No 132. Office Docket

Samuel S. Coston

vs

Lear Coston & others

Full Bench

Opinion

Bowie C. J.

To be reported

Filed July 17th 1866

Boston vs Boston. } Error from the Circuit Court of Balt. City.

A writ of Error, may be brought in Criminal, as well as Civil Cases. It has no peculiar power, which gives it a wider range, or greater effect, than an Appeal, in the latter Cases. They are but different modes of accomplishing the same thing:- the review of judgments of Courts of original & inferior jurisdiction, by a Court of Appellate jurisdiction.

The one, is by a writ originally issued out of Chancery, Courts having Chancery jurisdiction directed to the but now from the Court whose alleged error is proposed to be reversed; the other, by praying an appeal, entered in the time and manner prescribed by law and it may be safely said, that in this State, in all Civil Cases, an appeal and writ of Error lie "in consimili casu" A final judgment is as necessary in one case, as the other.

~~A writ and final judgment is necessary to the one~~
~~or the other. 2. Md. & J. 79.~~

In the U.S. Case of the Matter of the Petition of Sam'l. S. Costin decided by this Court at the (Reported in 24 Md. Rep. 1.)
April Term 1865, it was held, that the order ~~proceeding~~ of a Judge or Court, upon a petition for a Habeas Corpus, could not be a subject of Appeal, because ~~it~~ was not in legal acceptation, "a judgment or determination of any Court of law, in any Civil Suit or action", from which alone, appeals would lie. This decision was founded on a similar ruling in the Case of Bell vs The State 4 Gill 314. in which this Court declared, that the writ of Habeas Corpus was a proceeding, summary in its character; addressed to the discretion of the Judge, or tribunal to whom the application was 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".

That decision, condensed the reasoning of the adjudged cases in England for a Century past, was several years subsequent to the Case of Holmes & Jemison 14 Pet.s relied on by the Appellants, and must be presumed to have been settled law, since the Court did not deem it necessary to refer to authorities to sustain their Conclusion.

The force of that decision, is not impaired in any degree, by the new mode of bringing up the question, as it was not founded on matter of form, but matter of substance.

If it were not superfluous to add another, to the arguments already urged, it might be said, the main object of the Writ of "Habeas Corpus ad subjiciendum" as a writ of Right, which is to release immediately from unlawful personal restraint, is counteracted, by converting it, into a suit, subject to all the delays and Expenses incident to such.

Although the Petitioner should be released by the order of the Judge a Court to whom he made application; if that order is subject to revision and reversal by an appellate Court, the final judgt. to be of any avail, must deprive the Petitioner of the right of petitioning again. Whereas the the right of petitioning for a Habeas Corpus is unlimited in its nature, and the application may be renewed "toties, quoties" as long as the Petitioner is Confined, and a judge or Court can be found to whom he may address his prayer for relief.

It is Conceded by the Appellants Counsel, that no writ of error will lie unless the judgment is final. This Court has said, in the Case of Bell vs The State, the judgment in Habeas Corpus is not final. all the English authorities from Coke to Holt. were reviewed by C. J. Kent, in the Case of Bates vs The People 6. Johns. Repts. the result of which he sums up in the following

energetic and eloquent apostrophe.

"I now submit to the Candour and judgment of this Court, whether I have not sufficiently shown that by the English law, a writ of Error will not lie in this case. We have the unanimous opinion of the Court of C. B. in the time of Lord Coke. We have the resolution of the House of Commons in the reign of Queen Anne. We have the opinion of the Court of K. B. in the time of Geo I. and lastly, we have the sanction of Lord Ch. B. Comyns; and all this, without a single case, or decision or precedent, or opinion, to oppose to such a stream of authority." What intelligent person can then doubt of the fact?! × × × ×

"The doctrine was laid down in Lord Coke's day, as of course, as being then the known and established law. The principle is of immemorial standing. It has become the uncontroverted maxim of ages."

Although this opinion was not sanctioned by a Majority of the Senate of N. Y. they being divided as 12. to 11. yet much the greater portion of the Bench concurred with Ch. Kent—

The Case of Holmes vs Jamison 14 Peters 540.
Was a writ of error brought on the order of the Supreme Court of Vermont, remanding on habeas Corpus, the plaintiff in Error, who had been Committed on the Governors Warrant, to be surrendered to the Canadian authorities, as a fugitive from justice. The Supreme Court of the United States was divided on the question of jurisdiction, so that no decision was pronounced in the case.

In announcing their Opinions, several of the judges expressed their views on the question whether a writ of Error would lie, in such a case.

Taney C. J. Story, McLean, Wayne & Catron concurred in favor of a writ of Error. Baldwin dissented, others were silent.

The Chief Justice placed his Opinion on the ground, that there was a judgment of the highest Court of the State of Vermont, formally & fully entered on its Records, declaring the prisoner was legally held under the authority of the State laws, which was precisely one

of the cases, in which the writ of Error is given in the 25th. Section of the act 1789. That, "the validity of the Governors Warrant was the only question before the Supreme Court of Vermont, and that question was certainly finally settled.

The writ of Error was granted at the instance of the prisoner, "in favorem libertatis" under what was considered the established construction of of the act of 1789. in parallel cases, such as petitions for Mandamus and writs of prohibition which have held to stand on the same principles and have continued to be "Suits" in the Meaning of the Acts of Congress.

No such analogy exists in our legislation. Appeals in cases of Mandamus, being the subject of express and distinct provision, without the remotest allusion to the Writ of Habeas Corpus, in the provisions for appeal or Writ of Error.

In the Case of Ableman vs Booth. 21. How. 506.
the Supreme Court of Wisconsin, discharged
a prisoner, committed by a Commissr of the U. S.
for a violation of the Fugitive Slave Law,
After rendering their judgment, before the writ of Error
was sued out, the State Court entered on its record,
that in the final judg.t it had rendered, the validity
of the Act of Congress of Sept. 18. 1850. & Feby. 12. 1793,
and the authority of the Marshal to hold the
defendant in his custody under the process mentioned
in his return to the writ of "Habeas Corpus" were respectively
by them in question, and the decision of the Court
in the final judgment was against their validity
respectively. The whole proceedings shew, there was
an attempt upon the part of the State Courts, to
supersede and annul the authority of the United
States, by declaring the Law unconstitutional, and
arresting the action of its Officers & Courts, under
semblance of the right to issue a writ of Habeas C.
and the United States, had to assume jurisdiction

to vindicate its authority.

It is not inappropriate to remark, that the decisions in the Supreme Court of the U. S. above referred to, may be considered, as turning upon the Statutes of the United States, providing for appeals or writs of Error from the decisions of State Courts in all Cases in which the Constitution or laws of the United States made in pursuance thereof, are drawn in question and the decision was against their validity.

If writs of Error in such Cases did not lie, the authority of the United States, would depend entirely upon the judicial decisions of the Judges of the State Courts.

Independently of this consideration, the authority of these Cases, cannot control the series of decisions to the Contrary in the State Courts.

After collating all the cases, Hurd, a late writer on Habeas Corpus says "The Current of authority in the State Courts is that a review of a decision on Habeas Corpus, independently of Statutory provisions cannot be had by writ of Error, or appeal, and that on the ground that the decision is not a final judgment, in which he cites. Ball vs The State 4. Gill 304. Russell vs The Commonwealth 7. Penrose & Watts 82. Wade vs Judge 5. Ala. 18. Howe vs The State 9. Miss. 691. 2. Cal. 424.

This objection constituting the Appellees first point, goes to the jurisdiction of this Court over the subject Matter and being in our judgment well taken makes it unnecessary, as well as improper to consider the other points raised by the Briefs of the respective parties.

Writ of Error dismissed