PROCEEDINGS UPON A WRIT OF HABEAS CORPUS ISSUED BY THE CHIEF JUSTICE, REPUBLIC OF LIBERIA.

LRSC 4; 1 LLR 190

Monrovia, January 9th, A. D. 1885

Writ of Habeas Corpus and Proceedings thereupon—Justices of the Supreme Court have inherent Powers to issue same—Duties of the Attorney General: his opinions will be held as contemptuous when given with the view to nullify the rulings or decisions of a justice of the Supreme Court.

1. It is within the judicial powers of justices of the Supreme Court to issue the remedial writ of habeas corpus and the proceedings on the review of the return of such writs are in the nature of appellate and not original jurisdiction.
2. Proceedings upon such writs differ from ordinary suits and are not governed by the arbitrary rules of the common law; the judge who issues the writ may be deemed the representative of the State and his powers are largely discretionary. Where the prisoner named in the writ is not produced and no justifiable reasons are assigned therefor, the punishment attached by statute for such failure is in the nature of punishment for contempt.
3. The duty of the Attorney General is to advise the general government officers on all legal questions relating to their respective offices. Legal questions are where doubts or differences arise on a certain state of facts; and where the party demurs, the decision of a competent judge is to be sought for. Where the advice of the Attorney General is given with the view to nullify the rulings or proceedings of a justice of the Supreme Court the act becomes a contempt.

The facts in the case are as follows : The bodies of two girls, viz., Bio and May-queh, were unlawfully seized and detained by one Gaga; therefore a petition to the Chief Justice for a writ of habeas corpus was made in behalf of the prisoners. Inquiries respecting the condition of the prisoners were made and were satisfactorily answered, whereupon the writ issued, commanding the said Gaga to produce the bodies of the prisoners before Chief Justice C. L. Parsons, on the day and hour mentioned in the writ. The officer by whom the writ was to be served, pursuant to duty, proceeded to Gaga's place. Gaga, however, forbid his coming near to serve any writ whatever upon him. Upon this return a compulsory writ was issued, directed to the sheriff, in accordance with the statute regulating the practice on writs of habeas corpus. (Lib. Stat. Book 1, p. 68, sec. 12.)

The sheriff, in order to execute successfully and expeditiously the compulsory writ, summoned to his assistance a posse comitatis, and of this the said Gaga was informed by some means unknown; therefore he fled with his prisoners to some place where they could not be found. The sheriff having thus made his return, motioned for costs incurred; therefore the Chief Justice, in the exercise of his legal discretion, adjudged the same to be charged to the Republic of Liberia. The bill of costs was taxed and certified by the clerk of the Supreme Court according to the direction of the following judgment :—

The allegations made in the petition of the complainant show the act of Gaga to be a public offence, and in this light I consider the same. For the restraining of a free citizen's liberty without the authority of the law is not only a private injury but a gross public offence, against which the law frowns.

The return of the sheriff stating that the defendant cannot be found is to be regretted; nevertheless the writ is hereby renewed and made good to arrest the defendant, wherever he can be found, within the limits of the Republic, at any time before the second Monday in September next, A. D. 1885, on which day the Chief Justice will at 12 0'clock examine the case, if the defendant be found. I regret also that the sheriff has cause to complain that G' Titler, Z. T. Walker and A. D. Skinner have contempted this court, by refusing to obey the lawful summons of the sheriff. The clerk is therefore hereby authorized to summon the said G. Titler, Z. T. Walker and A. D. Skinner to show cause, on the second Monday in September next, A. D. 1885, at 12 0'clock, to Chief Justice C. L. Parsons, why they should not be held to answer the said contempt.

The case, as I have said, involves matters which in their nature must be considered as bearing the character of a public offence. Therefore, I decide that the costs incurred so far be made up by the clerk, and charged to the Republic of Liberia.

C. L. PARSONS, C. J. R. L

In considering the character of this case, it must be remembered that the Chief Justice was in the lawful exercise of his judicial powers and jurisdiction, when the foregoing judgment was rendered, and this fact is apparent upon the record and proceedings in the case. But the Attorney General, regardless of the Chief Justice's right to exercise legal discretion over a matter on habeas corpus, questioned the authority upon which the judgment was given, and assumed the power and authority to review the same. In fact, little respect is paid by him to the authorities, who lay it down as a settled question that no court has a right to review a matter on habeas corpus. (Bouv. Law Dict. Vol. I, p. 352, sec. 6, under the head "Contempt.") Hence, I regard the written paper (called opinion) of the Attorney General a contemptuous paper, first, because it was written for the purpose of stopping the effect of the judgment, and that I should know it, a copy of the same was sent me in court, showing the reasons relied upon why the bill of costs should not be paid. This act, when constructively considered, is an open contempt to the court, in its presence, and it is also an outrage upon the judiciary, tending to deprive the people of the benefits which by the Constitution of Liberia ought to be enjoyed in the freest manner on habeas corpus.

I am compelled to say from the position taken by the Attorney General, that he has attached greater powers to his office than has been given by the Legislature. One of the many duties of his office (defined by statute) is to advise the general government officers on all legal questions touching the duties of their several offices. And it is in respect to a want of a proper understanding of this part of his duty, that the question arises as to what is a "legal question." It is one when the doubt or differences arise as to what the law is, on a certain state of facts. This is said to be a legal question, and if the party demurs, this is to be decided by the judge. (Bouv. Law Dict. Vol. Il, p. 403, under head "Question also Lib. Stat. Book I, p. 16, under head ' 'Trial.") It is here described that the trial of all questions of mere law shall be by the court. It must therefore be remembered that the phrase "legal question" is applicable only when it arises on a certain state of facts, and that such a question can only be decided by a court of law having jurisdiction over the same,

and not, as the Attorney General maintains, that it includes questions without the walls and jurisdiction of the court.

Now I am sure that if the act passed by the Legislature of 1873, amendatory and supplementary to an act entitled "An act establishing the Treasury Department," be rightly understood, no conflict benveen the two branches of government can ever take place about the payment of costs. For it is obvious that the Legislature for the payment of judiciary bills has carefully and plainly marked out in the 10th section of the above entitled act, the course to be observed by both branches, in which it makes it the duty of the Secretary of the Treasury to authorize the payment of all bills authenticated, as directed in said 10th section and presented for payment.

This section of the statute last referred to, seems to exclude the necessity of the Auditor's approval of judiciary bills, as no good reason can be offered for having him examine and decide as to the legality of a bill which had been already adjudged and certified by a court of law to be lawful. I apprehend that the Auditor's duty is to pass upon all public accounts of disbursing officers and upon all matters originating and referring to public business; for the law is intended to govern the several heads of the department, so that they may be checks one upon the other, and to prevent fraud on the Government and the payment of money in excess of appropriations, and also to prevent other unwarranted expenditures. And yet, in the face of the plain language and meaning of the law, the Attorney General wrote the paper called an opinion in manner as follows :—

82-3/27 Monrovia, July 10th, 1883.

Sir,—I have the honor to acknowledge receipt of yours of this date enclosing the judgment of His Honor the Chief Justice in a, case of habeas corpus, and a bill of costs amounting to $188.35, which he orders that the Republic shall pay, and in accordance with your request for my opinion in the premises beg to say, that having solicited information on the subject from the Attorney for Montserrado County, I have learnt from him, and it so appears in the said judgment, that the writ was issued in the usual way on the petition Of a certain native man. The Republic of Liberia was not a party and of course was not represented.

2. A court clearly has not any power to give judgment against any person but the parties who are legally within its jurisdiction either by having voluntarily submitted themselves thereto, or having been legally served with some process issuing therefrom, and this point has been so decided by the Honorable the Supreme Court in the case R. R. Johnson, plaintiff in error, vs. J. G. Grimes, defendant in error.

3. I find also that the person against whom the writ issued has not yet been brought within the jurisdiction of the court by the service of the process, and consequently the case is not yet in the condition to be heard and determined and there can, of course, be no valid judgment rendered.

4. Another question also presents itself, namely, the liability of the Government to pay costs, and I am of opinion that according to the general principles of law and the rules of the Supreme Court (see Rule 36, sec. 4) His Honor the Chief Justice could have had no power to rule costs against the Republic even if it had been a party.

5. Without, however, entering at length into this question, and considering only the stage of the case at which said judgment was given, and the fact that the law officers of the Republic were not notified to appear and defend its interests, I feel it my duty to say that in my opinion you ought not to pay said bill of costs.

I return the papers enclosed by you and have the honor to be, Sir, Your Obedient Servant,

HY. W. GRIMES,
Atty. Gen. R. L.

The Attorney General in his review seems to regard the practice on habeas corpus as being bound down to the arbitrary rules of the common law. Again, he looks upon it as a civil suit. He is, however, mistaken. A writ of habeas corpus is not the foundation of a civil suit, but, on

the contrary, its use is to enable the court or judge to ascertain whether the prisoner's personal liberty is illegally restrained, and to release him if this be found proper to do. For every illegal restraint of a person's liberty is a public offence against which the Constitution of the Republic of Liberia provides the writ of habeas corpus, and upon which a summary examination of the cause of detention may be had. But I shall proceed to show that the Attorney General's opinion is not supported by law. He says that because the writ was issued on a petition of a certain native man, the Republic was not a party and of course was not represented. I say the Republic was represented, for the Chief Justice represented her, as the power from which the writ emanated. The right to the writ, however, and all the benefits under the same, being a Constitutional one of the prisoner's, it is the duty of the court to regard the same tenderly.

The Attorney General says: "A court clearly has not any power to give judgment against any person but the parties who are legally within its jurisdiction, either by having voluntarily submitted themselves thereto, or having been legally served with some process issuing therefrom." I defy the Attorney General to show that the Chief Justice has given judgment against any party who has not been summoned, or against any person without the jurisdiction of the court. The Attorney General must not forget the fact that the writ of habeas corpus is unlike other writs; that it issues in the nature of a mandate and that it does not summon but commands; and that the practice on it disregards the ancient common law course of proceedings. For the common law course upon summons in civil cases is, if the party summoned does not appear, his case goes by default. But a writ of habeas corpus is directed to the custodian himself, commanding him to produce the body of the person named in the writ, and if he fails to do so he is punished for contempt, unless the court is satisfied that it was not in his power to produce the said body. Every person authorizing the issuing of a writ is responsible for the fees incurred thereon, whether the object of the writ has been effected or not. The Republic, having issued the writ, was responsible for the costs, because neither the person to whom it was directed nor the prisoners, can be found.

And the Attorney General goes on further to say: "I find also that the person against whom the writ issued has not yet been brought within the jurisdiction of the court by the service of the process, and consequently the case is not yet in a condition to be heard and determined and there can, of course, be no valid judgment rendered."

The statute directs the manner in which the court or judge shall proceed, when the person to whom the writ is directed appears and does not produce the body of the prisoner. (See Lib. Statute, Book I, page 67, sec. 8.) But nothing is said as to what course should be pursued if, upon the return of the duplicate writ, the court or judge should be informed that the person to whom the writ is directed cannot be found, nor the prisoner he has in his custody. I now ask, under such circumstances what should the court or judge do? Why, certainly the court or judge should exercise discretion, this being an inherent right of a court of law. This is just what I have done, and was fully warranted by the Constitution and law to do, because after the return of the writ of habeas corpus there must be some action on it by the court or judge. The Constitution gives wide jurisdiction to the court, as to how freely the prisoner may be allowed

to enjoy the benefit of a writ of habeas corpus, as also does the law. Every judgment delivered on it is valid, because the law has exempted such judgment from the review of any court, as I have shown in the preceding comments.

We now consider the last position taken by the Attorney General, which reads as follows:—

' 'M'ithout, however, entering at length into this question, and considering only the stage of the case at which said judgment was given, and the fact that the law officers of the Republic were not notified to appear and defend its interests, I feel it my duty to say that, in my opinion, you ought not to pay said bill of costs."

Here I hesitate not to say that there is no rule of court that exempts the Government from the payment of any costs incurred in a case brought for a public offence and crime. Nor is there any principle of law applicable to the position of the Attorney General. But in civil cases the Government does not pay costs; and here I have occasion to remark that the tendency of the Attorney General's advice to the Secretary of the Treasury not to pay the costs, was subversive to good Government, and it is well that the wisdom of the Secretary of the Treasury soon led him to discover the same. I therefore repeat, that the judgment is a valid one; and every man who loves liberty and regards the writ of habeas corpus as one of his dearest birth-rights, in consideration of the law and practice on the same, will so conclude in respect to said judgment.

Having thus reviewed the paper of the Attorney General, I proceed to pronounce the writing and sending of the same to the Chief Justice in court (constructively considered) an open contempt of the Attorney General in the presence of the court; for which he shall be held to make satisfactory apology forthwith to the Chief Justice in court, and to pay costs incurred in the case; otherwise to pay a fine of one hundred and fifty dollars forthwith; and on failure to do so he shall be imprisoned in the common jail of the County of Montserrado and Republic of Liberia during the time of the Chief Justice sitting in chambers. C. L. PARSONS,

C. J. R. L.

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