

Henry Vs. Henkel

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Appeal No. : 235 U.S. 219

Appellant : Henry

Respondent : Henkel

Judgement :

Henry v. Henkel - 235 U.S. 219 (1914)

U.S. Supreme Court Henry v. Henkel, 235 U.S. 219 (1914)

Henry v. Henkel

No. 216

Argued February 24, 25, 1914

Decided November 30, 1914

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

No hard and fast rule has as yet been announced as to how far the Court will go in passing upon questions raised in habeas corpus proceedings. Barring exceptional cases, the general rule is that, on applications for habeas corpus, the hearing is confined to the single question of jurisdiction, and even that will not be decided in every case. The hearing on habeas corpus is not in the nature of a writ of error, nor is it intended as a substitute for the functions of the trial court.

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This rule applies equally whether the petitioner is committed for trial within the district or held under warrant of removal to another state. *Ex Parte Royall*, [117 U. S. 241](#) .

A citizen cannot be held for custody or removed for trial where there is no provision of common law or statute making an offense of the acts charged, as in such case the committing court would have no jurisdiction, as the prisoner would be in custody without warrant of law. Every act of Congress is presumptively valid, and a committing magistrate cannot properly treat as invalid a statutory declaration of what should constitute an offense except where the act is palpably void. Whether Congress has power to compel a witness in a congressional inquiry to make material and noncriminatory disclosures, and whether the district judge has jurisdiction to commit on the ground that the statute punishing the witness for refusal to disclose is unconstitutional are questions for the determination of the trial court, and not on a proceeding in habeas corpus.

207 F. 805 affirmed.

The facts, which involve the jurisdiction of courts on habeas corpus proceedings and to what extent the court will pass upon questions of jurisdiction and the merits of the case before the trial, are stated in the opinion.

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MR. JUSTICE LAMAR delivered the opinion of the Court.

In the 62nd Congress, the House of Representatives (H.R. 429, 504) adopted a resolution authorizing the members of the committee on banking and currency to investigate and make a report as to the financial affairs and activities of national banks, interstate corporations, and groups of financiers as a basis for remedial and other legislative purposes. To that end, the committee was authorized to send for persons and papers and to swear witnesses.

Among those summoned and sworn was the appellant, George G. Henry, who was examined at length as to many matters relating to the formation of syndicates and the flotation of stock. He testified that he was a member of the firm of Salamon & Company, bankers in New York, who were accustomed to form syndicates for the acquisition and sale of blocks of stock and to grant participation therein to trust companies and national banks, their directors and corporate officers also being frequently members of the same syndicate. In reference to one of these transactions, he testified that Salamon & Company had agreed to pay \$8,215,262 for \$22,500,000 preferred and common stock in a California oil company; thereupon Salamon & Company, Lewisohn Brothers, Hallgarten & Company, bankers in New York, together with a fourth banking firm (whose name witness did not disclose) had then formed a syndicate for acquiring and disposing of this

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\$22,500,000 of oil stock. He testified how the shares were allotted, and that 12 1/2 percent went to the unnamed persons in the banking group; that, in the subsequent disposition of the stock, a number of shares were acquired by 15 individuals, some of whom were officers of national banks located in New York, Chicago, and Detroit. Other shares were allotted to those who were officers in trust companies in New York and Chicago. Letters were written offering to allot part of this oil stock to the New York syndicate, but, before acceptance of the allotment, all of the stock had been sold at a profit of nearly \$500,000, a part of which went to the members of the New York syndicate (officers of banks), even though they had

not previously accepted the allotment. They thus, in effect, received a present of their share of the profits. He was asked to give the names of those composing the New York syndicate, but claimed to have the right under the Constitution to decline to answer the question, saying also that he

"did not want to disclose the names of the participants in the New York syndicate, although he understood it to be the wish of the subcommittee that he should, for the reason that he would consider it dishonorable to reveal the names of his customers unless compelled to do so."

The committee ordered the fact of his refusal to answer to be reported to the House for action, majority and minority reports being made. After discussion, the House of Representatives directed that the facts should be laid before the grand jury of the District of Columbia. That body returned an indictment against Henry, charging him with refusing to answer questions propounded by the committee. Rev.Stat. 101-104. A warrant issued, and Henry was arrested in New York, and, when taken before the commissioner, demanded an examination.

On the hearing and before the introduction of any testimony, he moved for his discharge on the ground that

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the commissioner was without jurisdiction, since it appeared on the face of the complaint that petitioner was not charged with any offense against the United States.

The motion was denied, and, it having been admitted that Henry was the person described in the indictment, the government introduced the bench warrant and a certified copy of the indictment as sufficient proof of probable cause.

The petitioner then offered in evidence the resolution defining the scope of the inquiry, with a transcript of his testimony before the committee, including the question which he refused to answer and his reasons therefor. Copies of the majority and minority reports to the House were also incorporated in the record.

After argument, the commissioner ordered Henry to be held in custody until the district judge could issue a warrant for his removal to the District of Columbia under the provisions of Section 1014, Revised Statutes.

Thereupon Henry applied to the district judge for a writ of habeas corpus, and on the hearing introduced all of the testimony that had been submitted to the commissioner, and asked for his discharge on grounds similar to those which had been presented to the committing magistrate.

After argument, the district judge discharged the writ, and an appeal was entered to this Court, where petitioner's counsel, renewing the objections made in the district court, insist that the resolution did not authorize an inquiry as to the matter about which Henry refused to testify; that the facts charged do not constitute an offense under the statute, or, if so, that the statute is void. On the authority of *In re Chapman*, [166 U. S. 668](#) ; *Kilbourn v. Thompson*, [103 U. S. 168](#) , and other cases, they insist that in the trial of contested elections, in cases involving the expulsion of members or other *quasi* -judicial proceedings, the House or Senate may, like any other

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court, compel material and noncriminatory disclosures. But they argue that, in view of the provisions of the Fourth Amendment to the Constitution, neither House can compel a citizen to disclose his private affairs as a basis for legislation, particularly where, as in the present case, the witness was not contumacious, but had fully and freely answered all material questions; had disclosed the fact that national banks and their officers were often members of the same syndicate, and had only refused to give the names of certain bank officials when the names themselves could not by any possibility be of assistance in shaping legislation. They therefore contend that the papers show on their face that there was no jurisdiction to issue the warrant on which he was held, and that Henry should not be subjected to the hardship of being removed to the District of Columbia to stand trial upon an indictment which affirmatively shows that no crime has been committed.

The government, on the other hand, insists that Rev.Stat. 104 is constitutional, and that Congress may provide for the punishment of witnesses who, in answer to a question propounded by its authority, fail to make noncrimnatory disclosures and furnish information deemed necessary as a basis for legislation.

These important and far-reaching questions, though elaborately argued, should not be decided on this record, in view of the rule, relied on by the government, that such issues must primarily be determined by the trial court.

The petitioner, however, relying specially on *Greene v. Henkel*, [183 U. S. 261](#) ; *Beavers v. Henkel*, [194 U. S. 73](#) ; *Tinsley v. Treat*, [205 U. S. 20](#) , claims that, as this is a removal case, with the special hardships attendant thereon, it is to be distinguished from those in which the foregoing rule has been announced.

When a person under arrest applies for discharge on

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writ of habeas corpus, the issue presented is whether he is unlawfully restrained of his liberty. Rev.Stat. 752. But there is no unlawful restraint where he is held under a valid order of commitment, so that, in strict logic, the inquiry might extend to the legal sufficiency of the order. In view, however, of the nature of the writ and of the character of the detention under a warrant, no hard and fast rule has been announced as to how far the court will go in passing upon questions raised in habeas corpus proceedings. In cases which involve a conflict of jurisdiction between state and federal authorities, or where the treaty rights and obligations of the United States are involved, and in that class of cases pointed out in *Ex Parte Royall*, [117 U. S. 241](#) ; *Ex Parte Lange*, 18 Wall. 163; *New York v. Eno*, [155 U. S. 89](#) ; *In re Loney*, [134 U. S. 372](#) , the court hearing the application will carefully inquire into any matter involving the legality of the detention and remand or discharge, as the facts may require. But, barring such exceptional cases, the general rule is that, on such applications, the hearing should be confined to the single question of jurisdiction, and even that will not be decided in every case in which it is raised. For otherwise the "habeas corpus courts could thereby draw to

themselves, in the first instance, the control of all prosecutions in state and federal courts." To establish a general rule that the courts on habeas corpus, and in advance of trial, should determine every jurisdictional question would interfere with the administration of the criminal law and afford a means by which, with the existing right of appeal, delay could be secured when the Constitution contemplates that there shall be a speedy trial, both in the interest of the public and as a right to the defendant.

The question has been before this Court in many cases, some on original application and others on writ of error; in proceedings which began after arrest and before commitment; after commitment and before conviction; after

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conviction and before review. The applications were based on the ground of the insufficiency of the charge, the insufficiency of the evidence, or the unconstitutionality of the statute, state or federal, on which the charge was based. In some of the cases, the applicants have advanced the same arguments that are here pressed, including that of the hardship of being taken to a distant state for trial upon an indictment alleged to be void.

But in all these instances, and notwithstanding the variety of forms in which the question has been presented, the court, with the exceptions named, has uniformly held that the hearing on habeas corpus is not in the nature of a writ of error, nor is it intended as a substitute for the functions of the trial court. Manifestly this is true as to disputed questions of fact, and it is equally so as to disputed matters of law, whether they relate to the sufficiency of the indictment or the validity of the statute on which the charge is based. These and all other controverted matters of law and fact are for the determination of the trial court. If the objections are sustained or if the defendant is acquitted, he will be discharged. If they are overruled and he is convicted, he has his right of review (*Kaizo v. Henry*, [211 U. S. 148](#)). The rule is the same whether he is committed for trial in a court within the district or held under a warrant of removal to another state. He cannot in either case anticipate the regular course of proceeding by alleging a want of jurisdiction and demanding

a ruling thereon in habeas corpus proceedings. *Glasgow v. Moyer*, [225 U. S. 420](#) ; *In re Gregory*, [219 U. S. 210](#) ; *Ex Parte Simon*, [208 U. S. 144](#) ; *Johnson v. Hoy*, [227 U. S. 245](#) ; *Urquhart v. Brown*, [205 U. S. 179](#) ; *Hyde v. Shine*, [199 U. S. 63](#) ; *Beavers v. Henkel*, [194 U. S. 73](#) ; *Riggins v. United States*, [199 U. S. 551](#) ; *Ex Parte Royall*, [117 U. S. 241](#) .

The last of these decisions is particularly in point not only because of the applicability of its reasoning to the

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present case, but because of the fact that the writ was there denied, even though the statute, on which the charge was based was ultimately held to be void. *Royall v. Virginia*, [121 U. S. 104](#) ; [116 U. S. 116](#) U.S. 579, [116 U. S. 583](#) ; [125 U. S. 125](#) U.S. 697.

The cases cited do not, of course, lead to the conclusion that a citizen can be held in custody or removed for trial where there was no provision of the common law or statute making an offense of the acts charged. In such case, the committing court would have no jurisdiction, the prisoner would be in custody without warrant of law, and therefore entitled to his discharge. *Greene v. Henkel*, [183 U. S. 261](#) . But the presumption is in favor of the validity of every act of Congress, and it would not be proper for the committing magistrate to treat as invalid a statutory declaration of what should constitute an offense except in those rare and extreme cases in which the act was plainly and palpably void.

Neither the issue nor the basis of the decision is changed when the person held under the warrant applies to a district judge for discharge on writ of habeas corpus. So, likewise, the same issue and the same rule of decision must govern when the case is here on appeal from the order of the habeas corpus tribunal. It follows, therefore, that this Court should not on this record pass on the jurisdictional questions presented. They, like all other controverted issues in the case, are for the determination of the courts of the District of Columbia when the defendant is therein put to his trial.

Judgment affirmed.

MR. JUSTICE Mc REYNOLDS took no part in the consideration or decision of this case.

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