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Ex Parte Milburn

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Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 704

Appellant : Ex Parte Milburn

Judgement :

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Ex Parte Milburn

34 U.S. (9 Pet.) 704

APPLICATION FOR WRIT

OF HABEAS CORPUS

SYLLABUS

Habeas corpus. As the jurisdiction of the Supreme Court is appellate, it must he shown to the Court that the Court has he power to award a habeas corpus before one will be granted.

George Milburn was imprisoned in the jail of the County of Washington upon a bench warrant issued by the Circuit Court of the United States for the District of Columbia to answer an indictment pending against him for keeping a faro bank, an offense which, by an act of Congress, is punishable by imprisonment at hard labor in the penitentiary of the District. He had been arrested on a former capias issued on the same indictment, upon which he gave a recognizance of, bail, with sureties, in the sum of 100, Maryland currency, according to the statute of Maryland, conditioned to appear

in court at the return day of the process, &c.; He did not appear, and the recognizance was forfeited, and a *scire facias* was issued against him and his sureties, returnable to December term, 1833. At the same term, another writ of capias was issued against him, returnable immediately, and returned *"non est inventus."* At June vacation, 1834, another writ of capias was issued against him, returnable to November term, 1834, on which he was arrested, and from which arrest he was discharged on a habeas corpus by the chief Justice of the circuit court on the ground that the writ of capias improperly issued. On a return of this discharge by the marshal, a bench warrant was issued by order of a majority of the judges of the circuit court and on which he was in custody. He applied for a writ of habeas corpus to this Court to obtain his discharge. *Held* that

he was properly in custody. The rule for the habeas corpus was refused.

A rule to show cause why a habeas corpus should not be awarded to bring up the body of George Milburn, in confinement in the jail of the County of Washington in the District of Columbia. *

The case, as stated in the opinion of the Court, was as follows:

"This is an application to the Court by petition for a writ of habeas corpus to bring up the body of George Milburn, now imprisoned in the jail of Washington County in the District of

Columbia, upon a bench warrant issued against him by the Circuit Court of this District, to arrest him to answer to an indictment now pending in the same court against him for keeping a faro bank, an offense which, by the Act of Congress of 2 March, 1831, ch. 37, is punishable by imprisonment and labor in the penitentiary of the District. The main grounds for the application (for it is not necessary to go into the minute facts) are that the party was arrested on a former capias issued on the same indictment, upon which he gave a recognizance of bail with sureties in the sum of 100 Maryland currency ($266.67) according to the statute of Maryland passed in October 1780, ch. 10 (which is in force in this District), conditioned to appear in court on the return day of the process, to attend the court from day to day, and not to depart therefrom without leave of the court. At the return day he did not appear, and the recognizance was forfeited, and a *scire facias* issued against him and his sureties, returnable to November, 1833. At the same term, another writ of capias on the indictment was issued against him, returnable immediate, which was returned *non est inventus.* Afterwards, in June, 1834, in vacation, another writ of capias was issued by the district attorney upon the same indictment, returnable to November term, 1834, upon which the party was arrested, and from which, upon a writ of habeas corpus, he was discharged by Mr. Chief Justice Cranch of the circuit court upon the ground that the writ of capias improperly issued. The marshal having returned this matter specially to the circuit court at the November term, 1834, upon motion of the district attorney, the present bench warrant was issued by order of the majority of the court, and upon which the party is now in custody. "

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MR. JUSTICE STORY, after stating the facts of the case, delivered the opinion of the Court.

The points principally relied on at the argument are, in the first place, that the party is not liable to be arrested to answer the indictment after having given a recognizance of bail,

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although the recognizance has been forfeited and the party has not appeared and answered and been tried on the indictment; in the next place, that the discharge upon the habeas corpus before Mr. Chief Justice Cranch is a bar to any subsequent arrest.

We are of opinion that neither of these grounds can, in point of law, be maintained. A recognizance of bail, in a criminal case, is taken to secure the due attendance of the party accused to answer the indictment and to submit to a trial and the judgment of the court thereon. It is not designed as a satisfaction for the offense when it is forfeited and paid, but as a means of compelling the party to submit to the trial and punishment which the law ordains for his offense. And *a fortiori* it cannot be deemed to apply to a case like the present of a penitentiary offense, for that would be to suppose that the law allowed the party to purge away the offense and the corporeal punishment by a pecuniary compensation. There is nothing, in our opinion, in the Maryland statute of 1780, ch. 10, to charge this construction of the law.

The other ground is also unmaintainable. A discharge of a party under a writ of habeas corpus from the process under which he is imprisoned discharges him from any further confinement under the process, but not under any other process which may be issued against him under the same indictment.

For these reasons, we are of opinion that the party is rightfully in custody under the bench warrant of the circuit court, and therefore that the petition for the writ of habeas corpus ought to be

Denied.

The rule, therefore, to show cause is discharged, and the motion for the habeas corpus is overruled.

* When the petition in this case was presented to the Court, a habeas corpus was asked to be issued and it was proposed to argue the question of the right of the petitioner to his discharge on the return of the habeas corpus.

MR. CHIEF JUSTICE MARSHALL said:

"As the jurisdiction of the Supreme Court is appellate, it must first be shown that the Court has the power in this case to award a habeas corpus."

"A rule was granted to show cause why a habeas corpus should not be issued."

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