Michigan Law Review

Volume 38 | Issue 1

1939

# HABEAS CORPUS - INSANE PERSONS - TORTS - CIVIL ACTION FOR OBSTRUCTION OF RIGHT TO TEST LEGALITY OF IMPRISONMENT

John P. Cofrin
*University of Michigan Law School*

HABEAS CORPUS — INSANE PERSONS — TORTS — CIVIL ACTION FOR OBSTRUCTION OF RIGHT TO TEST LEGALITY OF IMPRISONMENT — Claimant had been adjudged insane and committed to a state hospital by order of the court. On March 6, 1936, he signed a petition for a writ of habeas corpus, placed it in an envelope addressed to his attorney and left it with an employee of the hospital to be mailed. In the past claimant had written many letters asking for assistance to men in public life, who in turn annoyed claimant's wife. The superintendent of the hospital, therefore, complying with the request of claimant's wife that all his letters be sent to her, mailed her the letter containing the petition. The wife suppressed the petition and it was not until April 2d that claimant was discharged from custody as the result of a hearing upon a writ signed by his attorney. Claimant sued the state of New York for damages resulting from the misfeasance of the superintendent of the hospital. *Held*, he may recover. The superintendent, in diverting the petition to claimant's wife, obstructed claimant's right to test the legality of his imprisonment. An officer of the state may not accomplish by indirection what is forbidden to the state. The presumption of continuance of insanity does not apply where there has been only an order of commitment. Since the jury's finding that claimant was sane on March 6, 1936, is supported by the evidence, the state is liable for damages caused by the delay. *Hoff v. State*, 279 N. Y. 490, 18 N. E. (2d) 671 (1939).

No case has been found to parallel this decision.[1] The case is interesting, however, for it indicates that a tort action will lie against one who unreasonably censors the mail of persons in his charge. It is well settled that a person lawfully imprisoned is entitled to private consultations with his attorney,[2] although no

[1] People ex rel. Jacobs v. Worthing, 167 Misc. 702, 4 N. Y. S. (2d) 630 (1938), while closely analogous, is a habeas corpus proceeding.

[2] Bridwell v. Zerbst, (C. C. A. 5th, 1938) 97 F. (2d) 992, reversing 92 F. (2d) 748 and affg. Bridwell v. Aderhold, (D. C. Ga. 1935) 13 F. Supp. 253; In re

case has been found of a suit for the damages caused by a denial of this privilege. It is also well settled that a civil action for damages will lie against one disobeying the writ of habeas corpus,[3] and since under the New York law [4] the writ must be granted and without delay, he who interferes with the petition for the writ could logically be held liable as disobeying the writ. Either hypothesis might furnish a basis for the decision in the principal case. In fact, however, it seems to be based upon neither and stands for the proposition that wrongful censorship is actionable. It is an important case in New York jurisprudence in view of the recent decisions in lower courts.[5] In some other states it is held that the question of sanity may not be determined in the hearing on the writ,[6] and it is a general rule that the remedies provided by statute must be exhausted before the petition for the writ will be granted.[7] Statutory remedies do not exist in New York, however, except with reference to the writ of habeas corpus. Assuming that claimant has a right of action, what are his damages? If the jury in the subsequent proceeding found him insane, he would of course suffer no loss. Would he nevertheless have a cause of action for nominal damages? This question is not answered in the decisions, although such an action would seem to be possible in view of the broad New York statutes.[8] The court indicates its stand on the quantum of proof necessary to overcome the presumption arising from an adjudication of insanity to this extent, that an order of commitment is prima facie evidence at best.[9]

*John P. Cofrin*

Snyder, 62 Cal. App. 697, 217 P. 777 (1923); Ex parte Ryder, 50 Cal. App. 77, 195 P. 965 (1920); Thomas v. Mills, 117 Ohio St. 114, 157 N. E. 488 (1927); 23 A. L. R. 1382 (1923); 54 A. L. R. 1225 (1928).

[3] Wright v. State, 3 Ala. App. 140, 57 So. 1023 (1912); Ex parte Benedict, Fed. Cas. No. 1,292 (1862); 84 A. L. R. 807 (1933).

[4] New York Civil Practice Act, § 1235.

[5] See Boudin, "Has the Writ of Habeas Corpus been Abolished in New York?" 35 COL. L. REV. 850 (1935).

[6] Ex parte Chase, 193 N. C. 450, 137 S. E. 305 (1927); Clark v. Matthews, (Tex. 1928) 5 S. W. (2d) 221.

[7] 73 A. L. R. 567 (1931).

[8] "A court or a judge authorized to grant either writ must grant it without delay whenever a petition therefor is presented. . . ." New York Civil Practice Act, § 1235. N. Y. Consol. Laws (McKinney, 1927), c. 27, "Mental Hygiene Law," § 204.

[9] This is the usual rule in civil cases. 14 IOWA L. REV. 102 (1928).