1948

Leroy Newbill v. John A. Hendricks : Brief of Plaintiff

Utah Supreme Court

David K. Holther; Attorney for Plaintiff;

7251

IN THE

SUPREME COURT

OF THE STATE OF UTAH

LEROY NEWBILL,

Plaintiff,

VS.

JOHN A. HENDRICKS, as Judge of the District Court of the Second Judicial District in and for the County of Weber, State of Utah,

Defendant.

Plaintiff's Brief

DAVID K. HOLTHER,
Attorney for Plaintiff

J. C. WOODY PRINTING CO., OGDEN, UTAH

INDEX

IN THE

SUPREME COURT

OF THE STATE OF UTAH

LEROY NEWBILL,

Plaintiff,

vs.

JOHN A. HENDRICKS, as Judge of the District Court of the Second Judicial District in and for the County of Weber, State of Utah,

Defendant.

STATEMENT OF FACTS

Plaintiff, residing in Ogden, Utah, was there arrested July 24, 1948. He was booked at the Weber County Sheriff's Office in Ogden and confined until July 26, 1948, when he was conducted under arrest by Deputy Sheriffs to the North Courtroom, on the 5th floor of the City-County Building in Ogden, and before the Honorable Alfred Gladwell, as Judge of the Justices' Court of the Precinct of Burch Creek, County of Weber, State of Utah. Then and there a complaint charging Plaintiff with a state misdemeanor was subscribed and filed. The complaint was read to plaintiff, he was asked by said Judge whether or not the name shown in the complaint was his true name; he replied in the affirmative; he was requested by said Judge to enter a plea of guilty or not guilty; he pleaded guilty and was there-

upon sentenced upon his plea. Plaintiff was not advised by said Judge, or anyone, at the time of said proceedings, or prior, that said Judge was not a Judge or Justice of the Ogden City Precinct, nor was plaintiff asked to waive the jurisdiction and venue, nor was he advised he could. None of the proceedings took place in Burch Creek Precinct.

OTHER PERTINENT FACTS ARE:

Ogden City has a city court and had and now has a aduly elected, qualified and acting Judge thereof.

The Judge of the Ogden City Court is exofficio Justice of the Peace of Ogden City Precinct.

The City of South Ogden and Ogden City are separate and distinct Cities of the State of Utah.

The Honorable Alfred Gladwell resides at 3908 Adams Avenue in the City of South Ogden.

Burch Creek Precinct is a separate Precinct from Ogden City Precinct.

All the foregoing facts appear in substance from the Stipulation made and entered into by the Plaintiff's Attorney and the District Attorney, the prosecutor on appeal to the District Court.

SUBSEQUENT PROCEEDINGS

An appeal was taken to the District Court of the Second Judicial District, and before the Honorable John A. Hendricks. Motions to quash and to dismiss were made on the grounds that the Justice did not have jurisdiction of the offense. These motions were denied and

said Judge set a date for the entry of plaintiff's plea. Plaintiff, fearing that on said date the said Judge would take his plea and then set a date for trial and on the latter date try the case on appeal, sought and procured herein, a Peremptory Writ of Prohibition. A general demurrer has been interposed by the District Judge, defendant herein.

STATEMENT OF ERROR

1. The District Judge, defendant herein, erred in denying plaintiff's motion to quash and to dismiss the complaint.

ARGUMENT

The sole question presented and argued herein, may be tersely expressed:

> May the Judge of the Justices' Court of the Precinct of Burch Creek, County of Weber, State of Utah, hold Court in Ogden City Precinct, County of Weber, State of Utah, and there take the oath of a complainent to a complaint charging plaintiff with a state misdemeanor, proceed to arraign the plaintiff, take his plea, and sentence him?

If this be answerable in the affirmative, then the action of the District Judge, defendant herein, in denying the motions of the plaintiff to quash and to dismiss the complaint are not error and the Peremptory Writ of Prohibition herein should be dismissed.

But, plaintiff does not now believe the Judge of said Justices' Court has such right and correlatively the ruling of the District Judge, defendant herein, was erroneous, and the Writ of Prohibition should be made Absolute.

Under Title 20, (Courts), Chapter 5, (Justices' Courts), Section 1, (Residence—place of Holding Court), Utah Code Annotated 1943, appears the following law:

> *"Every justice of the peach shall reside in and shall hold a justices' court in the precinct, city or town for which he is elected or appointed;* PROVIDED, that where two or more precincts are embraced within the limits of any incorporated city or town the justices of the peace of such precincts may hold court at any place within such city or town. (Italics ours.)

Applying the pertinent facts: The court was held in Ogden City Precinct; Alfred Gladwell resides in the City of South Ogden, and outside of Ogden City Precinct; he was not elected or appointed in or for Ogden City Precinct.

Plaintiff reaches what is believed to be the inescapable conclusion that there is no authority whatever, for the holding of the Court in Ogden City, and the pretence of the holding of such Court was, without jurisdiction, a nulity, and the proceedings wholly void.

The particular provision of the law cited above is not unique in this State. For comparison, Title 104, (Code of Civil Procedure), Chapter 71, (Justices Courts —Place of Trial), Section 1, (where actions must be commenced and tried), Utah Code Annotated 1943, provides the following:

"Actions in justices' courts must be commenced, and, subject to the right to change the place of trial as in this chapter provided, must be tried:

(1) If there is no justices' court for the precinct or city in which the defendant resides,—in any city or precinct of the county in which he resides. (Here follows paragraphs (2) to (10) inclusive, which indicate in general that the place of residence (precinct) of the defendant when a resident of the county, is the place where actions should be brought modified in special cases.) The last paragraph reading: (10) In all other cases—in the precinct or city in which the defendant resides."

104-71-2 U.C.A. '43 Id. Provisions of Proceeding Section Jurisdiction.

"The conditions stated in the last section are jurisdictional, and judgments rendered in disregard thereof shall be wholly void."

The provisions governing City Courts are comparable.

20-4-8 U.C.A. '43 Id Residence—Place of Holding Court. "*Every judge of a city court shall reside in and hold court in the city for which he is elected,* and the city commissioners or city councils of such cities shall provide suitable rooms for holding the city court, together with attendants, furniture, lights and stationery sufficient for the transaction of business, the expenses of which shall be paid out of the general funds of the city treasury. (Italics ours.)

And even with a judge of the District Court, he holds Court only in his District except where he is requested to sit in a county outside of his District by the judge of the district or on request of the Governor.

Nowhere in the law of this state can plaintiff find a provision for an ambulatory, circuit-riding justice of the peace, sitting at times in the city of his residence and at other times in an adjoining precinct, at his sole will and discretion.

The best statement from a text relative to the effect of a judgment rendered by a Justice of the Peace holding court outside of his precinct is contained in 31 American Jurisprudence at page 749 under the title, Justices of the Peace—Trial

> "76. Time and Place.—While the place for holding a trial is not usually definitely fixed by statute, still the evils and hardships resulting from migratory court have induced the legislatures in some jurisdictions to provide that justices of the peace shall sit at fixed times and places, (15) and it is made the duty of justices to select some central and convenient place in their respective districts at which to hold their courts. When the place for holding a justice's court is definitely fixed pursuant to law, such court cannot be held at any other place; and a *judgment of a justice of the peace is void when it affirmatively appears that the court was held at a place where it could not lawfully sit.* (16)"
> (15) Hilson v. Kitchens, 107 Ga. 230, 33 SE 71, Am St Rep 119; Western U. Teleg. Co. v. Taylor, 84 Ga 408, 11 SE 396, 8 LRA 189.
> (16) Hilson v. Kitchens, 107 Ga 230, 33 SE 71, 73 Am. St. Rep. 119. Anno: 33 LRA 90, S. LRA 1917E 361.

THE REMEDY

The plaintiff, on learning that the Justice before whom he was taken was not a Judge or Justice of Ogden City Precinct, appealed to the District Court pursuant to

the provisions of 105-57-38 to 41 inclusive U.C.A. 1943. He then interposed his motions to quash and to dismiss pursuant to the provisions of 105-44 (1) U. C. A. 1943. Since the motions were denied, we believe erroneously, and the defendant Judge was about to proceed further with the case, the only speedy and adequate remedy of the plaintiff was to seek a writ of prohibition. He did this.

The District Court only gained jurisdiction on the appeal if the court from which the appeal was taken had jurisdiction and if the justice had no jurisdiction, the plaintiff was entitled to have the complaint dismissed on motion. 105-57-44 (1) U.C.A. 1943.

CONCLUSION

It is respectfully submitted that the District Judge, defendant herein, ought not to further proceed against the plaintiff, and therefor the Writ of Prohibition should be made absolute; that the complaint against the plaintiff herein, ought to be dismissed and his bond be exhonorated.

DAVID K. HOLTHER,

Attorney forPlaintiff