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Freedmen's Bureau

Registers and Letters Received by the Commissioner, Letters Received, Entered in Register 9, R, Jan.–May 1867

Extracted on Mar-28-2024 09:14:50

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20...	50	80	105	105	164	195

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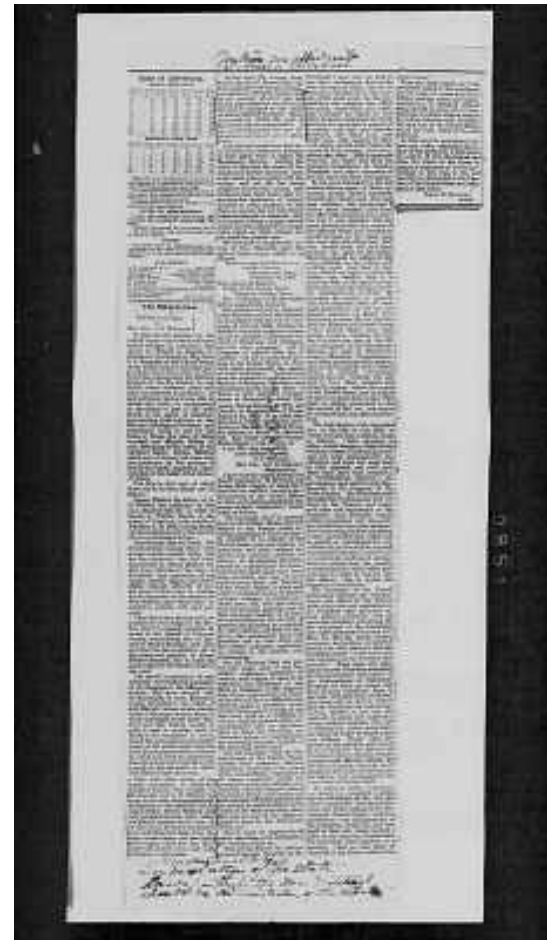
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The Milsted Case.

The State of Texas vs. Maj. Gen. J. J. Reynolds



In this case the petition for the writ of habeas corpus which has been issued alleges in substance that Aaron G. Milsted is illegally restrained of his liberty by Maj. Gen. J.J. Reynolds of the United States army, under colour of an order purporting to have been issued to Gen. Reynolds, commanding the Military District of the Rio Grande, by one Kiddo, whose christian name and rank are unknown to petitioner, as said petitioner had not been able to obtain said order, in consequence of his refusal to pay to the said Kiddo, or his agent, or assistant, representing what is known as the Bureau of Refugees Freedmen and abandoned lands in and for the State of Texas, the sum of three hundred and fifty-six dollars in coin, belonging to the estate of his deceased father, Abram Milsted, which sum of money had come into his possession by due process of law as the legally appointed administrator of the estate of his deceased father.

The facts in this case of which there can be no true denial are as follows:

Abram Milsted, the father of A. G. Milsted, the petitioner in this case, departed this life at what is known as White's Ranch, in the county of Cameron, in the month of February A. D. 1866, leaving money and personal property to the amount of several thousand dollars.

Immediately after his death, different persons (among whom where a negro woman named Anna, and her son Alexander, who had been manumitted by Abram Milsted but who were with him at the time of his death) took possession of his money, mules, wagon, and other effects, without authority of law, the most of whom were in waiting for the departure of the steamer for New Orleans, upon which they intended to embark with said property.

Upon these facts having been represented to the Judge of the Probate Court, he issued a warrant directed to the Sheriff of Cameron County, commanding him to proceed to Brazos Santiago, and seize and take into his possession all of the money and property of Abram Milsted deceased, and to hold the same subject to the further order of the court.

The sheriff, in pursuance of said authority, went and took possession of the baggage of the different intruders, who were charged with having illegally in their possession money, belonging to the estate of said Milsted; among which was the trunk of the negro woman Anna, in which was found about three hundred and fifty dollars, mostly in gold, in such a corroded state as hardly to be recognized as money, and the same appearance of other money of the estate, taken from the other persons herein before referred to, which had, from its appearance, been for a long time buried in the ground, as was the mode in which said Milsted kept his money.

This, with other money of the estate, amounting to thirty-five hundred dollars, was brought to Brownsville, and A. G. Milsted, the party in the suit, was appointed administrator of the estate of his deceased father Abram Milsted, and duly qualified as such, after which the Sheriff turned over to him all of the money he had in his possession, including that taken from the negro woman Anna, and two mules and a wagon, which her son Alexander had carried away and sold, belonging to said estate.

[[note]] Understood to be in violation of the state laws - that the son Milstead should be administrator of the estate [[?]] see Affidavit of Anna

Milstead[[/note]]

At that time, the woman Anna was in the city of Brownsville, and was cognizant of all the proceedings, and made no objection thereto; but on the contrary admitted that the money taken from her was not hers, but that it belonged to the estate of Abram Milsted deceased. There is no mode by which this part of the record can be controverted. It was in proof then from her own declarations, and can be put in proof today.

And thus this matter has slept until awakened by influences brought to bear upon what is called the Freedmen's Bureau. During the whole of this time the courts of the county and district have been open to the black citizen equally with the whites; and yet she has never sought to recover this money, and whatever may have been said respecting the treatment of colored persons in other portions of the State, no person has yet been found infamous enough to insinuate that in Cameron County a single colored person has been deprived of a single right, which our white citizens enjoy, until the present case.

We now pass to consider the return of Gen. Reynolds upon the writ of habeas corpus, which is as follows:
Headquarters Sub-District of the Rio Grande.
Brownsville, Texas,
February 16, 1867.
Hon. Israel B. Bigelow,
Judge of the County Court,
Cameron County, Texas.
Sir: Compliance with the within writ is respectfully declined.

The prisoner is held by authority of the President of the United States, in accordance with the act of Congress of July 16, 1866, Section 14, entitled "an act to continue in force an act to establish a Bureau for the relief of Freedmen and Refugees, and for other purposes." Act of Congress of April 9, 1866, Sec. 9. entitled "an act to protect all persons in the United States in their civil rights, and furnish the means of their vindication." "Instructions from the Assistant Commissioner of Bureau of Refugees, Freedmen and abandoned Lands for the State of Texas to Sub Assistant Commissioner at Brownsville dated Galveston, Texas, January 5, 1867, and Circular to Headquarters of Texas, January 12, 1867. It is held that this case is wholly beyond the jurisdiction of the State Courts of Texas. See Allman vs. Booth 21, Howard 523. Also Judge Advocate General Holts Digest p. 118, Section 11."

I am, Sir, very respectfully, your obedient servant,
J. J. Reynolds,
Maj. Gen., Col. 26 Infantry, Commanding.

I have not the case of Albman vs. Booth reported in 21 Howard, nor Judge Holts Digest at hand, but I have the act entitled "an act to protect persons in the United States in their civil rights, and furnish the means of their vindication, " which reads as follows:

"Be it enacted, That all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall have the same right in every

State, and Territory of the United States, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefits 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 and penalties, and to none other, any law, statute, ordinance, regulation, or customs to the contrary notwithstanding."

Sec. 2d, Declares "that any person who under color of any law, statute, ordinance, regulation or custom, shall subject or cause to be subjected any inhabitant of any State or Territory, to the deprecation of any right secured or protected by this act or to a different punishment, pains or penalties, on account of such person having at any time been held in a condition of slavery, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not exceeding one thousand dollars or imprisonment not exceeding one year, or both, in the discretion of the court."

Sec. 3d, Provides "that the District Courts of the United States, neither their respective districts shall have, exclusively of the courts or the several States, cognizance of all crimes committed against the provisions of this act, and also concurrently with the Circuit Courts of the United States, of all causes civil and criminal, affecting persons who are denied, or cannot enforce in the courts of the State or locality where they may be, any of the rights secured to them by the first section of this act."

Now it must be apparent to all minds that there is no ambiguity in the wording of this act.

This act was framed by, and engineered through Congress by Mr. Trumbull, a man who, as well as any other, understood that words were the signs of ideas, and he, in framing it, devoted all of the energies of his great mind, for the consumation and carrying into effect of a great, benevolent, and equitable principle for which he, and other American statesmen had been laboring for more than a quarter of a century, and that was that the freedmen, and black man, and white man, with respect to their civil rights, should stand before the courts of their country, and everywhere else, alike. This is apparent from the act itself, and from the repeated declarations of Senator Trumbull and other advocates of the bill, upon the floor of Congress.

It was never intended by the law makers that an agent of these oppressed people should constitute himself into a Judge and Jury and pass sentence, and encarcerate a citizen three hundred miles from his office without giving him a hearing, but it was intended that the agent should see that the courts of the different States and Territories should be open to the black man the same as to the white man; that they should hold, sell and lease property the same as the whites. That they should be subject to the same penalties as the whites, and nothing more. And that if they were denied any right to which the whites were entitled, then it is made the duty of the agent or commissioner to see the wrong corrected. And how is he to do it? By arresting the person or persons who have deprived them of some right guaranteed by the law and passing sentence on them? Certainly not, because the law declares that the District and Circuit Courts of the United States alone shall punish persons violating the law; but it is made the duty of the officers and agents of the Freedmen's Bureau, the same as District Attorneys, Marshals, Commissioners, and other persons specially

empowered by the President of the United States, to institute proceedings against persons violating this act, and to have them arrested and bound to appear before the courts of the United States, and in default of bail to commit them to jail. This duty is plainly prescribed in the 4th section of the act, and cannot be tortured into any other construction.

The 14th Section of the Amended Act of the 16th of July 1866, to which we have been referred, reads as follows: "And whenever in either of said States or Districts the ordinary course of Judicial proceedings has been interrupted by the rebellion, and until the same shall be fully restored, and until such State shall have been restored in its Constitutional relations to the government, and shall be duly Represented in the Congress of the United States. The President shall through the Commissioner and officers of the Bureau, and under such rules and regulations as the President shall prescribe, extend military protection and have military jurisdiction over cases and questions concerning the free enjoyment of such immunities and rights and no penalty or punishment for any violation of the law shall be imposed or permitted because of race or color or previous condition of slavery, other, or greater than the penalty or punishment to which white persons may be liable by law for the like offense." Let us notice the language of this Section:

The President of the United States shall through the Commissioner and officers of the Bureau under such rules and regulations as the President shall prescribe, extend military protection over all cases and questions concerning the free enjoyment of the immunities and rights guaranteed in said Act: Here we find the words military protection and military jurisdiction issued, but with the we find the limitation clause: "under such rules and regulations as the President shall prescribe." What rules and regulations has the President prescribed for the government and control of the Commissioner at Galveston? To these we have no access, nor have we been referred to them in writ; and until they are shown, this Court will be slow to believe that the President has conferred upon Gen. Kiddoo or any one else authority to arrest and imprison a citizen without allowing him bail or sending him before some tribunal where he could be heard in his own defense. Simply upon the ground of his refusal to pay over to an irresponsible Sub Agent of the Freedmen's Bureau the sum of three hundred and fifty-six dollars, for the use of a person who has never applied to the Courts of the Country for redress, and consequently, has never been denied any right.

To arrive at such a conclusion, we should be compelled to strike out the 3d Section of the very Act which created the Freedmen's Bureau, and which confers on the District and Circuit Courts; exclusive jurisdiction over infringements of the provisions of this law, and lose sight of that rule which has had a place in the American Constitution for more than three-quarters of a century; "that no man shall be deprived of his liberty without due course of law."

From the lights before me, I am irresistibly forced to the conclusion that the order of arrest from Gen. Kiddoo, and the arrest and imprisonment of A. G. Milstead without being allowed to enter bail by Gen. Reynolds, is wholly without authority, and in violation of the Constitution and laws of the United States, and of the legal rights of the said petitioner.

As this Court is powerless to enforce any order respecting the release of the petitioner, I shall grant the motion of Col. Macmanus and order the

Clerk of the Court to prepare a transcript of all the proceedings in this case, to the end that they be forwarded to the President of the United States for his inspection and action.
Israel B. Bigelow,
Judge.

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