

Ex parte Kearney.

There was also proof in the cause, that "Page, in his lifetime, frequently promised the bank payment of the said note, after it became due." This  
 \*38] promise \*must be regarded as applying exclusively to the note which was offered in evidence, and was payable in fifty-four days after date : and if that note had been declared on, its influence on the cause would deserve serious consideration ; but it cannot be used in support of the other count, for the testimony, in terms, confines this promise to payment of the note, and says not a word of his undertaking to repay the money which the bank had loaned to him, or which he had received for their use.

The opinion of the court then is, that the bank can only recover from the administrators of Page, if at all, on his indorsement ; but that, having set forth the note incorrectly, and there not being sufficient evidence to support the second count, the present action cannot be sustained. The judgment of the circuit court is, therefore, reversed ; and judgment is to be entered for the defendants below.

Judgment reversed.

*Ex parte* KEARNEY.

*Habeas corpus.*

This court has authority to issue a *habeas corpus*, where a person is imprisoned under the warrant or order of any other court of the United States.<sup>1</sup>

But this court has no appellate jurisdiction in criminal cases, confided to it by the laws of the United States, and cannot revise the judgments of the circuit courts, by writ of error, in any case where a party has been convicted of a public offence.<sup>2</sup>

\*39] \*Hence, the court will not grant a *habeas corpus*, where a party has been committed for a contempt adjudged by a court of competent jurisdiction.

In such a case, this court will not inquire into the sufficiency of the cause of commitment.<sup>3</sup>

The case of Crosby, Lord Mayor of London, 3 Wils. 188, commented on, and its authority confirmed.

February 9th, 1822. *Jones* moved for a *habeas corpus* to bring up the body of John T. Kearney, now in jail, in the custody of the marshal, under a commitment of the Circuit Court for the the District of Columbia, for an alleged contempt. The petition stated, that on the trial of an indictment in that court, the petitioner was examined as a witness, and refused to answer a certain question which was put to him, because he conceived it tended materially to implicate him, and to criminate him as a *particeps criminis*. The objection was overruled by the court, and he having persisted in refusing to answer the question, was committed to jail for the supposed contempt ; and for no other cause.

*Jones*, for the petitioner, now argued : 1. That this court has power to issue the writ of *habeas corpus* in every case where the personal liberty of the citizen is restrained, under the judicial authority of the Union. The jurisdiction is settled by a uniform series of decisions. It had been exer-

<sup>1</sup> See note to *Bollman's Case*, 4 Cranch 75.

<sup>2</sup> A writ of *habeas corpus* cannot be made to perform the functions of a writ of error ; to warrant the discharge of the petitioner, the sentence under which he is held, must be not merely erroneous and voidable, but absolutely

void. *Ex parte Reed*, 100 U. S. 23. And see *Ex parte Milligan*, 4 Wall. 2 ; *Ex parte Yenger*, 8 Id. 85 ; *Ex parte Lange*, 18 Id. 163.

<sup>3</sup> *s. p.* *New Orleans v. Steamship Co.*, 20 Wall. 387 : *Hayes v. Fischer*, 102 U. S. 121 : *Williamson's Case*, 26 Penn. St. 9.

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cised in a case of treason (*United States v. Hamilton*, 3 Dall. 17); in a case where the warrant of commitment was defective, in not showing a good cause \*certain, on oath or affirmation (*Ex parte Burford*, 3 Cranch 448); and, at last, the case of *Bollman & Swartwout* (4 Ibid. 75) [\*40] settled the power of the court to be universal, and co-extensive with the general judicial power of the Union.

2. He insisted, that a fit case was made out to justify the exercise of the jurisdiction upon the present application. The jurisdiction of this court cannot depend upon the nature of the commitment by the other court. The writ of *habeas corpus* is a writ of right, and the nature and grounds of the commitment are to be looked into, on the return. This court must have power to issue the writ, where an inferior court commits even for a contempt; because if the process of contempt be a branch of criminal judicature, considered as a punishment for an offence, this court has authority to control all inferior courts and magistrates. In England, the court of common pleas, although a tribunal of original and civil jurisdiction only, has, from the earliest times, exercised the authority of issuing the writ of *habeas corpus* to inquire into the cause of commitments by other jurisdictions. *Wood's Case*, 3 Wils. 173; *Skrogges v. Coleshil*, Dyer 175; 4 Inst. 290; *Bushell's Case*, Sir T. Jones 12; 2 W. Bl. 745; 2 Hale's P. C. 144; Moore 838; 1 Hale P. C. 399, 406, 446.

*Swann* (District-Attorney), contra, admitted, that this court had a general power of issuing the writ of *habeas corpus ad subjiciendum* to all the other \*courts and officers of the United States, but insisted, that this was not a case in which the court could exercise the authority. [\*41] Because the circuit court for the district of Columbia was an inferior tribunal, it did not, therefore, follow, that an appeal lies to this court from its judgment in criminal cases. This court has no appellate jurisdiction in criminal cases. It can only revise the decisions of the circuit court, in such cases, where there is a certificate of a division of opinion of the judges below. Here, there was no doubt, the court had jurisdiction of the case in which the party was committed for refusing to answer a question put to him, and which the court had determined he was bound to answer. The court cannot revise the principal case by an appellate process, neither can it revise that which has incidentally arisen out of it. Every court of justice must have a discretionary power of punishing contempts; and if an appeal were allowed upon every interlocutory judgment of this sort, there would be the greatest possible embarrassment and confusion.

February 25th. STORY, Justice, delivered the opinion of the court, and after stating the case, proceeded as follows:—Upon the argument of this motion, two questions have been made: first, whether this court has authority to issue a *habeas corpus*, where a person is in jail, under the warrant or order of any other court of the United States; secondly, if it have, whether, upon the facts stated, a fit case is made out, to justify the exercise of such an authority.

\*As to the first question, it is unnecessary to say more, than that the point has already passed *in rem judicatam* in this court. In the case of *Bollman and Swartwout* (4 Cranch 75), it was expressly decided, [\*42]



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upon full argument, that this court possessed such an authority, and the question has ever since been considered at rest.

The second point is of much more importance. It is to be considered, that this court has no appellate jurisdiction confided to it in criminal cases, by the laws of the United States. It cannot entertain a writ of error, to revise the judgment of the circuit court, in any case where a party has been convicted of a public offence. And, undoubtedly, the denial of this authority proceeded upon great principles of public policy and convenience. If every party had a right to bring before this court every case, in which judgment had passed against him, for a crime, or misdemeanor or felony, the course of justice might be materially delayed and obstructed, and in some cases, totally frustrated. If, then, this court cannot directly revise a judgment of the circuit court in a criminal case, what reason is there to suppose, that it was intended to vest it with the authority to do it indirectly?

It is also to be observed, that there is no question here, but that this commitment was made by a court of competent jurisdiction, and in the exercise of an unquestionable authority. The only objection is, not that the court acted beyond its jurisdiction, but that it erred in its judgment of the law applicable to the case. If, then, we are to give any relief in this case, \*43] \*it is by a revision of the opinion of the court, given in the course of a criminal trial, and thus asserting a right to control its proceedings, and take from them the conclusive effect which the law intended to give them. If this were an application for a *habeas corpus*, after judgment on an indictment for an offence within the jurisdiction of the circuit court, it could hardly be maintained, that this court could revise such a judgment, or the proceedings which led to it, or set it aside, and discharge the prisoner. There is, in principle, no distinction between that case and the present; for when a court commits a party for a contempt, their adjudication is a conviction, and their commitment, in consequence, is execution; and so the law was settled upon full deliberation, in the case of *Brass Crosby*, *Lord Mayor of London* (3 Wilson 188).

Indeed, in that case, the same point was before the court as in this. It was an application to the court of common pleas for a *habeas corpus*, to bring up the body of the Lord Mayor, who was committed for contempt by the House of Commons. The *habeas corpus* was granted, and upon the return, the causes of contempt for which the party was committed, were set forth. It was argued, that the House of Commons had no authority to commit for a contempt; and if they had, that they had not used it rightly and properly, and that the causes assigned were insufficient. But the whole court were of opinion, that the House of Commons had a right to commit for a contempt; and that the court could not revise its adjudication. Lord

\*44] Chief Justice DE GREY, on \*that occasion said, "when the House of Commons adjudged anything to be a contempt, or a breach of privilege, their adjudication is a conviction, and their commitment, in consequence, is execution; and no court can discharge on bail, a person that is in execution by the judgment of any other court. The House of Commons, therefore, having an authority to commit, and that commitment being an execution, what can this court do? It can do nothing, when a person is in execution by the judgment of a court having a competent jurisdiction. In such a case, this court is not a court of appeal." Again, "the courts of K.

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B. or C. B. never discharged any person committed for a contempt, in not answering in the court of chancery, if the return was for a contempt. If the admiralty commits for a contempt, or one be taken upon *excommunicato capiendo*, this court never discharges the persons committed." Mr. Justice BLACKSTONE said, "all courts, by which I mean to include the two Houses of Parliament, and the courts of Westminster Hall, can have no control in matters of contempt. The sole adjudication of contempt, and the punishment thereof, belongs exclusively, and without interfering, to each respective court. Infinite confusion and disorder would follow, if courts could, by writs of habeas corpus, examine and determine the contempt of others."

So that it is most manifest, from the whole reasoning of the court in this case, that a writ of *habeas corpus* was not deemed a proper remedy, where a party was committed for a contempt by a court of competent \*jurisdiction; and that, if granted, the court could not inquire into the [\*45 sufficiency of the cause of commitment. If, therefore, we were to grant the writ in this case, it would be applying it in a manner not justified by principle or usage; and we should be bound to remand the party, unless we were prepared to abandon the whole doctrine, so reasonable, just and convenient, which has hitherto regulated this important subject. We are entirely satisfied, to administer the law as we find it, and are all of opinion, that, upon the facts of this case, the motion ought to be denied.

The argument of inconvenience has been pressed upon us with great earnestness. But where the law is clear, this argument can be of no avail; and it will probably be found, that there are also serious inconveniences on the other side. Wherever power is lodged, it may be abused; but this forms no solid objection against its exercise. Confidence must be reposed somewhere; and if there should be an abuse, it will be a public grievance, for which a remedy may be applied by the legislature, and is not to be devised by courts of justice. This argument was also used in the case already cited, and the answer of the court to it is so satisfactory, that it would be useless to attempt any further refutation.

Upon the whole, it is the opinion of the court, that the motion be overruled.

Writ denied.(a)

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(a) See *Anderson v. Dunn*, 6 Wheat. 204,<sup>1</sup> where it was determined, that an action could not be maintained against the sergeant-at-arms of the house of representatives for imprisoning the plaintiff on a warrant for a contempt adjudged by the house. See also the case of *J. V. N. Yates*, 4 Johns. 317; *Yates v. Lansing*, 9 Id. 395; *Yates v. People*, 6 Id. 337; *Burdett v. Abbott*, 14 East 1; s. c. 5 Dow 165.

<sup>1</sup> But see note to that case, which was overruled in *Kilbourn v. Thompson*, 103 U. S. 168.