No. 194. Office Docket

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No. 115—General Docket.

IN THE COURT OF APPEALS OF MARYLAND.

OCTOBER TERM, 1865.

SAMUEL S. COSTON,

vs.

LEAH COSTON, Mother and next friend of SIMON COSTON and WASHINGTON COSTON.

Writ of Error to the Criminal Court of Baltimore city.

Statement and Points of Appellant.

Leah Coston, mother and next friend of Simon and Washington Coston, petitioned the Criminal court of Baltimore city for a writ of habeas corpus, directed to the appellant, commanding him to produce before said court the bodies of Simon and Washington Coston. The allegation upon which said petition was based, was, that said Simon and Washington Coston had been "illegally arrested," and were "held in custody" by said Samuel S. Coston. No affidavit was made to the petition, or any statement of facts beyond the petition.

The writ was issued on the sixth of May 1865, and delivered to the sheriff of Baltimore city for service, and returned by said sheriff on the ninth of the same month. S. S. Coston made return to said writ that said Simon and Washington were "his apprentices," and in evidence of his title to them, exhibited as part of his return copies of the indentures of apprenticeship. He states further in his return that he was a citizen of Somerset county, Maryland, had been for a long time before, and still continues to be a citizen of Somerset county, Maryland.

It appears by the indentures of apprenticeship that Leah Coston, the mother, was a free negro of Somerset county.

That she, together with her said children, were summoned before the Orphans' court of said county, and upon examination it appeared to the court that the children had been raised by S. S. Coston. That the said mother had no means to support the children and keep them employed, so as to teach them habits of industry, and that it would be better for their habits and comfort that they should be bound as apprentices to some white person to learn to labor. That the said mother selected said S. S. Coston as a person to whom they should be bound, who was appointed by the court, and accordingly on the 11th of November 1864 they were bound out to said S. S. Coston as apprentices until they should arrive at twenty-one years of age. S. S. Coston on his part contracts to instruct and teach, or cause to be instructed and taught the said apprentices "in the art, trade and calling of a farmer, after the manner of an apprentice." He further contracts to find said apprentices "sufficient food, clothing and other necessaries," and at the expiration of their time to furnish them with "two suits of wearing apparel, and the sum of twenty-five dollars each in money."

The petitioners filed their pleas to the said return·

1st. That the parents of said infants were not summoned to be present at the binding out.

2nd. That the said infants were not at the time they were bound out, the children of free negroes, but were born in slavery of a mother who was a slave, and that said children and the said mother were the slaves of S. S. Coston, until set free by the Constitution of 1864.

3rd. That the parents of the said children had at the time of the binding aforesaid, and now have the means, and were and are willing to support said infants and to keep them employed so as to teach them habits of industry.

The counsel for the appellant in this case filed exceptions to these pleas on page 5 of record.

1st. Because the matters of said supposed traverses are not matters of fact set forth in the return.

2d. Because the matters set forth in the pleas are wholly immaterial and irrelevant to the question of the sufficiency of the return.

3rd. That the pleas relate to matters of fact, not properly triable upon the writ of habeas corpus, and if material were proper for the consideration of the Orphans' court of Somerset county.

The court overruled these exceptions and required the pleas to be answered. Whereupon S. S. Coston demurred to said pleas, and upon the demurrer issue was joined.

The court decided that the pleas of the petitioner above referred to were sufficient in law to bar the said S. S. Coston from the detention of said Simon and Washington, and passed an order discharging them from the custody of said S. S. Coston, and delivering them to the custody of the parents in the petition, for the habeas corpus named.

A writ of error was sued out, and the case brought before this court.

The first question in the case is the right of S. S. Coston to the writ of error in this case.

By Article 5th, section 3rd of the Code, an appeal is given from "any judgment or determination of any court of law in any civil suit or action."

By Article 5th, section 4th, "writs of error may be sued out in civil or criminal cases as heretofore practised in this State."

A writ of error is allowed according to the Maryland practice in all cases where it is allowed at common law, whether an appeal is allowed in the case or not.

Evans' Practice, 421.
2 Wil. Saunds, 100, 101, note.

A writ of error will lie in case of habeas corpus.

Rex vs. Paty, et al., Sal., 503.
Case of Cresby, 3 Wil., 192.

A writ of habeas corpus is a suit or action.

6 John. Rep., 337.
14 Pet., 563, 565, 566.
14 Pet., 625, Appendix.
Ableman vs. Booth, 21 How., 506.

Whether the judgment then is a final judgment for which a writ of error will lie, depends upon the subject matter of the decision. The court cannot, under cover of a right to issue a writ of habeas corpus, decide matters not within its jurisdiction.

Ableman vs. Booth, 21 How., 506.

The matter here decided, arises upon the demurrer, and is entirely out of the jurisdiction of the court deciding it. The Orphans' conrt for Somerset county alone can decide the questions here raised.

Lammott vs. Malsby, 8 Md., 5.
Johnson vs. Brenneman, 10 Md., 495.
Cator vs. Carter, 9 Gill & John., 476.

The foregoing proposition is true, unless all the provisions in the Code in relation to apprentices are repealed by the adoption of the Constitution of 1864. For points on that question see brief in case of Adeline Brown vs. State, on Special Docket.

WM. SCHLEY,
W. S. WATERS,
Att'y for Appellant.

In the Court of Appeals

Caster

vs

Caster

Mr Brewer
has the printed
Brief in this

Notes of plaintiff in error

Case

Copy left with the defendant in error this ~~twelfth~~ 12th day of June 1866

William Daniel
per O F Bump

Filed June 13th 1866

Costen vs. Costen

In the Court of Appeals, No 27
Writ of error to the Circuit Court of Baltimore City.

Notes of plaintiff in error.

The judgment sought to be reversed in this cause is upon page 6. Record.

A writ of Habeas Corpus had been issued, at the instance of the defendant in error, requiring the plaintiff in error to bring before the Court below, the bodies of Simon and Washington Costen, together with the cause of their detention, to abide by the judgment of the Court. There had been no probable ground shown for the issue of the writ, according to the provisions of the Act of 1861 & 2 Ch. 36. The plaintiff in error, however, in obedience to the writ, produced the bodies of the infants as required, and the cause of his holding them; stating that they were his apprentices, and filing his indentures by the Orphans' Court of Somerset County, and alleging that he and his apprentices, resided in Somerset County.

The defendant in error pleaded,

First, That the parents of the infants were not summoned.

Second, That the children, at the time of the binding, were not free negroes, but were born in slavery, their mother and themselves being slaves of the plaintiff in error, until set free by the Constitution.

Third, that the parents of said children, at the time of their being bound out, were able to support them.
These pleas were excepted to, and the exceptions were overruled. Record page 5.
A demurrer was then filed to them. The Court gave judgment, overruling the demurrer, and "ordering the infants Simon and Washington Costen to be discharged from the custody of the respondent (now plaintiff in error) and delivered to their parents, the petitioners mentioned" (the now defendants in error)
The writ of error in this cause is brought for the purpose of reversing this judgment.
A writ of error will be allowed in Maryland, in every case where it would be allowed at Common Law whether an appeal would lie or not.
Article 5. Sec. 4 - Code
Evans' Prac. 424-428
3 Bac. Abr. 325 (note) 330
3 Bouvier Inst. 69-537-545
2 Williams Saunders 100-101 note 1
Will the writ of error lie in this case?
1st. This is a final judgment.
It will be conceded that no writ of error will lie unless the judgment is final. "A writ of error lieth when a man is grieved by an error in the foundation, proceeding, judgment, or execution in a suit, but without a judgment or an award in the nature of a judgment, no writ of error doth lie". Coke Lit. 288 b.
Boyle vs. Zacharie & Turner 6 Pet. 655-6

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the question as to what is a final judgment has been much considered. The only requisite to finality in a judgment is, that it should dispose of the whole subject matter in controversy.

9 Petersdorff Abr. 3 note.

Holmes vs. Jennison 14 Pet. 562-565.

Metcalfe's case 11 Coke 38-40.

It will be conceded, that in all cases of Habeas Corpus a writ of error will not lie, because, in all cases, the subject matter in controversy is not finally disposed of. But where the whole subject matter is disposed of by a judgment of the Court, it is contended a writ of error will lie. The writ of Habeas Corpus is sometimes issued, for the purpose of bringing before the Court, a person accused of crime. In such a case, there is no purpose of disposing of the criminal charge, but only of some collateral matter, such as the right to bail &c. There is, in that case, no final judgment. The case at bar may be presented, so as to illustrate the subject. The writ issued for the purpose of bringing into the Court, the bodies of two infants with the cause of their detention. This was done, and the return and proceedings show, that the infants were claimed as apprentices. The usual course would have been, that as soon as it appeared, that they were apprentices, the Court would have decided that it had no jurisdiction, and have remanded the parties. There would, then, have been no final disposition of the subject matter. The Court, however, assumed jurisdiction over the question of apprentices in Somerset County, decided upon the validity of the indentures, and

upon solemn demurrer passed a judgment for the delivery of the apprentices out of the possession of the plaintiff in error, to the defendant in error. The Court assumed to settle the whole matter in controversy. The Orphans' Court of Somerset County could not more effectually have disposed of the subject, and the process used in this cause is precisely that, which would have been used by the Orphans' Court, and the decision is in form the same. A writ of replevin will lie for an apprentice. They are quasi property; and the judgment of the Court in this cause is, that this property be taken from one party to the suit, and given to another. This is a judgment too, which can be enforced by contempt of Court, and penalties under the law of Habeas Corpus. No Court could by its judgment have disposed more completely of an entire matter in controversy, than has been done in this cause. Independent of the question of a want of jurisdiction, which will be considered hereafter, the judgment is in form and substance a final judgment.

2d. This judgment is given in a suit or action.

"A suit is any proceeding in a Court of Justice, by which an individual pursues that remedy in a Court of Justice, which the law affords him". Holmes vs. Jennison 14 Pet. 566

A writ of Habeas Corpus has been decided to be a suit.

Holmes vs. Jennison 14 Pet. 566

Yates vs. The People 6 John. 337

Ableman vs. Booth 21st How. 506

3d. The judgment here is upon proceedings in conformity to the Common Law. In the case of the City of London 8 Co. 127, it is said, that a writ of error would not lie,

because there could be no demurrer or issue joined.
Article 43, Sec 12 of the Code authorizes pleadings and in this cause the whole question is decided upon demurrer. The pleadings are by the Common Law, and a regular judgment entered thereupon. The great difficulty in England, when the question of the right to writ of error in case of Habeas Corpus has been considered, has been, that there was no regular form of a judgment entered. Nothing was done, but to endorse the remittitur upon the back of the writ. Lord Holt, in order to obviate this objection, in the case of the Aylesbury men ordered the judgment to be entered in form.
8 Hargrave's St. Trials 167
Rex vs. Paty and others 2 Ld. Raymond 1115
2 Salk. 304
Fourth, The decision in this cause is not in the exercise of a discretion, as it is a judgment upon a matter of right.
Light will be thrown upon all these questions by a brief reference to the cases.
In England, the question, as to the right to writ of error in decisions upon writs of Habeas Corpus has never been decided. The case of Paty and others, 2d Ld. Raymond 1115, 2d Salk 304, 8 Hargrave St. Trials 167 gave rise to much discussion Paty and four others had been committed by the Speaker of the House of Commons, by virtue of an order of the House, and had been brought before the Kings Bench upon Habeas Corpus. Lord Holt alone was for discharging the prisoners. The Court ordered them to be remanded, and a

a judgment was made up, under the direction of the Court, with the view that a writ of error might be taken to the House of Lords; and almost all the judges of England were of opinion, that the parties were entitled to a writ ex debito, and the writ would have been awarded, but the parties obtained relief by dissolution of parliament. This was in 1704. There was no judicial decision upon the question in this case. The House of Lords could alone have determined it upon adjudication, and yet it seems singular, that the House of Lords and nearly all the judges should recommend that it be issued, unless they thought it would lie.

A full report of the case, and all its proceedings will be found in 8 Hargrave's St. Trials 167.

The case of the Dean & Chapter of Dublin, 1 Strange 536, 8 Mod 27, 2 Bro. Par. Cas. 554 was a writ of error upon an award of a peremptory mandamus. The objections to the writ will be found to be mainly; that the judgment was not in form a judgment, and that it gave no right, not even a right of possession. The substance of the judgment in the case at bar, its finality, its determining the rights of the parties to property, and even the possession of that property, have already been considered.

In the United States, the question received much attention and was thoroughly discussed in the case of Yates vs. the People 6 Johns. Rep. 338. That was a writ of error, brought to the Court of Errors in New York, under the following circumstances. The plaintiff in error had been committed by the Court of Chancery for a contempt. He was brought before the Supreme Court of New York, and was upon investigation

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remanded. The writ of error was for the purpose of reversing this determination, and it was determined that the writ would lie.
The case of Holmes vs. Jennison 14 Pet. 561 arose in the Supreme Court of the United States. In Vermont, George Holmes was confined under a warrant from the Governor of that State, directing the sheriff to deliver him to an agent from Canada. Holmes was accused of murder in Canada, and the object was to transfer him there for trial. Upon Habeas Corpus to the Supreme Court of Vermont, Holmes had been remanded. Writ of error was then taken to the Supreme Court U.S. The same questions occurred there as here. Was the judgment final? Was a writ of Habeas Corpus a suit or action? The majority of the Court were of opinion, in the affirmative of both these propositions. The act of Congress, authorizing a writ of error to the Supreme Court, and the Code, authorizing it in this State are the same. The act will be found referred to in that case. The able opinion of Chief Justice Taney is on page 561. He is clear that a Habeas Corpus is a suit. He makes a distinction between writs of Habeas Corpus, and on page 564 states his opinion to be, that in the particular case, a writ of error will lie. This was undoubtedly, the opinion of a majority of the Court. The case of Ableman vs. Booth 21 How. 506 is to the same effect. This case will be considered hereafter.
The case of Bell vs. The State, use of Miller 4 Gill 304 is familiar to this Court. The party was held under a ca. sa., and asked upon Habeas Corpus to be discharged,

and the Court below passed an order dismissing the application. The Court of Appeals is guarded in its opinion, that the order dismissing the application in a case like that is not the subject of appeal. That case is not in conflict with the one at bar. In that case there was no disposition of the subject matter in controversy. Is it believed, that if the Court below had taken up the subject of the custody under the ca. sa. and upon regular pleadings had solemnly decided, that the party could not be held under the ca. sa. in that case, and discharged him from custody, that the party aggrieved could not have corrected this decision by writ of error? The whole matter in controversy would then have been decided, and in such a manner as would have deprived the party of the fruits of a judgment.

The possibility of a review by this Court, of proceedings under writs of Habeas Corpus, is considered in Exparte O'Neil 8 Md. 229.

The judgment in this cause may be reviewed upon writ of error, for reasons distinct and peculiar to this State.

It will not be doubted, that all questions upon the validity of indentures, the binding out of apprentices, and all questions between master and apprentices, and between parties in Somerset County are cognizable alone before the Orphans' Court of that County.

Lanmott vs. Maulsby 8 Md. 5
Johnson vs Brannaman 10 Md. 495
Cator vs. Cator 9 G & J. 476

The Criminal Court of Baltimore City can have no jurisdiction to make the inquiry and the decisions here

made. It is true, that the Court has the right to issue the writ of Habeas Corpus in this cause, but no right under the writ to do what is here done. This is precisely such a proceeding as might be instituted in the Orphans' Court of Somerset County, and that Court would have brought the parties before it, by a writ of Habeas Corpus in some form. That the writ may be authorized, and that which is assumed to be done under it, be entirely without the jurisdiction of the Court is clearly illustrated in the case of Ableman vs. Booth 21 How. 506-523. The right of the Judge to issue the writ in that case was clear, but when upon the return, it appeared that the subject matter was not within the Court's jurisdiction, then the Court could go no further. So in this case, there was the right to issue the writ, but when it appeared that the party was held by indentures of apprenticeship, and resided in Somerset County, the Court had then before it a case beyond its jurisdiction. The Court had no right, for the causes assigned in the pleas to annul the apprenticeship. That belonged to another tribunal. If, simply by the use of a writ of Habeas Corpus, a Court has a right to draw within the sphere of its jurisdiction every subject, then the grant of the power to issue that writ confers boundless jurisdiction.

It is well established in the practice of this Court, that where any inferior tribunal, whether proceeding according to the Common Law or not, assumes to decide a matter not within its jurisdiction, this Court will reverse such decision.

The State vs. Mace 5 Md. 350

Webster vs. Cockey 9 Gill 92

Mister vs. The State 5 Ind. 11.

It is needless to go into the merits of this case. This Court has affirmed the Constitutionality of all the apprentice laws of this State, in the case of Adeline Brown vs. the State.

But it is said in the brief, that the "Civil Rights Bill" affects this cause. The first section alone of that bill defines rights. It is as follows:

"All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right in every State and Territory of the United States, to make and enforce contracts, to sue, be parties and give evidence purchase, lease, sell, hold, and convey real and personal property, as is enjoyed by white citizens, and shall be subject to like punishments, pains, and penalties, and to none other, any law, statute, ordinance, regulation or custom to the contrary notwithstanding." –

How the validity of the apprentice system in Maryland is affected by this is not very clear The apprentice laws are not penal. They are intended for the benefit of the parties to whom they apply, and doubtless are so. There is nothing in them which is unknown to England, and the other States of the Union. Blackstone and Kent are sufficient authorities upon this point.

But can an Act of Congress annul a contract, entered

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into under a State law, which was in force legally when the contract was made?

It is not believed that the Act of Congress is constitutional, or valid for any purpose, but it is unnecessary to trouble the Court with this question. The penal part of it, supposed to apply to the Courts, will be scarcely considered by this Court, as trammelling its action. Ministerial acts of judges may be punished, but it was never heard of, that in a matter depending upon opinion and deliberate judgment, a Court should be subject to penalty for error. In a mere question of the Constitutionality of an Act of Congress, if the Court, before which its validity is drawn in question, can be compelled, by penalties in the Act itself, to decide it to be valid, then Congress can have no difficulty hereafter in enforcing any law which it may pass. That body will be omnipotent, both in State and General government, and the only appeal that can be made, will be to its forbearance.

William S. Waters
William C. Schley
Attys. for plaintiff in error.

No. 115
Office Docket
October term 1865

Samuel S. Coston
vs
Leah Coston, mother and next friend of Simon Coston and Washington Coston.

Filed Oct. 16th 1865.

Print to day if possible

Mr. Clk
Please file this bill and have it printed on Monday. Yours &c W S Wells

Samuel S. Coston
vs
Leah Coston, Mother and next friend of Simon and Washington Coston

In the Court of Appeals

Writ of Error to the Criminal Court of Baltimore City

Statement and Points of Appellant.

Leah Coston, mother and next friend of Simon and Washington Coston petitioned the Criminal Court of Baltimore City, for a writ of Habeas Corpus directed to the appellant, commanding him to produce before said Court the bodies of Simon and Washington Coston. The allegation upon which said petition was based was, That said Simon and Washington Coston had been "illegally arrested" and were "held in custody" by said Samuel S. Coston. No affidavit was made to the petition, or any statement of facts beyond the petition.

The writ was issued on the sixth of May 1865, and delivered to the sheriff of Baltimore City for service, and returned by said sheriff on the ninth of the same month. S. S. Coston made return to said writ that said Simon and Washington were "his apprentices", and in evidence of his title to them, exhibited as part of his return copies of the indentures of apprenticeship He states further in his return that he was a citizen of Somerset County, Maryland, had been for a long

time before and still continues to be a citizen of Somerset County Maryland.

It appears by the indentures of apprenticeship that Leah Coston the mother was a free negro of Somerset County. That she together with her said children were summoned before the Orphans' Court of said County and upon examination it appeared to the Court that the children had been raised by S. S. Coston, That the said mother had no means to support the children, and keep them employed so as to teach them habits of industry, and that it would be better for their habits and comfort that they should be bound as apprentices to some white person to learn to labor, That the said mother selected said S. S. Coston as a person to whom they should be bound; who was appointed by the Court and accordingly on the 11th of November 1864 they were bound out to said S. S. Coston as apprentices until they should arrive at twenty one years of age. S. S. Coston on his part contracts to instruct and teach, or cause to be instructed and taught the said apprentices "in the art, trade and calling of a farmer after the manner of an apprentice". He further contracts to find said apprentices "sufficient food, clothing, and other necessaries" and at the expiration of their time to furnish them with "two suits of wearing apparel and the sum of twenty five dollars each in money"-

The petitioners filed their pleas to the said return

1st, That the parents of said infants were not summoned

to be present at the binding out.

2d, That the said infants were not at the time they were bound out the children of free negroes but were born in slavery of a mother who was a slave, and that said children and the said mother were the slaves of S. S. Costen until set free by the Constitution of 1864.

3d, That the parents of the said children had at the time of the binding aforesaid and now have the means, and were and are willing to support said infants and to keep them employed so as to teach them habits of industry.

The counsel for the appellant in this case filed exceptions to these pleas on page 5 of record

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2d Because the matters set forth in the pleas are wholly immaterial and irrelavant to the question of the sufficiency of the return.

3d, That the pleas relate to matters of fact not properly triable upon the writ of Habeas Corpus, and if material were proper for the consideration of the Orphans' Court of Somerset County.

The Court overruled these exceptions and required the pleas to be answered. Whereupon S. S. Costen demurred to said pleas, and upon the demurrer issue was joined.

The Court decided that the pleas of the petitioner above referred to were sufficient in

law to bar the said S. S. Coston from the detention of said Simon and Washington and passed an order discharging them from the custody of said S. S. Coston and delivering them to the custody of the parents in the petition for the Habeas Corpus named.

A writ of error was sued out and the case brought before this Court.

The first question in the case is ~~upon~~ the right of S. S. Coston to the writ of error in this case

By Article 5th, Section 3d of the Code, an appeal is given from "any judgment or determination of any Court of law in any civil suit or action"

By Article 5th, Section 4th, "Writs of error may be sued out in civil or criminal cases as heretofore practised in this State",

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Evans' Practice 421

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Rex v Paty et al Ld Ray 503

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6 John Rep 337

14 Pet 563-565-566

14 Pet 625 appendix

Ableman v Booth 21 How 506

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Lammott v Maulsby 8 Md 5
Johnson v Brennan 10 Md 495
Carter v Carter 9 Gill & John 476

The foregoing proposition is true unless all the provisions in the code in relation to appeals are repealed by the adoption of the Constitution of 1864. For our points on that question see brief in case of Adaline Brown v State on appeal docket.

Wm Schley }
W S Waters } attys. for appellant