Craig Vs. Hecht

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Decided On : Nov-19-1923

Appeal No. : 263 U.S. 255

Appellant : Craig

Respondent : Hecht

Judgement :

Craig v. Hecht - 263 U.S. 255 (1923)
U.S. Supreme Court Craig v. Hecht, 263 U.S. 255 (1923)

Craig v. Hecht

No. 82

Argued October 17, 1923

Decided November 19, 1923

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. A circuit judge, as such, has no power to grant the writ of habeas corpus. P. 263 U. S. 271 .

2. A final order discharging a petitioner in habeas corpus, made at chambers by a circuit judge exercising by designation the power of the district court, or by a district judge, is reviewable on appeal by the circuit court of appeals. P. 274.

3. In an ordinary contempt proceeding, the district court has jurisdiction to decide whether the evidence established an offense within the statute and whether the respondent was guilty as charged, and its order sentencing him to imprisonment is reviewable by appeal, and not by habeas corpus, which cannot be used as a substitute for appeal in the absence of exceptional circumstances. P. 263 U. S. 277 .

282 F. 138 affirmed.

Certiorari to a judgment of the circuit court of appeals reversing an order in habeas corpus which discharged the petitioner, Craig, from custody under a commitment issued by the district court in a contempt proceeding. The order of discharge was made by a circuit judge, assigned to the district court, who directed that it be recorded in that court.

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MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

The opinions below are reported in *United States v. Craig,* 266 F. 230; *Ex parte Craig,* 274 F. 177; *United States v. Craig,* 279 F. 900; *Ex parte Craig,* 282 F. 138.

In October, 1919, petitioner Craig, Comptroller of New York City, wrote and published a letter to Public Service Commissioner Nixon wherein he assailed United States District Judge Mayer because of certain action taken in receivership

proceedings then pending. The United States District Attorney filed an information charging him with criminal contempt under 268, Judicial Code.

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Having heard the evidence, given the matter prolonged consideration and offered the accused opportunity to retract, on February 24, 1921, some fifteen months after the offense, Judge Mayer, holding the district court, sentenced petitioner to jail for 60 days and committed him to the custody of the United States marshal. Immediately, without making any effort to appeal, Craig presented his verified petition, addressed "To the Honorable Martin T. Manton, Circuit Judge of the United States," asking for a writ of habeas corpus and final discharge. The record of all evidence and proceedings before the district court was annexed to, or by reference made part of, the petition. The judge promptly signed and issued the following writing, which bore neither seal of court nor clerk's attestation:

"The United States of America"

"Second Judicial Circuit ss.:"

"Southern District of New York"

"We command you that the body of Charles L. Craig, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, within the circuit and district aforesaid, to do and receive all and singular those things which the said judge shall then and there consider of him in this behalf, and have you then and there this writ."

"Witness the Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, this 24th day of February, 1921, and in the 145th year of the Independence of the United States of America."

"Martin T. Manton, U.S.C.J."

The marshal made return and set up the contempt proceedings in the district court along with the order of commitment. This was traversed, and Judge Manton heard the cause. He said and ruled:

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"Was there a cause pending within the rule of contempt concerning libelous publications? A cause is pending when it is still open to modifications, appeal, or rehearing, and until the final judgment is rendered. Did the letter concern a cause pending? If it did not, it could not obstruct the administration of justice. The application before the court, which is the subject matter of the letter, was the matter of a co-receiver. As to this, the court had definitely decided adverse to the comptroller. The court's action was complete in respect to this matter. . . . The district judge pointed out, as did the information, that the whole railroad situation was before the court, since it was an equity proceeding, but it is not of this that the defendant wrote. This is fully corroborated by the testimony of the defendant. He also testified that he had no intention of obstructing the delivery of justice or misbehaving himself so as to obstruct the administration of justice. He stands convicted upon his letter alone, and such inferences as may be drawn therefrom. His conviction rests upon an issue between the court and the defendant, and it is one of terminology or interpretation. There is no criminal intent discoverable from this record to support the interpretation placed upon it by the court, nor was there pending *sub judice* a proceeding before the court at the time the letter was written. The conclusion is irresistible that the court exceeded its jurisdiction by an excess of power in adjudging the defendant guilty. The petition for discharge is granted."

"It is ordered that the papers in this proceeding be filed with the clerk of the United States District Court for the Southern District of New York, in his office in the Post Office Building, in the Borough of Manhattan, City of New York, and that this order be recorded in said court."

Circuit Judge Hough allowed an appeal. Being of opinion that circuit judges, as such, are without power

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to grant writs of habeas corpus, the circuit court of appeals treated the cause as determined by the district court, to which Judge Manton had been assigned, and held:

"We find no reason why this case is not governed by the general rule that a habeas corpus proceeding cannot be used as a writ of error, but must be limited to jurisdictional questions. . . . The sole question which could be considered in the habeas corpus proceedings was as to the jurisdiction of the district judge. If he had jurisdiction of the person of the petitioner, Craig, and jurisdiction of the subject and authority to render the judgment which he pronounced, there was no right to inquire further in the habeas corpus proceedings, and no right to determine whether or not, in the exercise of that jurisdiction, the district judge had committed error. If errors were committed, the law afforded a remedy therefor, but not by habeas corpus."

It concluded that the district court, Judge Mayer presiding, had jurisdiction of both offense and person, and reversed the order of discharge.

The court correctly held that United States Circuit Judges, as such, have no power to grant writs of habeas corpus.

Two sections of the Revised Statutes authorize the granting and issuing of such writs.

"Sec. 751. The Supreme Court and the Circuit and district courts shall have power to issue writs of habeas corpus."

"Sec. 752. The several justices and judges of said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty."

The Judiciary Act of 1789 provided for the organization of Circuit Courts. Until 1869, they were presided over by district judges and Justices of the Supreme Court. The Act of April 10, 1869, 16 Stat. 44, created the office

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of circuit judge:

"For each of the nine existing judicial circuits, there shall be appointed a circuit judge, who shall reside in his circuit and shall possess the same power and jurisdiction therein as the Justice of the Supreme Court allotted to the circuit."

This provision became part of 607, Rev.Stats:

"For each circuit there shall be appointed a circuit judge, who shall have the same power and jurisdiction therein as the Justice of the Supreme Court allotted to the circuit. . . . Every circuit judge shall reside within his circuit."

The Act of March 3, 1911 (Judicial Code, 289, 291, 297), abolished circuit courts, conferred their duties and powers upon the district courts, and specifically repealed 607, Rev.Stats. It also repealed "all acts and parts of acts authorizing the appointment of United States circuit or district judges . . . enacted prior to February 1, 1911."

Section 118, Judicial Code, provides:

"There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges; in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. . . . The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law: *Provided,* that nothing in this section shall be construed to prevent any circuit judge holding district court or serving in the Commerce Court, or otherwise, as provided for and authorized in other sections of this Act."

Sections 751 and 752, Rev.Stats., give authority to grant writs of habeas corpus only to judges and justices of the courts therein specified -- supreme, circuit and district. The Judicial Code abolished the circuit courts. Only justices of the Supreme Court and judges of district courts remain within the ambit of the statute.

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Section 18, Judicial Code:

"Whenever in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or Associate Justice, or Chief Justice shall designate and appoint any circuit judge of the circuit to hold said district court."

A duly executed writing designated and appointed Judge Manton

"to hold a session of the district court of the United States for the Southern District of New York for the trial of causes and the hearing and disposition of such *ex parte* and other business as may come before him during the period beginning February 21, 1921, and ending March 5, 1921."

Petitioner's counsel took care to show this assignment, and, responding to the motion that the judge should proceed as a district court in hearing the application for petitioner's discharge, he stated:

"Our position is, your honor, that the writ is issued by you as a circuit judge. In addition thereto, you were designated formally under the statute, and, under that form of designation, you had the power and the duty in chambers of doing the acts and proceedings of a district court judge, and we therefore claim that there was superadded to your powers, if necessary, the powers and activities of a district court judge."

And, in the brief here, counsel maintains:

"In issuing the writ, Circuit Judge Manton, in addition to his powers as a circuit judge, was exercising the powers of a district judge under designation."

As circuit judges have no authority to issue writs of habeas corpus, Judge Manton acted unlawfully unless the proceeding was before him either as district judge or as the district court. The record shows he did not rely solely on his authority as circuit judge, and, considering his assignment and all the circumstances, we agree with the court below that he was exercising the

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powers of the district court. He was not a district judge, but circuit judge assigned "to hold a session of the district court."

If it be conceded that he acted as district judge, and not as the district court, nevertheless his action was subject to review. *Webb v. York* (1896), 74 F. 753, holds that an appeal lies to the circuit court of appeals from the final orders of a judge at chambers in habeas corpus proceedings. Notwithstanding *Hoskins v. Funk,* 239 F. 278, to the contrary, we approve the conclusion reached in *Webb v. York* and think it is supported by sound argument. The court said:

"The present motion to dismiss . . . raises the question whether an appeal lies to this Court from an order made by a district judge at chambers in a habeas corpus proceeding directing the discharge of a prisoner. Prior to the Act of March 3, 1891, creating circuit courts of appeals . . . , an appeal lay from such orders to the circuit court for the district by virtue of 763, Rev. St. . . ."

" Sec. 763. From the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued, an appeal may be taken to the circuit court for the district in which the cause is heard. . . ."

"In the case of *United States v. Fowkes,* 53 F. 13, it was held that the Act of March 3, 1891, *supra,* operated to divest the circuit courts of their appellate jurisdiction in habeas corpus cases under 763, and that, by virtue of the provisions

of the Act of March 3, 1891, the various circuit courts of appeals had acquired the jurisdiction to review the decisions of district court in habeas corpus cases that had previously been exercised by the circuit courts. This conclusion, we think, was fairly warranted by the following clause. . . ."

" Sec. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any

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district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals, by writ of error or otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established. . . ."

" *See, also Duff v. Carrier,* 55 F. 433."

"The result is that, unless the Act of March 3, 1891, is construed as lodging in the circuit courts of appeals the appellate jurisdiction, under section 763, from final decisions of district judges, that was previously exercised by the circuit courts, the right of appeal, plainly granted by that section, from final decisions of district judges at chambers in habeas corpus cases is lost, and becomes valueless, because no court has been designated to which appeals in such cases may be taken. We think it clear that it was not the purpose of Congress to thus legislate. If it had intended to abolish the right of appeal from the decisions of district judges in habeas corpus cases, it would doubtless have done so in plain and direct terms. The fact that the right of appeal was not thus abolished furnishes a persuasive inference that Congress intended to designate a court to hear and determine such appeals. In *McLish v. Roff,* 141 U. S. 661 , 141 U. S. 666 , and in *Lau Ow Bew v. United States,* 144 U. S. 47 , it was said, in substance, by the Supreme Court of the United States that it was the purpose of the Act of March 3, 1891, to distribute the entire appellate jurisdiction theretofore exercised by the federal courts between the Supreme Court of the United States and the circuit courts of

appeals that were thereby established. This intent, we think, is plainly apparent from the terms of the act. Moreover, the act in question very much enlarged the right of appeal, and that was one of its chief objects. In no single instance, so far as we are aware,

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was a previous right of appeal abolished. We think, therefore, that it may be fairly concluded that it was the intention of Congress to confer on the circuit courts of appeals the right to hear appeals from final orders made by district judges in habeas corpus cases, as well as to hear appeals from final decisions of district courts made in such cases. We can conceive of no reason why the right should be denied in the one case and granted in the other, and such we believe was not the intent of the lawmaker. In the case of *United States v. Gee Lee,* 50 F. 271, it was held that the words 'the judge of the district court for the district,' as used in an act of Congress, were equivalent to the words 'district court for the district.' By a similar latitude of construction, the intent being clear, we think that section 4 of the Act of March 3, 1891, may be held to authorize an appeal to the United States circuit court of appeals from a final decision of a district judge at chambers in a habeas corpus case, as well as from a final decision of a district court."

See also United States, Petitioner, 194 U. S. 194 .

Carper v. Fitzgerald, 121 U. S. 87 , *Ex parte Lennon,* 150 U. S. 393 , *McKnight v. James,* 155 U. S. 685 , *Lambert v. Barrett,* 157 U. S. 697 , and *Harkrader v. Wadley,* 172 U. S. 148 , are cited by petitioner to show that no appeal lay from the order discharging petitioner. These cases relate to the jurisdiction of this Court, not the circuit court of appeals. The one first cited and most relied upon was decided in 1887. It recognizes the distinction between orders of a judge, as such, and decrees by the court. It denied the right to appeal here from a judge's order; it did not discuss the power of circuit courts to review such orders. The later cited cases go no further than to hold that appeals do not lie to this Court from orders by judges at chambers.

Although in point, we cannot agree with *Ex parte Jacobi,* 104 F. 681, where the opinion of the circuit

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judge attempts to support denial of an appeal to the circuit court of appeals from an order granted at chambers.

The court below had jurisdiction of the appeal,

On the merits, there is nothing unusual about the cause now before us. Unlike *Ex parte Hudgings,* 249 U. S. 378 , 249 U. S. 384 , it cannot be regarded as "an exception to the general rules of procedure." Nor do we think it presents circumstances sufficiently extraordinary to bring it within any class of "exceptional cases." *Henry v. Henkel,* 235 U. S. 219 , 235 U. S. 228 .

The matter heard by Judge Mayer was an ordinary contempt proceeding, and *Toledo Newspaper Co. v. United States,* 247 U. S. 402 , is enough to show that the district court had power to entertain it, decide whether the evidence established an offense within the statute, and determine petitioner's guilt or innocence. When the latter found himself aggrieved by the decree, his remedy by appeal was plain. Neglecting that course, he asked a single judge to review and upset the entire proceedings, and now claims there was no appeal from the favorable order. As tersely stated by Judge Hough:

"there is no new matter in this record attacking jurisdiction; what really happened was that the case was tried over again, and the so-called writ was no more than a device for obtaining a new trial."

The course taken indicates studied purpose to escape review of either proceeding by an appellate court. Petitioner may not complain of unfortunate consequences to himself.

The circuit court of appeals correctly applied the well established general rule that a writ of habeas corpus cannot be utilized for the purpose of proceedings in error. *Harlan v. McGourin,* 218 U. S. 442 , 218 U. S. 445 ; *Matter of Gregory,* 219 U.

S. 210 , 219 U. S. 213 , 217; *Glasgow v. Moyer,* 225 U. S. 420 , 225 U. S. 428 -429. Its decree is affirmed, and the cause will be remanded to the District Court for the Southern District of New York with directions to vacate the order

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releasing petitioner, discharge the writ, and take such further proceedings as may be necessary to carry this opinion into effect.

Affirmed.

MR. CHIEF JUSTICE TAFT, concurring.

I concur fully in the opinion of the Court.

It is of primary importance that the right freely to comment on and criticize the action, opinions, and judgments of courts and judges should be preserved inviolate; but it is also essential that courts and judges should not be impeded in the conduct of judicial business by publications having the direct tendency and effect of obstructing the enforcement of their orders and judgments, or of impairing the justice and impartiality of verdicts.

If the publication criticizes the judge or court after the matter with which the criticism has to do has been finally adjudicated and the proceedings are ended, so that the carrying of the court's judgment cannot be thereby obstructed, the publication is not contempt, and cannot be summarily punished by the court, however false, malicious, or unjust it may be. The remedy of the judge as an individual is by action or prosecution for libel. If, however, the publication is intended and calculated to obstruct and embarrass the court in a pending proceeding in the matter of the rendition of an impartial verdict or in the carrying out of its orders and judgment, the court may, and it is its duty to, protect the administration of justice by punishment of the offender for contempt.

The federal statute concerning contempts as constructed by this Court in prior cases vests in the trial judge the jurisdiction to decide whether a publication is obstructive

or defamatory only. The delicacy there is in the judge's deciding whether an attack upon his own judicial action is mere criticism, or real obstruction, and the possibility that impulse may incline his view to personal vindication are manifest. But the law gives the person convicted of contempt in such a case the right to have the whole question on facts and law reviewed by three judges of the circuit court of appeals who have had no part in the proceedings, and, if not successful in that court, to apply to this Court for an opportunity for a similar review here.

The petitioner and his counsel have made such a review impossible. Instead of pursuing this plain remedy for injustice that may have been done by the trial judge and securing by an appellate court a review of this very serious question on the merits, they sought, by applying to a single judge of only coordinate authority for a writ of habeas corpus to release the petitioner on the ground that the trial judge was without jurisdiction to make the decision he did. This raised the sole issue whether the trial judge had authority to decide the question, not whether he had rightly decided it.

Relying on a decision of this Court made years ago when the statutory provisions were different from those which now apply, the petitioner and his counsel thought that, if they could secure a decision from a single circuit judge releasing the petitioner, no appeal would lie from his decision, and that thus resort to the appellate courts could be avoided. The single judge to whom they applied released the prisoner. They were, however, mistaken in supposing that no appeal lay to the judge's decision on the question of the trial court's jurisdiction. The government prosecuted its appeal, and the only issue presented in that review is the matter of the trial court's jurisdiction which the circuit court of appeals and we uphold. In this way, the petitioner and his counsel threw

away opportunity for a review of the case on its merits in the circuit court of appeals and in this Court in their purpose to make a shortcut and secure final

release through the act of a single judge. This is the situation the petitioner finds himself in, and we are without power to relieve him.

MR. JUSTICE HOLMES, dissenting.

I think that the petitioner's resort to habeas corpus in this case was right, and was the only proper course. Very possibly some of the cases confuse the principles that govern jurisdiction with those that govern merits. *See Fauntleroy v. Lum,* 210 U. S. 230 , 210 U. S. 235 . But I think that this should be treated as a question of jurisdiction. The statute puts it as a matter of power:

"The said courts shall have power . . . to punish . . . contempts of their authority: *Provided,* that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice,"

etc. Judicial Code, 268. I think that these words should be taken literally, and that we do not need a better illustration of the need to treat them as jurisdictional and to confine the jurisdiction very narrowly than the present case. For we must not confound the power to punish this kind of contempts with the power to overcome and punish disobedience to or defiance of the orders of a court, although unfortunately both are called by the same name. That, of course, a court may and should use as fully as needed, but this, especially if it is to be extended by decisions to which I cannot agree, makes a man judge in matters in which he is likely to have keen personal interest and feeling, although neither self-protection nor the duty of going on with the work requires him to take such a part. It seems to me that the statute on its face plainly limits the jurisdiction of the judge in this class of cases to those

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where his personal action is necessary in a strict sense in order to enable him to go on with his work. But wherever the line may be drawn, it is a jurisdictional line. "The jurisdiction attaches only when the suit presents a substantial claim under an act of Congress." *Blumenstock Brothers Advertising Agency v. Curtis Publishing*

Co., 252 U. S. 436 , 252 U. S. 441 .

I think that the sentence from which the petitioner seeks relief was more than an abuse of power. I think it should be held wholly void. I think, in the first place, that there was no matter pending before the Court in the sense that it must be to make this kind of contempt possible. It is not enough that somebody may hereafter move to have something done. There was nothing then awaiting decision when the petitioner's letter was published. The English cases show that the law of England at least is in accord with my view. *Metzler v. Gounod,* 30 Law Times R., N.S., 164. But if there had been, and giving the most unfavorable interpretation to all that the letter says, I do not see how to misstate past matters of fact of the sort charged here could be said to obstruct the administration of justice. Suppose the petitioner falsely and unjustly charged the judge with having excluded him from knowledge of the facts -- how can it be pretended that the charge obstructed the administration of justice when the judge seemingly was willing to condone it if the petitioner would retract? Unless a judge while sitting can lay hold of any one who ventures to publish anything that tends to make him unpopular or to belittle him, I cannot see what power Judge Mayer had to touch Mr. Craig. Even if feeling was tense, there is no such thing as what Keating, J., in *Metzler v. Gounod,* calls contingent contempt. A man cannot be summarily laid by the heels because his words may make public feeling more unfavorable in case the judge should be asked to act at some

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later date, any more than he can for exciting public feeling against a judge for what he already has done.

MR. JUSTICE BRANDEIS concurs in this opinion.