

mined. *Riddlesbarger v. McDaniel*, 38 Mo. 138; *Henze v. Railroad Co.*, 71 Mo. 636, 644. See, also, *Bank v. Steinnitz*, 65 Cal. 219, 3 Pac. Rep. 808. We hold, therefore, that the bill of exceptions in the present case was properly allowed and filed, and we accordingly overrule the motion to expunge it from the record.

In re BOLES.

(Circuit Court of Appeals, Eighth Circuit. October Term, 1891.)

1. CIRCUIT COURT OF APPEALS—HABEAS CORPUS—EXTRATERRITORIAL JURISDICTION.

A circuit court of appeals has no jurisdiction, in the absence of a statute expressly authorizing it, to award a writ of *habeas corpus* to be served outside of the circuit for which it sits, to secure the release of a person there held in custody.

2. SAME—APPELLATE JURISDICTION—TERRITORIAL DISTRICT COURTS.

The court is not authorized to award such writ on the ground that its appellate jurisdiction is invoked therein to revise the decision of the district court of a territory within its circuit under whose process petitioner was confined; for by section 15, Act Cong. March 3, 1891, creating the circuit courts of appeals, their appellate jurisdiction over territorial courts is limited to the supreme courts of the territories.

This is an application for a writ of *habeas corpus* to release from imprisonment one W. H. Boles, who is now, as it is said, confined in the Ohio state penitentiary at Columbus, Ohio, under a sentence imposed by the district court of Logan county, territory of Oklahoma, at its adjourned September term, 1890. The petition for the writ charges that the court before whom the petitioner was tried, convicted, and sentenced for horse-stealing had no jurisdiction of the offense for which he was tried, and that the sentence imposed was for that reason void. It also states in detail the several facts that are supposed to have rendered the proceedings of the district court utterly nugatory and void, but the view that we take of the case renders it unnecessary to recite such facts. A writ is sought against B. F. Dyer, warden of the Ohio state penitentiary, he being the person who now has the petitioner in custody.

Ira C. Terry, for petitioner.

Geo. D. Reynolds, U. S. Dist. Atty.

Before CALDWELL, HALLETT, and THAYER, JJ.

THAYER, J., (after stating the facts as above.) It will be observed that we are asked to award a writ of *habeas corpus* to be served at a place outside of the territorial jurisdiction of this court, for the purpose of securing the release of a person who is there confined, and we are of the opinion that we have no authority to award such a writ. It certainly cannot be maintained that this court has power to release persons who are unlawfully restrained of their liberty in any part of the United States under color of process of a federal court, as the supreme court may do, yet such would be the assertion of jurisdiction on our part, if we granted

a writ in the present instance. In the absence of any statute expressly authorizing us to issue a writ of *habeas corpus* to run and be executed outside of the circuit, our jurisdiction to release from unlawful imprisonment would seem to be restricted to cases where persons are restrained of their liberty somewhere within the circuit. *Ex parte Graham*, 3 Wash. C. C. 456. It was suggested at the hearing, as we understood counsel, that a writ might be awarded in this case to be served outside of the circuit, because the jurisdiction invoked is to revise the decision of the district court of the territory, and is therefore in its nature appellate, and because the appellate jurisdiction of this court extends to the territory of Oklahoma by virtue of the fifteenth section of the act creating circuit courts of appeal, and an order made by the supreme court on May 11, 1891, assigning Oklahoma to this circuit. The *Yerger Case*, 8 Wall. 86, and other kindred cases, are cited in support of this contention. It is sufficient to say that the authorities invoked have no application to the facts of this case. No writ of error or appeal can be prosecuted from the several district courts of the territory of Oklahoma to this court. We have no general supervisory control over the proceedings of those courts, and congress has not seen fit, in express terms, to confer on this court, as upon the supreme court, the power to issue writs of *habeas corpus*. Our appellate jurisdiction over territorial courts, except in the Indian Territory, is limited to a "review of the judgments, orders, and decrees of the supreme courts of the several territories" assigned to the circuit. *Vide* section 15, *supra*. It is an appellate jurisdiction formerly exercised by the supreme court of the United States, but whether it is more or less extensive than the jurisdiction formerly exercised by that court we do not now decide. For present purposes we only decide that we cannot issue the writ in question to be served in another circuit, merely because the petitioner is there confined in execution of a sentence imposed by one of the district courts of the territory of Oklahoma. It was contended on the argument of the application that this court could not grant the writ prayed for, even though petitioner was unlawfully restrained of his liberty within the circuit, because this court has not been authorized by statute to issue writs of *habeas corpus*. Several well-known authorities are cited in support of this proposition, to-wit, *Ex parte Bollman*, 4 Cranch, 75; *Ex parte Parks*, 93 U. S. 18; *In re Burrus*, 136 U. S. 586, 10 Sup. Ct. Rep. 850; but we carefully refrain from expressing any opinion on this important question until a case arises that requires a decision. The writ is denied, and the application therefor dismissed.

Ex parte CONWAY.

(Circuit Court, D. South Carolina. October 27, 1891.)

HABEAS CORPUS—JURISDICTION OF CIRCUIT COURTS—IMPRISONMENT FOR ACT DONE BY FEDERAL AUTHORITY—POST-ROADS—ERECTING TELEGRAPH LINES.

Under Act Cong. March 1, 1884, (23 U. S. St. at Large, 3,) declaring all public highways and roads to be post-roads of the United States, a person engaged in erecting a telegraph line along a public road for a company which has accepted the provisions of Act Cong. July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military, and other purposes," and which authorizes the construction of telegraph lines over and along any military and post roads of the United States, is acting under authority of an act of congress, and, if arrested by the state authorities for obstructing the highway merely because of the prosecution of such work, he will be released on *habeas corpus*.

On *Habeas Corpus* to release R. H. Conway from imprisonment under a warrant issued by a justice of the peace for obstructing a highway.
Mordecai & Gadsden, for petitioner.

SIMONTON, J. The petitioner is the foreman of the gang engaged in constructing and erecting the lines of the Postal Cable & Telegraph Company. This company, incorporated under the laws of New York, has its line running through all the Atlantic states, and the line upon which the petitioner was engaged connects Charleston with Savannah. The Postal Company has accepted the provisions of the act of congress approved July 24, 1866. This act, entitled "to aid in the construction of telegraph lines, and to secure the government the use of the same for postal, military, and other purposes," authorized the construction of telegraph lines over and along any of the military and post roads of the United States. By act of 1st March, 1884, (23 U. S. St. at Large, 3,) all public highways and roads are declared post-roads of the United States while they are kept up. The petitioner alleges that while he was engaged as such foreman in constructing this line through Colleton county, in South Carolina, over and along the old state road between Charleston and Savannah,—a public road, kept up and worked,—he was arrested, and is now in custody under a warrant issued by H. W. ACKERMAN, a trial justice of said county, upon the charge of obstructing a public road. He alleges that he is acting under and by virtue of the provisions of the act of congress, and claims the protection of this court. The case is cognizable in this court, (*Railroad Co. v. Mississippi*, 102 U. S. 135,) and the court can on this writ inquire into the cause of his commitment, and discharge him if he be held in custody in violation of the laws of the United States, (*Ex parte Royall*, 117 U. S. 250, 6 Sup. Ct. Rep. 742.) "If he be held in custody in violation of the constitution or a law of the United States, or for an act done or omitted in pursuance of a law of the United States, he must be discharged." *In re Neagle*, 135 U. S. 41, 10 Sup. Ct. Rep. 658. Section 761 of the Revised Statutes of the United States prescribed the duties of the court upon an application of this character to "proceed in a summary way to determine the facts

of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require." "The single question is to be fully tried, not on affidavits, but upon testimony, not *ex parte*, but after a full hearing on both sides." Mr. Choate's argument in *Re Neagle*. The trial justice who has the petitioner in custody produces as his return the warrant and the prisoner. He does not appear, and no one appears for him. Counsel for the petitioner has, under instructions of the court, notified the solicitor of the circuit in which Colleton county is included of this hearing, and the solicitor does not appear. To this extent the court is without assistance. I recognize to the fullest extent the delicacy of the question, and would not willingly enter into a discussion which would seem to interfere with the process of the state court. It is a principle of right and of law, and therefore of necessity, that such interference should be avoided between the courts of the United States and the state courts. *Covell v. Heyman*, 111 U. S. 176; 4 Sup. Ct. Rep. 355. But the duty is cast on this court of examining into the facts of cases like this,—of hearing and deciding them. This has been done. The testimony of disinterested witnesses has been taken, and compared with the affidavit of the state's witnesses, and the conclusion has been reached that the cause and ground of the prosecution arise from the construction and erection of this telegraph line and from objections to it. Let the prisoner be discharged.

UNITED STATES *v.* SANGES *et al.*

(Circuit Court, N. D. Georgia. October 5, 1931.)

1. CONSTITUTIONAL LAW—RIGHT TO TESTIFY BEFORE FEDERAL GRAND JURY—CONSPIRACY.

The amendments to the constitution of the United States, including especially section 1 of the fourteenth amendment, so far as they relate to the rights of individuals, are intended to prevent the states and the United States, or any persons acting under their authority, from interfering with existing rights, and do not confer any new rights; and hence one cannot claim that his right to testify before a federal grand jury without interference from private individuals is one conferred by the constitution of the United States, within the meaning of Rev. St. U. S. §§ 5508, 5509, which prescribe a punishment for any persons who "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution of the United States, or because of his having so exercised the same." *Ex parte Yarbrough*, 110 U. S. 653, 4 Sup. Ct. Rep. 152; *U. S. v. Waddell*, 112 U. S. 76, 5 Sup. Ct. Rep. 35; and *State v. Lancaster*, 44 Fed. Rep. 396,—distinguished.

2. SAME—CONSPIRACY—INDICTMENT.

Rev. St. U. S. § 1977, declaring that "all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other," will not support an indictment for a conspiracy by private individuals to injure and oppress a citizen for testifying before a federal grand jury, in the absence of allegations that such citizen was a person of color, or that the acts were committed because of his color and previous condition of servitude.