

Territory Vs. Lockwood

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Court : US Supreme Court

Decided On : 1865

Appeal No. : 70 U.S. 236

Appellant : Territory

Respondent : Lockwood

Judgement :

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Territory v. Lockwood

70 U.S. (3 Wall.) 236

ERROR TO THE SUPREME

COURT OF NEBRASKA

SYLLABUS

A proceeding in the nature of a *quo warranto* in one of the territories of the United States to test the right of a person to exercise the functions of a judge of a supreme court of the territory must be in the name of the United States, and not in

the name of the territory. If taken in the name of the territory, the error may be taken advantage of on demurrer, and it is fatal.

The act of Congress organizing the Territory of Nebraska ordains that the executive power in and over *the* territory shall be vested in a governor, that the legislative power shall be vested in a governor and legislative assembly, and that the judicial power of the territory shall be vested in a supreme court &c.; And the code of the territorial legislature [[Footnote 1](#)] gives the remedy of information against " *any* person unlawfully holding or exercising any public office or franchise *within this territory*, " providing also that the defendant shall "answer such petition in the *usual way*, and, issue being joined, it shall be tried in the *ordinary* manner."

With these provisions in force, the district attorney filed in one of the district courts of Nebraska territory an information in the nature of a *quo warranto* in the name of the " *Territory of Nebraska*, on the relation of Eleazar Wakely," against a certain Lockwood, to test the rights of the said Lockwood to exercise the office of an associate judge of the supreme court of the territory; a court in which, as is known, the judges are appointed by the President of the United States. The information was full, explicit, and technical in its statement of the case; alleging, with circumstance, that the relator had a right to the office, and that the defendant held, exercised, usurped, and invaded &c.;, without any legal warrant &c.; The defendant demurred generally. The district court sustained the demurrer, and gave judgment in his favor. The relator took the case to the supreme court of the territory, where the judgment below was affirmed. This was a writ of error to reverse that judgment.

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The question presented for the determination of this Court was, whether the petition was well brought in the name of the *territory*, or whether it should not have been in behalf of the United States.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

The writ of *quo warranto* was a common law writ. In the course of time, it was superseded by the speedier remedy of an Information in the same nature. [[Footnote 2](#)] It was a writ of right for the King. [[Footnote 3](#)] In the English courts an information for an offense differs from an indictment, chiefly in the fact that it is presented by the law officer of the Crown without the intervention of a grand jury. [[Footnote 4](#)] Whether filed by the attorney general or the master of the Crown office, and whether it relates to public offenses or to the class of private rights specified in the statute of 9 Ann. ch. 20, in relation to which it may be invoked as a remedy, it is brought in the name of the King, and the practice is substantially the same in all cases. [[Footnote 5](#)] Any defect in the structure of the information may be taken advantage of by demurrer. [[Footnote 6](#)]

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In this country, the proceeding is conducted in the name of the state or of the people, according to the local form in indictments, and a departure from this form is a substantial and fatal defect. [[Footnote 7](#)]

In *Wallace v. Anderson*, [[Footnote 8](#)] this Court said

"that a writ of *quo warranto* could not be maintained except at the instance of the government, and as this writ was issued by a private individual, without the authority of the government, it could not be sustained, whatever might be the right of the prosecutor or the person claiming to exercise the office in question."

In the case of the *Miners' Bank v. United States*, [[Footnote 9](#)] on the relation of Grant, the information was filed in the name of the United States in the District Court of Iowa territory. The sufficiency of the information in this respect does not appear to have been questioned. A state court cannot issue a writ of mandamus to an officer of the United States. "His conduct can only be controlled by the power that created him." [[Footnote 10](#)] The validity of a patent for land issued by the United States "is a question exclusively between the sovereignty making the grant

and the grantee." [[Footnote 11](#)]

The judges of the Supreme Court of the Territory of Nebraska are appointed by the President and confirmed by the Senate of the United States. The people of the territory have no agency in appointing them and no power to remove them. The territorial legislature cannot prescribe conditions for the tenure or loss of the office. Such legislation on their part would be a nullity. Impeachment and conviction by them would be futile as to removal. The right of the territory to prosecute such an information as this would carry with it the power of a motion without the consent of the government from which the appointment was derived. This the territory can no more accomplish in one

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way than in another. The subject is as much beyond the sphere of its authority as it is beyond the authority of the states as to the federal officers whose duties are to be discharged within their respective limits. The right to institute such proceedings is inherently in the Government of the nation. We do not find that it has been delegated to the territory. We think the demurrer was well taken.

Judgment affirmed with costs.

[[Footnote 1](#)]

10 Stat. at Large 277.

[[Footnote 2](#)]

5 Bacon's Abridgment, 174, Tit. Information A; 3 Blackstone's Commentaries 263.

[[Footnote 3](#)]

7 Comyn's Digest p. 190, Phila. ed., 1826; Tit. Quo War. A.

[[Footnote 4](#)]

2 Hawkins' P.C., chap. 26, 4.

[[Footnote 5](#)]

Cole on Informations 65, 113; *Rex v. Francis*, 2 Term 484; 4 Blackstone's Commentaries 312.

[[Footnote 6](#)]

Regina v. Smith, 2 Moody & Robinson 109; *Regina v. Law, id.*, 197

[[Footnote 7](#)]

Wright v. Allen, 2 Tex. 158; *Wright v. People*, 15 Ill. 417; *Donnelly v. People*, 11 *id.* 552; *Eaton v. State*, 7 Blackford 65; *Comm. v. Lex & H. T. Co.*, 6 B.Monroe 398.

[[Footnote 8](#)]

[18 U. S. 5](#) Wheat. 292.

[[Footnote 9](#)]

[46 U. S. 5](#) How. 213.

[[Footnote 10](#)]

[McClung v. Silliman](#), 6 Wheat. 605.

[[Footnote 11](#)]

[Field v. Seabury](#), 19 How. 332.