The decree of the Supreme Court of Arkansas must, therefore, be reversed and the cause remanded, with instructions to enter a

DECREE IN CONFORMITY WITH THIS OPINION.

N. B. The same order was made in cases Nos. 28, 29, 30, 31, 32, and 33, argued with the above case, and which the Chief Justice said were governed by its decision.

UNITED STATES v. HOFFMAN.

1. The writ of prohibition can only be used to prevent the doing of some act which is about to be done, and can never be used as a remedy for acts already completed.
2. Therefore, where the court to which the writ should be issued, has already disposed of the case, so that nothing remains which that court can do, either by way of executing its judgment or otherwise, no prohibition will be granted.
3. And this is true, though the final disposition of the case was made after service on the judge of a rule to show cause why the writ should not issue, and though other cases of the same character may be pending in the same court.

ON a motion for prohibition.

At the last term of this court the relator made application for a writ of prohibition to the judge of the District Court of the Northern District of California, to prevent that court from proceeding further in a certain cause in admiralty. This court, without looking into the question of the alleged want of jurisdiction, granted a rule on the judge of that court to show cause why the writ should not be issued; and an order accompanied the rule, that he should proceed no further in the case until the decision of this court in the premises.

The return of the judge to that rule was now before this court. The substance of it was, that after the rule had been served upon him the libellant in the admiralty suit came into court, and moved for permission to pay all the costs that had accrued, and to dismiss his suit. After hearing

argument the court granted the motion, and the libellant, having paid all the costs of both parties, an order was made dismissing the suit.

The relator now asked that the writ of prohibition might issue notwithstanding the return, and whether it should or not, presented the question to be here decided.

The suggestion of the relator, it may be here mentioned, stated that four other suits in admiralty against vessels owned by him, and founded on libels of the same character as the libel in this case, were pending in the same court.

Mr. Carlisle, in support of the motion:

The only fact stated in the return which can be alleged as cause why the prohibition should not issue, is that the libel has been dismissed by the order of the District Court.

This, however, was done after the rule was issued, and after it had been served, and against the objection of the party here suing for the prohibition, and while the question of the writ was *sub judice*, and was against the express mandate in the rule, that further proceedings in the said District Court upon the said libel be stayed until the further order of this court in the premises. It is therefore wholly impertinent to the return, and is at best mere surplusage.

But if such subsequent proceedings be properly before the court they present no objection to the writ. The law upon this subject is fully stated by Lord Coke, in his second Institute.*

"*Objection.* As touching the time when prohibitions are granted, it seemeth strange to us that they are not only granted at the suit of the defendant in the ecclesiastical court after his answer, whereby he affirmeth the jurisdiction of the said court, and submitted himself unto the same; but also after all allegations and proofs made on both sides, when the cause is fully instructed and furnished for sentence; yea, after sentence; yea, after two or three sentences given, and after execution of the said sentence or sentences, and when the party for his long-

* Page 602.

continued disobedience is laid in prison upon the writ of *excommunicato capiendo;* which courses, forasmuch as they are against the rules of the common law in like cases (as we take it), and do tend so greatly to the delay of justice, vexation, and charge of the subject, and the disgrace and discredit of his majesty's jurisdiction ecclesiastical, the judges (as we suppose), notwithstanding their great learning in the laws, will hardly be able in defence of them to satisfy your lordships."

"*Answer.* Prohibitions by law are to be granted *at any time* to restrain a court to intermeddle with or execute anything which by law they ought not to hold plea of, and they are much mistaken that maintain the contrary. And it is the folly of such as will proceed in the ecclesiastical court for that whereof that court hath not jurisdiction, or in that whereof the king's temporal courts should have the jurisdiction. And so themselves (by their extraordinary dealing), are the cause of such extraordinary charges, and not the law; for their proceedings in such case are *coram non judice.* And the king's courts that may award prohibitions, being informed either by the parties themselves, *or by any stranger*, that any court temporal or ecclesiastical doth hold plea of that (whereof they have not jurisdiction), may lawfully prohibit the same as well after judgment and execution as before."

And the law continues the same to this day.*

The authorities, however, cited in the note, fall short of the present case, and the books, it is believed, furnish no instance of an inferior court proceeding in any direction or to any degree in the suit before it, while the very question of its jurisdiction was pending upon a motion for a prohibition in a superior court. Still less can any case be found of an inferior court so proceeding in the face of an express mandate to stay all proceedings in the premises until further order.

To allow the prohibition to be defeated in this manner,

* Paxton *v.* Knight, 1 Burrow, 314; Buggin *v.* Bennett, 4 Id. 2035; Roberts *v.* Humby, 3 Meeson & Welsby, 120; Jones *v.* Owen, 5 Dowling & Lowndes, 669.

would not only be against principle and precedent, but injurious and vexatious to the party suing here.

It appears by the suggestion that other suits by libel against the vessels of the same party are pending in the same court, under similar circumstances. If that court has no jurisdiction in the premises, the prohibition in the present case would have disposed of all the others. But if the proceeding set up by the return be sanctioned, the same thing may be repeated in each of those cases; and in this manner onerous costs may be put upon the party suing for, and, as is here assumed, entitled to the protection of this court, while he is still left exposed to the assertion of the same unfounded jurisdiction.

In the analogous case of an injunction, even where the defendant admitting the wrong discontinues it, and promises not to repeat it, the complainant is, nevertheless, entitled to the judgment of the court for his protection.*

By much greater reason should the prohibition issue in this case, as the question is one of jurisdiction, in which the public is concerned, when the writ will issue upon the suggestion of a stranger to correct a usurpation, as the authorities above cited show; whereas, in the absence of the writ, the records of the District Court can only show that the libellant there, for some undisclosed reason, thought proper to withdraw his suit; the judge, by the record, still affirming his jurisdiction, as to which he intimates no doubt in his return.

Mr. Justice MILLER delivered the opinion of the court.

The writ of prohibition, as its name imports, is one which commands the person to whom it is directed not to do something which, by the suggestion of the relator, the court is informed he is about to do. If the thing be already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act; and the only effect of a writ of prohibition is to suspend all action, and to prevent

* Losh v. Hague, Webster's Patent Cases, 200.

any further proceeding in the prohibited direction. In the case before us the writ, from its very nature, could do no more than forbid the judge of the District Court from proceeding any further in the case in admiralty.

The return shows that such an order is unnecessary, and will be wholly useless, for the case is not now pending before that court, and there is no reason to suppose that it will be in any manner revived or brought up again for action. The facts shown by the return negative such a presumption.

Counsel has argued very ingeniously that the case should be considered as remaining in the court below, in the same position as it was when the rule issued from this court; but we cannot so regard it. By the action of the libellant and the consent of the court, the case is out of court, and the relator is no longer harassed by an attempt to exercise over him a jurisdiction which he claims to be unwarranted. If the return shows no more, it shows that the district judge has no intention of proceeding further in that case. Now, ought the writ to issue to him under such circumstances? It would seem to be an offensive and useless exercise of authority for the court to order it.

The suggestion that there are or may be other cases against the relator of the same character can have no legal force in this case. If they are now pending, and the relator will satisfy the court that they are proper cases for the exercise of the court's authority, it would probably issue writs instead of a rule, but a writ in this case could not restrain the judge in the other cases by its own force, and could affect his action only so far as he might respect the principle on which the court acted in this case. We are not prepared to adopt the rule that we will issue a writ in a case where its issue is not justified, for the sole purpose of establishing a principle to govern other cases.

We have examined carefully all the cases referred to by counsel which show that a prohibition may issue after sentence or judgment; but in all these cases something remained which the court or party to whom the writ was

directed might do, and probably would have done, as the collection of costs, or otherwise enforcing the sentence.

Here the return shows that nothing is left to be done in the case. It is altogether gone out of the court.

These views are supported by the following cases:

In *United States* v. *Peters*,* which was an application for prohibition to the admiralty, this court suspended its decision to give the libellant an opportunity to dismiss his libel. The court finally issued the writ, but there seems no reason to doubt, from the report of the case, that it would have considered such action by the libellant as an answer to the request for the writ.

In the case of *Hall* v. *Norwood*†—a very old case, when writs of prohibition were much more common than now—a prohibition was asked to a court of the Cinque Ports at Dover. While the case was under consideration, the reporter says: "On the other hand the court was informed that they had proceeded to judgment and execution at Dover, and therefore that they move here too late for a prohibition, and of this opinion was the court, since there is no person to be prohibited, and possessions are never taken away or disturbed by prohibitions." The marginal note by the reporter is this: "Prohibition will not lie after the cause is ended."

The rule heretofore granted in this case is

DISCHARGED.

WALKER v. UNITED STATES.

The jurisdiction of this court to re-examine judgments of the Circuit Courts is limited to cases where the matter in dispute *exceeds* $2000. Where it but equals that sum the jurisdiction does not exist.

THE United States had recovered judgment against Walker in the Circuit Court for the Eastern District of Louisiana, "for the sum of $2000, with interest thereon at the rate of

* 3 Dallas, 121.

† Siderfin, 166.