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APPEALS AND WRITS OF ERROR IN HABEAS
CORPUS CASES.

“At this day one would hardly suppose that a question could arise on the subject of proceedings under the habeas corpus Act, and yet there does seem to be a popular misconception in relation to them, indicating a belief that the habeas corpus Act is a sort of universal relief law, a summary general jail delivery.” So says Mr. Justice EARLE, of South Carolina; but if that learned Judge means by “popular misconception,” to imply that perfect unanimity exists among legal minds on the subject in question, we can only say that we wish it were the case. It would be no very difficult task to fill more than one page with points in the law of habeas corpus—we use the words in their popular sense, meaning *habeas corpus ad subjiciendum*—upon which directly conflicting decisions may be found among the reports. At present we propose to select from our memoranda on the subject, some notices of the decisions upon the question whether an appeal or writ of error will lie upon the action of a Court or Judge on a writ of *habeas corpus ad subjiciendum*.

In the case of the *City of London*,¹ Lord COKE said that a writ of error would not lie upon a decision on habeas corpus. In the cases arising from the Aylesbury election in 1703-4,² an effort was made to obtain writs of error to the House of Lords upon a decision in Queen's Bench, remanding the prisoners on a habeas corpus. The Commons addressed the Queen against, and the Lords in favor of, granting the writs of error, and Parliament was prorogued in order to elude the question.³ Subsequently⁴ it was repeated, after Lord COKE, that it was against the nature of a writ of error to lie on any decision but in causes where issue might be joined and tried, or where judgment might be had on a demurrer, and therefore it would not lie on a decision on habeas corpus. Upon *this* opinion, a writ of error was taken to the House of Lords, and it was affirmed.⁵ And it is said⁶ that, seemingly, the question whether a writ of error lies on a decision on habeas corpus is no longer open in England, although at least one respectable professional opinion has been expressed that the writ should lie.

In America, the question has arisen in two remarkable cases, and also in several others less noted.

In *Yates' Case*,⁷ after a very full and learned argument, it was decided by the Court of Errors of New York, that a writ of error lies, independently of any statutory provision, on a decision on habeas corpus. In *Holmes vs. Jennison*,⁸ the case was, that Holmes, being committed by a warrant from the Governor of Vermont, in order to be delivered to the Canadian authorities, took a habeas corpus to the Supreme Court of Vermont, which remanded him, and thereupon he brought his writ of error to the Supreme Court of the United States, under the twenty-fifth section of the Judiciary Act. The Supreme Court of the United States was divided on the question of jurisdiction, and the writ was dismissed; but it is to be observed that a majority of the Court, viz: TANEY, C. J., and STORY,

¹ 8th.Rep'ts, 127, b.

² 2 Salk. 503; 2 Ld. Raym. 1105; 14 State Tr. 849; et vid. n. (b) to 14 East, 92.

³ Hallam Const. Hist. cap. xvi.

⁴ 8 Mod. 27.

⁵ Per KEET, C. J., in 6 Johns. 424.

⁶ Am. n. to Hall P. C., 149.

⁷ 4 Johns. 317, and 6 Johns. 337.

⁸ 14 Peters, 540.

M'LEAN, WAYNE and CATRON, JJ., were of opinion that, independently of other questions and facts of the case, a writ of error would lie to the decision of another Court on habeas corpus.

On these cases it may be remarked that:—

The Court of Errors of New York was not composed wholly of judicial officers learned in the law, but of six Judges and the whole of the upper house of the State Legislature.

That *Yates' Case* was decided therein not without evidences of strong excitement.

That four out of the six *Judges* in the Court of Errors were of opinion that the writ of error would not lie, and should have been quashed; these four Judges being VAN NESS and THOMPSON, JJ., LANSING, Chanc., and KENT, C. J., while YEATES and SPENCER, JJ., sustained the writ.

That since the decision in *Yates' Case*, a statutory provision has been enacted in New York, to authorize the issuing of writs of error in such cases.¹

That *Holmes vs. Jennison* has left the question open :

That although the Judges, who, in *Holmes vs. Jennison*, were of opinion that a writ of error would lie, founded their opinions on the *statute*, this does not weaken the effect of those opinions on the general question independent of statutory provisions, for, in order so to found their opinions on the statute, they were obliged to consider the decision on a habeas corpus as “a final judgment in a suit.”

That since the decision in *Holmes vs. Jennison*, the Congress of the United States inserted a special clause in a statute,² to authorize an appeal, in certain cases, on decisions on habeas corpus.

That the current of authority in America is, decidedly, that an appeal or writ of error will not lie, independently of statutory provisions, on a decision upon habeas corpus, such decision not being a final judgment.³

¹ 2 Rev. Stats. 1846, p. 668, [573], § 85.

² 5 U. S. Stats. at L. 539.

³ 1 Penr. & Watts. 82; 3 S. & R., 158, 167; 4 Gill. 301; 6 Rand. 680, n.; 5 Alab. 130; 9 Sm. & M., 383; 9 Missou. 690; 1 La. Ann. R. 413; sed vid. contr. 6 Mart. 569; et vid. Wilm. N. 88, “the writ of habeas corpus is not the commencement of a civil suit.”

On the whole, it would seem that the better opinion is, that no appeal or writ of error should, independently of statutory provisions, be allowed on a decision on habeas corpus. Sensible difficulties oppose the contrary rule. An appeal or writ of error can only be taken upon a final judgment; a final judgment is, from its very nature, conclusive between the same parties upon the facts and law which it decides, and can only be reversed or examined by some proceeding in the nature of appeal; and yet a decision in a habeas corpus case, at least in refusing the writ or remanding the prisoner, (which last was the case in *Holmes vs. Jennison*,) binds no other Court whatever, but the same state of facts and the same questions of law, between the same parties, may be investigated over and over again, and differently decided on new applications for, or writs of, habeas corpus, as long as there are different Courts to go to. An application for a habeas corpus, or for a discharge thereon, is peculiarly to the discretion of the Court or Judge to whom it is made, and it would be difficult, (said Mr. Justice BALDWIN, in *Holmes vs. Jennison*,) to find any authority authorizing an appeal or writ of error upon the discretionary action of a judicial officer. It is now, probably, the case everywhere, that a habeas corpus may be issued and decided by any common law Judge *in vacation*, and it is not easy to see how an appeal or writ of error could lie, or on what they could be founded, when, as in such a case, there is no Court, no record, and therefore, it is submitted, can be no "judgment;" yet if an appeal or writ of error will lie once, they should lie always.

W. H. C.

¹9 Eng. Jurist. 92; 5 Binn. 304; 1 Rand. 15; 8 Alab. 424; 8 Paige, 47; 25 Wend. 64, and 3 Hill, 339; 7 P. S. R. 336; 6 P. L. J. 288; 7 P. L. J. 227; 3 S. & R. 158, 167.