Moyer Vs. Peabody

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Court : US Supreme Court

Decided On : Jan-18-1909

Appeal No. : 212 U.S. 78

Appellant : Moyer

Respondent : Peabody

Judgement :

Moyer v. Peabody - 212 U.S. 78 (1909)
U.S. Supreme Court Moyer v. Peabody, 212 U.S. 78 (1909)

Moyer v. Peabody

No. 55

Argued January 5, 6, 1909

Decided January 18, 1909

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ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLORADO

SYLLABUS

What is due process of law depends on circumstances, and varies with the subject matter and necessities of the situation.

An officer of a state interfering with an individual's rights in an unconstitutional manner derives no protection from personal liability on account of his office.

The declaration of the governor of a state that a state of insurrection exists is conclusive.

Where the constitution and laws of a state give the governor power to suppress insurrection by the National Guard, as is the case in Colorado, he may also seize and imprison those resisting, and is the final judge of the necessity for such action, and when such an arrest is made

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in good faith, he cannot be subjected to an action therefor after he is out of office on the ground that he had not reasonable cause.

Public danger warrants the substitution of executive for judicial process, and the ordinary rights of individuals must yield to what the executive honestly deems the necessities of a critical moment.

Without deciding other questions as to the jurisdiction of the circuit court, *held* that the declaration of plaintiff in error in this case against the former governor of Colorado for arrest and detention during a period of insurrection does not give the circuit court jurisdiction thereof under 629 or 1979, Rev.Stat., as a suit authorized by law brought to redress the deprivation of a constitutional right.

148 F. 870 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action brought by the plaintiff in error against the former Governor of the State of Colorado, the former adjutant general of the national guard of the same state, and a captain of a company of the national guard, for an imprisonment of the plaintiff by them while in office. The complaint was dismissed on demurrer, and the case comes here on a certificate that the demurrer was sustained solely on the ground that there was no jurisdiction in the circuit court. 148 F. 870.

The complaint alleges that the imprisonment was continued from the morning of March 30, 1904, to the afternoon of June 15, and that the defendants justified under the Constitution of Colorado, making the Governor commander in chief of the state forces, and giving him power to call them out to execute laws, suppress insurrection, and repel invasion. It alleges that his imprisonment was without probable cause, that no complaint was filed against the plaintiff, and that (in that sense) he was prevented from having access to the courts of the state, although they were open during the whole time, but it sets out proceedings on habeas corpus, instituted by him before the supreme court of the state, in which that court refused to admit him to bail and ultimately discharged the writ. 35 Colo. 154, and 35 Colo. 159. In those proceedings, it appeared that the Governor had declared a county to be in a state of insurrection, had called out troops to put down the trouble, and

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had ordered that the plaintiff should be arrested as a leader of the outbreak, and should be detained until he could be discharged with safety, and that then he should be delivered to the civil authorities, to be dealt with according to law.

The jurisdiction of the circuit court, if it exists, is under Rev.Stat. 629, Sixteenth. That clause gives original jurisdiction

"of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity secured by the Constitution

of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The complaint purports to be founded upon the Constitution and on Rev.Stat. 1979, which authorizes suit to be brought for such deprivation as above described. Therefore, the question whether the complaint states a case upon the merits under 1979 in this instance is another aspect of the question whether it states a case within the jurisdiction of the court under 629, cl. 16. Taken either way, the question is whether this is a suit authorized by law -- that is, by 1979, or the Constitution, or both.

The plaintiff's position, stated in a few words, is that the action of the Governor, sanctioned to the extent that it was by the decision of the supreme court, was the action of the state, and therefore within the Fourteenth Amendment, but that, if that action was unconstitutional, the Governor got no protection from personal liability for his unconstitutional interference with the plaintiff's rights. It is admitted, as it must be, that the Governor's declaration that a state of insurrection existed is conclusive of that fact. It seems to be admitted also that the arrest alone would not necessarily have given a right to bring this suit. *Luther v. Borden,* 7 How. 1, 48 U. S. 45 -46. But it is said that a detention for so many days, alleged to be without probable cause at a time when the courts were open, without an attempt to bring the plaintiff before them, makes a case on which he has a right to have a jury pass.

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We shall not consider all of the questions that the facts suggest, but shall confine ourselves to stating what we regard as a sufficient answer to the complaint, without implying that there are not others equally good. Of course, the plaintiff's position is that he has been deprived of his liberty without due process of law. But it is familiar that what is due process of law depends on circumstances. It varies with the subject matter and the necessities of the situation. Thus, summary

proceedings suffice for taxes, and executive decisions for exclusion from the country. *Murray v. Hoboken Land & Improvement Co.,* 18 How. 272; *United States v. Ju Toy,* 198 U. S. 253 , 198 U. S. 263 . What, then, are the circumstances of this case? By agreement, the record of the proceedings upon habeas corpus was made part of the complaint, but that did not make the averments of the petition for the writ averments of the complaint. The facts that we are to assume are that a state of insurrection existed and that the Governor, without sufficient reason, but in good faith, in the course of putting the insurrection down, held the plaintiff until he thought that he safely could release him.

It would seem to be admitted by the plaintiff that he was president of the Western Federation of Miners, and that, whoever was to blame, trouble was apprehended with the members of that organization. We mention these facts not as material, but simply to put in more definite form the nature of the occasion on which the Governor felt called upon to act. In such a situation, we must assume that he had a right, under the state constitution and laws, to call out troops, as was held by the supreme court of the state. The constitution is supplemented by an act providing that "when an invasion of or insurrection in the state is made or threatened, the Governor shall order the national guard to repel or suppress the same." Laws of 1897, c. 63, Art. 7, 2, p. 204. That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist, and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not necessarily

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for punishment, but are by way of precaution, to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the Governor is the final judge, and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief. If we suppose a Governor with a very long-term of office, it may be that a case could be imagined in which the length of the imprisonment would raise a different question. But there is nothing in the duration of the plaintiff's detention or in the allegations of the complaint that

would warrant submitting the judgment of the Governor to revision by a jury. It is not alleged that his judgment was not honest, if that be material, or that the plaintiff was detained after fears of the insurrection were at an end.

No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact that he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But even in that case, great weight is given to his determination, and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event. *Lawrence v. Minturn,* 17 How. 100, 58 U. S. 110 ; *The Star of Hope,* 9 Wall. 203; *The Germanic,* 196 U. S. 589 , 196 U. S. 594 -595. When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. *See Keely v. Sanders,* 99 U. S. 441 , 99 U. S. 446 . This was admitted with regard to killing men in the actual clash of arms, and we think it obvious, although it was disputed, that the same is true of temporary detention to prevent apprehended harm. As no one would deny that there was immunity for ordering a company to fire upon a mob in insurrection, and that a state law authorizing the Governor to deprive citizens of life under such circumstances was consistent with the Fourteenth Amendment,

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we are of opinion that the same is true of a law authorizing by implication what was done in this case. As we have said already, it is unnecessary to consider whether there are other reasons why the circuit court was right in its conclusion. It is enough that, in our opinion, the declaration does not disclose a "suit authorized by law to be brought to redress the deprivation of any right secured by the Constitution of the United States." *See Dow v. Johnson,* 100 U. S. 158 .

Judgment affirmed.

MR. JUSTICE MOODY took no part in the decision of this case.