~ &c. An injunction is asked that be issued to the said Jarrett and Harwood, strictly enjoining and restraining Jarrett from exercising any of the powers and duties attached or incident to the office of Comptroller, until the further order of this Court, and also enjoining Harwood from recognizing as valid or obeying any warrants issued or other acts done by the said Jarrett under color of title to the said office of Comptroller, and from refusing to obey the warrants issued and other acts done by the said Claude, as Comptroller.

The substantial gravamen of the bill is, that the fiscal interests of the State are in imminent hazard, and, on that ground, the interposition of a Court of Equity is invoked in the manner prayed for in the bill

This averment is distinctly and positively denied by the answer of Jarrett, and as there is no other ground on which it is pretended a Court of Equity would be justified in interposing by injunction, the whole Equity of the bill is thrown away by the answer, and therefore ~~the~~, - Conceding for the sake of the case, but without deciding it, that a Court of Equity in this State has jurisdiction in a case like the present - the unanimous opinion of this Court, that the order of the Circuit Court refusing the injunction should be affirmed.

In addition to what we have said, it may be proper to add, that in any aspect of the case made by the bill or any other which might be filed at the instance and on behalf of the same complainant, this Court would be compelled to take notice of the public Statutes Law of the State, and if that Law advertizes the Court some of the allegations of the bill are not simply as they are therein stated, then it is its duty to interpret them so as to make them read as if set out in connection with what appears in the public Statutes; and this being so, the Court are notified that the holding of the office of Comptroller by W. Purnell was not a holding by him without contest by another claimant of it, or by a general acquiescence in his title to it.

It may be very properly conceded, that if W. Purnell was rightfully in office till the [redacted] day of May 1861 without any other person having a right to divest him of said office upon qualifying according to Law that his resignation on that day created such a vacancy, as, with the Constitution, the Governor had the right to fill

by appointment, which appointment would continue until the next Election and the qualification of the party elected, and this, we take it, was the case which the framer of the information designed to present to the court; but if it be, (as it clearly is,) the duty of the court to notice the public laws, any silence on the part of the pleader in regard to them cannot be allowed to the prejudice of a party whose rights are ascertained by them. In other words, the bills must be read in connection with the subject to which it relates, and the subject in the present instance is, a title to a public office which depends upon the Constitution and laws of the State. By the latter, it is made known to the judiciary that A. Lingan Jarrett and Wm. H. Purnell severally claimed the office of Comptroller, under the election of 1859, and also, that their several claims were considered by the House of Delegates, and by it passed on and determined, and also, that the Legislature authorized and appointed a mode in and by which A. Lingan Jarrett showed bond and qualified as

Comptroller. There are facts which this court cannot ignore; and in entertaining the case, the question is, what effect have those facts on the case made by the bill, and its accompanying exhibits?

By resolution No 6 passed the 10th day of March 1860 it was declared, "that A. Lingan Jarrett, having received a majority of two thousand four hundred and ninety two of the legal votes cast in the State of Maryland, on the said second of November, for the office of Comptroller of the Treasury of the State of Maryland, he is hereby declared elected to said office".

This is clear and explicit and covers the case, if the House of Delegates had the right to pass it. Had it such right? By the 48th section of article 3rd of the Constitution it is provided that "the Legislature shall make provision for all cases of contested elections of any of the officers not herein provided for". It is nowhere else in the constitution pointed out how any contested election for

Comptroller shall be disposed of; and it follows that the provision is to be made by the Legislature. Such provision was made by act of 1850 Chapter 244, and by the 52 Section of Article 35 of the Code of public general laws — that "All Contested elections for Comptroller and Commissioner of the Land office, shall be decided by the House of Delegates.

It cannot, we think, be considered an open question at this day, that where the exclusive and sole right to decide upon a question has been confided to any tribunal, and no appeal allowed from its decision in the premises, that such decision must be taken as final and conclusive, no matter what may have been the reasons which induced such decision.

The power given to the House of Delegates under the Constitution and law is not a special or limited jurisdiction, as urged at the bar, nor liable to the reasoning applicable to the judgments of such tribunals: its jurisdiction is the only, entire and absolute one in

Case of Contested Election for the office of Comptroller. There is no other tribunal which can review it.

The resolution of the House of Delegates decided the election of A. L. Jarrett to the office; but, of itself, did not nor could it place him in it: it only placed him in a condition if he chose to do so, to qualify himself to Enter upon its duties and enjoy its emoluments. According to the Law as it then stood he had to take the proper oaths before the Governor, and obtain his approval of his official bond. Neither of these it is said he did, and it is insisted, that his failure to do so, Continued W. Purnell in his office as Comptroller under his Election in 1857 until his Successor was duly qualified. In this view we concur. We hold that W. Purnell until the 18th of May 1861 was lawfully entitled to Exercise the power and perform the functions of the office; and that on his resignation, the Governor had the

constitutional power to appoint his successor, but not necessarily for the full period intervening between the appointment and next general election, but until the party declared to be entitled to the office should duly qualify. And in this conclusion we are fully justified.

In construing a constitution it must be taken as a whole, and every part of it, as far as possible, interpreted in reference to the general and prevailing principles. So far as the Comptroller is concerned it is manifest, that it was the purpose of the authors of the Constitution to endow the people with the right to elect that officer. They contemplated the possibility of a vacancy in the office and authorized the Governor to fill it, because the general system in relation to the fiscal affairs of the State should not be interrupted. This evidently was the reason for conferring on the Governor the power to fill a vacancy: it never could have been their sole purpose to confer on him additional patronage; if that had been the case they would not have given to the people the right to Elect: they meant by the delegation of the

powers of the Governor merely to provide against the expences and necessity of another election before the regular term of holding Elections to fill the vacancy. It seems to us to be inconsistent with the whole sense and purport of the constitution to so construe it as to give to the Governor the power to defeat and put aside the will of the people as expressed by them at the polls under the Constitution and laws: they evidently contemplated in framing the first section of the 6th article no such case as the one now before us. They cannot have intended to embrace cases of contested election for Comptroller, and this, to us, is obvious, if for no other reason from the fact, that they have authorized provision to be made for the decision of such cases. They undoubtedly designed that whenever a decision should be given, that it was to have some effect and not to be treated as a mere nullity; otherwise, it would be to ascribe to them the folly of authorizing and providing for as useless and expensive inquiry. We hold, therefore, that when the House of Delegates decided that A. Lingan Jarrett was

Elected to the office he was placed in the same attitude towards it as he would have been had he been returned by the judges of election as having been elected to it; and if for any defect in the then law, or on the part of its administrators, he was prevented from qualifying himself for [redacted] on the duties of the office, it was competent to the Legislature to pass an enabling act like that of June 2, 8? last enabling him to do so.

It was conceded by the appellants counsel, in argument, that if Mr. Jarrett had been duly qualified by taking the oath and filing his bond during the time Mr. Purnell was holding on, he would be lawfully entitled to the office as against Mr. Purnell. But it was argued that Purnell's resignation and the appointment of Dr. Claude by the Governor placed Claude in a better position than Purnell occupied. This cannot be the true construction of the Constitution. It rests ~~entirely~~ Exclusively upon the Construction of the 1st Section of the 6th Article and if adopted would lead inevitably to the conclusion that the incumbent of the office

of Comptroller, at any time after an election and before the qualification of his successor duly elected, may, by resigning his office, make it necessary for the Governor to fill the vacancy by appointment, and such appointee would be entitled to hold till the next election. This is not the true construction of the Constitution. In such case — as in the case before us — the appointment of the Governor is ad interim only, and such appointee is subject to be divested whenever the person duly elected shall qualify according to law.

The only remaining enquiry is, whether Jarrett has been duly qualified under the act of June 1861?

It is conceded that the oath of office has been taken as required by the Constitution and laws, but it is objected, that the bond given by him is insufficient because it had been before tendered to the Governor and not accepted by him, and that he ought to have been required to give another bond. It is not pretended that the bond is not

in proper form, or that the sureties are insufficient. Nor does it appear that the Governor refused to accept it for either of those reasons. It is said, that having been executed originally for the purpose of being presented to the Governor for approval, and not being accepted, it could not be binding on the sureties if afterwards accepted by another officer authorized by law to accept it.

This argument rests upon the principle that a delivery is necessary to the validity of a bond. But it is clear, that in this case, the bond was not delivered till it was approved by the proper officer on the 9th of July 1861. A Statutory bond is not delivered or binding on the obligors till it is approved, 7. Md, 201. In the case of Brown & Carroll v Murdock & Brawner a question as to the validity of a Statutory bond was determined by this Court, which, we think, conclusively answers the objection of the appellants counsel in this case. See 16. Md 522.

Having shown that Jarrett, in

our opinion, has the legal right, and, as an injunction is not a matter ex debito justitiæ, but resting for the most part in the conscience of the Court, none such should issue against him. There is no case authorizing an injunction against one having the legal right, and but few where the right is doubtful, except in cases to stay waste, or prevent the destruction of the thing.

The public interest which is supposed to be involved in this case, is a sufficient reason for having considered at length the question of title which was fully argued at the bar

Orders accordingly

State of Maryland

vs

Garrett & Harwood

Decree

Filed Oct 8th 1861

State of Maryland
vs.
Jarrett & Sturwood

June Term 1861

This cause standing ready for hearing
all the proceedings were read and duly considered:
It is therefore this 8th day of October A.D. 1861 by
the Court of Appeals and by authority thereof
adjudged ordered and decreed, that the
order appealed from in this cause, be and
the same is hereby affirmed with Costs.

Jno. C. Legrand

Wm. H. Tuck

Jas. L. Bartol

Wm. Goldsborough