Haas Vs. Henkel

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Appeal No. : 216 U.S. 462

Appellant : Haas

Respondent : Henkel

Judgement :

Haas v. Henkel - 216 U.S. 462 (1910)
U.S. Supreme Court Haas v. Henkel, 216 U.S. 462 (1910)

Haas v. Henkel

No. 367

Argued January 6, 7, 1910

Decided February 21, 1910

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Notwithstanding the hardship necessarily entailed upon the accused in being tried in a district other than that in which he resides, there is no principle of constitutional law that entitles him to be tried in the place of his residence.

Art. III, 2 of, and the Sixth Amendment to, the Constitution secure to the accused the right to a trial in the district where the crime is committed, and one committing a crime in a district where he does not reside cannot object to his removal thereto for trial.

Where one has been indicted for the same offense in two or more districts, in one of which he resides, it is the duty of the prosecuting officer to bring the case to trial in the district to which the facts most strongly point, and if the court first obtaining jurisdiction of the person of the accused does not object, the accused cannot object

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to his being removed under 1014, Rev.Stat., from the district of his residence to the district in which the government elects to first bring the case to trial.

Where the statute is plain, and Congress has made no exception in its application, the Court cannot make one.

Under 1014, Rev.Stat., the duty of the commissioner is to determine whether a *prima facie* case is made out that a crime has been committed, indictable and triable in the district to which removal is sought, and if so determined, there is no discretion; nor is the fact that the accused is under bail in the district where he resides a bar to the removal.

A conspiracy to defraud the United States under 5440, Rev.Stat., does not necessarily involve a direct pecuniary loss to the United States. The statute includes any conspiracy to impair, obstruct or defeat the lawful function of any department of the government -- *e.g.,* the promulgation of officially acquired

information in regard to the cotton crop.

Regulations of a department of the government promulgated under 161, Rev.Stat., have the force of law, and bribery of an officer of the United States to violate such regulations is included under 5451, Rev.Stat., making it a crime to bribe such officer to violate his lawful duty.

Matters exclusively relating to defense either substantive or in abatement are properly determinative by the court into which the indictments are returned, and where the case will be tried; they cannot be considered on an appeal from the order of removal made under 1014, Rev.Stat.

Introduction before the commissioner of an indictment found in the district to which removal is sought makes a *prima facie* case for removal which is not overcome by an indictment found in another district, although the locus is differently stated in each indictment.

167 F. 211 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE LURTON delivered the opinion of the Court.

On May 29, 1908, four indictments were found in the Supreme Court of the District of Columbia against Moses Haas and certain others, charging them with having conspired in the District of Columbia to defraud the United States, and with having conspired to commit an offense against the United States, under 5440, Rev.Stat.. Bench warrants were issued and returned not found.

On the same day, four other indictments were found in the Circuit Court of the United States for the Southern District of New York against the same Moses Haas and the others named in the District of Columbia indictments, charging them with having conspired in the Southern District of New York to commit the same

offenses covered by the four District of Columbia indictments. Haas appeared in the New York courts and gave bail. Later he was arraigned and pleaded not guilty, then withdrew his plea and entered a motion to quash, which was overruled.

On June 24, 1908, and while this motion to quash was *sub judice,* proceedings were duly begun by the United States District Attorney for the Southern District of New York before the United States commissioner for the arrest of Haas and his removal to the District of Columbia for trial upon the indictments there pending against him. Pending these removal proceedings, and before any hearing, the United States district attorney moved the circuit court in which the New York indictments were pending for consent to the prosecution of these removal proceedings, and consent was granted over the objection of Haas. This application was made by direction of the then Attorney General of the United States, who in an official communication, said "that should the trial here [Washington] result in acquittal or conviction, the indictments in New York will be dropped." Among other

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reasons for desiring the trial in Washington, aside from mere questions of convenience to government officials and witnesses, the Attorney General said:

"1. The indictments charge a conspiracy on the part of the several defendants to cause to be issued at Washington by the Bureau of Statistics for the Department of Agriculture of false cotton crop reports, and that Holmes, who was then Associate Statistician of the Bureau of Statistics, was to furnish to his co-conspirators, in advance of their official issue, the information to be contained in the reports. While, owing to the commission in your district of acts in pursuance of the conspiracy, the court in your district has jurisdiction of the offense, yet the conspiracy was, in all probability, actually formed in Washington. The false reports were prepared and issued here, and the advance information was given out here. The real situs of the crime, then, is in the District of Columbia, and the trials should therefore be had here."

"2. The defendant Holmes has been arrested and is now awaiting trial on the indictments pending in the District of Columbia. There are two series of these indictments, one against Price, Haas, and Holmes, and the other against Haas, Peckham, and Holmes. It would be a great convenience and a vast saving to the government to try the defendants together. Even this would necessitate two trials, one in each series. If the nonresident defendants are not removed to Washington, four trials would be needed -- two in Washington and two in New York."

Upon the hearing before the commissioner, the government put in evidence certified copies of the four District of Columbia indictments, and proof that bench warrants had issued in that district and returned not found. The defendant admitted his identity and put in evidence copies of the four New York indictments and of the proceedings had thereunder. The commissioner found probable cause and directed that Haas be held to await an order of removal by a district judge. Thereupon a petition for writs of habeas corpus and

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certiorari was filed in the circuit court, averring that his arrest and detention were illegal and in violation of the federal Constitution. The circuit court, upon a full hearing, denied the writs and remanded the petitioner. 166 F. 621. This appeal was thereupon taken.

The facts stated present the question as to whether Haas could be lawfully removed under 1014, Rev.Stat., over his objection, pending the proceedings against him in the Southern District of New York for similar offenses.

Section 1014 provides for the arrest and detention of any person, wherever found, "for trial" before such court of the United States as by law has cognizance of the offense, and that,

"where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

Haas was arrested upon a warrant duly sworn out charging him with offenses against the United States committed within the District of Columbia. Copies of the indictments duly returned by a grand jury were put in evidence. That made a *prima facie* case, requiring detention until an order of removal could be applied for and issued. Haas insisted upon his right to be tried in the district of his residence, and complained, with more or less justice, of the expense and hardship incident to a trial in the District of Columbia. But there is no principle of constitutional law which entitles one to be tried in the place of his residence. The right secured by Art. III, 2, and the Sixth Amendment of the Constitution is the right of trial in the district "where the crime shall have been committed." If, therefore, Haas committed a crime against the United States in the District of Columbia, he had neither legal nor constitutional right to object to removal to the district where the trial was to be had. *In re Palliser,* 136 U. S. 257 , 136 U. S. 265 .

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If the only constitutional right secured is the right to a trial by jury in the district where the crime was committed, there is obviously no invasion of either right by the election of the government to prosecute the offense in any district and "court of the United States as by law has cognizance of the offense." If the same accusation has been made by grand juries of different jurisdictions, it would be manifestly the duty of the prosecuting officer of the United States to determine in which the offense was most probably committed, and bring the offender to trial there. Thus, if the place of the formation of the conspiracy be doubtful, and there be some facts pointing to one district and some to another, and indictments have been returned in each, it would be the plain duty of the prosecution to take steps to bring the case to trial in that district to which the facts most strongly pointed. This seems to have been the very situation of this case, and the principal motive moving the Attorney General to give the instruction shown by his letter to the District Attorney for the Southern District of New York. The removal statute is plain, and leaves no room for the court to make an exception when Congress has made none.

Has the United States court for the District of Columbia jurisdiction over the accusation made in that district, and is the case triable there? If so, the duty of the commissioner, assuming a showing of probable cause, was to detain, and of the judge of the district to issue his warrant for the removal of the accused "to the district where the trial is to be had." The case, on principle, must be the same if the offense be one which was committed in more than one district. In such a case, 731, Rev.Stat., makes it cognizable in either. But, if indicted in two or more districts, there must be an election as to where the defendant shall be tried. Primarily, this is the right and duty of the Attorney General or those acting by his authority. If the election require the arrest of the accused in a district other than that in which the trial is to be had, removal proceedings must, of course, be instituted.

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The duty of the commissioner is then limited to the determination of the single question of whether a *prima facie* case is made that the accused has committed an offense against the United States, indictable and triable in the district to which a removal is sought. There is no discretion reposed when such a case is made out. That bail had been given would not prevent removal, for in such a situation the sureties would be exonerated by act of the law. *Beavers v. Haubert,* 198 U. S. 77 .

But in the case before us, the consent of the circuit court, to which the New York indictments had been returned, was granted. To say that the accused had a right to a speedy trial of the New York cases may be conceded. If unreasonable delay should result from continuances due to an election to try the same accusations in another district, a very different question might arise, calling for relief through habeas corpus. But such a possibility affords no legal reason for denying the right of removal. The precise question has not been before raised, but in principle the case is within *In re Palliser,* 136 U. S. 257 , 136 U. S. 267 ; *Hyde v. Shine,* 199 U. S. 62 , and *Benson v. Henkel,* 198 U. S. 1 , 198 U. S. 15 .

In the *Palliser* case, a removal from a New York district, the residence of Palliser, to a Connecticut district was objected to because the offense had been committed in New York, and not Connecticut. The court said:

"But there can be no doubt at all that, if any offense was committed in New York, the offense continued to be committed when the letter reached the postmaster in Connecticut, and that, if no offense was committed in New York, an offense was committed in Connecticut, and that, it either aspect, the District Court of the United States for the district of Connecticut had jurisdiction of the charge against the petitioner. Whether he might have been indicted in New York is a question not presented by this appeal."

In *Hyde v. Shine,* the fact that the conspiracy charged was one triable in California, the residence of the appellant, was

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not considered as an answer to the demand for removal from California to the District of Columbia, the question of distance being the one pressed, and decided as presenting no obstacle to the legal right of removal.

In *Beavers v. Haubert, supra,* the appellant objected to removal from the district of his residence to another, to be there tried, because he was at the time under indictment in the district of his residence and under bail for his appearance for a different offense against the United States. But it was held that this fact afforded no reason for denying a removal upon the election to try the one case before the trial of the other.

In *Benson v. Henkel,* 198 U. S. 15 , objection was made to a removal to the District of Columbia upon the ground that the offense, if any, was committed in California, and that, under the Constitution, the appellant was entitled to a trial in that jurisdiction. In dealing with that question, Mr. Justice Brown said:

"The objection does not appear upon the face of the indictment, which charges the offense to have been committed within this district, but from the testimony of one

of those clerks it seems that the money was received by him in certain letters mailed to him from San Francisco and received in Washington. Without intimating whether the question of jurisdiction can be raised in this way, the case clearly falls within that of *In re Palliser,* 136 U. S. 257 , in which it was held that, where an offense is begun by the mailing of a letter in one district and completed by the receipt of a letter in another district, the offender may be punished in the latter district, although it may be that he could also be punished in the former."

The next objection is that the District of Columbia indictments do not charge any offense against the United States.

The four District of Columbia indictments charge two sets of conspiracies. One conspiracy, charged in indictment No. 26,088, is averred to have been formed between Haas, one

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Theodore Price, and one Edwin S. Holmes, Jr., who was an associate statistician in the Department of Agriculture. The charge in certain of these counts is that these three defendants conspired to defraud the United States by secretly obtaining information from Holmes which he should acquire in his official character as associate statistician and should, in violation of his official duty, give out secretly to his coconspirators as to the probable contents of certain official cotton crop reports in advance of the time when these reports were to be promulgated according to law. In one of the counts it is charged that Holmes was to falsify one of these official cotton crop reports, of which fact his associates were to be advised in advance. All of which information in advance of the publication of the official cotton crop reports was to be used for speculative purposes in the open market.

Indictment No. 26,089 charges that Haas and Price conspired to bribe Holmes to make this false report and to furnish them in advance information as to its contents.

Indictment No. 26,086 charges that Haas and one Frederick A. Peckham conspired with one Van Riper to bribe Holmes to give them advance information of the June report of 1905, while No. 26,087, charges Haas, Peckham, and Holmes with conspiracy to defraud the United States by Holmes' giving his coconspirators advance information as to that report.

The indictments are of such great length that it is not feasible to set them out in full or to state the substance of their several counts. It is, for the purposes of this case, enough to say that it is averred that the Department of Agriculture includes a Bureau of Statistics, established by law. That one of the governmental functions exercised by that department, particularly through the Statistical Bureau, is the acquirement of detailed information from time to time in respect to the condition of the cotton crop of the country. That this information comes through thousands of correspondents, some official and others not, through the reports of local agents scattered through the cotton region, and through traveling

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representatives of the Department. From these and other sources a report is made estimating acreage, condition, and the probable size of the crop. Comparisons with former reports are made, and every explanation furnished which may throw light upon the present condition and prospect of the growing crop. That the purpose is to complete and promulgate at stated times fair, impartial, and reliable reports, and that said reports are issued about the third day of the months of June, July, August, September, October, and December. That the information thus officially acquired and compiled, and the estimates thereon, are of value and do greatly affect the market price of the crop. That such reports are required to be submitted to and approved by the Secretary of Agriculture before publication, and that, under the custom, practices, and regulations of the Secretary of Agriculture all officers and employees are required to keep secret the information so gathered, and from in any way divulging same or giving out any information forecasting such report in advance of its official approval and promulgation.

It is averred that the said Holmes was an employee or an official in said department, and in the Bureau of Statistics. That, by virtue of his duty as such official and assistant statistician, he acquired much of the information upon which such reports are based, and, as an official, came into knowledge of the probable contents of the regular reports. That neither Haas nor Price had any official connection, and were not authorized to obtain information about such reports in advance of their promulgation. That the conspiracy was to obtain such information from Holmes in advance of general publicity, and to use such information in speculating upon the cotton market, and thereby defraud the United States by defeating, obstructing, and impairing it in the exercise of its governmental function in the regular and official duty of publicly promulgating fair, impartial, and accurate reports concerning the cotton crop. One count charges in addition that the conspiracy included the making of a false report, the

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facts to be given by Holmes to his coconspirators in advance of its publication.

The counts charging a conspiracy to commit an offense against the United States in substance charge that this was to be accomplished by bribing the said Holmes to induce him to do certain acts in violation of his lawful duty not to give out advance information in respect to the condition of the cotton crop acquired in the performance of his official duty.

Do the counts which charge a conspiracy to defraud the United States charge any offense?

The authority for the indictments charging a conspiracy to defraud is 5440, Rev.Stat. Its language is plain and broad:

"If two or more persons conspire . . . to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable,"

etc.

These counts do not expressly charge that the conspiracy included any direct pecuniary loss to the United States, but, as it is averred that the acquiring of the information and its intelligent computation, with deductions, comparisons, and explanations, involved great expense, it is clear that practices of this kind would deprive these reports of most of their value to the public and degrade the department in general estimation, and that there would be a real financial loss. But it is not essential that such a conspiracy shall contemplate a financial loss, or that one shall result. The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government. Assuming, as we have, for it has not been challenged, that this statistical side of the Department of Agriculture is the exercise of a function within the purview of the Constitution, it must follow that any conspiracy which is calculated to obstruct or impair its efficiency and destroy the value of its operations and reports as fair, impartial, and reasonably accurate would be to defraud

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the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by law or departmental regulation. That it is not essential to charge or prove an actual financial or property loss to make a case under the statute has been more than once ruled. *Hyde v. Shine,* 199 U. S. 62 , 199 U. S. 81 ; *United States v. Keitel,* 211 U. S. 370 , 211 U. S. 394 ; *Curley v. United States,* 130 F. 1; *McGregor v. United States,* 134 Fed.195.

The counts charging a conspiracy to commit an offense against the United States -- namely, the offense of bribing Holmes to violate his duty as a public official by giving out advance information about the monthly cotton reports -- are said not to charge an offense against the United States, because there is no statute which prohibits the giving out of such official secrets in advance of lawful promulgation.

Section 5451, Rev.Stat., makes it a crime to bribe or offer to bribe "any officer of the United States," or

"any person acting for or on behalf of the United States, in any official function, under or by authority of any department or office of the government; . . . to induce him to do or omit to do any act in violation of his lawful duty."

The head of each department is authorized by 161, Rev.Stat.,

"to prescribe regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the . . . preservation of the records, papers, and property appertaining to it."

Such regulations need not be promulgated in any set form, nor in writing.

In *United States v. Macdaniel,* 7 Pet. 1, 32 U. S. 14 -15, it was said of departmental regulations that,

"of necessity, usages have been established in every department of the government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits."

In *Benson v. Henkel,* 198 U. S. 1 , 198 U. S. 11 , a similar question

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arose in an appeal from an order denying a writ of habeas corpus in a removal case. The appellant was charged with a conspiracy to commit an offense by bribing certain clerks of the land office to divulge the contents of certain reports. It was said that these clerks had not been forbidden by any statute to give out such information. Mr. Justice Brown, for the Court, said:

"But it is clearly for the court to say whether every duty to be performed by an official must be designated by statute, or whether it may not be within the power of the head of a department to prescribe regulations for the conduct of the business of his office and the custody of its papers, a breach of which may be treated as an act in violation of the lawful duty of an official or clerk. *United States v. Macdaniel,* 7 Pet. 1, 32 U. S. 14 ."

We have not dealt with certain minor objections which go to the form of the indictments, rather than to the substance. These are matters to be determined in the court where they were found, and are not proper for consideration upon habeas corpus proceeding.

The exclusion of the evidence taken in *Price v. United States* and offered in this case upon the petition for writ of habeas corpus in the circuit court, touching the history of the finding of indictment No. 26,088, is not a matter which is proper for review on such an appeal as this. So also the defense of the statute of limitations. The one defense is matter in abatement, and the other of substantive defense, and both are properly matters for the determination of the court into which the indictments were returned and where the case will be tried.

It is enough to hold, as we do, that the indictments sufficiently charge an offense committed within the District of Columbia to require that the appellant shall be removed to that district for trial. *Benson v. Henkel,* 198 U. S. 1 .

The introduction of certified copies of the District of Columbia indictments made a *prima facie* case for removal. That

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case was not overcome by the copies of the New York indictments. That they laid the locus of the conspiracy in a different place from that laid in the District of Columbia indictments is true. But if such indictments are evidence for the purpose of showing that the place of the conspiracy was not in the District of Columbia, such evidence was not, as matter of law, sufficient to overcome the probable cause shown by the District of Columbia indictments. They certainly could not be regarded as admissions by the government. They were, at most, evidence of the opinion of the New York grand jury as to the locus of the conspiracy. But if the fact be that the offense charged in both sets of indictments is identical, and that the locus of the conspiracy is laid in one set as in one district and in the other as in a different district, it is still for the government to determine in which of the two districts it will bring the accused to trial, and of the commissioner to determine

whether a *prima facie* case has been shown that the accused had probably committed an offense in the District of Columbia which was indictable and triable there. This we have dealt with already, and only refer to it now in connection with the use of the New York indictments as evidence that the offense was not committed in the District of Columbia.

Upon the whole case, we conclude that the commissioner had jurisdiction, and that no sufficient reason is shown for discharging the appellant.

Final order denying writ

Affirmed.

BREWER, J., concurring:

I concur in affirming the orders of removal in these cases, but my concurrence must not be taken as holding that the indictments will stand the final test of validity or sufficiency. Assuming that there is a doubt in respect to these matters, as I think there is, and as seems to be suggested by the opinion in No. 367, I am of the opinion that such doubt should be

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settled by direct action in the court in which the indictments were returned, and not in removal proceedings.

MR. JUSTICE Mc KENNA concurs in the result, but reserves opinion whether the facts alleged in the indictment constitute a conspiracy to defraud the United States.