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Charles F. Coira Jr.

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Courts—Jurisdiction—Construction of Statutes Relative to Lands Within State Acquired by Federal Government

The Supreme Court of North Carolina, in the recent case of State v. DeBerry, construed the statutes of this state pertinent to the jurisdiction of state and federal courts over lands within the state which have been acquired by the federal government.

The defendant was tried and convicted in the municipal court of the city of Winston-Salem on a criminal charge of assault and battery and was sentenced to thirty days on the roads. The assault had occurred in the Federal courtroom in the Post Office Building in the city of Winston-Salem; and the defendant, upon appeal to the Superior Court of Forsyth County, entered a plea in abatement, for that the scene of the alleged assault was on property over which the United States Government has exclusive jurisdiction. For the purposes of the plea it was admitted that the federal government acquired the property in question on July 28, 1899, and that acquisition was confirmed in 1900. The motion to abate was denied, and the defendant took exception thereto and appealed from an adverse judgment.

The Supreme Court held the motion to abate to be well founded, but Chief Justice Stacy, in writing the opinion of the court, indicated that the result which was reached, although governed by the pertinent statutes and decisions, was clearly questionable in its desirability.

The authority of the federal government to accept and govern lands within the boundaries of the sovereign states was conferred by the provision of the Federal Constitution that "Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district . . . (District of Columbia) . . . and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

Pursuant to this provision, the sovereign states have, through their legislative bodies, enacted laws governing the cession of jurisdiction of such lands to the federal government. It is the tendency of the wording of these provisions to limit the authority of the federal government that gives rise to cases necessitating construing of the statutes. The major problems facing the courts in their interpretation of these statutes are: (1) What type of cession is required by the provision of the Federal Constitution? (2) What classes of structures, not specifically mentioned in the Federal Constitution, may be classed as "other needful buildings?" (3) What manner and degree of jurisdiction may be re-

224 N. C. 834, 32 S. E. (2d) 617 (1945).
tained by the states over lands so ceded without creating incompatibility with the jurisdiction required for the purpose for which the land is sought?

In general there are three methods of acquisition employed by the federal government in acquiring lands within the states. The type of acquisition known as the constitutional method is that expressly provided for by clause 17, section 8, article 1 of the Federal Constitution, which method is purchase of private land by the federal government from the owners, with the consent of the state wherein the land is located. Acquisition by this method transfers to the federal government such dominion as the consent statute confers, which in most cases is subject to the single exception of the right by the state to serve criminal and civil process through its officers. The second method is that of purchase without obtaining the consent of the state, or by condemnation. In such a case the federal government owns the land thus acquired in the same manner as would an individual, and the state has full jurisdiction thereover for all purposes, with the exception that its jurisdiction cannot be so exercised as to interfere with the essential and necessary operations of the federal government. The third method is that in which the land acquired by the federal government was the property of the state, such acquisition being by a cession by the state to the federal government in the nature of a gift. If such a method be pursued, the state can annex any conditions or reservations to the cession as it may see fit; and if the federal government takes the land, it accepts its subject to such conditions or reservations.4

But what types of buildings, beyond the description "needful," were intended by the framers of the Constitution when they recorded their intention that lands so used should be under exclusive federal jurisdiction as a result of mere purchase with state consent? Since those structures specifically named in clause 17 of section 8 of article 1 are predominantly military in character, it is not always facile to bring non-military areas within the term "other needful buildings." However, a clear majority of the courts include post offices within the term,5 and North Carolina has so recognized them by specific mention within the statutes bearing on the point.6

But, in arriving at its decision in the principal case, the North Carolina court was required to consider the third question; that of the pertinence of our statutes concerning post offices as affecting the release

6 N. C. GEN. STAT. (1943) §§104-1, 104-7.
or reservation of jurisdiction over the lands so ceded. The initial legislation, enacted in 1887, contained a provision conferring upon the federal government, without reservation, the authority to acquire title to tracts of land on which were to be erected certain public buildings. Among these buildings was the specific designation of post offices. No additional legislation was forthcoming concerning such federal acquisition until the year 1905, when the legislature formulated a provision to reserve to the state concurrent jurisdiction with the federal government over such lands for the service of civil and criminal process, and for the punishment of all violations of the criminal laws of North Carolina which might be committed on such tracts of land as were covered by the statute of 1887. This act of 1905 is still incorporated in our General Statutes as section 104-1.

Two years later, in 1907, an act was passed which ceded to the federal government all jurisdiction over these lands, excepting only the right to serve civil and criminal process. This provision made no mention of the existence of the former acts, and is now section 104-7 of our General Statutes.

Since none of these legislative acts makes reference to their applicability to lands previously acquired by the federal government, the court held in the principal case, under the general rule of construction, that they must be prospective only. Thus, the law applicable to a particular parcel of federal land within the state would have to be that which was in force at the time of the acquisition of the property.

Under this construction, and it appears legally sound, the law applicable to the post office building in the city of Winston-Salem, the scene of the offense in the principal case, which site was acquired in 1899 while the act of 1887 was effective, would be that the federal government has exclusive jurisdiction. This is subject to the later construction of the Supreme Court of the United States that even an express cession of exclusive jurisdiction to the federal government implies a reservation of the right of service of state civil and criminal process.

The undesirability of the situation becomes evident with the realization that, following this line of reasoning, any property acquired by the federal government within the state during the two-year period from 1905 to 1907 would be within the jurisdiction of the state courts while all other lands acquired at any other time would be without such jurisdiction. Thus, in the present case, had the defendant committed the assault in another post office, the site of which had been ceded to the

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8 Revisal of 1905, §5426.
federal government between 1905 and 1907 the offense would have been justifiable in the criminal courts of this state.

That sections 104-1 and 104-7 of our General Statutes are in conflict is recognized by the court in the principal case. However, since these statutes are prospective only, and since it must be recognized that jurisdiction over lands once ceded cannot be limited at a later date, such a situation seems inescapable.

It appears clear that while the act of 1907 remains in effect the court will be forced to admit lack of jurisdiction over lands acquired before 1905 or after 1907. The writer would agree that the principal case is a lucid example of the undesirable result which the application of this statute requires the court to reach.

Therefore, it is submitted that the legislature of North Carolina enact into law a provision reserving to the courts of this state concurrent jurisdiction with the federal courts over violations of our criminal laws occurring on such tracts of land hereafter acquired. It is clear that in special cases where conditions exist for removal to federal courts the federal judiciary will have jurisdiction over the cause, regardless of whether it may accrue from occurrences taking place on lands privately owned or owned by the state or federal governments. Therefore, the reservation of concurrent jurisdiction over those indicted for crimes in violation of our criminal laws would not create inconsistencies with the purposes for which the land is acquired by the federal government, and would facilitate the speedy adjudication of the ordinary cases arising from the relations of inhabitants of the community.

CHARLES F. COIRA, JR.

Mortgages and Security Trust Deeds—Sale Under Power—Burden of Proof as to Regularity—Recital in Trustee’s Deed

The dissent of Barnhill, J. in Jefferson Standard Life Ins. Co. v. Boogher charges the majority (Stacy, C. J., not participating) with overthrowing sub silentio a well established and long followed rule in this state as to burden of proving proper advertisement of a foreclosure sale when the trustee’s deed contains a recital of advertisement duly made. The facts were these: on default in payment of money loaned defendants by plaintiff insurance company and secured by a trust deed of real property, the trustee advertised and sold the security to plain-

20 For a general discussion of jurisdiction over federal lands within the state see Note (1929) 8 N. C. L. Rev. 299.

224 N. C. 563, 31 S. E. (2d) 771 (1944).

* The word “foreclosure” is for convenience used herein to include sales under a power granted in the security instrument whether trust deed or mortgage, and the words “mortgage” and “mortagor” are also used in a correspondingly enlarged and somewhat inaccurate sense where it seems to make no difference.