No. 12422

Supreme Court of Illinois

Brown.

vs.

People.

71641 7

1st pp

United States of America
State of Illinois Winnebago County S.S. } Pleas before the Hon Benj R. Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois at a Term of the Winnebago County Circuit Court began & held at the Court House in said County of Winnebago on the 1st day of February 1858.

Present Hon Benj R Sheldon Judge
W. D. Meacham States Attorney
S. I. Church Sheriff:

Attest W. B. Derick Clerk

State of Illinois } The People of the State of Illinois
Winnebago County S.S. } to any Constable of said County and the keeper of the common jail of said County:-

Whereas on the 23d day of January 1858 while John Gaver one of the Justices of the peace of the said County was engaged in the trial of a cause between the People of the State of Illinois on the one part & Doris Atwell on the other at his office in Pecatonica in said County Frederick Brown did wilfully & contemptuously interrupt the proceedings in said cause by making a great disturbance and being ordered by said Justice to cease refused so to do:

Wherefore the said Justice did thereupon convict the said Frederick Brown of said contempt and adjudge & determine that he pay a fine of five dollars and that he be committed to the common jail of said County until he pay the said fine or until he be discharged by due course of law:-

We therefore command you the said Constable to take the said Frederick Brown and deliver him to the keeper of the common jail of said County together with this warrant and you the said keeper are hereby required to recieve him into your custody in the said jail and him there safely keep until he pay the said fine or until he be discharged by due course of law thereof fail not at your peril:
Given under my hand & seal this sixth day of February 1858.

John Gaver J. P. "seal"

Endorsed

Executed the within writ by delivering the within named F. Brown to the keeper of the common jail of Winnebago County as I am therein commanded

G. S. Parker Const

[10423-]

2 Pp

To the Circuit Court of Winnebago County or To the Hon Benjamin R Sheldon Judge of the Winnebago County Circuit Court

The Petition of Frederick Brown an Attorney of this Court respectfully sheweth that while on his way to Court this morning he was arrested and is now confined in the common jail of the County of Winnebago on a warrant of which the following is a copy that he is detained by S. L Church Sheriff and jailor of said County your Petitioner further sheweth that as an Attorney of this Court and having suits to attend to he was privileged from arrest and that the warrant upon which he was arrested and on which he is now held in custody is wholly void your petitioner therefore prays that a writ of Habeas Corpus may issue commanding said S L Church Sheriff and jailor as aforesaid to convey the body of said Frederick Brown before this Honorable Court that he may be discharged from his Arrest and Custody and be further dealt with according to law

Frederick Brown
By Thos J Turner Sol.

Copy of Warrant:

State of Illinois
Winnebago County S. S. } The People of the State of Illinois to any Constable of said County and the keeper of the Common jail of said County: Whereas on the 23d day of January 1858 Whilst John Garver one of the Justices of the peace of the said County was engaged in the trial of a cause between the People of the State of Illinois on the one part & Daniel Howell on the other at his Office in Pecatonica in said County Frederick Brown did wilfully & contemptuously interrupt the proceedings in said cause by making a great disturbance and being ordered by said Justice to cease refused so to do: Wherefore the said justice did thereupon convict the said Frederick Brown of said contempt and adjudge & determine that he pay a fine of five dollars and that he stand committed to the common jail of said County until he pay the said fine or until he be discharged by due course of law

We therefore command you the said Constable to take the said Frederick R Brown and deliver him to the keeper of the Common jail of said County together with this warrant and you the

3 Rep. said keeper are hereby required to receive him into your custody in the said jail and him there safely keep until he pay the said fine or until he be discharged by due course of law: Thereof fail not at your peril: Given under my hand & seal this sixth day of February 1838. John Gauer J. P. seal

Endorsed "Filed Feby 15 1838. A. Fennoyer Dep. Clerk"

State of Illinois } The People of the State of Illinois
Winnebago County S.S. } to the Sheriff of said County Greeting:

You are hereby commanded to have the body of Frederick Brown by you imprisoned and detained as it is said together with the time & cause of such imprisonment and detention, by whatsoever name the said Frederick Brown shall be called or charged, before Benjamin R. Shelden Judge of the Circuit Court of said County at Rockford in said County forthwith: To do & receive what shall then & there be considered concerning the said F. Brown & have you then & there this writ:

Witness Morris B. Derrick Clerk of said Circuit Court & the seal thereof at Rockford this 15th day of February A.D. 1838.

S.S.

Morris B. Derrick Clk

Endorsed "By the Habeas Corpus Act"

By virtue of the requirements of the within writ: I have the within named Frederick Brown now here before the said Judge and certify that he is detained by me by virtue and in obedience to the commands of a warrant of Committment to me delivered with the body of the said Brown and which said warrant is to this writ attached and returned herewith. And that I detain said Brown only by virtue of said warrant of Committment

Dated February 15th 1838.

Saml I. Church Shff
By James Dame Dep.

A Copy of the warrant of Committment returned with this Writ of Habeas Corpus appears on the first page of this record

[12402-2]

4th Page

In the matter of the Petition of Frederick Brown for discharge from imprisonment under a writ of Habeas Corpus

And afterwards to wit on the 18 day of February 1858 It being one of the days of the aforesaid term of Court the following entry was made as appears of Court record:

And now come the People by Meacham States Attorney & the Petitioner by Miller & Turner his Attorneys & the Court having heard the argument of Counsel on petition herein: denies the same It is therefore ordered & considered by the Court that the Defendant be remanded to jail: to which the Petitioner excepts:

State of Illinois
Winnebago County Circuit Clerks Office S.S. I Morris B Derrick Clerk of the Circuit Court in & for said County do hereby Certify the foregoing to be a Correct & Complete Copy of the records & papers on file in my Office in the foregoing entitled Cause & that they are Correct Copies of such original record & files duly Compared therewith by me:

Witness my hand & the seal of said Court at the City of Rockford this 12th day of April 1858

M B Derrick Clerk
By A Fennoyer Dep Clerk

Fees $1.75

Frederick Brown Plff in Error
vs
The People deft in Error } Error to Winnebago Circuit Court

And the said Plff in Error by Sam M Light his attorney comes and says that in the record and proceedings aforesaid there is manifest Error in this. That in said record and proceedings it appears that the said Circuit Court by the Court below denied the motion of the Plff in Error to discharge him from imprisonment when by the law the

said Court ought to have granted the said motion & discharged the said Plff in Error from imprisonment

Because the said Court below remanded the said Plff in Error when it should have discharged

Because the said Indictment was not the deft in Error when it should have been for the Plff in Error

Jas A. Wright atty
for Plff in Error.

Respondent deft in Error
vs
Frederick Brown Plff in Error

And the said deft in Error by W Bushnell Stats atty come and says that there are no such Errors in the said Record and proceedings as the Plff in Error has above alleged: Wherefore they pray that said judgment be affirmed

W Bushnell
States Atty

It is hereby stipulated that this cause shall be submitted to the Supreme Court on the Abstracts, Briefs and written arguments of the parties at the present term of said Supreme Court April 1858

[2422-3]

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Supreme Court

Frederick Brown Plff in Error

v

The People of the State of Illinois defts in Error

Record

Error to Winnebago Cir Ct

Filed May 10. 1858.

L. Leland

Clk.

In the Supreme Court.

FREDERIC BROWN, Plaintiff in Error,
vs.
THE PEOPLE, &c., Defendants in Error.
} **Error to Winnebago Circuit.**

ABSTRACT.

(Record.) HABEAS CORPUS to discharge Plaintiff in Error from imprisonment under an Execution against his Body, for an alleged contempt committed before Garver, Justice of the Peace.

PETITION

(2d Page.) Shows that the Applicant, an Attorney of said Court, while on his way to Court on the morning of the filing of the Petition, was arrested and was then confined in jail on a Warrant against his Body, a copy of which Warrant was annexed to the Petition, and was in substance as hereinafter set forth.

(3d.) Writ of Habeas Corpus to the Sheriff of Winnebago County requiring him to produce the Body of the applicant, with cause of detention.

RETURN OF SHERIFF.

(3d.) That he detains him in obedience to a Warrant of Commitment, with the Body of Brown, and attaches the Warrant to his return.

WARRANT OF COMMITMENT,

Record 1st page. Dated February 6th, 1858, recites that on January 23d, 1858, while the Justice John Garver, who issued the Warrant, was engaged in the trial of a cause, the said Brown wilfully and contemptuously interrupted the proceedings in said cause by making a great disturbance, and refused to cease when ordered to do so.

That thereupon the said Justice convicted said Brown of contempt, and fined him five dollars and adjudged that he be commirted to jail until he paid the fine, or was discharged by due course of law.

The Warrant therefore commands the officer to whom issued to take the Body of said Brown and commit him to the County Jail and deliver to the Keeper of said Jail the Warrant, which also required the said Keeper to detain him until he paid the fine or was discharged by course of law.

JUDGMENT.

(4th.) Denied the motion to discharge Plaintiff in Error, and remanded him.

ERRORS ASSIGNED.

(1st.) The refusal of the motion to discharge, and the remanding of Plaintiff in Error.

It is proper to observe that the warrant upon which Plaintiff was committed, appears on the 1st page of the Record, instead of following the Sheriff's return, as it should have done.

JAMES M. WIGHT, Attorney for Plaintiff in Error.

POINTS FOR PLAINTIFF IN ERROR.

The Plaintiff in Error should have been discharged.

A Justice of the Peace has no right to commit for contempt, his authority being limited to the imposition of a moderate fine, not exceeding Five Dollars. The authority to commit for contempts being (in the language of the cases) only vested in Courts of competent jurisdiction. Rev. Statutes 1845, Page 322, Sec. 50; Breese Rep. 266; 25th Miss. Rep., 884; 3d Scam., 396; 1 Blackford, 166.

The said Justice was not empowered to make the order that the Plaintiff in Error should stand committed until the fine was paid, or to issue the Warrant against his body on which the Plaintiff in Error was imprisoned, he could only collect the fine by ordinary Execution as on other debts.

The Justice had no right to imprison Plaintiff in Error two weeks after the supposed contempt was committed, even admitting that he had the right to do so at the time of its commission.

The Plaintiff in Error, being an Attorney at Law, was privileged from arrest while attending Court in the discharge of his duties as such Attorney, and for that reason should have been discharged.

JAMES M. WIGHT, for Plaintiff in Error.

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Supreme Court

Frederic Brown

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The People of the State of Illinois

Abstract & Brief

Filed May 10, 1838

Le Baume

Clerk

In the Supreme Court.

FREDERIC BROWN, Plaintiff in Error,
vs.
THE PEOPLE, &c., Defendants in Error.
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JUDGMENT.

(4th.) Denied the motion to discharge Plaintiff in Error, and remanded him.

ERRORS ASSIGNED.

(1st.) The refusal of the motion to discharge, and the remanding of Plaintiff in Error.

It is proper to observe that the warrant upon which Plaintiff was committed, appears on the 1st page of the Record, instead of following the Sheriff's return, as it should have done.

JAMES M. WIGHT, Attorney for Plaintiff in Error.

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The said Justice was not empowered to make the order that the Plaintiff in Error should stand committed until the fine was paid, or to issue the Warrant against his body on which the Plaintiff in Error was imprisoned, he could only collect the fine by ordinary Execution as on other debts.

The Justice had no right to imprison Plaintiff in Error two weeks after the supposed contempt was committed, even admitting that he had the right to do so at the time of its commission.

The Plaintiff in Error, being an Attorney at Law, was privileged from arrest while attending Court in the discharge of his duties as such Attorney, and for that reason should have been discharged.

JAMES M. WIGHT, for Plaintiff in Error.

In the Supreme Court.

FREDERIC BROWN, Plaintiff in Error,
vs.
THE PEOPLE, &c., Defendants in Error.

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JAMES M. WIGHT, Attorney for Plaintiff in Error.

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A Justice of the Peace has no right to commit for contempt, his authority being limited to the imposition of a moderate fine, not exceeding Five Dollars. The authority to commit for contempts being (in the language of the cases) only vested in Courts of competent jurisdiction. Bac. Statutes 1864, Page 852, Sec. 50; Brown Rep. 266; 23th Miss. Rep. 884; 24 Conn. 396; 1 Blackford, 206.

The said Justice was not empowered to make the order that the Plaintiff in Error should remain committed until the fine was paid, or to issue the Warrant against his body on which the Plaintiff in Error was imprisoned, he could only collect the fine by military Execution as an other debt.

The Justice had no right to imprison Plaintiff in Error two weeks after the supposed contempt was committed, even admitting that he had the right to do so at the time of its commission.

The Plaintiff in Error, being an Attorney at Law, was privileged from arrest while attending Court in the discharge of his duties as such Attorney, and for that reason should have been discharged.

JAMES M. WIGHT, for Plaintiff in Error.

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Frederick Brown

vs

The People of the State of Illinois

Opinion

15 PD

12422

1858

Preserved