Gleason Vs. Florida

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 76 U.S. 779

Appellant : Gleason

Respondent : Florida

Judgement :

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Gleason v. Florida

76 U.S. (9 Wall.) 779

MOTION TO DISMISS WRIT OF ERROR

TO THE SUPREME COURT OF FLORIDA

SYLLABUS

1. No writ of error to a state court can issue without allowance, either by the proper judge of the state court or by a judge of this Court, after examination of the record in order to see whether any question cognizable here on appeal was made and

decided in the proper court of the state and whether the case, upon the face of the record, will justify the allowance of the writ, and this is to be considered as the settled construction of the Judiciary Act on this subject. Writ dismissed accordingly.

2. *Doubted* whether in any case the affidavit of a party to the record can be used as evidence of the fact of such allowance. And the affidavit of such a party refused in a case where the Court thought it highly probable that he was mistaken in his recollection.

Motion by Mr. Howe to dismiss a writ of error to the Supreme Court of Florida which had been taken under the twenty-fifth section of the Judiciary Act, but which that counsel conceived did not come within that act.

The record showed an information in the nature of a writ of *quo warranto* in the Supreme Court of the State of

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Florida in the name of the state by the attorney general of the state against William H. Gleason charging him with exercising the office of lieutenant governor in violation of the state constitution and demanding an answer by what warrant or authority he claimed to hold that office.

To this information Gleason filed an answer denying the jurisdiction of the court and the lawfulness of the proceeding against him on several distinct grounds, all of which were overruled by the court, and he was required to answer upon the merits.

Thereupon he put in a demurrer, and subsequently, before argument on the demurrer, filed a petition for the removal of the cause into the Circuit Court of the United States for the Northern District of Florida, in the exercise, as he asserted, of his right under certain acts of Congress particularly specified, and generally under the laws of the United States.

The petition was denied and the demurrer was overruled, and leave was given to him to plead to the information or show cause why judgment of ouster should not be entered against him.

In pursuance of the leave thus given, Gleason showed cause, and, among other things, alleged that he was eligible, and was elected to the office held by him under the acts of Congress known as the Reconstruction Acts, and was therefore entitled to the office, though not qualified by three years' residence in the state according to the provision of the state constitution.

But the defense, as well as all other defenses set up by him, was overruled by the court and judgment of ouster was rendered against him, to reverse which he presented this writ of error.

The motion to dismiss as not within the twenty-fifth section coming on to be heard, it was observed that the record before this Court contained no allowance of the writ of error, and thereupon a suggestion of diminution of record was made by Mr. B. F. Butler for the plaintiff in error, and time given to procure a complete copy. The case coming up

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again the complete copy expected was not produced, but an affidavit of the plaintiff in error, Gleason, was relied on to excuse the want of it. The affidavit stated that after the judgment below, Gleason petitioned the Chief Justice of the Supreme Court of Florida to allow a writ of error to be sued out &c.;, but that the said chief justice refused his signature upon the ground that the state court had decided no question cognizable here upon writ of error; that thereupon the deponent went with his counsel to MR. JUSTICE MILLER of this Court with a petition similar to that which he had presented to the Chief Justice of the Supreme Court of Florida, and also a form of citation and a form of bond, and that he and his counsel presented to the said MR. JUSTICE MILLER those three papers and stated the case, and that thereupon that judge made an endorsement upon the petition for the allowance of the writ of error, of the allowance of said petition, and

dated it with his own hand and signed the citation and also approved the bond. The affidavit went on to say

"That, not being acquainted with legal forms, the deponent was not curious to observe the precise form in which the judge made an entry upon the petition, but he does remember that he made an entry thereon which he understood and believed and now understands and believes was an allowance and approval thereof."

The affidavit then further stated that the deponent

"thereupon took the three papers and immediately went to Tallahassee, Florida, arrived there, and filed the three papers. Whereupon the writ of error was issued by the clerk of the circuit court."

The affidavit stated further that the deponent subsequently went to the clerk's office in Tallahassee, and could find neither the petition nor bond, which this deponent is certain he did file at the same time with the citation, but that he found the citation with the endorsement thereon. [This paper was produced in this Court, but not the petition.]

The deposition concluded with an allegation that the deponent verily believed that the bond and the petition for the writ of error, and the allowance which this deponent was certain he filed in the said court, had been taken from

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the files thereof by some person, and for some purpose unknown.

Upon this affidavit and the matter of diminution, the case was again subsequently spoken to.

THE CHIEF JUSTICE delivered the opinion of the Court.

The Court has considered the affidavit of the plaintiff in error, submitted by his counsel as evidence of the allowance of a writ of error in this case by one of the

Justices of this Court, and without determining now whether in any case the affidavit of a party to the record can be used as evidence

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of that fact, we are obliged to say that the affidavit submitted to us has failed to satisfy us that such an allowance was in fact made. The affidavit states that three papers -- namely a petition for the writ of error, the form of a bond, and a citation -- were presented to the Associate Justice, and lays some stress upon the fact that the papers were three in number. It omits to mention that any copy of the record of the state court was presented to the judge, without which it is obvious there could be no allowance of a writ of error. It seems to us highly probable, therefore, that the plaintiff in error is mistaken in his recollection. A copy of the record was probably one of the three papers of which he speaks. In the absence of any affidavit from the clerk who prepared the papers and of any showing of the loss of the petition by the clerk of the Supreme Court of Florida, with whom the allowance supposed to have been endorsed on it must in regular course have been filed, we cannot regard the evidence of allowance as sufficient, and must proceed to dispose of this cause as if no such allowance were claimed to have been made.

As respects jurisdiction under the twenty-fifth section of the Judiciary Act, it seems to us that, considered under the view presented with much force by the counsel for the plaintiff in error, a writ of error might have been properly enough allowed under that section. But on looking into the record, we find no allowance of the writ. And this has been repeatedly held to be essential to the exercise by this Court of revisory jurisdiction over final judgments or decrees by the courts of the states. In the case of *Twitchell v. Commonwealth,* * the rule which governs the allowance, by national courts and judges, for writs of error to state courts, was thus stated:

"Writs of error to state courts have never been allowed as of right. It has always been the practice to submit the record of the state court to a judge of this Court whose duty has been to ascertain whether any question cognizable here on appeal was made and decided in the proper court

of the state, and whether the case, upon the face of the record, will justify the allowance of the writ."

And this may now be considered as the settled construction of the Judiciary Act on this subject. The foundation of the jurisdiction of this Court over the judgments of state courts is the writ of error, and no writ of error to a state court can issue without allowance, either by the proper judge of the state court or by a judge of this Court, after examination as just stated.

In this case, the plaintiff in error has evidently acted under the impression that a writ of error to a state court is a matter of right. Under this impression he applied to the Chief Justice of the Supreme Court of Florida for his signature to a citation, but that magistrate, who had presided in the court where the proceeding for ouster had taken place, refused his signature upon the ground that the state court had decided no question cognizable here upon writ of error. Application was then made to a judge of this Court, by whom a citation was signed, but there was no allowance of a writ of error by him.

Under these circumstances, the issuing of the writ of error was unauthorized, and the writ, not having been allowed, gives no jurisdiction to this Court. It must therefore be

Dismissed.

* 74 U. S. 7 Wall. 321.