Randall Vs. Brigham

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Decided On : 1868

Appeal No. : 74 U.S. 523

Appellant : Randall

Respondent : Brigham

Judgement :

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Randall v. Brigham

74 U.S. (7 Wall.) 523

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF MASSACHUSETTS

SYLLABUS

1. An action for damages does not lie against a judge of a court of general jurisdiction for removing, whilst bolding court, an attorney-at-law, from the bar for malpractice and misconduct in his office, the court being empowered by statute to

remove attorneys for "any deceit, malpractice, or other gross misconduct," and having heard the attorney removed in explanation of his conduct in the transaction which was the subject of complaint. And such action will not lie against the judge even if the court, in making the removal, exceeds its jurisdiction, unless perhaps in the case where the act is done maliciously or corruptly.

2. All judicial officers are exempt from liability in a civil action for their judicial acts done within their jurisdiction, and judges of superior or general authority are exempt from such liability even when their judicial acts are in excess of their jurisdiction, unless perhaps where the acts in excess of their jurisdiction are done maliciously or corruptly.

3. Formal allegations making specific charges of malpractice or unprofessional conduct are not essential as a foundation for proceedings against attorneys. All that is requisite to their validity is that when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or injustice is a matter of judicial regulation.

4. The construction given to a provision of the constitution of a state by the highest court of that state, not called in question by any conflicting decision of that court, is conclusive upon this Court.

This action was brought by the plaintiff, who was formerly an attorney and counselor-at-law in Massachusetts,

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against the defendant, who was one of the justices of the superior court of that state, for an alleged wrongful removal by him of the plaintiff from the bar.

The substantial facts, as established by the evidence produced by the plaintiff and by the records of the state court, introduced by consent, upon which the removal was made were these:

In August, 1864, one Leighton was arrested upon a charge of larceny, and confined in jail in Boston to await the action of the grand jury in the superior court upon his failure to give a recognizance with sureties in four hundred dollars, required for his appearance. While thus confined, he retained the plaintiff as his attorney, to whom he expressed a willingness to enlist in the army or navy of the United States if the prosecution could be discontinued. The plaintiff thereupon proposed to the district attorney to dispose of the prosecution in this way. That officer declined to accede to the proposition at that time, but encouraged the plaintiff to expect that he would not object to such an arrangement in court if the presiding judge approved of it when the indictment was presented.

The plaintiff and his father, without any further arrangement with the district attorney, thereupon became sureties for Leighton, who, upon his release, proceeded to the office of the plaintiff and there signed with his mark -- he not being able to write -- an agreement to enlist as a substitute for one Brown, of Lowell, for four hundred dollars, which sum was to be retained by the plaintiff, without any subsequent claim upon him, as indemnity for his becoming surety on the recognizance, and also to pay the plaintiff four hundred dollars for furnishing bail.

Leighton subsequently enlisted in the naval service as a substitute for Brown, who paid the plaintiff, for the enlistment, eight hundred and thirty dollars. Of this sum, the plaintiff gave Leighton, when the latter went on board the vessel to which he was assigned, the sum of ten dollars. Subsequently he paid one hundred dollars to Leighton's order. The balance he retained.

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Some weeks afterwards, Leighton wrote a letter to the captain of his vessel stating that he was promised four hundred dollars for his enlistment by his lawyer, the plaintiff, that he had only received ten dollars, and that when he applied to the plaintiff for settlement, evasive answers were all he obtained. He referred in the letter to the fact that he had a wife and two children dependent upon him for

support, and he appealed to the captain to see that justice was done him. This letter was shown to the plaintiff, who replied that he had paid Leighton all he had agreed to, and should not pay him another cent. The wife of Leighton also applied to the plaintiff for a portion of the bounty of her husband in his hands, stating that the destitution of herself and children was such that she should be obliged to give them up to the city, to whom he replied by advising her to do so, and gave her nothing.

The captain then sent the letter to the grand jury of the county, at the time sitting upon Leighton's case. The jury, of course, could not act upon the letter, and its foreman requested the prosecuting officer to bring it before the court. This was accordingly done, the defendant being at the time the presiding justice. The plaintiff was thereupon sent for, and, in open court, his attention was called to the letter, and it was notified to him that on the following Wednesday, then five days distant, his professional conduct and standing at the bar would be considered.

At the time designated, he appeared and showed that, after his citation, he had paid to Leighton the balance of the four hundred dollars which Leighton claimed he was entitled to receive. This right of Leighton was never admitted until after the attention of the court had been directed to the matter.

The court being of opinion that the plaintiff took advantage of the situation of Leighton and obtained from him an agreement, which, under the circumstances, was unconscionable and extortionate and therefore grossly unprofessional; that he had induced Leighton to enlist by making him believe that his release from the prosecution would be accomplished

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by his enlistment, and that the money obtained by the enlistment subsequently paid to Leighton was paid only in consequence of the inquiry instituted into the professional conduct of the plaintiff, he having previously denied that he was bound to pay anything, found that he had violated his oath of office as an attorney-at-law, and was guilty of malpractice and gross misconduct in his office, and

consequently ordered that he be removed from his office as an attorney-at-law within the Commonwealth of Massachusetts. Thereupon, the plaintiff brought this suit. The declaration charged the removal to have been made without lawful authority and wantonly, arbitrarily, and oppressively.

Upon the evidence produced, the court below instructed the jury that the action could not be maintained and that their verdict should be for the defendant. Such verdict was accordingly rendered, and the plaintiff brought the case here.

The general statutes of Massachusetts [Footnote 1] provide that "an attorney may be removed by the Supreme Judicial Court or superior court for any deceit, malpractice, or other gross misconduct," and also that "a person admitted in any court may practice in every other court in the state, and there shall be no distinction of counselors and attorneys."

The oath required of attorneys on their admission is as follows:

"You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney, within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God."

The superior court of Massachusetts is a court of general jurisdiction. Indeed, its jurisdiction is the most general of any court in Massachusetts. [Footnote 2]

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court, as follows:

The superior court of Massachusetts is a court of general jurisdiction, and is empowered by statute to admit attorneys and counselors to practice in the courts of the state, upon evidence of their possessing good moral character, and of

having devoted a prescribed number of years to the study of the law, in the office of some attorney in the state, and to remove them "for any deceit, malpractice, or other gross misconduct."

Both the admission and the removal of attorneys are judicial acts. It has been so decided in repeated instances. It was declared in *Ex Parte Secombe,* [Footnote 3] and was affirmed in *Ex Parte Garland.* [Footnote 4]

Now it is a general principle applicable to all judicial officers that they are not liable to a civil action for any judicial act done within their jurisdiction. In reference to judges of limited and inferior authority, it has been held

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that they are protected only when they act within their jurisdiction. If this be the case with respect to them, no such limitation exists with respect to judges of superior or general authority. They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, unless perhaps where the acts in excess of jurisdiction are done maliciously or corruptly. This doctrine is as old as the law, and its maintenance is essential to the impartial administration of justice. Any other doctrine would necessarily lead to the degradation of the judicial authority and the destruction of its usefulness. Unless judges, in administering justice, are uninfluenced by considerations personal to themselves, they can afford little protection to the citizen in his person or property. And uninfluenced by such considerations they cannot be if, whenever they err in judgment as to their jurisdiction, upon the nature and extent of which they are constantly required to pass, they may be subjected to prosecution at the instance of every party imagining himself aggrieved, and be called upon in a civil action in another tribunal, and perhaps before an inferior judge, to vindicate their acts.

This exemption from civil action is for the sake of the public, and not merely for the protection of the judge. And it has been maintained by a uniform course of decisions in England for centuries, and in this country ever since its settlement.

In England, the superior judges are the delegates of the King. Through them he administers justice, and to him alone are they accountable for the performance of their trust. And it was said as long ago as 1608, as reported by Lord Coke in *Floyd and Barker's Case,* [Footnote 5] that insomuch as the judges of the realm have the administration of justice, under the King, to all his subjects, they ought not to be called in question for any judicial proceedings by them, except before the King himself, "for this would tend to the scandal and subversion of all justice; and those who are most sincere would not be free from continual calumniations."

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In the United States, judicial power is vested exclusively in the courts. The judges administer justice therein for the people, and are responsible to the people alone for the manner in which they perform their duties. If faithless, if corrupt, if dishonest, if partial, if oppressive or arbitrary, they may be called to account by impeachment and removed from office. In some states, and Massachusetts is one of them, they may be removed upon the address of both houses of the legislature. But responsible they are not to private parties in civil actions for their judicial acts, however injurious may be those acts and however much they may deserve condemnation, unless perhaps where the acts are palpably in excess of the jurisdiction of the judges and are done maliciously or corruptly.

In *Taaffe v. Downes,* [Footnote 6] this subject was most elaborately and learnedly considered, and all the English authorities commented upon, by the Court of Common Pleas of Ireland in 1813. The defendant was Chief Justice of the King's Bench in Ireland, and had issued a warrant at chambers for the arrest of the plaintiff for a breach of the peace. The plaintiff was accordingly arrested and held to bail, and he afterwards brought an action against the chief justice for assault and false imprisonment. It was urged in argument that it was not lawful or defensible for a judge, without any offense committed, or charge made upon oath of crime, or suspicion of crime committed, to imprison a subject. But it was held that the action would not lie against the judge for acts judicially done by him. "Liability," said Mr. Justice Mayne, one of the justices of the court,

"to every man's action, for every judicial act a judge is called upon to do, is the degradation of the judge, and cannot be the object of any true patriot or honest subject. It is to render the judges slaves in every court that holds plea, to every sheriff, juror, attorney, and plaintiff. If you once break down the barrier of their dignity and subject them to an action, you let in upon the judicial authority a wide, wasting, and harassing

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persecution, and establish its weakness in a degrading responsibility."

And the justice observed that no action of the kind was ever sustained, and save one in London and one in Ireland, none was ever attempted. The one mentioned as arising in Ireland was not against any judges, but against the governor of the country, and may perhaps be subject to other considerations. In the case in London, [Footnote 7] the action was against the recorder, who, as one of the judges of oyer and terminer, had fined and imprisoned a petit jury for rendering a verdict against the direction of the court and the evidence. This act was declared illegal by the Court of Common Pleas in discussing the case on habeas corpus. [Footnote 8] Upon that decision, the action was brought by one of the jurors, but the court held that the action would not lie, and were of opinion

"that the bringing of the action was a greater offense than the fining of the plaintiff and committing of him for nonpayment, and that it was a bold attempt both against the government and justice in general."

Mr. Justice Fox, in the case of *Taaffe v. Downes,* conceded that the act of the chief justice was illegal, but held that he was not responsible in the action, and observed that without the existence of the principle that a judge administering justice shall not be liable for acts judicially done by action or prosecution, it was utterly impossible that there should be such a dispensation of justice as would have the effect of protecting the lives or property of the subject. "There is something," he said,

"so monstrous in the contrary doctrine that it would poison the very source of justice and introduce a system of servility utterly inconsistent with the constitutional independence of the judges, an independence which it has been the work of ages to establish, and would be utterly inconsistent with the preservation of the rights and liberties of the subject."

The same subject was considered very elaborately in the case of *Yates v. Lansing* [Footnote 9] in the supreme court and in the

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Court of Errors of New York. Lansing was chancellor of the state, and had committed Yates, one of the officers in chancery, for malpractice and contempt. A judge of the supreme court discharged him, and thereupon the chancellor ordered him to be recommitted. He then brought an action to recover a statute penalty for the recommittent. It was held that the action would not lie, Mr. Chief Justice Kent observing that the chancellor may have erred in judgment in calling an act a contempt which did not amount to one and in regarding a discharge as null when it was binding, and that the supreme court may have erred in the same way, but still it was but an error of judgment for which neither the chancellor nor the judges were or could be responsible in a civil action, and that such responsibility would be an anomaly in jurisprudence. "Whenever," said the learned chief justice,

"we subject the established courts of the land to the degradation of private prosecution, we subdue their independence and destroy their authority. Instead of being venerable before the public, they become contemptible."

The superior court of Massachusetts, as we have already stated, is a court of general jurisdiction, and is clothed by statute with authority to admit and to remove attorneys-at-law. The order removing the plaintiff was made by the court, and not by the judge in chambers. The inquiry into his conduct was before the court, and before it he was notified to appear. His claim is that the court never acquired jurisdiction to act in his case, because there was not a formal accusation made against him, or statement of grounds of complaint, and formal citation issued to

him to answer them. If this were so, his case would not be advanced. Under the authorities cited, he could not seek redress in that event by an action against the judge of the court, there being no pretense or shadow of ground that he acted maliciously or corruptly. But the claim of the plaintiff is not correct. The information imparted by the letter was sufficient to put in motion the authority of the court, and the notice to the plaintiff was sufficient to bring him before it to explain the

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transaction to which the letter referred. The informality of the notice, or of the complaint by the letter, did not touch the question of jurisdiction. The plaintiff understood from them the nature of the charge against him, and it is not pretended that the investigation which followed was not conducted with entire fairness. He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself.

It is not necessary that proceedings against attorneys for malpractice or any unprofessional conduct should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit, and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.

The authority of the court over its attorneys and counselors is of the highest importance. They constitute a profession essential to society. Their aid is required not merely to represent suitors before the courts, but in the more difficult transactions of private life. The highest interests are placed in their hands and confided to their management. The confidence which they receive and the responsibilities which they are obliged to assume demand not only ability of a high

order, but the strictest integrity. The authority which the courts hold over them and the qualifications required for their admission are intended to secure those qualities.

The position that the plaintiff has been illegally deprived of rights which he held under the Constitution of Massachusetts,

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which declares that "no subject shall be held to answer for any crime or offense, until the same is fully and plainly, substantially and formally, described to him," nor be

"despoiled or deprived of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty or estate, but by the judgment of his peers or the law of the land [Footnote 10]"

is answered by the construction which the supreme court of that state has given to these provisions. It has held that the proceeding taken for the removal of the plaintiff could not in any just and proper sense be deemed a criminal procedure, in which a party has a right to a full, formal, and substantial description of the offense charged; and that it was not essential to the validity of the order of removal that it should be founded on legal process according to the signification of the words *"per legem terrae"* as used in Magna Charta or in the Declaration of Rights. [Footnote 11] This construction of the highest court of the state, not called in question by any conflicting decision of that court, is conclusive upon us. [Footnote 12]

We find no error in the ruling of the circuit court, and its judgment must therefore be

Affirmed.

[Footnote 1]

C. 121, 34.

[Footnote 2]

General Statutes, c. 114.

[Footnote 3]

60 U. S. 19 How. 9.

[Footnote 4]

71 U. S. 4 Wall. 378.

[Footnote 5]

12 Coke, 25.

[Footnote 6]

Given in a note in 3 Moore's Privy Council 41.

[Footnote 7]

Hamond v. Howell, 1 Modern 184; 2 *id.* 218.

[Footnote 8]

Bushell's Case, Vaughan, 135.

[Footnote 9]

5 Johnson 283; 9 *id.* 395.

[Footnote 10]

Declaration of Rights, Art. 12.

[Footnote 11]

Randall, Petitioner for Mandamus, 11 Allen 473.

[Footnote 12]

Provident Institution v. Massachusetts, 6 Wall. 630.