

Opinion of the Court.

aboard of her to represent him, and employed the captain and four men to take care of the vessel, besides a night watchman. The marshal's possession being a legal possession, he had the right to take this course, and I do not find anything in the testimony, or in the circumstances of the case, to warrant the conclusion that the expenses of keeping such a vessel while in the collector's or the marshal's possession were extravagant."

Whether these charges were proper or not, was a matter for the courts below to determine in the exercise of their best judgment, and, as the commissioner found that they were, and both the District Court and the Court of Appeals affirmed his action in that regard, we are not disposed to disturb their finding, although the amount seems large.

The decree of the Court of Appeals must be reversed, and the case remanded to the District Court for further proceedings in conformity to this opinion.

In re ALIX, Petitioner.

ORIGINAL.

No. 15. Original. Argued March 1, 1897. — Decided March 15, 1897.

Applying to the facts as stated in the opinion of the court the settled rules in reference to writs of prohibition laid down in *In re Rice*, 155 U. S. 396, 402, it is *held* that a proper case is not made for awarding such a writ.

THE case is stated in the opinion.

Mr. Horace L. Cheney (with whom was *Mr. John F. Lewis* on the brief) for petitioner.

Mr. Curtis Tilton opposing.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

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John L. Mills filed his libel in the District Court of the United States for the District of New Jersey on the fourteenth day of September, A.D. 1896, against the steamer Allegheny and her cargo to recover salvage, and such proceedings were thereafter had thereon as resulted in a decree in favor of the libellant, December 2, 1896. An order for the sale of the steamer and cargo was entered December 15; a motion to vacate this order was made on behalf of Gustave Alix, master of the Belgian steamer *Caucase*, which was denied December 21; the sale took place December 22, and was confirmed December 30, 1896.

On December 26, 1896, Alix filed a petition of intervention in said cause, alleging that he had filed a libel in admiralty against the *Allegheny*, October 22, 1894, in the District Court of the United States for the District of Delaware; that the steamer had been attached by the marshal of that district in December of that year; and that the District Court for the District of New Jersey had no jurisdiction.

All the material allegations of the petition of intervention were denied by the answer thereto, and issues of fact were raised on which the question of jurisdiction depended.

Thereupon, on January 11, 1897, a petition or suggestion was filed by Alix in this court, seeking the issue of a writ of prohibition to the judge of the District Court for the District of New Jersey to restrain him from enforcing any of the orders or decrees by him theretofore made in the suit of said Mills, or proceeding further therein. A rule to show cause was granted, to which return has been duly made.

The settled rules in reference to the writ of prohibition were thus laid down in *In re Rice, Petitioner*, 155 U. S. 396, 402: "Where it appears that the court whose action is sought to be prohibited had clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, a party who has objected to the jurisdiction at the outset and has no other remedy is entitled to a writ of prohibition as a matter of right. But where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful, or depends on facts which are not made

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matter of record, or where the application is made by a stranger, the granting or refusal of the writ is discretionary. Nor is the granting of the writ obligatory where the case has gone to sentence, and the want of jurisdiction does not appear upon the face of the proceedings. *Smith v. Whitney*, 116 U. S. 167, 173; *In re Cooper*, 143 U. S. 472, 495."

Tested by these rules, we are clear that a proper case is not made for awarding the writ of prohibition.

Writ denied.

ALLEN v. GEORGIA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 641. Submitted January 19, 1897. — Decided March 15, 1897.

After a person had been convicted in a state court of murder, he sued out a writ of error from the Supreme Court of the State. On the day assigned for its hearing it appeared from affidavits that the accused had escaped from jail, and was at that time a fugitive from justice. The court thereupon ordered the writ of error dismissed, unless he should within sixty days surrender himself or be recaptured, and when that time passed without either happening, the writ was dismissed. He was afterwards recaptured, and resentenced to death, whereupon he sued out this writ of error, assigning as error that the dismissal of his writ of error by the Supreme Court was a denial of due process of law. *Held*, that the dismissal of the writ of error by the Supreme Court of the State was justified by the abandonment of his case by the plaintiff in the writ.

THIS was a writ of error to review an order of the Supreme Court of the State of Georgia dismissing a writ of error from that court which had been sued out to reverse the conviction of the plaintiff in error for the murder of one Charles Carr.

After defendant had been convicted and sentenced to death by the Superior Court of Bibb County, he made a motion for a new trial which was overruled, whereupon he sued out a writ of error from the Supreme Court of the State, which was assigned for hearing upon the 4th day of March, 1895. The case having been called upon that day, it was made to appear to the court by affidavits that Allen, after his conviction and