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Ex Parte Mccardle

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Decided On : 1867

Appeal No. : 73 U.S. 318

Appellant : Ex Parte Mccardle

Judgement :

Ex Parte McCardle - 73 U.S. 318 (1867)
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Ex Parte McCardle

73 U.S. (6 Wall.) 318

MOTION TO DISMISS APPEAL FROM THE CIRCUIT

COURT FOR THE DISTRICT OF MISSISSIPPI

SYLLABUS

Under the Act of February 5, 1867, 14 Stat. at Large 385, to amend the Judiciary Act of 1789, an appeal lies to this Court on judgments in habeas corpus cases rendered by circuit courts in the exercise of original jurisdiction.

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The Judiciary Act of 1789, [Footnote 1] enacts:

"That either of the Justices of the Supreme Court as well as 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."

A subsequent Act, one of February 5, 1867, [Footnote 2] to amend the Judiciary Act of 1789, enacts:

"SEC. 1. That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdiction, *in addition to the authority already conferred by law,* shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States."

After providing for the awarding, direction, serving and return of the writ, and for the hearing &c.;, the act proceeds:

"From the final decision of any judge, justice, or court *inferior to the circuit court,* appeal may be taken to the *circuit court* of the United States for the district in which said cause is heard, and *from the judgment of said circuit court to the Supreme Court of the United States.* "

"And pending such proceedings or appeal, and until final judgment be rendered therein, and after final judgment of discharge in the same, any proceeding against such person so alleged to be restrained of his or her liberty in any *state* court, or under the authority of any *state,* for any matter or thing so heard and determined, or in process of being heard and determined, under and by virtue of such writ of habeas corpus, shall be deemed null and void. "

The act further declares:

"SEC. 2. . . . This act shall not apply to any person who is or may be held in the custody of the military authorities of the United States, charged with any military offense."

In this state of statutory law, a writ of habeas corpus was issued from the Circuit Court of the United States for the District of Mississippi, on the 12th of November, 1867, upon the petition of William H. McCardle, directed to Alvin C. Gillem and E. O. C. Ord, requiring them to produce the body of the petitioner, together with the cause of his imprisonment, and to abide the order of the court in respect to the legality of such imprisonment.

At the time of issuing the writ, E. O. C. Ord was brevet Major General commanding the Fourth Military District, and Alvin C. Gillem was brevet Major General commanding the sub-district of Mississippi, under the Reconstruction Acts of Congress.

In obedience to the writ, Major General Gillem, on the 21st of November, made a return of the cause of imprisonment, from which it appeared that McCardle had been arrested and was held in custody for trial by a military commission, under the alleged authority of the Reconstruction Acts, for charges, (1) of disturbance of the public peace; (2) of inciting to insurrection, disorder, and violence; (3) of libel; and (4) of impeding reconstruction.

On making this return, Major General Gillem surrendered McCardle to the court, and he was ordered into the custody of the marshal.

Subsequently, on the 25th of November, 1867, the circuit court adjudged that the petitioner be remanded to the custody of Major General Gillem, from which judgment the petitioner prayed an appeal to this Court, which was allowed, and a bond for costs given according to the order of the court.

On the same 25th of November, on the motion of the petitioner, he was admitted to bail on his own recognizance, with sufficient sureties, in the sum of one

thousand dollars,

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conditioned for his appearance to abide by and perform the final judgment of this Court.

The legal consequence of this admission to bail was the discharge of the prisoner, both from the custody of the marshal and of Major General Gillem, with a continuing liability, however, under the recognizance, to be returned, first to the civil court, and then to military custody, in case of affirmance by this Court of the judgment of the circuit court.

The ground assigned for the motion to dismiss the appeal was a want of jurisdiction in this Court to take cognizance of it.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The motion to dismiss the appeal has been thoroughly argued, and we are now to dispose of it.

The ground assigned for the motion is want of jurisdiction, in this Court, of appeals from the judgments of inferior courts in cases of habeas corpus.

Whether this objection is sound or otherwise depends upon the construction of the act of 1867.

Prior to the passage of that act this Court exercised appellate jurisdiction over the action of inferior courts by habeas corpus. In the case of Burford, [Footnote 3] this Court, by habeas corpus, aided by a writ of certiorari, reviewed and reversed the judgment of the Circuit Court of the District of Columbia. In that case, a prisoner brought before the circuit court by the writ had been remanded, but was discharged upon the habeas corpus issued out of this Court.

By the writ of habeas corpus also, aided by a certiorari, this Court, in the case of *Bollman and Swartwout,* [Footnote 4] again revised a commitment of the Circuit Court of the District. The prisoners had been committed on a charge of treason by order of the circuit court, and on their petition this Court issued the two writs, and, the prisoners having been produced, it was ordered that they should be discharged on the ground that the commitment of the circuit court was not warranted in law.

But, though the exercise of appellate jurisdiction over judgments of inferior tribunals was not unknown to the practice of this Court before the act of 1867, it was attended by some inconvenience and embarrassment. It was necessary to use the writ of certiorari in addition to the writ of habeas corpus, and there was no regulated and established practice for the guidance of parties invoking the jurisdiction.

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This inconvenience and embarrassment was remedied in a small class of cases arising from commitments for acts done or omitted under alleged authority of foreign governments, by the Act of August 29, 1842, [Footnote 5] which authorized a direct appeal from any judgment upon habeas corpus of a justice of this Court or judge of a district court to the circuit court of the proper district, and from the judgment of the circuit court to this Court.

This provision for appeal was transferred, with some modification, from the act of 1842 to the act of 1867; and the first question we are to consider, upon the construction of that act, is whether this right of appeal extends to all cases of habeas corpus, or only to a particular class.

It was insisted on argument that appeals to this Court are given by the act only from the judgments of the circuit court rendered upon appeals to that court from decisions of a single judge, or of a district court.

The words of the act are these:

"From the final decision of any judge, justice, or court inferior to the circuit court, an appeal may be taken to the circuit courts of the United States for the district in which said cause is heard, and from the judgment of said circuit court to the Supreme Court of the United States."

These words, considered without reference to the other provisions of the act, are not unsusceptible of the construction put upon them at the bar; but that construction can hardly be reconciled with other parts of the act.

The first section gives to the several courts of the United States, and the several justices and judges of such courts within their respective jurisdictions, in addition to the authority already conferred by law, power to grant writs of habeas corpus in all cases where any person may be restrained of liberty in violation of the Constitution or of any treaty or law of the United States.

This legislation is of the most comprehensive character. It brings within the habeas corpus jurisdiction of every court

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and of every judge every possible case of privation of liberty contrary to the national Constitution, treaties, or laws. It is impossible to widen this jurisdiction.

And it is to this jurisdiction that the system of appeals is applied. From decisions of a judge or of a district court appeals lie to the circuit court, and from the judgment of the circuit court to this Court. But each circuit court, as well as each district court and each judge, may exercise the original jurisdiction, and no satisfactory reason can be assigned for giving appeals to this Court from the judgments of the circuit court rendered on appeal, and not giving like appeals from judgments of circuit courts rendered in the exercise of original jurisdiction. If any class of cases was to be excluded from the right of appeal, the exclusion would naturally apply to cases brought into the circuit court by appeal, rather than to cases originating there. In the former description of cases, the petitioner for the writ, without appeal to this Court, would have the advantage of at least two hearings, while in the latter, upon the hypothesis of no appeal, the petitioner could have but one.

These considerations seem to require the construction that the right of appeal attaches equally to all judgments of the circuit court unless there be something in the clause defining the appellate jurisdiction which demands the restricted interpretation. The mere words of that clause may admit either, but the spirit and purpose of the law can only be satisfied by the former.

We entertain no doubt, therefore, that an appeal lies to this Court from the judgment of the circuit court in the case before us.

Another objection to the jurisdiction of this Court on appeal was drawn from the clause of the first section, which declares that the jurisdiction defined by it is "in addition to the authority already conferred by law."

This objection seems to be an objection to the jurisdiction of the circuit court over the cause, rather than to the jurisdiction of this Court on appeal.

The latter jurisdiction, as has just been shown, is coextensive

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with the former. Every question of substance which the circuit court could decide upon the return of the habeas corpus, including the question of its own jurisdiction, may be revised here on appeal from its final judgment.

But an inquiry on this motion into the jurisdiction of the circuit court would be premature. It would extend to the merits of the cause in that court; while the question before us upon this motion to dismiss must be necessarily limited to our jurisdiction on appeal.

The same observations apply to the argument of counsel that the acts of McCardle constituted a military offense, for which he might be tried under the Reconstruction Acts by military commission. This argument, if intended to convince us that the circuit court had no jurisdiction of the cause, applies to the main question which might arise upon the hearing of the appeal. If intended to convince us that this Court has no appellate jurisdiction of the cause, it is only necessary to refer to the considerations already adduced on this point.

We are satisfied, as we have already said, that we have such jurisdiction under the act of 1867, and the motion to dismiss must therefore be

Denied.

[Footnote 1]

14; 1 Stat. at Large 82.

[Footnote 2]

14 *id.* 385.

[Footnote 3]

7 U. S. 3 Cranch 448, 7 U. S. 453 . *See also* *Ex Parte Dugan,* 2 Wall. 134.

[Footnote 4]

8 U. S. 4 Cranch 75.

[Footnote 5]

5 Stat. at Large 539.

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