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Dynes Vs. Hoover

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Court : US Supreme Court

Decided On : 1857

Appeal No. : 61 U.S. 65

Appellant : Dynes

Respondent : Hoover

Judgement :

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Dynes v. Hoover

61 U.S. (20 How.) 65

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

The Constitution of the United States gives to Congress the power to provide and maintain a navy, and to make rules for its government.

In the exercise of this power, Congress provided for the punishment of desertion and of other crimes not specified in the articles, which should be punished according to the laws and customs in such cases at sea.

Where a seaman was charged with deserting, and the court martial found him guilty of attempting to desert, the Court had jurisdiction over the subject matter, and an action of trespass for false imprisonment will not lie against the ministerial officer who executes the sentence for attempting to desert.

It is only where a court has no jurisdiction over the subject matter, or, having such jurisdiction, is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered *coram non judice,* that an action will lie against the officer who executes its judgment.

The authorities upon this point examined, and also the legal powers of courts martial.

Dynes was a seaman in the navy, who was tried by a court martial upon a charge of desertion, who found him not guilty of deserting but guilty of attempting to desert, and sentenced him to be confined in the penitentiary of the District of Columbia at hard labor, without pay, for the term of six months from the date of the approval of the sentence, and not to be again

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enlisted in the naval service. Whereupon the President of the United States directed Hoover, the marshal of the district, to commit him to the penitentiary.

The proceedings of the circuit court are stated in the opinion of the Court.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

The plaintiff brought an action for assault and battery and false imprisonment, charging that the defendant imprisoned him in the penitentiary of the District of

Columbia. The defendant pleaded the general issue, and several special pleas, in which he denied the force and injury and set up that he, as Marshal of the District of Columbia, imprisoned the plaintiff by virtue of the authority of the President of the United States in the execution of a sentence of a naval court martial, convened under an Act of Congress of the 23d of April, 1800; which sentence was approved by the Secretary of the Navy, which was final and absolute, and denying the jurisdiction of the court. The plaintiff filed a *retraxit,* admitting that there was no battery other than the imprisonment in pursuance of the sentence of the court martial.

The charge by the Secretary of the Navy was desertion, with this specification:

"That on or about the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-four, Frank Dynes deserted from the United States ship Independence, at New York."

He pleaded not guilty. After hearing the evidence, the court declared,

"We do find the accused, Frank Dynes, seaman of the United States navy, as follows:"

"Of the specification of the charge, guilty of attempting to desert; of the charge, not guilty of deserting, but guilty of attempting to desert; and the court do thereupon sentence the said Frank Dynes, a seaman of the United States navy, to be confined in the penitentiary of the District of Columbia, at hard labor, without pay, for the term of six months from the date of the approval of this sentence, and not to be again enlisted in the naval service."

This conviction and sentence was approved by the Secretary of the Navy, on the 26th of September, 1854. The prisoner was then brought from New York to Washington, in custody, and the President, reciting the trial and sentence, made the following order upon the defendant, the marshal, in relation to carrying the judgment of the court into execution.

"The prisoners above named the plaintiff, Dynes, being one among others having been brought to the city, by direction of the Secretary of the Navy, in the United States steamer *Engineer,* you are hereby directed to receive them from the commanding officer of said vessel and commit them

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to the penitentiary in the District of Columbia, in accordance with their respective sentences."

These facts formed a portion of the defendant's pleas, to which the plaintiff demurred, pointing out the following causes of demurrer:

1. Because the said court martial had no jurisdiction or authority whatever to pass such sentence as that pleaded and set forth in said plea.

2. Because the sentence is illegal and void.

3. Because the President of the United States had no jurisdiction or authority whatever to write such a letter to the defendant as that pleaded and set forth in said plea, nor in any manner whatever to direct the defendant to commit the plaintiff to the penitentiary in the District of Columbia, in accordance with said sentence.

4. Because the said letter, and the said directions therein contained, are unconstitutional, illegal, and void.

5. Because the said plea is altogether vicious and insufficient in law, and wants form.

There was a joinder in demurrer and judgment for the defendant.

This presents the question whether the defendant, as marshal, was authorized to execute the direction to receive the plaintiff, then in custody of the captain of the United States steamer *Engineer,* to deliver him to the keeper of the penitentiary of the District of Columbia.

The demurrer admits that the court martial was lawfully organized; that the crime charged was one forbidden by law; that the court had jurisdiction of the charge as it was made; that a trial took place before the court upon the charge, and the defendant's plea of not guilty; and that upon the evidence in the case the court found Dynes guilty of an attempt to desert, and sentenced him to be punished, as has been already stated; that the sentence of the court was approved by the Secretary, and that by his direction Dynes was brought to Washington; and that the defendant was Marshal for the District of Columbia, and that in receiving Dynes, and committing him to the keeper of the penitentiary, he obeyed the orders of the President of the United States in execution of the sentence. Among the powers conferred upon Congress by the 8th section of the first article of the Constitution, are the following: "to provide and maintain a navy;" "to make rules for the government of the land and naval forces." And the 8th Amendment, which requires a presentment of a grand jury in cases of capital or otherwise infamous crime, expressly excepts from its operation "cases arising in the land or naval forces." And by the 2d section of the 2d Article of the Constitution it is declared that:

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"The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States."

These provisions show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations; and that the power to do so is given without any connection between it and the 3d Article of the Constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other.

In pursuance of the power just recited from the 8th section of the first Article of the Constitution, Congress passed the Act of the 23d April, 1800, 2 Stat. 45, providing rules for the government of the navy. The 17th article of that act is: "And if any

person in the navy shall desert or entice others to desert, he shall suffer death, or such other punishment as a court martial shall adjudge." The 32d article is:

"All crimes committed by persons belonging to the navy, which are not specified in the foregoing articles, shall be punished according to the laws and customs in such cases at sea."

The 35th article provides for the appointment of courts martial to try all offenses which may arise in the naval service. The 38th article provides that charges shall be made in writing, which was done in this case. The court was lawfully constituted, the charge made in writing, and Dynes appeared and pleaded to the charge. Now the demurrer admits, if Dynes had been found guilty of desertion, that no complaint would have been made against the conviction for want of jurisdiction in the court. But as it appears that the court, instead of finding Dynes guilty of the high offense of desertion, which authorizes the punishment of death, convicted him of attempting to desert, and sentenced him to imprisonment for six months at hard labor in the penitentiary of the District of Columbia, it is argued that the court had no jurisdiction or authority to pass such a sentence -- in other words, in the language of the counsel of the plaintiff in error, that

"the finding was *coram non judice,* it being for an offense of which the plaintiff was never charged and of which the court had no cognizance. That the subject matter of the sentence, the punishment inflicted, was not within their jurisdiction, and is a punishment which they had no sort of permission or authority of law to inflict."

But the finding of the court against the prisoner was what is known in the administration of criminal law as a partial verdict, in which the accused is acquitted of a part of the accusation against him and found guilty of the residue. As when there is an acquittal on one count and a verdict of guilty on

another. Or when the charge is of a higher degree, including one of a lesser, there may be a finding by a partial verdict of the latter. As upon a charge of burglary,

there may be a conviction for a larceny, and an acquittal of the nocturnal entry. So, upon an indictment for murder, there may be a verdict of manslaughter, and robbery may be reduced to simple larceny, and a battery into an assault.

The objection is ingeniously worded, was very ably argued, and, we may add, with a clear view and knowledge of what the law is upon such a subject and how the plaintiff's case must be brought under it to make the defendant responsible on this action for false imprisonment. But it substitutes an imputed error in the finding of the court for the original subject matter of its jurisdiction, seeking to make the marshal answerable for his mere ministerial execution of a sentence, which the court passed, the Secretary of the Navy approved, and which the President of the United States, as constitutional Commander-in-Chief of the army and navy of the United States, directed the marshal to execute by receiving the prisoner and convict, Dynes, from the naval officer then having him in custody, to transfer him to the penitentiary, in accordance with the sentence which the court had passed upon him. And this upon the principle that where a court has no jurisdiction over the subject matter, it tries and assumes it; or where an inferior court has jurisdiction over the subject matter, but is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered *coram non judice,* that trespass for false imprisonment is the proper remedy, where the liberty of the citizen has been restrained by process of the court or by the execution of its judgment. Such is the law in either case, in respect to the court, which acts without having jurisdiction over the subject matter, or which, having jurisdiction, disregards the rules of proceeding enjoined by the law for its exercise, so as to render the case *coram non judice. Cole's Case,* John.W. 171; *Dawson v. Gill,* 1 East. 64; *Smith v. Beucher,* Hardin 71; *Martin v. Marshall,* Hob. 68; *Weaver v. Clifford,* 2 Bul. 64; 2 Wils. 385. In both cases, the law is that an officer executing the process of a court which has acted without jurisdiction over the subject matter becomes a trespasser, it being better for the peace of society and its interests of every kind that the responsibility of determining whether the court has or has not jurisdiction should be upon the officer than that a void writ should be executed. This Court, so far back as the year 1806, said, in the case of *Wise and Withers,* 3 Cranch 331, 7 U. S. 337 of that case,

"It follows from this opinion that a court martial has no jurisdiction over a justice of the

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peace as a militiaman; he could never be legally enrolled, and *it is a principle* that a decision of such a tribunal, in a case *clearly without its jurisdiction,* cannot protect the officer who executes it. The *court and the officer are all trespassers.* "

2 Brown 124; 10 Cranch 69; Mark's 118; 8 Term 424; 4 Mass. 234.

I add two cases from the 2d of Horace Gray's reports of the Supreme Judicial Federal Court of Massachusetts, furnished me by MR. JUSTICE CAMPBELL of *Pifer v. Person,* 120; *Clark v. Whipple,* in May and Kent 410.

But the case in hand is not one of a court without jurisdiction over the subject matter, or that of one which has neglected the forms and rules of procedure enjoined for the exercise of jurisdiction. It was regularly convened; its forms of procedure were strictly observed as they are directed to be by the statute; and if its sentence be a deviation from it, which we do not admit, it is not absolutely void. Whatever the sentence is or may have been, as it was not a trial by court martial taking place out of the United States, it could not have been carried into execution but by the confirmation of the President, had it extended to loss of life, or in cases not extending to loss of life, as this did not, but by the confirmation of the Secretary of the Navy, who ordered the court. And if a sentence be so confirmed, it becomes final, and must be executed unless the President pardons the offender. It is in the nature of an appeal to the officer ordering the court, who is made by the law the arbiter of the legality and propriety of the court's sentence. When confirmed, it is altogether beyond the jurisdiction or inquiry of any civil tribunal whatever, unless it shall be in a case in which the court had not jurisdiction over the *subject matter or charge,* or one in which, having jurisdiction over the subject matter, it has failed to observe the rules prescribed by the statute for its exercise. In such cases, as has just been said, all of the parties to such illegal trial are trespassers upon a party aggrieved by it, and he may recover damages from them on a proper suit in a civil

court, by the verdict of a jury.

Persons, then, belonging to the army and the navy are not subject to illegal or irresponsible courts martial when the law for convening them and directing their proceedings of organization and for trial have been disregarded. In such cases, everything which may be done is void -- not voidable, but void -- and civil courts have never failed, upon a proper suit, to give a party redress, who has been injured by a void process or void judgment. In England it has been done by the civil courts ever since the passage of the 1 Mutiny Act of William and Mary, ch. 5, 3 April, 1689. And it must have been with

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a direct reference to what the law was in England that this Court said, in *Wise v. Withers,* 3 Cranch 337, that in such a case "the court and the officers are all trespassers." When we speak of *proceedings* in a cause or for the organization of the court and for trials, we do not mean mere irregularity in practice on the trial or any mistaken rulings in respect to evidence or law, but of a disregard of the essentials required by the statute under which the court has been convened to try and to punish an offender for an imputed violation of the law.

Courts martial derive their jurisdiction and are regulated with us by an act of Congress, in which the crimes which may be committed, the manner of charging the accused, and of trial, and the punishments which may be inflicted, are expressed in terms, or they may get jurisdiction by a fair deduction from *the definition of the crime* that it comprehends, and that the legislature meant to subject to punishment one of a minor degree of a kindred character, which has already been recognized to be such by the practice of courts martial in the army and navy services of nations, and by those functionaries in different nations to whom has been confided a revising power over the sentences of courts martial. And when offenses and crimes are not given in terms or by definition, the want of it may be supplied by a comprehensive enactment, such as the 32d article of the rules for the government of the navy, which means that courts martial have jurisdiction of such crimes as are not specified, but which have been recognized to

be crimes and offenses by the usages in the navy of all nations, and that they shall be punished according to the laws and customs of the sea. Notwithstanding the apparent indeterminateness of such a provision, it is not liable to abuse, for what those crimes are and how they are to be punished is well known by practical men in the navy and army and by those who have studied the law of courts martial and the offenses of which the different courts martial have cognizance. With the sentences of courts martial which have been convened regularly and have proceeded legally, and by which punishments are directed, not forbidden by law, or which are according to the laws and customs of the sea civil courts have nothing to do, nor are they in any way alterable by them. If it were otherwise, the civil courts would virtually administer the rules and articles of war, irrespective of those to whom that duty and obligation has been confided by the laws of the United States, from whose decisions no appeal or jurisdiction of any kind has been given to the civil magistrate or civil courts. But we repeat, if a court martial has no *jurisdiction over the subject matter of the charge* it has been convened

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to try, or shall inflict a punishment forbidden by the law, though its sentence shall be approved by the officers having a revisory power of it, civil courts may, on an action by a party aggrieved by it, inquire into the want of the court's jurisdiction, and give him redress. *Harman v. Tappenden,* 1 East. 555; as to ministerial officers, *Marshall's Case,* 10 Cranch 76; *Morrison v. Sloper,* Wells 30; *Parton v. Williams,* B. & A. 330; and as to justices of the peace, by Ld. Tenterden, in *Basten v. Carew,* 3 B. & C. 653; *Mules v. Calcott,* 6 Bins 85.

Such is the law of England. By the mutiny acts, courts martial have been created, with authority to try those who are a part of the army or navy for breaches of military or naval duty. It has been repeatedly determined that the sentences of those courts are conclusive in any action brought in the courts of common law. But the courts of common law will examine whether courts martial have exceeded the jurisdiction given them, though it is said, "not, however, after the sentence has been ratified and carried into execution." *Grant v. Gould,* 2 H.Black 69; *Ship Bounty,* 1 East. 313; *Shalford's Case,* 1 East. 313; *Mann v. Owen,* 9 B. & C.

595; *In the Matter of Poe,* 5 B. & A. 681, on a motion for a prohibition. A judge, or any person acting by authority as such, where he has over the subject matter and over the person, a general jurisdiction which he has not exceeded, will not be liable to have his judgment examined in an action brought against himself; but if jurisdiction be wanting over the subject matter and over the person, such judgment would be examinable. *Hammond v. Howel,* 1 Mod. 184; *Garnett v. Ferrand,* 6 B. & C. 611; *Moslyn v. Fabugas,* Cow. 172; *Bonham's Case,* 8 Co. 114; *Greenwell v. Burwell,* 1 Le Roy 454; by Holt, C.J., 1 Le Roy 470; *Lumley v. Lance,* 2 Le Roy 767; *Basten v. Carew,* 3 B. & C. 649. The preceding cited cases relate to judges of record. As to judges not of record, ecclesiastical judges, *Acherly v. Parkerson,* 3 M. & S. 411. Commissioners of court of bequests, *Aldridge v. Haines,* 2 B. & Ad. 395. As to returning officer of election, *Ashby v. White,* 2 Ld.Raym. 941; *Cullen v. Morris,* 2 Start 577.

In this case, all of us think that the court which tried Dynes had jurisdiction over the subject matter of the charge against him, that the sentence of the court against him was not forbidden by law, and that, having been approved by the Secretary of the Navy as a fair deduction from the 17th article of the Act of April 23, 1800, and that Dynes having been brought to Washington as a prisoner by the direction of the Secretary, that the President of the United States, as constitutional commander-in-chief of the army and navy, and in virtue of his

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constitutional obligation that "He shall take care that the laws be faithfully executed," violated no law in directing the marshal to receive the prisoner Dynes from the officer commanding the United States steamer *Engineer* for the purpose of transferring him to the penitentiary of the District of Columbia, and consequently that the marshal is not answerable in this action of trespass and false imprisonment.

We affirm the judgment of the circuit court.

MR. JUSTICE Mc LEAN dissented.

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