Kelly Vs. Griffin

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Appeal No. : 241 U.S. 6

Appellant : Kelly

Respondent : Griffin

Judgement :

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Kelly v. Griffin

No. 777

Argued April 6, 7, 1916

Decided April 17, 1916

241 U.S. 6

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

That the arrest by state or municipal authorities is illegal does not affect the jurisdiction of a United States Extradition Commissioner.

The omission of a formal act of release of one held under an illegal arrest by state authorities and of a subsequent formal and legal arrest thereafter by a United States Marshal under an extradition warrant *held,* under the circumstances of this case, not to furnish grounds for release on habeas corpus, it not appearing that a different rule applies in the demanding country.

In this case, *held* that the complaint charging the person demanded with having committed in Canada perjury, obtaining money under false pretenses, and receiving stolen property, states offenses of perjury and obtaining money by false pretenses within the meaning of the extradition provisions of the treaty with Great Britain both in Canada, where the offenses were committed, and in Illinois, where the person demanded was arrested; but *quaere* whether it does state an offense of receiving stolen property, which is a crime in both jurisdictions.

Where the complaint properly charges an offense included in the extradition treaty and also charges one that is not included, the court will not release on habeas corpus, but will presume that the demanding country will respect an existing treaty and only try the person surrendered on the offenses on which extradition is allowed.

The facts, which involve the validity of an order for extradition under the treaties with Great Britain, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The appellant was held for extradition to Canada, and petitioned for and obtained a writ of habeas corpus. After a hearing upon the returns to the writ and to a writ of certiorari issued to the commissioner by whose warrant, the

petitioner was detained, the district judge discharged the writ. An appeal was allowed and several objections have been pressed to the proceeding, which we will take up in turn. The matter arises out of frauds in the construction of the new Parliament buildings at Winnipeg, in which Kelly, the contractor, and a number of public men are alleged to have been involved.

First it is said that jurisdiction of the appellant's person has not been obtained legally. On October 1, 1915, he was arrested without a warrant on a telegram from Winnipeg. The next day, a complaint was made before the commissioner by the British Vice Consul General in Chicago upon information and belief, a warrant was issued, and the petitioner was turned over to the United States Marshal by the Chicago police. On October 15, a new complaint was filed by the British Consul General, a new warrant was placed in the hands of the marshal, and the former complaint was dismissed. *Wright v. Henkel,* 190 U. S. 40 , 190 U. S. 42 -44, 190 U. S. 63 . The contention is that the original arrest was illegal, and that the appellant was entitled to be set at liberty before the warrant of October 2 or that of October 15 could be executed with effect.

But, however illegal the arrest by the Chicago police, it does not follow that the taking of the appellant's body by the marshal under the warrant of October 2 was void. The action of the officers of the state or city did not affect the jurisdiction of the commissioner of the United States. Furthermore, the order dismissing the complaint of October 2 was that the appellant be discharged forthwith from custody, so that, on the face of the record, it would seem that, before being held under the present warrant, the appellant had the moment of freedom which he contends was his right. It is urged that the Canadian authorities are trying to take advantage of their own wrong. But the appellant came within reach of the commissioner's warrant by his own choice, and the most that can be said

is that the effective exercise of authority was made easier by what had been done. It was not even argued that the appellant was entitled to a chance to escape before either of the warrants could be executed. This proceeding is not a fox hunt. But merely to be declared free in a room with the marshal standing at the door having another warrant in his hand would be an empty form. We are of opinion that, in the circumstances of this case as we have stated them, the omission of a formal act of release and a subsequent arrest, if they were omitted, furnishes no ground for discharging the appellant upon habeas corpus. All the intimations and decisions of this Court indicate that the detention of the appellant cannot be declared void. *Pettibone v. Nichols,* 203 U. S. 192 ; *Iasigi v. Van de Carr,* 166 U. S. 391 , 166 U. S. 393 -394; *Nishimura Ekiu v. United States,* 142 U. S. 651 , 142 U. S. 662 . If we were satisfied that a different rule would be applied by the final authority in Great Britain, other questions would arise. *Charlton v. Kelly,* 229 U. S. 447 . But we are not convinced by anything that we read in *Hooper v. Lane,* 6 H.L.C. 443, that a different rule would be applied, and we think it unnecessary to discuss the differences in detail.

The complaint of October 15 charges perjury, obtaining money by false pretenses, and, conjointly, stealing or embezzling and unlawfully receiving money and other property of the King which had been embezzled, stolen, or fraudulently obtained by means of a conspiracy as set forth. The perjury alleged is swearing falsely to the proportion of cement sand and broken stone put into the caissons of the new Parliament buildings at Winnipeg, in a judicial proceeding before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, the appellant knowing his statements to be false. It is objected that, although perjury is mentioned as a ground for extradition in the treaty, the appellant should not be surrendered because the Canadian Criminal Code, 170,

defines perjury as covering false evidence in a judicial proceeding, "whether such evidence is material or not." As to this, it is enough to say that the assertions charged here were material in a high degree, and that the treaty is not to be made a dead letter because some possible false statements might fall within the

Canadian law that perhaps would not be perjury by the law of Illinois. "It is enough if the particular variety was criminal in both jurisdictions." *Wright v. Henkel,* 190 U. S. 40 , 190 U. S. 60 -61. There is no attempt to go beyond the principle common to both places in the present case. It is objected further that, although the above committee was authorized to examine witnesses upon oath, it was only in "such matters and things as may be referred to them by the House." But even if there were not some evidence and a finding, *Ornelas v. Ruiz,* 161 U. S. 502 , 161 U. S. 509 , the nature of the investigation, the purposes for which the committee was appointed, and the fact that the appellant appeared before it without objection would warrant a presumption of regularity in a summary proceeding like this.

The plan for the foundations of the buildings was changed from piling called for by the written contract to caissons filled with concrete, and the false representations alleged concerning the amount of concrete, lumber, iron rings, and bolts used in the extra work. They consisted in bills or "progress estimates" addressed to the provincial government for "labor and material supplied," setting forth the amount of each item thus stated to have been supplied. It is objected that the amounts demanded by the bills were paid not upon the bills, but upon vouchers coming from the Department of Public Works, and that the provincial architect who certified the bills was not deceived. The person who made out the certificates relied upon the bills in good faith, and it appears that, without the bills, the payments would not have been made. The fact that there were other steps necessary in addition

to sending in a false account, or that other conspirators cooperated in the fraud, does not affect the result that, on the evidence, Kelly obtained the money from the provincial government by fraudulent representations to which he was a party, and that his false statement was the foundation upon which the government was deceived.

The last charge, stealing or embezzling and receiving money fraudulently obtained, needs a word of explanation. It may be assumed that there is no evidence of larceny or embezzlement as (commonly) defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois. There may be a doubt whether the appellant, if a party to the fraud, received the money of the government directly from it, or through a third hand, so as to be guilty under this count of the complaint. We are not prepared to pronounce his detention upon the count unjustifiable, in view of the finding. We assume, of course, that the government in Canada will respect the convention between the United States and Great Britain, and will not try the appellant upon other charges than those upon which the extradition is allowed. Therefore, we do not think it necessary to require a modification of the complaint before the order discharging the writ of habeas corpus is affirmed.

Final order affirmed.