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Turner Vs. Fisher

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Court : US Supreme Court

Decided On : Dec-04-1911

Appeal No. : 222 U.S. 204

Appellant : Turner

Respondent : Fisher

Judgement :

Turner v. Fisher - 222 U.S. 204 (1911)
U.S. Supreme Court Turner v. Fisher, 222 U.S. 204 (1911)

Turner v. Fisher

No. 60

Argued November 14, 1911

Decided December 4, 1911

222 U.S. 204

ERROR TO THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

Where, under the provisions of acts of Congress, and after a hearing, the names of relators were duly entered as Creek Freedmen by blood on the rolls made and approved by the Secretary of the Interior, rights were acquired of which the freedmen could not be deprived without that character of notice and opportunity to be heard essential to due process of law. *Garfield v. Goldsby,* 211 U. S. 249 .

Notice to the attorney of such freedmen, given a few hours before the hearing of a motion to strike their names, on the ground that their enrollment had been secured by perjury, was not such notice as afforded due process. *Roller v. Holly,* 176 U. S. 399 , 176 U. S. 409 ; *Haar v. Reclamation Dist.,* 111 U. S. 708 ; *Iowa Central v. Iowa,* 160 U. S. 393 ; *Hovey v. Elliott,* 167 U. S. 414 .

In the absence of other controlling facts, the Secretary of the Interior could have been required by mandamus to restore the names of those thus arbitrarily stricken off without notice. *Garfield v. Goldbsy,* 211 U. S. 249 .

But mandamus is not a writ of right. It issues to remedy a wrong, not to promote one, and will not be granted in aid of those who do not come into court with clean hands.

Although the petition for the writ alleged that relators were freedmen duly enrolled and denied the truth of the testimony on which their names were stricken off, yet where the answer of the Secretary referred to that testimony and alleged

"on information and belief that the relators were not freedmen members or members by blood

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or marriage of the Creek Nation, and that their enrollment had been procured by fraud,"

a defense was stated, proof of which would have defeated the right to a restoration of relators' names even though they had been improperly stricken from the rolls

without due process. *Redfield v. Windom,* 137 U. S. 636 , 137 U. S. 646 ; *In re Sanford Co.,* 160 U. S. 257 .

Where a general demurrer to an answer containing such defense was overruled, and the relators, instead of replying, elected to stand on their demurrer, the writ of mandamus was properly refused. *In re Sanford Co.,* 160 U. S. 257 .

To have issued the writ would have involved the useless thing of requiring relators' names to be reentered, and in other proceeding having their names stricken because the original enrollment had been procured by fraud, thus admitted by the demurrer.

31 App.D.C. 332, 33 App.D.C.195, affirmed.

In error from a judgment of the Court of Appeals of the District of Columbia affirming an order of the lower court refusing to issue a writ of mandamus requiring the Secretary of the Interior to restore the names of relators to the Freedmen Rolls of the Creek Nation, from which they had been stricken. 31 App.D.C. 332, 33 *id.* 195.

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Memorandum opinion by direction of the Court. By MR. JUSTICE LAMAR:

1. Where, under the provisions of acts of Congress and after a hearing, the names of relators were duly entered as Creek freedmen by blood on the rolls made and approved by the Secretary of the Interior, rights were acquired of which the freedmen could not be deprived without that character of notice and opportunity to be heard essential to due process of law. *Garfield v. United States,* 211 U. S. 249 .

2. Notice to the attorney of such freedmen, given a few hours before the hearing of a motion to strike their names on the ground that their enrollment had been secured by perjury, was not such notice as afforded due process.

Roller v. Holly, 176 U. S. 399 , 176 U. S. 409 ; *Hagar v. Reclamation Dist.,* 111 U. S. 708 ; *Iowa Central Railway Co. v. Iowa,* 160 U. S. 393 ; *Hovey v. Elliott,* 167 U. S. 414 .

3. In the absence of other controlling facts, the Secretary of the Interior could have been required by mandamus to restore the names of those thus arbitrarily stricken off without notice. *Garfield v. United States, supra.*

4. But mandamus is not a writ of right. It issues to remedy a wrong, not to promote one, and will not be granted in aid of those who do not come into court with clean hands.

5. Although the petition for the writ alleged that relators were freedmen, duly enrolled, and denied the truth of the testimony on which their names were stricken off, yet, where the answer of the Secretary referred to that testimony, and alleged

"on information and belief, that the relators were not freedmen members or members by blood or marriage of the Creek Nation, and that their enrollment had been procured by fraud,"

a defense was stated, proof of which would have defeated the right to a restoration of relators' names, even though they had been improperly stricken from the rolls without due process. *United States ex Rel. Redfield v. Windom,* 137 U. S. 636 , 137 U. S. 646 ; *In re Sanford Fork & Tool Co.,* 160 U. S. 257 .

6. Where a general demurrer to an answer containing such defense was overruled, and the relators, instead of replying, elected to stand on their demurrer, the writ of mandamus was properly refused. *In re Sanford Fork & Tool Co.,* 160 U. S. 247 , 160 U. S. 257 .

7. To have issued the writ would have involved the useless thing of requiring relators' names to be reentered, and in other proceedings having their names stricken because the original enrollment had been procured by fraud, thus admitted by the demurrer.

Affirmed.

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