

Todd Vs. United States

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Court : US Supreme Court

Decided On : May-20-1895

Appeal No. : 158 U.S. 278

Appellant : Todd

Respondent : United States

Judgement :

Todd v. United States - 158 U.S. 278 (1895)

U.S. Supreme Court Todd v. United States, 158 U.S. 278 (1895)

Todd v. United States

No. 822

Argued March 26, 1895

Decided May 20, 1895

158 U.S. 278

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ALABAMA

SYLLABUS

A preliminary examination before a commissioner of a circuit court is not a case pending in any court of the United States within the meaning of Rev. Stat. section 5406.

Todd and others were indicted under section 5406 of the Revised Statutes, reading as follows:

"If two or more persons in any state or territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property, on account of his having so attended or testified, . . . each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment."

The indictment stated:

"That heretofore, . . . J. W. Todd, alias Watson Todd, George W. Kelley [etc., naming plaintiffs in error and others], whose Christian names and surnames, respectively, are to this grand jury otherwise unknown, unlawfully, corruptly, forcibly, and feloniously did combine, conspire, and confederate together, by force and intimidation and threats, to injure Wiley Pruett and William Pruett, who had theretofore been witnesses and testified against Joe Arnold, Milton Farmer, and George Kelley upon a charge of endeavoring to influence, intimidate, and impede witnesses in a court of the United States, in violation of the criminal laws of the United States, tried preliminarily by and before Robert Charlson, acting as a commissioner of the Circuit Court of the United States for said district, in

Page 158 U. S. 279

their person and property on account of the said witnesses above named having testified in said cause in the said court as aforesaid, and in pursuance of said

conspiracy, and to effect the object thereof, the said defendants, and each of them, did assault, beat, bruise, and wound with weapons the said Wiley Pruett and William Pruett, contrary,"

etc.

A demurrer to the indictment was interposed and overruled, and, a *nolle prosequi* having been entered as to certain defendants, Todd, Roberts, and Mitchell, and ten others, were tried and convicted, and, a motion in arrest of judgment having been made and denied, were each sentenced to imprisonment at hard labor for four years, and payment of \$500 and costs.

Thereupon they sued out a writ of error from this Court.

Page 158 U. S. 282

MR. JUSTICE BREWER, after stating the facts as above, delivered the opinion of the Court.

After this case had been submitted to us on certain alleged errors, we became impressed with the fact that a more serious question existed than any that had been discussed, and that is whether a preliminary examination before a commissioner is a proceeding "in any court of the United States" within the meaning of section 5406. The attention of counsel was called to this, and briefs have been furnished on each side. With the assistance furnished by these briefs we have carefully examined the question, and are of the opinion that it must be answered in the negative.

It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and that no act, however wrongful, can be punished under such a statute unless clearly within its terms. "There can be no constructive offenses, and, before a man can be punished, his case must be plainly and unmistakably within the statute." *United States v. Lacher*, [134 U. S. 624](#) ; Endlich on the Interpretation of Statutes, sec. 329, 2d ed.; Pomeroy's Sedgwick on Statutory and Constitutional Construction 280.

That a commissioner is not a judge of a court of the United States within the constitutional sense is apparent and conceded. He is simply an officer of the circuit court, appointed and removable by that court. Rev.Stat. 627. [*Ex Parte Hennen*](#), 13 Pet. 230; *United States v. Allred*, [155 U. S. 591](#) .

Page 158 U. S. 283

A preliminary examination before him is not a proceeding in the court which appointed him or in any court of the United States. Such an examination may be had not merely before a commissioner, but also before any justice or judge of the United States, or before any chancellor, judge of a state court, mayor of a city, justice of the peace, or other state magistrate. Rev.Stat. 1014. And it cannot be pretended that one of those state officers, while conducting a preliminary investigation, is holding a court of the United States. Technically, we speak of an examining magistrate, and not of an examining court. The distinction is recognized in the statutes, 1014, by which sundry judicial officers of the United States and of the states are authorized to conduct an examination and imprison or bail the defendant, "for trial before such court of the United States as by law has cognizance of the offense." Also 911, which provides that

"all writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof."

But a commissioner, like a justice of the peace, is not obliged to have a seal, and his warrants may be under his hand alone. *Starr v. United States*, [153 U. S. 614](#) . Again, the district attorney is allowed certain fees *per diem* for an examination before a judge or commissioner and for his attendance in a court of the United States; also for mileage in traveling to the place of holding any court or to the place of any examination before a judge or commissioner. 824. And a witness is entitled to fees "for each day's attendance in court or before any officer pursuant to law." 848. While a preliminary examination may be, in the strictest sense of the term, a judicial proceeding, yet the language of the statute is not broad enough to include every judicial proceeding held under the laws of the United States. The

offense described is a conspiracy to deter by force, etc., "any party or witness in any court of the United States."

Doubtless it was within the power of Congress to legislate in this direction fully for the protection of every witness called upon by the laws of the United States to give testimony

Page 158 U. S. 284

in any place and under any circumstances, *Logan v. United States*, [144 U. S. 263](#), but it has not as yet seen fit to do so, and has only provided for his protection when called as a witness in a court of the United States. *United States v. Clark*, 1 Gallison 497, is in point. In that case, under a statute punishing perjury

"in any suit, controversy, matter, or cause depending in any of the courts of the United States, or in any deposition taken pursuant to the laws of the United States,"

1 Stat. 116, the defendant was indicted for perjury on a preliminary examination before a judge of the district court of the United States, and it was held by Mr. Justice Story that the indictment could not be maintained, saying:

"The statute does not punish every perjury, but only a perjury done in *a court of the United States*. Plainly, therefore, it is of the very essence of the offense that it should be charged as committed in such court. Now under the authority of the United States, there are but three courts known in law, the district, circuit, and supreme courts, and as Congress alone can by the Constitution ordain and establish courts, none can exist but such as they create and name. . . . A court is not a judge, nor a judge a court. A judge is a public officer who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power by the proper officer or officers at a time and place appointed by law."

In connection with that case, it is worthy of notice that Congress subsequently changed the statute (4 Stat. 118), and that now in force, Rev.Stat. 5392, extends

to every "oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered."

Further discussion seems unnecessary. As a preliminary examination before a commissioner cannot be considered a case pending in any court of the United States, it follows that this indictment is fatally defective, and charges no offense against the laws of the United States.

The judgment is

Reversed.

MR. JUSTICE HARLAN dissents.

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