

United States Vs. Hoffman

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 158

Appellant : United States

Respondent : Hoffman

Judgement :

United States v. Hoffman - 71 U.S. 158 (1866)

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United States v. Hoffman

71 U.S. (4 Wall.) 158

ON MOTION FOR PROHIBITION

SYLLABUS

1. The writ of prohibition can only be used to prevent the doing of some act which is about to be done, and can never be used as a remedy for acts already completed.

2. Therefore, where the court to which the writ should be issued has already disposed of the case, so that nothing remains which that court can do, either by way of executing its judgment or otherwise, no prohibition will be granted.

3. And this is true though the final disposition of the case was made after service on the judge of a rule to show cause why the writ should not issue and though other cases of the same character may be pending in the same court.

At the last term of this Court, the relator made application for a writ of prohibition to the judge of the District Court of the Northern District of California to prevent that court from proceeding further in a certain cause in admiralty. This Court, without looking into the question of the alleged want of jurisdiction, granted a rule on the judge of that court to show cause why the writ should not be issued, and an order accompanied the rule that he should proceed no further in the case until the decision of this Court in the premises.

The return of the judge to that rule was now before this Court. The substance of it was that after the rule had been served upon him, the libellant in the admiralty suit came into court and moved for permission to pay all the costs that had accrued, and to dismiss his suit. After hearing

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argument the court granted the motion, and the libellant, having paid all the costs of both parties, an order was made dismissing the suit.

The relator now asked that the writ of prohibition might issue notwithstanding the return, and whether it should or not presented the question to be here decided.

The suggestion of the relator, it may be here mentioned, stated that four other suits in admiralty against vessels owned by him and founded on libels of the same character as the libel in this case were pending in the same court.

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MR. JUSTICE MILLER delivered the opinion of the Court.

The writ of prohibition, as its name imports, is one which commands the person to whom it is directed not to do something which, by the suggestion of the relator, the court is informed he is about to do. If the thing be already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act, and the only effect of a writ of prohibition is to suspend all action and to prevent

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any further proceeding in the prohibited direction. In the case before us, the writ, from its very nature, could do no more than forbid the judge of the district court from proceeding any further in the case in admiralty.

The return shows that such an order is unnecessary and will be wholly useless, for the case is not now pending before that court and there is no reason to suppose that it will be in any manner revived or brought up again for action. The facts shown by the return negative such a presumption.

Counsel has argued very ingeniously that the case should be considered as remaining in the court below in the same position as it was when the issued from this Court, but we cannot so regard it. By the action of the libellant and the consent of the court, the case is out of court, and the relator is no longer harassed by an attempt to exercise over him a jurisdiction which he claims to be unwarranted. If the return shows no more, it shows that the district judge has no intention of proceeding further in that case. Now ought the writ to issue to him under such circumstances? It would seem to be an offensive and useless exercise of authority for the Court to order it.

The suggestion that there are or may be other cases against the relator of the same character can have no legal force in this case. If they are now pending, and the relator will satisfy the Court that they are proper cases for the exercise of the Court's authority, it would probably issue writs instead of a rule, but a writ in this case could not restrain the judge in the other cases by its own force, and could affect his action only so far as he might respect the principle on which the Court

acted in this case. We are not prepared to adopt the rule that we will issue a writ in a case where its issue is not justified for the sole purpose of establishing a principle to govern other cases.

We have examined carefully all the cases referred to by counsel which show that a prohibition may issue after sentence or judgment, but in all these cases something remained which the court or party to whom the writ was

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directed might do, and probably would have done, as the collection of costs or otherwise enforcing the sentence.

Here, the return shows that nothing is left to be done in the case. It is altogether gone out of the court.

These views are supported by the following cases:

In *United States v. Peters*, [[Footnote 1](#)] which was an application for prohibition to the admiralty, this Court suspended its decision to give the libellant an opportunity to dismiss his libel. The Court finally issued the writ, but there seems no reason to doubt from the report of the case that it would have considered such action by the libellant as an answer to the request for the writ.

In the case of *Hall v. Norwood* [[Footnote 2](#)] -- a very old case, when writs of prohibition were much more common than now -- a prohibition was asked to a court of the Cinque Ports at Dover. While the case was under consideration, the reporter says:

"On the other hand, the court was informed that they had proceeded to judgment and execution at Dover, and therefore that they move here too late for a prohibition, and of this opinion was the court, since there is no person to be prohibited, and possessions are never taken away or disturbed by prohibitions."

The marginal note by the reporter is this: "Prohibition will not lie after the cause is ended."

The rule heretofore granted in this case is discharged.

[[Footnote 1](#)]

[3 U. S. 3](#) Dall. 121.

[[Footnote 2](#)]

Siderfin 166.

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