

No. 250  
Office Docket.  
April term 1865.

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In the matter of the  
Petition of Samuel  
S. Costen -

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Full Bench

Opinions

Amil. C. J.  
2<sup>d</sup> to Report.  
Filed July 7<sup>th</sup> 1865.

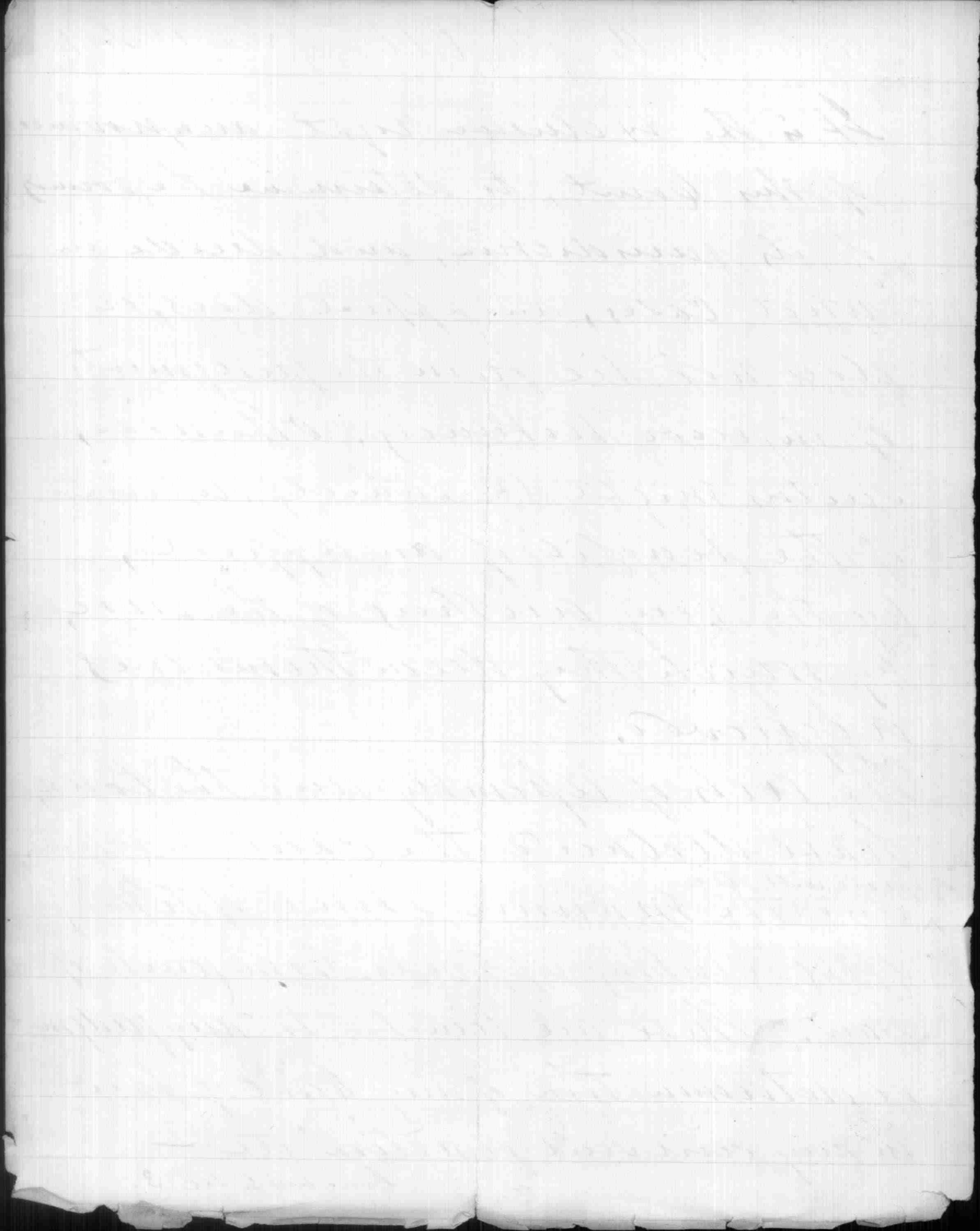
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In the matter of the Petition of Samuel S. Castro, Jr.

It is the exclusive right and province of this Court, to determine the bounds of its jurisdiction, and decide in what cases, an appeal does, or does not lie from the judgments of inferior tribunals. Otherwise, suitors might be entirely deprived of the benefit of an appeal, by the very authority of the error, by which they deem themselves aggrieved.

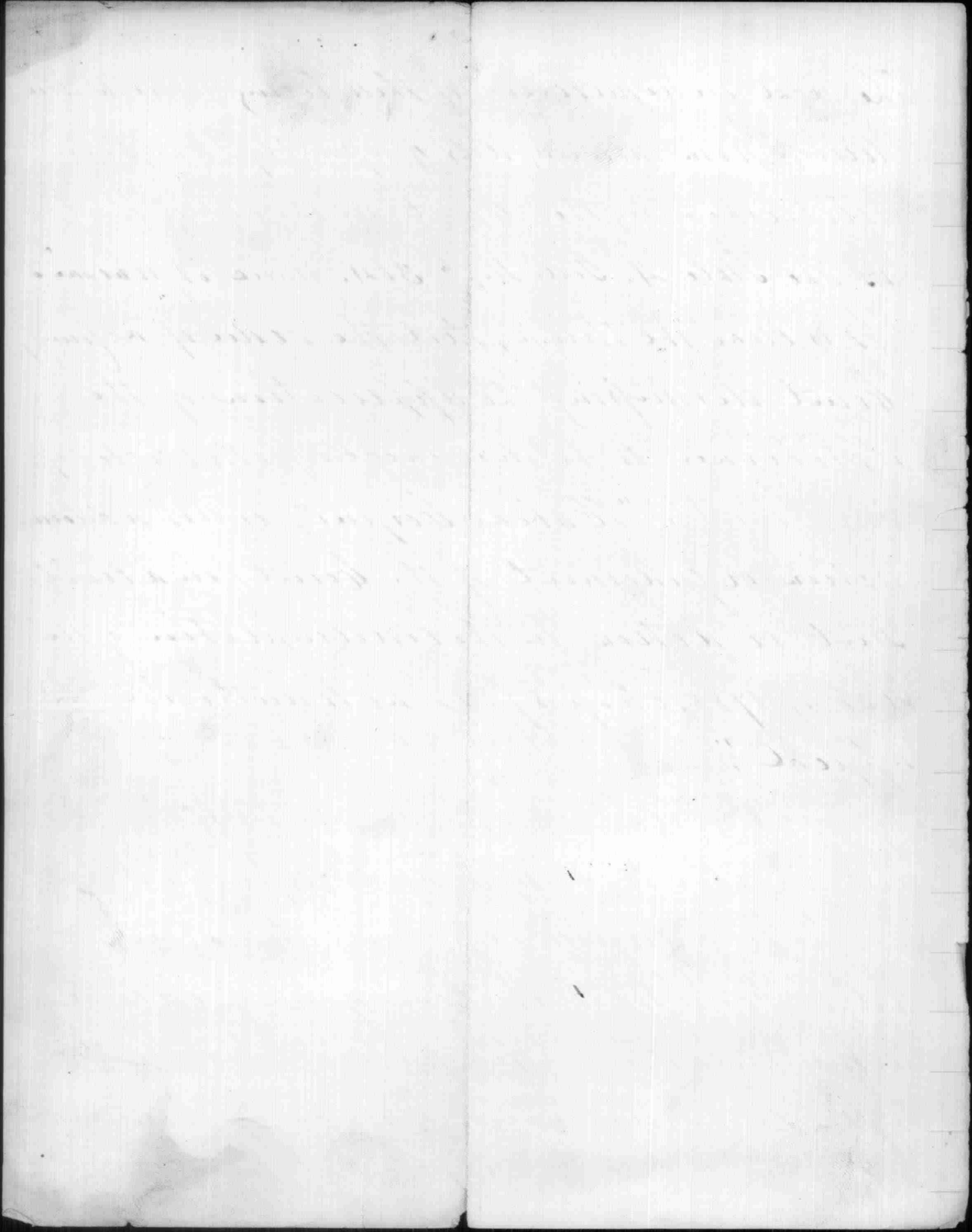
The Acts of Assembly and the Code, have declared the cases in which, <sup>appeals will lie</sup> and the manner & time of taking & prosecuting appeals, from Courts of Law. These are limited to "any judgment or determination of any Court of Law in any civil suit or action" etc. —

Code Art. 5. Sec 3.



The legal interpretation of these terms, which were derived from preceding Acts of Assembly, has been established by this Court, in the Case of Bell vs The State 4. Gill, Rep<sup>r</sup>. 304. Where it was said "It is clear we think, that the order of a County Court dismissing the Application of the Petitioner to be discharged from Custody, on a writ of "Habeas Corpus", is not a determination or judgment of the Court, in a civil suit or action in the contemplation of the Act of 1785. Chap 87 so as to authorize an appeal."

Among the Reasons assigned for this conclusion are that the writ of Habeas Corpus, is a proceeding summary in its character, addressed to the discretion of the judge or tribunal, to whom the Application is made so far as the discharge of the party is concerned,



a proceeding where in many cases, the evidence upon which the judgment is founded cannot be presented to the Appellate Court and is not final and conclusive upon the party applying for the writ; as he may prefer a similar application, to any other Judge or Court of the State".

This Case has been referred to & recognized in the Case of Mace vs The State 5. 116 upon an incidental point. It must be regarded as decisive of the question of the right of appeal in Cases of Habeas Corpus issued by Courts or Judges having <sup>jurisdiction and</sup> legal authority - to issue the same.

In such Cases, we hold where there has been no assumption of authority, nor right of appeal has been given by Statute or Code to this Court, &c. The petition must therefore be dismissed.