

Ex Parte Vs. Burford

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 448

Appellant : Ex Parte

Respondent : Burford

Judgement :

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Ex Parte v. Burford

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SYLLABUS

In this case it was decided that a warrant of commitment by two justices of the peace of the County of Alexandria must state some good cause certain, supported by oath. The discharge of the prisoner from confinement, the warrant being illegal, does not prevent the justices proceeding *de novo*, if the prisoner is really a person of ill fame, and who ought to find sureties for his good behavior.

John Arkins Burford, a prisoner confined in the jail of the County of Alexandria, in the District of Columbia, petitioned this court for a habeas corpus, to inquire into the cause of his commitment, alleging that he was confined under and by color of process of the United States, and praying for a certiorari to the clerk of the Circuit Court of the District of Columbia, for the County of Washington to certify the record by which his cause of commitment might be examined, and its legality investigated. To the petition was annexed a copy of his commitment, certified by the Jailor of Alexandria County.

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MR. CHIEF JUSTICE MARSHALL.

There is some obscurity in the act of congress, and some doubts were entertained by the court as to the construction of the constitution. The court, however, in favor of liberty, was willing to grant the habeas corpus. But the case of the [*United States v. Hamilton*, 3 U. S. 17](#) , is decisive. It was there determined that this Court could grant a habeas corpus; therefore let the writ issue, returnable immediately, together with a certiorari, as prayed.

Upon the return of the habeas corpus and certiorari, it appeared that on 28 of December, 1805, Burford was committed to the jail of Alexandria County, by a warrant under the hands and seals of Jonah Thompson, and ten other justices of the peace for that county, which warrant was in the following words:

"Alexandria County, ss."

"Whereas John A. Burford, of the county aforesaid, shopkeeper, has been brought before a meeting of many of the justices of the peace for the said county, and by them was required to find sufficient sureties to be bound

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with him in a recognizance, himself in the sum of \$4,000, and securities for the like sum, for his good behavior towards the citizens of the United States, and their

property; and whereas the said John A. Burford hath failed or refused to find such sureties; these are therefore in the name of the United States, to command you the said constables, forthwith to convey the said John A. Burford to the common jail of the said county, and to deliver him to the keeper thereof, together with this precept, and we do, in the name of the said United States, hereby command you, the said keeper, to receive the said John A. Burford into your custody, in the said jail, and him there safely keep, until he shall find such sureties as aforesaid, or be otherwise discharged by due course of law. Given under our hands and seals, this 28th day of December, 1805."

"To any constable, and the Jailor of the County of Alexandria."

On 4 January, 1806, the Circuit Court of the District of Columbia, sitting in the County of Washington, upon the petition of Burford, granted a habeas corpus, and upon the return the marshal certified, in addition to the above warrant of commitment, that Burford was apprehended by warrant, under the hands and seals of Jonah Thompson and thirteen other justices of the County of Alexandria, a copy of which he certifies to be on file in his office, and is as follows:

"Alexandria County, ss."

"The undersigned justices of the United States, assigned to keep the peace within the said county, to the marshal of the district, and all and singular the constables, and other officers of the said county, Greeting:"

"Forasmuch as we are given to understand from the information, testimony, and complaint of many credible persons that John A. Burford, of the said county, shopkeeper, is not of good name and fame nor of honest conversation, but an evil doer and disturber of the

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peace of the United States, so that murder, homicide, strifes, discords, and other grievances and damages amongst the citizens of the United States concerning their bodies and property are likely to arise thereby, therefore, on the behalf of the

United States, we command you and every of you that you omit not, by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the body of the aforesaid John A. Burford, so that you have him before us, or other justices of the said county, as soon as he can be taken, to find and offer sufficient surety and main prize for his good behavior towards the said United States, and the citizens thereof, according to the form of the statute in such case made and provided."

"And this you shall in no wise omit, on the peril that shall ensue thereon, and have you before us this precept. Given under our hands and seals in the county aforesaid this 21 December, 1805."

The circuit court, upon hearing, remanded the prisoner to jail, there to remain until he should enter into a recognizance for his good behavior for one year, himself in the sum of \$1,000, and sureties in the like sum.

Hiort, for the prisoner, contended that the commitment was illegal, both under the constitution of Virginia and that of the United States. It does not state a cause certain, supported by oath.

By the 10th article of the bill of rights of Virginia it is declared that all warrants to seize any person whose offense is not particularly described, and supported by evidence, are grievous and oppressive, and ought not to be granted.

By the 6th article of the amendments to the constitution of the United States, it is declared, "that on warrants shall issue but upon probable cause, supported by oath or affirmation."

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The Judges of this court were unanimously of opinion that the warrant of commitment was illegal for want of stating some good cause certain, supported by oath. If the circuit court had proceeded *de novo*, perhaps it might have made a difference. But this Court is of opinion that that court has gone only upon the proceedings before the justices. It has gone so far as to correct two of the errors

committed, but the rest remain. If the prisoner is really a person of ill fame, and ought to find sureties for his good behavior, the justices may proceed *de novo*, and take care that their proceedings are regular.

The prisoner is discharged.

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