

## Ex Parte Lange.

on the 4th day of December. The motion is therefore within the rule and it must be docketed and dismissed.

On the 1st of March, 1872, *Mr. B. F. Butler* moved to strike out order of 19th February and for leave to docket the appeal. This being argued on the 22d March, it was ordered that decree of February 19 be rescinded and annulled, and leave was granted appellant to docket cause.

*Mr. James Hughes* for the first motion. No one opposing.

*Mr. B. F. Butler* for the second motion. *Mr. James Hughes* opposing.

## EX PARTE LANGE.

## ORIGINAL.

No. 9. Original. October Term, 1873. — Decided January 12, 1874.

A writ of *habeas corpus* is ordered to issue, and also a writ of *certiorari* to bring up a petition by this petitioner to the judge of a Circuit Court of the United States for a writ of *habeas corpus*, and the denial thereof made in chambers; inasmuch as the petition in this court showed that the papers had been filed in the Circuit Court and remained there of record.

PETITION for writs of *habeas corpus* and *certiorari*. The case is stated in the opinion.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

Representation is made by the petitioner that he is, and since the eighth of November last has been a prisoner confined in the Ludlow-Street jail in the city of New York, in the custody of Oliver Fiske, United States marshal for the Southern District of New York, under an illegal sentence pronounced on him on the said eighth of November, and that he is restrained of his liberty in violation of the Constitution of the United States, and of the law in such case made and provided. Wherefore he prays that a writ of *habeas corpus* issue directed to the said Oliver Fiske, as such marshal, commanding him to produce the petitioner before this court here, at such time as this court shall direct, and that he, the marshal, show at the same time the cause of the petitioner's detention, to the end that he, the petitioner, may be discharged from custody.

Superadded is also the further prayer that a writ of *certiorari* may issue to Kenneth G. White, clerk of the Circuit Court of the United States for the same district, commanding him to certify to

## Bergner v. Palethorp.

this court the petition for *habeas corpus* which the petitioner on or about the seventeenth of December last presented "to the Hon. Lewis B. Woodruff, Circuit Judge of the United States for the Second Circuit, with the return thereto, and all the record of said court respecting the same, and the adjudication thereon, to the end that the errors therein may be corrected by this court, as more fully set forth in the petition."

Petitions of the kind when presented here are heard in the first place *ex parte*, and in view of that fact it is proper to remark that it has not escaped the attention of the court that the adjudication sought to be reviewed was made on a petition presented to the said circuit judge at chambers, but inasmuch as the petition here appears to warrant the inference that the first named petition and the proceedings thereon were subsequently filed in the Circuit Court, and that the same remain there of record, the court is of opinion that the special circumstance mentioned is no bar to the present application; and due consideration having been given to the petition, the court directs that the writ of *habeas corpus* issue to the person named and to the end as prayed.

Also that the writ of *certiorari* issue and that it be directed as prayed, and that it be made returnable forthwith.

*Mr. Stewart L. Woodford* for the petitioner.

For further proceedings in this case see *Ex parte Lange*, 18 Wall. 163.

## BERGNER v. PALETHORP.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

No. 926. October Term, 1875. — Decided March 27, 1876.

A Federal question not raised at the trial of a cause in the state court below will not be considered here.

MOTION TO DISMISS for want of jurisdiction. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE announced the opinion of the court.

The motion to dismiss this cause for want of jurisdiction is granted. No Federal question is presented by the record. It is argued here that a certain paper writing given in evidence upon the trial in the Court of Common Pleas was not good and valid as a lease, because not stamped as such, but the record does not show that any such question was presented to the Supreme Court for de-