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Wise Vs. Mills

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Court : US Supreme Court

Decided On : May-15-1911

Appeal No. : 220 U.S. 549

Appellant : Wise

Respondent : Mills

Judgement :

Wise v. Mills - 220 U.S. 549 (1911)
U.S. Supreme Court Wise v. Mills, 220 U.S. 549 (1911)

Wise v. Mills

No. 963

Argued April 24, 25, 1911

Decided May 15, 1911

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The fact that a question under the Constitution is involved in an order requiring production of books and paper, does not establish that a constitutional question is involved in the order committing for contempt for refusing to comply with the order to produce. *Nelson v. United States,* 201 U. S. 92 , distinguished, and *Alexander v. United States,* 201 U. S. 117 , followed.

This Court has no jurisdiction to review a judgment of the Circuit Court committing for contempt for failure to produce simply because the interlocutory order which appellant refused to obey involved a constitutional question, and where it does not appear that the order disobeyed was so far dehors the authority of the court as to be void, the appeal from the order of commitment will be dismissed.

On February 20, 1911, an inspector of customs, before a commissioner of a circuit court of the United States, charged Lawrence H. Mills, Charles G. Mourraille, and Emil S. Duflot with conspiring to defraud the United States of a portion of the customs duties upon certain merchandise imported by said parties, who were engaged in business in the city of New York, under the firm name of Mills & Duflot. It was charged that the object of the conspiracy was to be accomplished by presenting to the collector of the port of New York false and fraudulent invoices, and the commission of a specific overt act was alleged. Upon this charge, a warrant issued for the arrest of the accused. On the same day, a deputy marshal, with an agent of the Department of Justice, proceeded to the place of business of the firm and executed the warrant by arresting

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the accused. At the time this was done, the officers took possession of and carried away a large number of commercial books and papers, which were found in the store or office of the accused. On the same day also, the grand jury presented the accused for conspiracy to defraud the United States of its customs revenues, and they were also arrested under a bench warrant issued upon this indictment, and were arraigned and admitted to bail.

On February 23, 1911, Mills, Mourraille, and Duflot, in a petition filed in the circuit court, recited the taking possession and carrying away by the officers of the books and papers, as heretofore stated, and alleged that such books and papers "constituted substantially all the books and papers with which they are and have been for several years doing business." It was averred upon information and belief that the books and papers in question had been turned over to the United States district attorney, to be placed at the disposal of the grand jury. Averring that the seizure was unlawful and without warrant of authority, it was prayed that the marshal and the district attorney be notified, and after hearing, they be commanded to return the books and papers. The district attorney quite elaborately answered the petition, admitting that the books and papers had been seized and carried away as alleged, traversing the averment that they were all the books, admitting that they were in his possession, that he had used and was intending to use them for the purpose of procuring indictments for violation of the customs laws, and averring that reasonable access to the books and papers had been allowed the parties. The answer besides stated other matters which it was deemed sustained the seizure and the retention of the books and papers.

After hearing, the court ordered the return of the books and papers. The reasons for this course were stated in an opinion which substantially, on a review of the decisions of this Court, especially *Boyd v. United States,* 116 U.S.

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616, and *Hale v. Henkel,* 201 U. S. 43 , held that the constitutional rights of the parties had been violated by the taking possession of the books and papers as alleged. 185 F. 318. Thereupon the district attorney, who is the plaintiff in error, refused to obey the order of the court, and stated his reasons for the refusal in an elaborate paper filed in the circuit court, and styled "statement of grounds of United States attorney's refusal to obey order." In such paper, after referring to the taking possession of the books and papers, and making certain statements concerning the same, it was declared:

"As to the direction of this Court to turn over the other books and papers now in his possession and taken into custody at the time of the arrest of the defendants, said United States attorney is unwilling and respectfully refuses to comply with said order, and the grounds of his refusal to obey the said order are as follows. . . ."

This was followed by eleven paragraphs, in which were recited the charge against the accused, the taking possession of the books and papers, the return of some of them to the accused, the retention of the balance by the district attorney, their use before the grand jury, and the intention to use them further. Certain papers were annexed as part of the statement.

The district attorney persisting in his refusal, the court entered an order committing him for contempt. Thereupon this writ of error to the judgment of commitment for contempt was allowed by the circuit judge who ordered the commitment, and assigments of error were filed, concluding as follows:

"Wherefore the said Henry A. Wise prays that the order and judgment of said circuit court of the United States for the Southern District of New York, adjudging him to be in contempt, may be reversed, and that the said court may be directed to enter an order and judgment vacating and setting at naught the said order upon which the commitment and complaint was made. "

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MR. CHIEF JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the Court.

We have difficulty in understanding upon what theory the writ of error direct from this Court was prosecuted, as clearly there was no jurisdiction to allow it, unless the case is within some of the provisions of the Judiciary Act

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of 1891, conferring authority to so directly review. The only ground stated in the assignments of error which in the remotest degree refers to a matter which would come within our right to review is the third assignment, which asserts:

"The court erred in adjudging that the taking into custody of said books and papers at the time of the lawful arrest of said Lawrence H. Mills, Charles G. Mourrailles, and Emil S. Duflot was in violation of the provisions of the Constitution of the United States."

And this, we assume, is the theory upon which it is deemed we have jurisdiction directly to review, since that is the subject elaborately discussed in the argument at bar on behalf of plaintiff in error. But it is obvious on the face of the record that the error thus assigned and the discussion at bar in regard to it concern themselves, not with the order which it is sought to review, that is, the commitment for contempt, but to another an different order, not final in its character,-that is, the order of the court directing the return of the books and papers. *Alexander v. United States,* 201 U. S. 117 . Even then, although it be conceded that a question under the Constitution of the United States was involved in the latter, that concession does not establish that a constitutional question was involved in the order committing for contempt. No conceivable constitutional right of the district attorney arose or could have been involved in committing him for contempt for refusing to obey the order of the court, and therefore there is no question presented on this record justifying a direct review of the order committing for contempt.

The case here is not even analogous to *Nelson v. United States,* 201 U. S. 92 , since there the facts were these: a person who, as a witness before a special examiner, refused to produce books and papers on the ground that to compel him to do so would invade his constitutional rights, was proceeded against for contempt, and the authority of this Court to directly review the final judgment committing for

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contempt was rested upon the express ground that the writ of error directly involved the determination of whether the order to produce, and to punish for the refusal to produce, violated the constitutional rights of the witnesses. Even if it were to be conceded, for the sake of argument, that the court below had

proceeded upon an erroneous conception of the Constitution when it ordered the return of the books and papers, that concession would not serve to establish that the order was so *dehors* the authority of the court as to cause it to be void, and to justify an officer of the court in refusing to respect and obey it. This is obviously true, since it is apparent that, wholly irrespective of the merits of the view which the court took of the constitutional rights of the parties whose books and papers were directed to be returned, the power to direct the return of the books and papers was equally possessed and might have been exerted upon the conception of the abuse of discretion, which was manifested by the taking possession of the books and papers under the circumstances disclosed. Indeed, the basis upon which the assumption that we have jurisdiction to review rests plainly upon a two-fold misconception. The one, that the right to have a direct review of the final contempt order carries with it the right to have at the same time a review of the interlocutory order returning the books -- a proposition which directly conflicts with the ruling in the *Alexander* case, *supra.* The other because, under the view taken by the court below, the seizure of the books and papers violated the constitutional rights of the accused, that therefore some constitutional question was involved in the commitment for contempt for refusing to obey the order of the court for the return of the books and papers.

Under the circumstances, we are of opinion that the entire want of foundation for the assumption that there was jurisdiction in this Court to directly review the order of commitment which caused this writ of error to be prosecuted

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is, we think, so obvious as not to afford any possible ground for retaining jurisdiction of the cause. That is to say, we are of opinion that the contention upon which the asserted right to prosecute the error directly to this Court was based is so devoid of all foundation as to render it necessary to decline to assume a jurisdiction which we have not, and therefore the writ of error is dismissed.

Writ of error dismissed.

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