

Degge Vs. Hitchcock

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Court : US Supreme Court

Decided On : May-26-1913

Appeal No. : 229 U.S. 162

Appellant : Degge

Respondent : Hitchcock

Judgement :

Degge v. Hitchcock - 229 U.S. 162 (1913)

U.S. Supreme Court Degge v. Hitchcock, 229 U.S. 162 (1913)

Degge v. Hitchcock

Nos. 157, 158

Argued January 31, 1913

Decided May 26, 1913

229 U.S. 162

ERROR TO THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

This is apparently the first case in which a federal court has been asked to issue a writ of certiorari to review a ruling by an executive officer of the United States government.

Constant failure to apply for a particular remedy suggests that it is due to conceded want of power in the courts to grant it.

The scope of the writ of certiorari as it exists at common law has not been enlarged by any statute in the federal jurisdiction, and cases

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in which it has issued under statute from state courts to state officers are not controlling in the federal courts.

While the original scope of the writ of certiorari has been enlarged so as to serve the office of a writ of error, it has always run from court to court or to such boards, tribunals, and inferior jurisdictions whose findings and decisions had the quality of a final decision and from which there was no appeal or other method of review.

The decision of the Postmaster General that a fraud order shall issue is not the exercise of a judicial function, and if the decision is beyond his jurisdiction, the party injured may obtain relief in equity; the order cannot be reviewed by certiorari.

So long as proceedings before an executive officer are *in fieri*, the courts will not interfere with them. *Plested v. Abbey*, [228 U. S. 42](#) .

The writ of certiorari is an extraordinary remedy, and in deciding that it will not issue in a particular case, this Court does not anticipate in what cases exceptional facts may call for its use.

35 App.D.C. 218, 228, affirmed.

In 1909, complaint was made to the postal authorities that W. W. Degge and the Wellington corporations, of which he was president, were using the mails in furtherance of a fraudulent scheme. Notice was given to Degge and the corporations, and a hearing was had before the officer to whom, under the Postal Regulations, the disposition of this class of cases was committed. He found that the charges were true, and to his finding he attached a copy of all the evidence which had been taken. The report was confirmed by the Postmaster General, who issued an order directing the postmaster at Boulder, Colorado, not to deliver mail addressed to Degge or to these corporations, but to return all such letters to the sender with the word "Fraudulent" plainly stamped on the envelope. Rev.Stat. 3929, 4041.

Degge, the corporations, and some of the stockholders thereafter filed petitions in the Supreme Court of the District of Columbia alleging that the officer before whom the hearing had been had was without power to make report on which the Postmaster General had acted; that there was no testimony to show the existence of a fraudulent

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scheme, and no evidence whatever to support the finding. It was alleged that the order was arbitrary, in excess of the power of the Postmaster General, and void. The petitioners prayed that the court would issue writs of certiorari directing the Postmaster General to certify the record to the court, and that, upon hearing and review thereof, the court would set aside the order. A rule to show cause was granted. The Postmaster General demurred on the ground that the court was without jurisdiction to issue the writ, and subject thereto answered, attaching the record and the evidence on the hearing before the officer of the Post Office Department having charge of the Fraud Orders investigations.

The case was heard by the Supreme Court of the District of Columbia on petition, demurrer, and answer. After a hearing, the court dismissed the case. The Court of Appeals of the District, without passing on the right to issue the writ, affirmed the judgment upon the ground that the evidence supported the order. The petitioners

appealed, and on the argument in this Court, the government renews the contention that the district court was without jurisdiction to issue the writ of certiorari to the Postmaster General.

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

This case is the first instance, so far as we can find, in which a federal court has been asked to issue a writ of certiorari to review a ruling by an executive officer of the

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United States government. That at once suggests that the failure to make such application has been due to the conceded want of power to issue the writ to such officers. For, since the adoption of the Constitution, there have been countless rulings by heads of Departments that directly affected personal and property rights, and where the writ of certiorari, if available, would have furnished an effective method by which to test the validity of *quasi* -judicial orders under attack. The modern decisions cited to sustain the power of the court to act in the present case are based on state procedure and statutes that authorize the writ to issue not only to inferior tribunals, boards, assessors, and administrative officers, but even to the chief executive of a state in proceedings where a *quasi* -judicial order has been made. But none of these decisions are in point in a federal jurisdiction where no statute has been passed to enlarge the scope of the writ at common law.

In ancient times, it was used to compel the production of a record for use as evidence; more often to supplement a defective record in an appellate court, and later, to remove, before judgment -- *Harris v. Barber*, [129 U. S. 369](#) -- a record from a court without jurisdiction, and with a view of preventing error, rather than of correcting it. When, later still, its scope was enlarged so as to make it serve the

office of a writ of error, certiorari was granted only in those instances in which the inferior tribunal had acted without jurisdiction, or in disregard of statutory provisions. But in those cases the writ ran to boards (*Reaves v. Ainsworth*, [219 U. S. 297](#)), officers, tribunals, and inferior judicatures whose findings and decisions, even though erroneous, had the quality of a final judgment, and there being no right of appeal or other method of review, the extraordinary writ of certiorari was resorted to from necessity to afford a remedy where there would otherwise have been a denial of justice. But, in all those cases, it ran

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from court to court, including boards, officers, or tribunals having a limited statutory jurisdiction, but whose judgments would be conclusive unless set aside.

The plaintiffs in error insist that, under these common law principles, the writ should issue here because, having to act "upon evidence satisfactory to him" (Rev.Stat. 3929), and notice and a hearing having been given, the Postmaster General acted in a judicial capacity in making the order, which was therefore subject to review on certiorari because he exceeded his jurisdiction, and, without any proof of fraud in the use of the mails, deprived plaintiffs in error of the valuable right to receive letters and money through the post office.

It is true that the Postmaster General gave notice and a hearing to the persons specially to be affected by the order, and that, in making his ruling, he may be said to have acted in a *quasi* -judicial capacity. But the statute was passed primarily for the benefit of the public at large, and the order was for them and their protection. That fact gave an administrative quality to the hearing and to the order, and was sufficient to prevent it from being subject to review by writ of certiorari. The Postmaster General could not exercise judicial functions, and, in making the decision, he was not an officer presiding over a tribunal where his ruling was final unless reversed. Not being a judgment, it was not subject to appeal, writ of error, or certiorari. Not being a judgment, in the sense of a final adjudication, the plaintiffs in error were not concluded by his decision, for had there been an arbitrary exercise of statutory power, or a ruling in excess of the jurisdiction

conferred, they had the right to apply for and obtain appropriate relief in a court of equity. *American School v. McAnnulty*, [187 U. S. 94](#) ; *Philadelphia Co. v. Stimson*, [223 U. S. 620](#) .

The fact that there was this remedy is itself sufficient to take the case out of the principle on which, at common

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law, right to the writ was founded. For there it issued to officers and tribunals only because there was no other method of preventing injustice. Besides, if the common law writ, with all of its incidents, could be construed to apply to administrative and *quasi* -judicial rulings, it could, with a greater show of authority, issue to remove a record before decision, and so prevent a ruling in any case where it was claimed there was no jurisdiction to act. This would overturn the principle that, as long as the proceedings are *in fieri*, the courts will not interfere with the hearing and disposition of matters before the Departments. *Plested v. Abbey*, [228 U. S. 42](#) , [228 U. S. 51](#) . To hold that the writ could issue either before or after an administrative ruling would make the dispatch of business in the Departments wait on the decisions of the courts, and not only lead to consequences of the most manifest inconvenience, but would be an invasion of the executive by the judicial branch of the government.

The writ of certiorari is one of the extraordinary remedies, and, being such, it is impossible to anticipate what exceptional facts may arise to call for its use; but the present case is not of that character, but rather an instance of an attempt to use the writ for the purpose of reviewing an administrative order. *Public Clearing House v. Coyne*, [194 U. S. 497](#) . This cannot be done.

Affirmed.