No. 14095

Supreme Court of Illinois

People

vs.

W.Hatcher

71641 7

Habeas Corp.
Papers

In the Matter
of
George W. Thatcher
on Habeas Corpus

This Matter is in a peculiar position the Attorney General attempting to procure the release & the Officer or person having the defendant in Custody makes a speech in his return evidently for the purpose of procuring the discharge of the defendant, without inquiring as to the writ on which he holds deft.

The defendant might not be discharged because

1st He is Committed for a Contempt of a Court having Competent
R.S. 133. Sec 25. jurisdiction of the Subject Matter then under
Consideration before the Court to wit: The Recorder
R.S. 134. Sec 29. And also to Commit for Contempts —

By reference to the Writ issued by the Co Court Court and their Record Signed by them, the Contempt will be Clearly seen. & the Court will see the jurisdiction of the Co Court —

9 Johnson R 397 The Court Cannot discharge on Habeas Corpus
7 Wheaton R. 38 a person Committed by a Court of Competent
1 Blackford 166. jurisdiction for Contempt

3 J.J. Marshall 575, The Appellate Court of Kentucky will Correct
See also 1. Bracs 266. an erroneous Sentence though it Cannot try the question of Contempt —

The question of Who is Clerk does not arise,

8 Connecticut 379. No writ was necessary — the Sheriff or Deputy of the
Mitchell & Perkins Cases Court to Sheriff is Sufficient
Little Contempt

Again the proceeding was against the Clerk & a Clerk Protem must be Appointed. the Clerk Cannot make Orders or writs against himself —

The Court cannot discharge Thatcher because of his allegation that Warren is not a Sheriff or Deputy.

Warrens return shows that he has Thatcher in his Custody as Agent or Deputy of the Sheriff. he says on the fifth page of his return that "Backmasto remarked that this "Respondent Could not legally arrest Mr Thatcher but that "he would deputize & deliver him over to this Respondent which "was done, delivering to this Respondent the attachment which "is herein returned" — Thatcher Cant there be discharged because he is not in Custody of a proper officer. for he is in Custody of the Sheriff of Hancock Co. as appears most clearly from Warrens return — Warrens profession is the profession of the Sheriff. Although the Court the next day entered an order to permit Warren to take Thatcher to this Court — the Co Court only intended by that order that to consent that instead of Thatcher ~~cant~~ being confined in Jail ~~that if~~ he might if he chose be carried by Warren to Springfield to take a Habeas Corpus. Warrens Custody being the Custody of the Sheriff in the meantime Warren is sent to Hancock to keep the peace & to aid & assist the officers in Executing whatever process may come to their hands where force shall be necessary to be used in Executing the same. he — for this reason properly has the profession of Thatcher on said Writ properly — The Sheriff may call to his aid the posse of the Co & in this case he did call on Warren — And in pursuance of that call Warren has Thatcher —

Comyn Dig 7. Tith Rend a. 1 B.C. 206. 7.8. 16. Johns R. 55. 3. Mree 27. 3. Cann 151.

The Return of Warren attempts to go back of the Record which cannot be done. the Record is Conclusive

If there is sufficient in the Record returned for the Commitment to show that the Court was acting within their Juriscdiction, ~~that~~ Auditors

if having any matter relating to the Revenue — or which would affect the Revenue — & that the Commitment was made for a Contempt, where to acting thereon this Court must recommit Thatcher —

8 Conn R. 379. Metcalf & Perkins. Jet. Contempt. } The Commitment is Correct — but if it is not the Court Cannot discharge because the Record & return shows a Contempt & no writ was necessary —

The Commitment was made & Thatcher arrested before the Appeal bond was filed & approved therefore the question of Removal & Appeal Cannot come in question, —

I deny the right of this Court to make any other decision in this matter except as to the Commitment for Contempt. unless the Court give to the Co. Court a hearing in Court, but I do consent that the Court may hear the allegations & arguments of both the Sides & decide whether first

By Thatchers Appeal & filing & approval of his Bond he was restored to his Office as Clerk of the Co. Court Court of W. Co. Ill. or not. before the decision of the Circuit Court. or should the Court apt Clerk Pro tem until decision of Circuit Court. Should the Court apt Clerk Pro tem in proceedings vs the Clerk —

Second

Have the Co Court Court power to allow bills vs the Co for necessary provisions & sustainment furnished a posse necessarily called out by the Sheriff to suppress disturbances in the Co & to keep the peace —

Edmonds

Know all men by these presents that we the undersigned are held and firmly bound unto E B Rose for the use of Hancock County in the penal sum of one thousand ——— dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents

The condition of this obligation is such that whereas the county commissioners court of Hancock county Illinois have this seventh day of January A D 1846 made an order that George W Thatcher be removed from his office of ~~county~~ clerk of the county commissioners court of said county from which said order the said George W Thatcher did on the same day pray an appeal to the circuit court of Hancock county Illinois. Now therefore if the said George W Thatcher shall prosecute his appeal with effect and pay whatever ~~[illegible]~~ ~~and~~ costs may be awarded against him by the court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and effect

In witness whereof we have hereunto set our hands and seals this seventh day of January A D 1846

This Bond Approved this 7th day of January 1846.

Andrew H. Parkins
George Cauldson

Geo W Thatcher (Seal)
Thomas Gordon (Seal)
H. T. Wilson (Seal)
C. Fell (Seal)
Lewis Evans (Seal)
Isaac Hagerman (Seal)
Elias M. Kelley (Seal)
Noah M Rucker (Seal)
Thomas L Barnes (Seal)

Filed January 7th 1846.
G. Edmunds
Clerk Pro Tem

Carthage Sept. 1845

Purchased and Recived of Hebe M Baldwin Corn, Sheep & C. amounting to the Sum of Fifteen dollars & five Cents furnished for the use of the Posse under my Command and for which the County of Hancock will pay her the Sum of Fifteen dollars & five Cents

J. Jackentoss Shff
H. C. Mo

$15.05

State of Illinois Hancock County:

At a County Commissioners Court held at the Court House in Carthage in & for said County on the Seventh day of January A.D. 1846. pursuant to Adjournment. At 9 O'clock A.M.

Present

Andrew H. Perkins }
And George Coulson } County Commissioners
Court Convened. } Geo W. Thatcher Clerk

And called upon said George W. Thatcher as Clerk of said Court and stated that on the Sixth day of January instant this Court made an allowance of Fifteen dollars and five cents to one Hebe M. Baldwin on a claim presented to this Court on said Sixth day of January in favor of said Baldwin against the County of Hancock aforesaid and that said Court then required said Thatcher as such Clerk to make and enter an order of record in his office auditing and allowing the claim aforesaid which said Thatcher then refused to do. And now this Court again required said Thatcher as such Clerk to make & enter of record an order auditing & allowing the claim aforesaid. And thereupon said Thatcher refused to make or enter such order. The Court thereupon required said Thatcher to show cause why he should not be removed from office as Clerk of the County Commissioners Court of said County of Hancock. And also why he should not be adjudged guilty of a contempt of Court in refusing to make & enter of Record in his office an order auditing and allowing said claim of fifteen dollars & five cents in favor of said Baldwin against the said County. Whereupon said Thatcher entered upon his defense in the premises. And this Court after hearing the allegations of said Thatcher & his Counsel in the premises,

and after due consideration thereof made the following Order & Caused the Same to be entered of Record —

Whereas on the Sixth day of January 1846. at a County Commissioners Court held at the place aforesaid at which said Court said Andrew H. Perkins & George Coulson were present as Commissioners and said George W. Thatcher as Clerk an allowance was made to Orrtebe M. Baldwin an account presented to this Court against the County of Hancock by her attorney for the sum of $15.05 and the said Thatcher was by this Court ordered to make and enter an Order of mondatis office auditing and allowing said claim which said Thatcher refused to do. And Now at this day to which said Court had been duly adjourned the said Court being ~~continued~~ organized according to law, again required said Thatcher to make & enter the Order ~~afore~~ above referred to Auditing & allowing the aforesaid claim ~~allowing~~ of Hebe M. Baldwin against said County of Hancock, which said Thatcher there refused to do. And said Thatcher being then called upon by the Court to show cause if any why he should not be removed from his said office as Clerk of the County Commissioners Court of Hancock County ~~and~~ for the refusals aforesaid. And also why he should not be adjudged guilty of a Contempt of Court in refusing to make & enter the aforesaid order of Record as required by this Court as aforesaid. And said Thatcher not having shown sufficient cause to the Contrary — It is Ordered & adjudged that said Thatcher be & is hereby removed from his said office as Clerk of the County Commissioners Court of the County of Hancock. And said Office is hereby declared Vacant, said Thatcher has demanded an appeal & asked the Court to fix the ~~bail~~ amount of Recognizance to be taken payable —

And it is further ordered & adjudged by the said Court in the premises that the said Thatcher be & is hereby adjudged guilty of a Contempt in refusing to ~~obey~~ obey the order of this Court requiring him to

to make and enter the order which said Thatcher had been required by this Court to make & enter as aforesaid, and that he said Thatcher be confined in the common Jail of the County of Hancock aforesaid for the space of fifteen days for such contempt And it is further ordered that an attachment issue to the Sheriff of Hancock County Illinois against said Thatcher according to law for such contempt — Commanding said ~~Thatcher~~ Sheriff to arrest said Thatcher ~~if he may be found in~~ and commit him to the common Jail of said County & requiring the keeper of said Jail to receive said Thatcher into his custody & confine him in said Jail for the space of fifteen days or until he shall be discharged by due course of law —

Whereupon an attachment was issued accordingly —

And it is further ordered by said Court in the premises that George Edmunds Jr be appointed Pro tem Clerk of the County Commissioners Court of Hancock County Illinois upon his entering into the bond & taking the oath of office required by law

And now at this day appeared the said George Edmunds Jr & produced the bond required by law, which was approved by the said Court.

And having taken an oath in open Court administered by John McFerris a Justice of the peace of said County according to law, that he would support the Constitution of the United States the Constitution of the State of Illinois & that he would to the best of his ability perform his duties as Clerk of the County Commissioners Court of said County of Hancock

It is therefore ordered that said George Edmunds Jr be hereby appointed & qualified Clerk of the County Commissioners Court of said County of Hancock Pro tempore —

And now at this day it is further ordered by said Court in the premises that the said George W. Thatcher forthwith deliver ~~and~~ into the hands of George Edmunds Jr Clerk of the County Commissioners Court of Hancock County Illinois Return the same for in office of said Thatcher, All the Books, Papers Records, Moneys & all other things pertaining to such office in his said Thatchers possession or under his Controll -

Thereupon said George W. Thatcher having prayed an appeal from the order of this Court removing him from his office as Clerk of the County Commissioners Court of said County of Hancock, ~~and~~ the Court required a bond payable to Ethel B. Rose for the use of said County in the sum of $1000.00 Conditioned that said Thatcher should prosecute his appeal with effect & pay whatever costs may be awarded against him by the Court upon dismissal or trial of said appeal

Whereupon said Thatcher produced his bond on such appeal which was approved by this Court & said Bond filed -

Whereupon said Court adjourned until tomorrow morning at ~~nine~~ half past Eight O Clock A.M. at the place aforesaid -

Andrew H. Perkins
George Coulson

Thursday Morning ½ past 8. A.M. Court met pursuant to adjournment Record read. Concluded & Signed,

In the proceedings against George W. Thatcher for Contempt it is Ordered that the sword of the Court & the body of the said Thatcher be delivered to May W. R. Warner to be taken to Springfield where the matter can be heard before one or more Judges of the Supreme Court & ~~upon~~ until the matter is fully determined May Warner is requested to take possession of all the Books & records of this Court for safe keeping -

Ordered that the Court adjourn ~~sine die~~ - until Court in Course -

Andrew H. Perkins
George Coulson

To the Honourable the Supreme Court of the State of Illinois

Your Petitioner George W Thatcher would respectfully represent and shew to your Honors that he is detained in the Custody of William B Warren and that said William B Warren holds your Petitioner in Custody by virtue of a supposed writ issued by George Edmunds Jr pretending to act as clerk of the County Commissioner Court of Hancock County State of Illinois a Copy of which supposed writ is hereto annexed and prayed to be taken as a part of this Petition

Your Petitioner further represents and shows to your Honours that his imprisonment is illegal for the following reasons

1st That said supposed writ alledges that your Petitioner was committed for a contempt in refusing to enter an order on the records of said Court auditing and allowing a claim to Hebe ell Baldwin when in truth said alledged contempt was for refusing to deliver up the books, papers records and money belonging and appertaining to the office of Clerk of the County Commissioner Court of Hancock County State of Illinois to one George Edmunds Jr

2nd Said Writ is utterly void having been issued by a One George Edmunds Jr who is not and was not at the date of said supposed writ Clerk of said County Commissioner Court

3rd That said County Commissioner Court acted fraudulently in adjudging your petitioner guilty of Contempt with the intent to harrass and oppress your petitioner

4th That said Warren is not or ever has been Sheriff of said County of Hancock and has no authority whatever to detain your petitioner in custody

5th That there is no record of said County Court authorizing or requiring the issuing of said Suppose Court

In consideration of the premises your Petitioner prays your Honors to grant him the states most gracious writ of Habeas Corpus directed &c Commanding &c to the end and intent that said Warren have your petitioner before your Honourable Court and that upon upon the trial of this cause that your Honourable Court would discharge your petitioner out of custody & your Petitioner will ever pray &c

George M. Shatcher

Geo. W. Thatcher

Petition for
Habeas Corpus

Filed 17th May 1866
E. Beck
Clk

The People of the State of Illinois

To the Sheriff of Hancock County Greeting

Whereas an order has this day been entered on the records of the County Commissioners Court of said County of Hancock adjudging George W Thatcher guilty of a contempt of said Court in refusing to obey an order of said Court requiring him to make and enter of Record in his offices as the Clerk of said Court an order auditing and allowing to Hebe A Baldwin the sum of $15.05 which had been duly allowed by the County Commissioners Court of said County to said Hebe A Baldwin on a claim presented by her attorney to said Court against said County and has been ordered to be confined in the Common Jail of said County for the space of fifteen days for said contempt or until he shall be discharged by due course of law and it being further ordered by said Court in the premises that an attachment issue against said Thatcher for such contempt

These are therefore to command you forthwith to arrest the said George W Thatcher if he may be found in your bailiwick and confine him to the Common jail of said County and you the keeper of the Common jail of said County are hereby commanded to receive the said George W Thatcher into your custody and confine him in said jail for the space of fifteen days or until he shall be discharged by due course of law

In testimony whereof I George Edmunds Jr protem Clerk of the County Commissioners Court of the County of Hancock in the State of Illinois have affixed the seal of the said Court and my hand at Carthage in the County of Hancock aforesaid this Seventh day of January A D 1846 George Edmunds Jr Protem of the County Commissioners Court of H. Co. Ill

State of Illinois }
Sangamon County } ss

The People of the State of Illinois
To William B Warren Greeting

Whereas a petition has been presented to the Supreme Court by George W Thatcher alledging that he the said George W Thatcher is confined in your custody, and praying the benefit of the People's writ of Habeas Corpus, in order that he may be released from custody, upon which an order has been made requiring the issuing of the said writ, and directing that the said writ be made returnable before the said Supreme Court of the State of Illinois now in session, all which appears from the petition aforesaid and order in that behalf —

Wherefore we command you that you do cause the said George W Thatcher to be brought before the said Supreme Court of the said State of Illinois without delay (together with an account of the causes of his being taken and detained in custody) to perform and abide such order as the said Supreme Court shall make in the premises, and that you also return this writ to the said Court, and hereof fail not, under the penalty of the law —

Witness the Honorable William Wilson Chief Justice of our said Court, and the seal thereof at Springfield this seventeenth day of January in the year of our Lord one thousand eight hundred and forty six —

Weck

"By the Habeas Corpus act"

In the matter of
George W. Hatcher

Habeas Corpus

Know all men by these presents that we George Edmunds Jr and Jacob B. Backenstos E.B. Rose, John Clark, Hiram G. ~~Phillips~~ Ferris & John M. Ferris are held and firmly bound unto Andrew H. Perkins George Coulson & George Walter County Commissioners of the County of Hancock & their successors in office, for the use of any person injured in the penal sum of One thousand dollars the which payment well and truly to be made we bind ourselves our & each from his Executors & administrators severally & jointly by these presents sealed with our seals & dated the Seventh day of January 1846.

The Condition of this obligation is such that if the said George Edmunds Jr shall in all things faithfully perform the duties devolving upon him as Clerk of the County Commissioners Court & County Clerk of Hancock County in the State of Illinois then this obligation to be void else to be of full force & virtue

Signed sealed & delivered in our presence and the sureties & the bond approved by us — Jany 7 1846.

Andrew H. Perkins
George Coulson
County Commrs Hc. Ill

G. Edmunds Jr {Seal}
J. B. Backenstos {Seal}
John M. Ferris {Seal}
H. G. Ferris {Seal}
E. B. Rose {Seal}
John Clark {Seal}

G. Edmunds Jr
Official Bond

Filed Jany [redacted] 1846.
G. Edmunds Jr
Clerk Putnam

State of Illinois
Hancock County } ss. I George Edmunds Junr
~~being~~ duly affirmed and declare
that I will support the Constitution of the United
States the Constitution of this State and that I will
to the best of my ability discharge the duties of
Clerk of the County Commissioners Court of Hancock
County in said State of Illinois —

G. Edmunds Jr

Affirmed & Subscribed before before me this
Seventh day of January A.D. 1846. in
Open Court before the County Commissioners Court
of Hancock Illinois. —
John A Ferris Justice of the Peace

State of Illinois —
Supreme Court —

In the case of Thatcher
on a Habeas Corpus —

The said Thatcher was ordered to be committed to jail for a contempt by the County Commissioners of Hancock County —
We refer to the records of the Court, a copy herewith, for the true state of the case —
1st We insist that the Court had jurisdiction of the premises stated in the record —

2nd That having jurisdiction it was the duty of the Clerk to obey the Court or resign —
3rd That if the Clerk can enter up only such orders as he chooses to do, the Clerk controls the Court & is in fact the Court itself —
4th Whether the account audited was just or not is a question to be determined by other tribunals than the mere will of a petty County Clerk —

5th No questions can be legitimately decided in this case except such as grow out of the imprisonment of Hatcher —

6th In the shape in which the case comes before the Court, we are not authorized by the parties we represent, nor are we warranted by law, in agreeing to the settlement of any points in controversy which do not really & tangibly affect the issue before the Court.

7th There are claims pending in the County of Hancock which no party here has a right to compromise by an separate & very equivocal mode of trial —

8th The County Commissioners of Hancock, on account of being Mormons are thereby not altogether cut off from the protection of the law —

9th We deny the truth of the return of Warren in many particulars and alledge that he is interested in sustaining his present employment & thereby may be induced to prove hostilities in order to afford a pretext for himself being a common marauder

10th The interference of armed men with the business of County & justice

is against the spirit of our institutions, arbitrary, oppressive, & unjust —

11th The people of Hancock County can take care of themselves & keep the peace without armed men acting under the color of law to dictate terms to county & citizens —

12th The calling out of the posse by the Sheriff last fall was necessary for the suppression of burglary, robbery, & piracy —

13th The posse restored peace & suppressed crime, & the Military only afford protection, as we believe to criminals on one side, while they pursue with malicious vengeance the offenders of the opposite party —

14th The imprisonment & release of Thatcher is a matter of no great importance to either party — there are other questions of grave import, probably involving the life & destiny of 20,000 citizens of this State, which cannot & should not now be disturbed — The posse, called out by the Sheriff, of course were Mormons, for the pretended Christians were the burglars, & if the expences of that posse are to be paid it may take much time, long agitation & the effusion of blood to settle the decision which all parties will recognize as the ultimatum —

J. Lambson —

Samstag

G. W. Thatcher
vs
The People

Habeas Corpus or Committment for Contempt -

The County Commissioners Court of Hancock County Upon it being suggested that Thatcher would take a Habeas Corpus in this Matter said they were desirous if the Sup Court Could legally hear & decide the following Matters that they should

First.

Did the Appeal of Thatcher restore his Bond ~~complained~~ approved restore him to his Office as Clerk of that Court, before the decision of the Circuit Court, or should the Court Apt a Clerk Pro Tem until the decision of the Circuit Court, or should the Co Court Court Apt a Clerk Pro tem in Proceedings vs Thatcher if his Appeal restored him to his Office -

Second

Have the Co Court Court power to allow bills vs the County for Municipal purposes, for expenses furnished a posse Municipally called out by the Sheriff to suppress disturbances in the Co & to keep the peace

In the Matter
of George M. Hatcher
on Habeas Corpus.

Ex parte George W. Thatcher

On petition of George W. Thatcher, a writ of Habeas Corpus was issued out of this Court to William B. Warren to bring before this court, said Thatcher, and certify the day & cause of his caption and detention.

To which Warren returned, that at a county commissioners court for Hancock County, holden on the 6th January inst, Hebe M. Baldwin presented a claim for $15.05, for corn and sheep furnished S. B. Brackenridge Sheriff of said County for the use of the posse under his command; and asked to have the claim audited & allowed out of the county treasury. The court audited and allowed said claim; and ordered the clerk, George W. Thatcher to enter the same. Thatcher refused to make the entry. On the next day, the court, again ordered Thatcher to make the entry, who again refused. They then called upon him to shew cause why he should not be removed from office as clerk — when on his not shewing cause to their satisfaction — an order of removal, was directed to be entered: from which Thatcher appealed, and gave bond, as directed by the court. The court thereupon, appointed Edmonds clerk — who gave bond & was qualified. Thereupon, the court ordered Thatcher, to deliver up the books, papers, money &c to Edmonds — which he refused to do. Whereupon the court ordered Edmonds to make an order committing Thatcher to jail for 15 days for a contempt in not delivering the books, papers &c pursuant to the order. Edmonds issued an attachment, and delivered it to Brackenridge the Sheriff, who arrested Thatcher — and by order of the court — Brackenridge delivered Thatcher to Warren to be brought before this Court on Habeas Corpus to be applied for. The paper returned as the attachment under which this arrest has been made, does not agree in the cause for which the order of commitment was

made, with the return of Warren. The former states it to be for refusing to enter the order as directed. the latter, for refusing to deliver the books, papers &c. But as neither the Attorney General, nor the prisoner have traversed the return—we must take it to be true.

A short analysis of the organization & powers of that Court, will readily determine this question.

In the first place I would observe that that Court is not the appointing power, in filling the office of clerk, but it is filled by election Rev L Cap 27. Sec 8.

They have power to fill vacancies occasioned by death resignation, removal or otherwise id Sec 11.

They may, for misconduct in office, gross neglect of duty, incompetency, or other good cause shown to be entered of record, remove their clerk, whose office shall be considered vacant. id Sec 10. #

But this Section must be considered, and construed in connection with the 42nd Section of the same Chapter—which provides, that any party, to a proceeding before them who may feel aggrieved by the final decision, judgement, or order, shall be allowed to appeal to the circuit Court

There can be no doubt of the right of the clerk to appeal in this case—and there is as little doubt, that the appeal operated as a Supersedeas, of the order of removal, until the determination of it, in the circuit Court; like appeals from the circuit to the Supreme Court.

Again, in relation to their power to punish by fine & imprisonment for contempt. They have power to enforce their orders, decrees & judgements, by attachment or other process. id Sec 28. They "have power to punish for contempts, as other courts may do, and have all the power, necessary to the right exercise of the jurisdiction, with which said Court, is or may be vested according to law." id Sec 29.

6 Cow. 160 Sec 27.

These are salutary, and necessary powers to every court for the preservation of order & decorum, and the enforcement of its judgements. Its supervision, when exercised in the punishment of contempts, is a most delicate jurisdiction — and seldom, if ever, ought to be exercised. It is, indeed, denied that any appeal or writ of error lies from its judgement for contempt — by any court. I will not undertake to decide the general question. But the power has its limits. The court may not treat any & every act, as a contempt. And I have no doubt, that the appellate court, may revise and reverse its judgement, when it exceeds its jurisdiction, by treating that as a contempt, which, in law, is no contempt and cannot be. The supervision will be, to ascertain that fact. We are not without precedent for this. One article in the impeachment of Judge Smith, before the Senate, was for an illegal exercise of this power. And in the case of Stewart v The People 3 Scam R 395 this court, reversed a judgement of fine for a contempt, imposed by the Cook circuit court.

Having settled, satisfactorily, as I think, the question of a supervisory power in this Court, under certain circumstances, and upon a reasonable distinction, without touching the general question, as to all cases, I come now to its application to this case. The return shows, that the imprisonment, was for refusing to deliver the books & papers &c. For refusing to deliver them "after going out of office to his successor, the statute has declared, the clerk, shall forfeit, "any sum, not over $500, and be imprisoned any time, not exceeding thirty days, at the discretion of the court, before which he may be tried" Rev L cap 27. Sec 13.

Now it is to be observed, that he cannot be tried before the commissioners' court. For by the 29th section it is expressly declared that "there shall be nothing contained or construed in this chapter, to give the said court, any original or appellate jurisdiction in civil or criminal suits or actions, wherein the State is a party, or any individual or individuals, bodies politic, or corporate, are parties."

It is therefore very clear that they had no jurisdiction in the matter—and consequently could not treat the refusal as a contempt. The order, of commitment, for that cause, and the imprisonment under it, are both illegal and void. In relation to the paper, purporting to be an attachment, I would remark, that it is proof of nothing; being illegal & void, not having been issued by any officer. For the court had no power to make an appointment of a clerk, after appeal perfected, which appears to have been done, immediately, by delivering a sufficient bond to the court.

The power of the court, in my mind, to punish the clerk for a contempt, in refusing to enter up its orders, is unquestionable. It is not the province or duty of the clerk, to determine what orders may, & what may not be entered—what claims may, and what may not be allowed.

I have no hesitation in believing, that if the court should make an illegal & unjust allowance against the county, without jurisdiction & authority of law,—that any citizen, or number of them, being taxable inhabitants of the county, might have redress by appeal from the order of allowance—or at least by bill in equity. But it cannot be, by refusal of the clerk to enter the order of allowance.

From the return of Warren, this appears to be an extraordinary case, surrounded by extraordinary circumstances. The prisoner for himself, and the Attorney General who represents the people in this case, not having traversed the facts in the return, have admitted the return to present them truly. By the return, it appears that the County Court removed the clerk for refusing to deliver the books &c to Edmonds, whom, they had appointed as his successor, although the prisoner had tendered to them a bond, with condition, sum, security &c, as required by the court. Edmonds issued an attachment against prisoner, for a contempt in refusing to enter the order of allowance directed by the court, and for which cause prisoner, had been ordered to be removed from his office & appealed. Under this authority the Sheriff ~~delivered~~ arrests prisoner, & delivered him to Warren by order of the court: to be brought before this court, on this writ. Warren takes the prisoner and this void writ of attachment, and returns to this court, that he holds the prisoner in custody under an order of commitment for 15 days, made by the Commissioners court. We have said that the clerkship under these circumstances was not vacant, and that the supposed writ of attachment issued by Edmonds is illegal and void: and that the County commissioners court have no power or jurisdiction to imprison their clerk for refusing to deliver over the books &c of his office. The law has provided another remedy to obtain the possession of them, R L. 432 cap 87. sec 10. 11. by petition to a Judge of the Supreme or circuit court.

The prisoner is entitled to his discharge from this imprisonment on the grounds of the several causes for which a prisoner may be discharged as specified in the 1st 4th 5th & 7th causes in the 3rd section of the Habeas Corpus act Rev L. cap 48 p 270.

I have now adverted to every provision of law that I think calculated to throw light upon this question.

I may in conclusion be permitted to remark that it is with much regret we witness such confusion, and such a deplorable state of things, as is presented in this return. If men would take counsel, not of their wishes and passions — but of cool judgement enlightened by the rules of conduct, & of justice prescribed by the laws of their country, and pay due respect to the opinions of mankind, formed upon the principles of Christian morality, there would seldom, if ever, be occasion for such scenes as are presented here. Citizens armed, and attending to overawe the courts of the country — and deter them from acting in a certain manner: courts, aware of a strong feeling of unyielding opposition to certain acts, that may, without detriment to the public service, or justice be omitted by them, and settled in another way, & before another tribunal — going on to do those acts perfectly regardless of public sentiment, & excitement — are things but rarely witnessed, and are great reproaches to the government. If men would pause & reflect, that there is at least, a possibility, that their opinions and desires may be wrong — and that there is a possibility that their adversary may be right — they will at least have made the first step towards conciliation and forbearance in the mode of settling their dispute.

While the community approves their rights, it may not approve their mode of asserting & vindicating them. Some respect should be paid to the universal sense and opinions of the rest of the community.

I have made these remarks, in the hope, that some mode, more consistent with law, order, and good govern-

ment may be mutually resorted to, to determine the question, whether these claims are justly allowable against the county. It may easily & readily be done An amicable suit could be instituted before the circuit Court. Or an appeal from an order of allowance could be taken — suspending, in the mean time all further action on them in the County Court, until the determination of the question. Thus peace and harmony could be brought about, in their adjustment, and violence prevented — which the government cannot tolerate and preserve its dignity. The right to allow them, is not a question before us, and we cannot, therefore, now settle it.

The prisoner will be discharged.

Ex parte George
M. Thatcher

Opinion by
Scates J.

Filed 23d Jany 1846
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I am constrained to dissent from the opinion of the majority of the Court, in some of the principles which are it contains, though I concur in the final order for discharging the prisoner for the reason that the time of his imprisonment has now expired.

The return shows, that the clerk was ordered to be committed for contempt, for refusing ~~to [illegible] of the clerk of the Court~~ to deliver up the books and papers of his office, while the warrant of commitment, which is made part of the return, states that the order ~~was~~ for committment was made, for the reason, that he refused to entu up certain orders made by the Court. I am constrained to believe that the officer making the return, is not at liberty to contradict the warrant of committment, which he himself sets forth in his return. It is said however that the order to commit is informal or even void, not being signed by Thatcher, the then clerk, but by another person, signing as clerk *pro tem*. This objection being ~~is~~ purely technical, ought not to prevail. The clerk could not have well been ~~[illegible]~~ required to make out orders for his own removal from office, or for his own committment. While the clerk was thus at issue with the Court, showing cause and perfecting his appeal from the order of removal, it seems to me that the Court necessarily had authority to appoint a clerk *pro tem*. Besides, there was no necessity whatever to make out a written mittimus;

a verbal direction was sufficient. That such a direction was made, appears clearly from the return, independent of the warrant of commitment. That by virtue of said direction the prisoner was legally detained at the time he applied under the habeas corpus act, seems to me, to admit of but little doubt. —

Ex parte Martin
Application
under the
habeas corpus
act.

Speech of Hon
J. J. Roman.
Feb. 23d May 1845
C.C.C.
C.C.

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C.C.C.

Justice Young. "I concur with the Majority of the Court in the opinion that the prisoner ought to be discharged. The time for which he was ordered to be imprisoned having expired, the warrant of Committment whether legal or illegal, has spent its force, and he can no longer be detained in custody under it. I also concur in the opinion that Thatcher had the right to appeal from the order of the County Commissioner's Court of Hancock County removing him from office as Clerk, and that, upon giving an appeal bond and perfecting the appeal to the Satisfaction of the Court, he would, under ordinary circumstances, have been entitled to resume the duties of the office until the determination of the appeal in the Circuit Court. But I deny that he had the right, or that it would have been proper for the Court to have permitted him, to act as such Clerk in the interval between the time of making the order for his removal, and the perfecting of the appeal; or that he had a right to act, during any part of the time that he stood in Contempt of the Court.

The 29th Section of Chapter 27, on the subject of Counties and County Commissioners Courts, provides, "that the said Court shall have power to punish for Contempts, as other Courts may do, and have all the power to a right exercise of the jurisdiction with which said Court is, or may be vested according to law". By this clause the County Commissioners Court has as ample power to punish for Contempts, as this Court, or the Circuit Courts possess, and of consequence, the incidental power to appoint a Clerk ad interim, for such time as might be necessary, according to the circumstances of the case. Suppose the County Commissioners Court in the legitimate exercise of its powers, should direct their Clerk to enter up an order of the Court, and he =

should obstinately and contemptuously refuse to do so, ++ and they should order him to be committed for his contempt for any reasonable time to the Common Jail of the County. ++ Could they not appoint a Clerk, ad interim, to execute their orders by making the proper entries in their order book, or is there a casus omissus in the law, which would render it necessary for the Commissioners forthwith to adjourn, without an order of adjournment entered upon their Book, and to suspend all further proceedings in Court, until the Clerk after having suffered his imprisonment, or purged himself from his contempt, could be again restored to the proper exercise of the duties of his office? Such a construction of the act in my opinion, is neither warranted by reason, or by law.

Nor can I admit the doctrine to be correct that when an individual applies to the County Commissioners Court, ~~either~~ for an allowance, either for advances made, or services rendered, to the County, and they make an order directing his claim to be paid out of the County Treasury, that any number of the Citizens of the County, under pretence of being tax payers, may come in and make themselves parties to the proceeding, and demand an appeal from such order to the Circuit Court.

Nor, am I prepared to say, that that the County Commissioners Court has no power to make allowances to individuals for necessary advances made to the Sheriff of a County, while performing his duty, according to law, in suppressing riots, routs, affrays, and other crimes and breaches of the peace, in cases where it may become necessary, to call the posse comitatus to his assistance.

In the matter of Geo: W. Hatcher on Habeas Corpus.

Seperate opinion of Ast Justice Young

Filed 22 May 1846
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W B Warren by way of explanation of his return begs leave to state that the writ of Attachment does not set forth the true cause for which the defendant was adjudged guilty of contempt. but the true cause is set forth in this respondents return the attachment was not placed in the hands of this respondent until the day after he had taken the Clerk into custody under the order of the county commissioners court

W. B. Warren

W B Warren for answer to the Writ of Habeas Corpus served on him at the petition of George W Thatcher makes the following statement as his return to said Writ

On Tuesday the 6th day of January the County Commissioners Court of Hancock County was in Session two of the County Commissioners being present to Wit Andrew A Perkins & Geo Coulson

This Respondent has been stationed in Hancock County by order of the Governor of this State, acting as Major commanding a small detachment of Troops who were placed under his command for the purpose of preserving the peace and preventing bloodshed & Violations of Law in that highly excited County,

Owing to the excitement and ill feeling which exists there a large portion of the inhabitants always go armed,

For the protection of the Court and to prevent it from interruption this Respondent was requested by the County Commissioners to be present at its Session accordingly he attended with four of his Officers and men.

A Claim was presented against the County in favour of Mrs Rebecca Baldwin by one George Edmunds representing himself as her attorney, being for provisions furnished the Posse under S B Backenstos the Sheriff during the recent disturbances in that County

The County Commissioners approved the

Claim and ordered George W Thatcher the Clerk of that Court to make an order on the record in favour of Mr H M Baldwin for the amount of the Claim, Thatcher replied that he had been served with an Injunction restraining him from issuing several orders which had been made ~~to~~ for provisions bought by Mr Backenstos posse and that he could not under his oath of Office conscientiously make and enter the order.

Immediately on this statement being made some very inflamatory speeches were made an enquiry was made of the Court if they intended also to make allowances for the property stolen by Mr Backenstos and his posse— several persons laboring at the same time and the excitement became so great that this Respondent was compelled to interfere and suggest to the Court the propriety of adjourning until Morning when all parties would be ~~cal~~ calm and the business of the court should progress without any further interruption at the same time stating to the bystanders that he could and would enforce good order, the Court adopted the suggestion and adjourned.

On Wensday morning Respondent was present with a large number of his men well armed as he had ascertained the excitement was evidently increasing.

The Court again called on Mr Thatcher to enter the order on the record in favour

of Mr Baldwin which Mr Thatcher refused to do,

The court then called upon Mr Thatcher to show cause why he should not be removed from office for refusing to enter up the said order

Mr Thatcher was heard by counsel, The court then declared Mr Thatcher removed from office as clerk, Thatcher immediately demanded an appeal which was granted he asked to whom the appeal bond should be made payable and the amount thereof, he was told to make it payable to E B Rose who is the county treasurer in the sum of One thousand dollars, Thatcher had a bond already prepared except the amount, to whom payable and the signatures, as soon as it was practable to insert the amount to whom payable and sign it, it was done and presented to the court which time did not exceed (as this respondent believes) two minutes,

The Court said they would do nothing more in relation to the bond untill they had appointed a clerk—

They thereupon appointed Edmunds clerk who forthwith executed a bond which was approved and he was sworn into office—

The Court then ordered Thatcher to deliver up the books papers money &c to Edmunds Thatcher refused to do so ~~and demanded an appeal from the order appointing Edmunds clerk which appeal was refused by the Court~~ stating that he had prayed an appeal and had executed bond with good security, which was

then before the Court and he was therefore entitled to possession of the Book papers &c until his appeal should be heard— The Court then ordered Edmunds to make and order committing Thatcher to jail for contempt in not delivering up the books papers &c when ordered so to do

Accordingly an order was drawn up by said Edmunds to commit said Thatcher to jail untill he should comply with the order of Court or discharged by due course of law. This order was objected to by the Commissioners because it did not specify the number of days some talk was had on the subject when the court adjourned for dinner

When the Court met at 2 O'clock the order was so altered as to commit Mr Thatcher for fifteen days. and an attachment ordered— Edmunds then produced an attachment and handed it to the Sheriff A B Backenstos who was present in court—

On the reception of the writ Mr Backenstos took it in his left hand with his right hand in his ~~breeches~~ pantaloons pocket, advanced towards Mr Thatcher, as this was done two of the Citizens of the county standing at the right side of Mr Backenstos drew their pistols and several others were heard to cock theirs, in an instant this Respondent verily believes that many pistols would have been fired every one of which must have told on some person ~~from the~~ and many lives must unavoidably been lost

As Backenstos started towards Thatcher this Respondent arose and stepped in between them and requested Mr Backenstos to stop. He did so. Respondent then remarked to the Court that he thought the matter might be arranged and by way of compromise proposed to arrest Mr Thatcher and take him over to Springfield where the whole matter in controversy might be heard before the Supreme Court on a writ of Habeas Corpus – The Commissioners instantaneously acceded to the proposition with much seeming gratification Mr Thatcher also acceded to it

Mr Backenstos remarked that this respondent could not legally arrest Mr Thatcher but that he would do so and deliver him over to this respondent which was done delivering to this respondent the attachment which is herewith returned – all parties seemed much gratified and the Court adjourned until next morning to enable Edmunds to copy the record

The next morning court met & and the minutes or record of the proceedings of the previous day read – Mr Thatcher and his counsel Mr Morrison objected to the record and stated that it was false and not the record of the proceedings that had taken place and had been stated in the minutes of the preceding day stating the alterations and amendments which had as they charged been falsely made – Some intermediates were then made which were declared unsatisfactory by Mr Thatcher – As the record then read somewhat different from respondents recollection

of the proceedings he requested the original minutes to be handed to him which the Court ordered to be done Edmunds then stated he had left them up at Mr Backenstos house & if they were not destroyed he would hand them to this respondent. The original minutes have not been delivered to this respondent, although he has been told by Mr Backenstos that they are in this City and in possession of Edmunds

The County commissioners then requested Respondent to bring said Thatcher before the Supreme Court for the express purpose of getting the matters in controversy determined by this court. They expressed great anxiety that that this court should decide the following questions and stated that they would abide by and carry out the decisions of this Court

First Is Mr Thatcher ~~entitled~~ entitled to retain possession of the books and papers of the Office and to act as Clerk after he had prayed an appeal and given bond?

Second Had the court a right or was it bound to pay for the provisions & expenses of the posse who were called out by the Sheriffs during the late disturbances in Hancock County

The Court then approved of the ~~bond~~ appeal bond which had previously been executed & presented by said Thatcher.

The court then made an order directing this respondent to take and keep all the records books and papers belonging to the Office for safe keeping until the whole

matter could be legally determined.

The records are now in respondents possession and he requests the direction of this court as to what he shall do with them.

Respondent returns herewith the record of the court which was given to him by the County Commissioners to be transmitted to this court (which record has no seal because Mr Thatcher refused to let Edmunds use the seal of the office) He also returns the writ of attachment under which said Thatcher is in custody.

In concluding this return Respondent begs leave to state, that he considers it highly important for the preservation of the peace and quiet of Hancock county that the above questions be settled by this Honorable Court— The two Commissioners who made the above orders are Mormons and the Clerk is an Anti Mormon— Both have their friends who are ready to stand by them in the positions they have taken on these ~~subjects~~ questions to the shedding of blood.

In the present state of excited feeling which unfortunately prevails in Hancock there needs to be but a very slight pretext for the friends of these parties to adopt the most extraordinary and illegal measures—

These questions are greatly agitating Hancock county— On the one side it is alledged that the pope claims are just and

honestly due — and on the other side it is urged that they are unjust that the county is not bound for them, that it is the design to bankrupt the county and ruin the citizens who pay the principal part of the taxes —

Should this Honble Court not settle these questions they will again arise at the next county court and this respondent has the strongest reasons to believe from threats made in his presence and from other reliable information that at the next meeting of the County Commissioners Court acts of violence & bloodshed will ensue which will result most probably in the loss of many lives & eventually in extensive insurrection.

Respondent pleads the extraordinary condition of things connected with this case as his excuse for ~~the length~~ the length of this return

W. R. Warren

The People of the State of Illinois:

To the Sheriff of Hancock County Greeting:

Whereas an Order has this day been entered of Record in the County Commissioners Court of said County of Hancock adjudging George W. Thatcher guilty of a Contempt of said Court in refusing to Obey an Order of said Court requiring him to make and enter of Record in his Office ~~an order~~ as the Clerk of said Court an Order auditing and allowing to Hebe M. Baldwin the sum of $15.05 which had been duly allowed by the County Commissioners Court of said County to said Hebe M. Baldwin on a claim presented by her Attorney to said Court against said County. And has been ordered to be confined in the Common Jail of said County for the space of fifteen days for such Contempt or until he shall be discharged by due course of law. And it being further ordered by said Court in the premises that an attachment issue against said Thatcher for such Contempt.

These are therefore to Command you forthwith to arrest the said George W. Thatcher if he may be found in your bailwick and commit him to the Common Jail of said County. And you the Keeper of the Common Jail of said County are hereby commanded to receive the said George W. Thatcher into your custody & confine him in said Jail for the space of fifteen days or until he shall be discharged by due course of law.

In testimony whereof I George Edmunds Jr Pro tem Clerk of the County Commissioners Court of the County of Hancock in the State of Illinois, have affixed the Seal of the said Court, and my hand at Carthage in the County of Hancock aforesaid this 5th day of January A.D. 1846.

George Edmunds Jr
Pro Tem Clerk of the County
Commissioners Court of H. Co. Ill.

I have executed the within writ by arresting the within named George W. Thatcher, and have him now in Custody January 7th A.D. 1846

J. D. Jackenstos, Sheriff
H. C. Ills

In pursuance of an order of the County Comrs Court I have delivered the prisoner G. W. Thatcher into the hands of Maj W. B. Warren

J. D. Jackenstos Shff

Warrant
Arest G. W. Thatcher,

In the matter of Leo
M. Thatcher on Habeas
Corpus –

Filed 19th Jany 1846
E Peck
Clk