

United States Vs. Shipp

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Decided On : Dec-24-1906

Appeal No. : 203 U.S. 563

Appellant : United States

Respondent : Shipp

Judgement :

United States v. Shipp - 203 U.S. 563 (1906)

U.S. Supreme Court United States v. Shipp, 203 U.S. 563 (1906)

United States v. Shipp

No. 12, Original

Argued December 4, 5, 1906

Decided December 24, 1906

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INFORMATION IN CONTEMPT

SYLLABUS

Even if the circuit court of the United States has no jurisdiction to entertain the petition for habeas corpus of one convicted in the state court, and this Court has no jurisdiction of an appeal from the order of the circuit court denying the petition, this Court, and this Court alone, has jurisdiction to decide whether the case is properly before it, and, until its judgment declining jurisdiction is announced, it has authority to make orders to preserve existing conditions, and a willful disregard of those orders constitutes contempt.

Where the contempt consists of personal presence and overt acts, those charged therewith cannot be purged by their mere disavowal of intent under oath.

In contempt proceedings, the court is not a party; there is nothing that affects the judges in their own persons, and their only concern is that the law should be obeyed and enforced.

After an appeal has been allowed by one of the Justices of this Court, and an order entered that all proceedings against appellant be stayed and his custody retained pending appeal, the acts of persons having knowledge of such order in creating a mob and taking appellant from his place of confinement and hanging him constitute contempt of this Court, and it is immaterial whether appellant's custodian be regarded as a mere state officer or as bailee of the United States under the order.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an information charging a contempt of this Court, and is to the following effect. On February 11, 1906, one Johnson, a colored man, was convicted of rape upon a white woman, in a criminal court of Hamilton County, in the State of Tennessee, and was sentenced to death. On March 3, he presented a petition for a writ of habeas corpus to the United States circuit court, setting up, among other things, that all negroes had been excluded, illegally, from the grand and petit

juries; that his counsel had been deterred from pleading that fact or challenging the array on that ground, and also from asking for a change of venue to secure an impartial trial, or for a continuance to allow the excitement to subside, by the fear and danger of mob violence, and that a motion for a new trial and an appeal were prevented by the same fear. For these and other reasons, it was alleged that he was deprived of various constitutional rights, and was about to be deprived of his life without due process of law.

On March 10, after a hearing upon evidence, the petition was denied, and it was ordered that the petitioner be remanded to the custody of the sheriff of Hamilton County, to be detained by him in his custody for a period of ten days, in which to enable the petitioner to prosecute an appeal, and, in default of the prosecution of the appeal within that time, to be then further proceeded with by the state court under its sentence. On March 17, an appeal to this Court was allowed by MR. JUSTICE HARLAN. On the following Monday, March 19, a similar order was made by this Court, and it was ordered further "that all proceedings against the appellant be stayed, and the custody of said appellant be retained pending this appeal."

The Sheriff of Hamilton county was notified by telegraph of the order, receiving the news before six o'clock on the same day. The evening papers of Chattanooga published a full account of what this Court had done. And it is alleged that

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the sheriff and his deputies were informed, and had reason to believe, that an attempt would be made that night by a mob to murder the prisoner. Nevertheless, if the allegations be true, the sheriff, early in the evening, withdrew the customary guard from the jail, and left only the night jailer in charge. Subsequently, it is alleged, the sheriff and the other defendants, with many others unknown, conspired to break into the jail for the purpose of lynching and murdering Johnson, with intent to show contempt for the order of this Court, and for the purpose of preventing it from hearing the appeal and Johnson from exercising his rights. In furtherance of this conspiracy, a mob, including the defendants, except the sheriff, Shipp, and the night jailer, Gibson, broke into the jail, took Johnson out and

hanged him, the sheriff and Gibson pretending to do their duty, but really sympathizing with and abetting the mob. The final acts as well as the conspiracy are alleged as a contempt.

The defendants have appeared and answered, and certain preliminary questions of law have been argued which it is convenient and just to have settled at the outset before any further steps are taken. The first question, naturally, is that of the jurisdiction of this Court. The jurisdiction to punish for a contempt is not denied as a general, abstract proposition, as, of course, it could not be with success. [*Ex Parte Robinson*](#), 19 Wall. 505, [86 U. S. 510](#) ; *Ex Parte Terry*, [128 U. S. 289](#) , [128 U. S. 302](#) -303. But it is argued that the circuit court had no jurisdiction in the habeas corpus case unless Johnson was in custody in violation of the Constitution, Rev.Stat. 753, and that the appellate jurisdiction of this Court was dependent on the Act of March 3, 1891, c. 517, 5, 26 Stat. 827, *In re Lennon*, [150 U. S. 393](#) , and by that act did not exist unless the case involved "the construction or application of the Constitution of the United States." If the case did not involve the application of the Constitution otherwise than by way of pretense, it is said that this Court was without jurisdiction, and that its order might be contemned with impunity. And it is urged

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that an inspection of the evidence before the circuit court, if not the face of the petition, shows that the ground alleged for the writ was only a pretense.

We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, [124 U. S. 200](#) ; *Ex Parte Fisk*, [113 U. S. 713](#) ; *Ex Parte Rowland*, [104 U. S. 604](#) . But even if the circuit court had no jurisdiction to entertain Johnson's petition, and if this Court had no jurisdiction of the appeal, this Court, and this Court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument, and to take the time required for such consideration as it might need. See *Mansfield*,

Coldwater & Lake Michigan Ry. Co. v. Swan, [111 U. S. 379](#) , [111 U. S. 387](#) .

Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev.Stat. 766; Act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it. Of course, the provision of Rev.Stat. 766, that, until final judgment on the appeal, further proceedings in the state court against the prisoner shall be deemed void, applies to every case. There is no implied exception if the final judgment shall happen to be that the writ should not have issued or that the appeal should be dismissed.

It is proper that we should add that we are unable to agree with the premises upon which the conclusion just denied is based. We cannot regard the grounds upon which the petition for habeas corpus was presented as frivolous, or a mere pretense. The murder of the petitioner has made it impossible to decide

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that case, and what we have said makes it unnecessary to pass upon it as a preliminary to deciding the question before us. Therefore we shall say no more than that it does not appear to us clear that the subject matter of the petition was beyond the jurisdiction of the circuit court, and that, in our opinion, the facts that might have been found would have required the gravest and most anxious consideration before the petition could have been denied.

Another general question is to be answered at this time. The defendants severally have denied under oath in their answer that they had anything to do with the murder. It is urged that the sworn answers are conclusive; that, if they are false, parties may be prosecuted for perjury, but that, in this proceeding, they are to be tried, if they so elect, simply by their oaths. It has been suggested that the court is a party, and therefore leaves the fact to be decided by the defendant. But this is a mere afterthought, to explain something not understood. The court is not a party.

There is nothing that affects the judges in their own persons. Their concern is only that the law should be obeyed and enforced, and their interest is no other than that they represent in every case. On this occasion, we shall not go into the history of the notion. It may be that it was an intrusion or perversion of the canon law, as is suggested by the propounding of interrogatories and the very phrase, "purgation by oath" (*juramentum purgatorium*). If so, it is a fragment of a system of proof which does not prevail in theory or as a whole, and the reason why it has not disappeared perhaps may be found in the rarity with which contempts occur. It may be that, even now, if the sole question were the intent of an ambiguous act, the proposition would apply. But, in this case, it is a question of personal presence and overt acts. If the presence and the acts should be proved, there would be little room for the disavowal of intent. And when the acts alleged consist in taking part in a murder, it cannot be admitted that a general denial and affidavit should dispose of the case. The outward facts

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are matters known to many, and they will be ascertained by testimony in the usual way. The question was left open in *In re Savin*, [131 U. S. 267](#) , with a visible leaning toward the conclusion to which we come, and that conclusion has been adopted by state courts in decisions entitled to respect. *Huntington v. McMahon*, 48 Conn. 174, 200-201; *State v. Matthews*, 37 N.H. 450, 455; *Bates' Case*, 55 N.H. 325, 327; *In re Snyder*, 103 N.Y. 178, 181, 8 N.E. 479; *Crow v. State*, 24 Tex. 12, 14; *State v. Harper's Ferry Bridge Co.*, 16 W.Va. 864, 873. See *Wartman v. Wartman*, Taney, 362, 370; *Cartwright's Case*, 114 Mass. 230; *Eilenbecker v. Plymouth County*, [134 U. S. 31](#) . Whether or not Rev.Stat. 725 applies to this Court, it embodies the law so far as it goes. We see no reason for emasculating the power given by that section, and making it so nearly futile as it would be if it were construed to mean that all contemnors willing to run the slight risk of a conviction for perjury can escape.

The question was touched in argument whether the acts charged constitute a contempt. We are of opinion that they do, and that their character does not depend upon a nice inquiry whether, after the order made by this Court, the sheriff was to

be regarded as bailee of the United States or still held the prisoner in the name of the state alone. Either way, the order suspended further proceedings by the state against the prisoner, and required that he should be forthcoming to abide the further order of this Court. It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the trial of the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step. If that step is taken, the contempt is proved.

These preliminaries being settled the trial of the case will proceed.

MR. JUSTICE MOODY took no part in the decision.

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