

Ex Parte Dorr

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Court : US Supreme Court

Decided On : 1845

Appeal No. : 44 U.S. 103

Appellant : Ex Parte Dorr

Judgement :

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MOTION FOR HABEAS CORPUS

SYLLABUS

Neither the Supreme Court nor any other court of the United States or judge thereof can issue a habeas corpus to bring up a prisoner who is in custody under a sentence or execution of a state court for any other purpose than to be used as a witness.

An application for a writ of error prayed for without the authority of the party concerned but at the request of his friends cannot be granted.

Mr. Treadwell moved for a writ of habeas corpus to bring up Thomas W. Dorr, of Rhode Island, under the following circumstances:

He stated that Dorr was charged with levying war against the State of Rhode Island, and sentenced to the state's prison for life in June, 1844; that upon the trial a point of law was raised whether treason could be committed against a state, but the court would not permit counsel to argue it; that a motion was made to suspend the sentence until a writ of error could be sued out to bring the case before the Supreme Court of the United States, but the court refused to suspend it. He then read affidavits to show that personal access to Dorr was denied, in consequence of which his authority could not be obtained for an application for such a writ. The present motion for a habeas corpus was based upon this fact. There was no other mode of ascertaining whether or not it was Dorr's wish that his case should be brought up to this Court. Under the 14th section of the Judiciary Act, the power to issue writs of habeas corpus was vested in the judges of the United States' courts. 3 Story's Com., tit. Jurisdiction, 588, 590, 594, 595, 603, 608, 610, 625.

The case was in itself proper to be brought up under the 25th section of the Judiciary Act, as the decision of the state court was thought to be inconsistent with the Constitution of the United States.

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

Thomas W. Dorr was convicted before the supreme court of Rhode Island, at March term, 1844, of treason against the State of Rhode Island, and sentenced to the state's prison for life. And it appears from the affidavits of Francis C. Treadwell, a counselor at law of this Court, and others that personal access to Dorr, in his confinement, to ascertain whether he desires a writ of error to remove the record of his conviction to this Court, has been refused. On this ground the above application has been made.

Has the Court power to issue a writ of habeas corpus in this case? This is a preliminary question, and must be first considered.

The original jurisdiction of this Court is limited by the Constitution to cases affecting ambassadors, other public ministers, and consuls, and where a state is a party. Its appellate jurisdiction is regulated by acts of Congress. Under the common law, it can exercise no jurisdiction.

As this case cannot be brought under the head of original jurisdiction; if sustainable, it must be under the appellate power.

The 14th section of the Judiciary Act of 1789 provides

"That the courts of the United States shall have power to issue writs of *scire facias*, habeas corpus, and all other writs not specially provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law. And that either of the Justices of the Supreme Court, as well as

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judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment, provided that writs of habeas corpus shall in no case extend to prisoners in jail unless where they are in custody under or by color of the authority of the United States or are committed for trial before some court of the same or are necessary to be brought into court to testify."

It the trial of Dorr, it was insisted that the law of the state under which he was prosecuted was repugnant to the Constitution of the United States. And on this ground a writ of error is desired under the 25th section of the Judiciary Act above named. That as the prayer for this writ can only be made by Dorr or by someone under his authority, and as access to him in prison is denied, it is insisted that the writ to bring him before the court is the only means through which this Court can exercise jurisdiction in his case by a writ of error. Even if this were admitted, yet

the question recurs whether this Court has power to issue the writ to bring him before it. That it has no such power under the common law is clear. And it is equally clear that the power nowhere exists unless it be found in the 14th section above cited.

The power given to the courts in this section to issue writs of *scire facias*, habeas corpus &c., as regards the writ of habeas corpus, is restricted by the proviso to cases where a prisoner is

"in custody under or by color of the authority of the United States or has been committed for trial before some court of the same or is necessary to be brought into court to testify."

This is so clear from the language of the section that any illustration of it would seem to be unnecessary. The words of the proviso are unambiguous. They admit of but one construction. And that they qualify and restrict the preceding provisions of the section is indisputable.

Neither this nor any other court of the United States, or judge thereof, can issue a habeas corpus to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness. And it is immaterial whether the imprisonment be under civil or criminal process. As the law now stands, an individual, who may be indicted in a circuit court for treason against the United States, is beyond the power of federal courts and judges, if he be in custody under the authority of a state.

Dorr is in confinement under the sentence of the supreme court of Rhode Island, consequently this Court has no power to issue a habeas corpus to bring him before it. His presence here is not required as a witness, but to signify to the court whether he desires a writ of error to bring before this tribunal the record of his conviction.

The counsel in this application prays for a writ of error, but as it appears from his own admission that he does not act under the authority

of Dorr, but at the request of his friends, the prayer cannot be granted. In this view it is unnecessary to decide whether the counsel has stated a case, which, with the authority of his client, entitles him to a writ of error.

The motion for a habeas corpus is

Overruled.