

Committd

Copy
Cockrell & Record
Wells

1839 Sept 6th writ
of error awarded by
Judge Smith on the
petition of the said Cockrell
& Wells. Order Court
partly heard and heard
of County Court reversed
& left discharge on
the Italian Corpus &c

Boocke &c

Petition for
Habeas Corpus

To the Honorable Daniel Smith Judge of the
Circuit Superior Court of Law and Chancery for
the County of Rockingham.

The Petition of George W. Corker & William
Wells humbly represent that on the 21st day of
August 1839 at the August term of the County
Court of Rockingham your Petitioners were
summoned by the Sheriff to appear before and
give evidence to the Grand ^{Jury} then in session in
said Court. Your Petitioners appeared accord-
ingly and were sworn in Court to give evidence
and when your Petitioners appeared before the
Grand Jury they were interrogated "Whether
they knew of any unlawful gaming in the
County of Rockingham, they stated that they
knew of no gaming at any tavern or other pub-
lic place, as they believed nor did they know of
any gaming at any private place where more
than twenty dollars were won or lost; The
Grand Jury then interrogated your Petitioners
if they knew of any gaming at the house of
Joseph Cowgill in the Town of Harrodsburg
this question it is charged your Petitioners re-
fused ^{to answer}, and even threatened to
fail them to remain until they were com-
pelled to give the Grand Jury the evidence re-
quired and until the Grand Jury should

be sitting and prepared to receive said evidence. A copy of the record of the said order and judgment of the said Court is herewith exhibited for the inspection and consideration of your Honor.

Your Petitioners are advised that there is error in the aforesaid order and judgment of the said County Court for which the same ought to be reversed. They are advised that there is error apparent on the face of the record of the order and judgment aforesaid as follows: 1st In committing your petitioners to jail for any cause or causes set forth in the said order or judgment.

2nd In committing your Petitioners for a longer period than ten days without the verdict or intervention of a jury.

3rd In committing your Petitioners to jail for a supposed contempt in not answering a question propounded by the Grand Jury, when in fact it appears from the face of the record that the said question had been answered.

4th In committing your Petitioners to jail for a supposed contempt on the oral

statement of the Grand Jury or some one
of them whereas if your Petitioners had been
guilty of any disrespect to the Grand Jury
or misbehavior or contempt of the authority
of the Court, there should have been an
affidavit charging the same or some
written statement thereof by the Court the
Grand Jury or some other person that a
legal witness should have been produced
to support the charge and that your
Petitioners might be permitted to repel
the charge by responding to interrogatories
submitted by the Court or by the pro-
duction of legal testimony on their part.

For these and other errors apparent on the
face of the records aforesaid your Petitioners
pray that a writ of error may be awarded
there to the aforesaid judgment and or-
der of the said County Court and that
the said judgment and order may be
reversed and annulled and your Pe-
titioners will ever pray &c.

G W Cockerill

Wm Witt

I am humbly of opinion that there is error
in the judgment and proceedings within
mentioned for which the same ought to
be reversed

Thomas Clarke

4th Sept 1839

Virginia to wit, In the Records and proceedings of the County Court of
Rockingham, there is the following to wit.

At a Court continuing and held for the County
of Rockingham, on Wednesday the 21st day of August 1839.

The Grand Jury, sworn for this County, on Monday last appeared in
Court agreeably to their appointment, and retired from the bar to
consider of their presentments, and after some time, returned into
Court, and stated that they, had, ~~had~~ before them two witnesses
to wit/ George W. Cockrell and William Wills, who after being sworn
to give evidence to the Grand Jury, and being interrogated, whether
they knew of any unlawful gaming, in the County of Rockingham
stated that they knew of no gaming, at any Tavern or other
Public place, as they believed, nor did they know of any gaming
at private place, where more than \$20. was won, or lost, the
Grand Jury, then interrogated the said Witnesses, if they knew
of any gaming at the house of Joseph Cogswell, in the Town of
Harrisonburg, this question the Witnesses both refused to answer,
They were informed, and admonished, of their duty, and instructed
that, ^{unless} they would answer the questions then submitted to them,
they would be committed to jail, untill they would answer.
The questions both the Witnesses again promptly refused to
answer the questions, they were ordered to jail, there to remain
untill they were willing to give to the Grand Jury, the evidence
required, and untill the Grand Jury should be sitting and prepared
to receive the said evidence as above required, - and the said
Grand Jury having no further business before them they were
discharged

Teste

St. J. Gambel Clerk

To the Honble David Smith Judge of the Circuit Superior Court of Law &
Chancery for Rockingham County, In Pursuance of the annexed writ
therewith, send a Copy of the Record and proceedings in the case
therein mentioned, lately depending in the County Court of Rockingham
Given under my hand this 10th day of September 1839.

Aug. Watrous one of the
Justices of the peace for said County.

Rockwell p

ad. Copy Record
County

To the Honorable Daniel Smith Judge of the Circuit
Superior Court of Law & Chancery for the County of
Rockingham: Your Petitioners George W. Cockrill
and William Wits humbly represent that They are
confined in the common jail of the County aforesaid
in custody of the Sheriff and jailor thereof, by
virtue of an order of the County Court of said
County entered of record at the August Term
of said Court in the year 1839, a copy of which
order is herewith exhibited for the inspection of
Your Honor. Your Petitioners are advised that
the said order contains no charge nor sets forth
no lawful cause why or wherefore Your Petitioners
should be deprived of their liberty, and Your
Petitioners being imprisoned for no other cause, to
them known, than the order aforesaid, they humbly
conceive and have good cause to believe and
verily do believe that they are detained in custody
without lawful authority. Your Petitioners beg leave
to state that when interrogated by the Grand Jury
"Whether they knew of any unlawful gaming in the
County of Rockingham", they replied "that they knew
of no gaming at a tavern or other public place
nor did they know of any gaming at a private
place where more than twenty dollars were won
or lost at any one time", and when the Grand Jury
inquired of Your Petitioners whether they knew of
any gaming at the house of Joseph Cawley in the
Town of Harrodsburg They refused to answer the

question for the following reasons: 1st Because they conceived they had already fully answered the question having stated that they knew of no gaming at any tavern or other public place nor of any gaming at a private place in the County of Rockingham where more than twenty dollars were lost or won at any one time, the house of Joseph Cough being in the Town of Har-
rington and County of Rockingham was necessarily included in the answer of your Petitioners to the first interrogatory of the Grand Jury

2nd Because the new art of gaming is con- sidered in the community as odious and disgrace- ful and your Petitioners could not consent un- less lawfully interrogated to expose to public ope-
nure and disgrace private houses and private companions ^{and themselves also} although they might casually have seen gaming in such houses by such compa-
nions when such gaming was known to your Petitioners to be lawful.

3rd Because your Petitioners in refusing to answer the said interrogatory intended no disrespect to the Grand Jury nor any contempt to the authority of the Court. They had cheerfully obeyed the pro-
cess of the Court when summoned by the Sheriff to give evidence to the Grand Jury and when before the Grand Jury answered all questions

binding to give information with regard to
any unlawful gaming in the County of Rock-
ingham. Your Petitioners refused to answer the
said interrogatory because they considered it
illegal, involving results highly prejudicial
to themselves injurious to others and produc-
tive of no public good. In fact and in truth
the Grand Jury did not inquire whether
your Petitioners knew of any unlawful gam-
ing at the house of Joseph Bogle, but whether
or they knew of any gaming. If the object of
the Grand Jury was to ascertain whether there
was lawful gaming at the house of Bogle
your Petitioners are advised that it was not
within the province of the Grand Jury to make
such inquiry. If the object of the Grand Jury
was to inquire of any unlawful gaming at the
house of Bogle then your Petitioners conceive
they had responded to the inquiry when they stat-
ed they knew of no unlawful gaming in any
houses public or private in the County of Rock-
ingham.

4th your Petitioners conceive that they are
unlawfully imprisoned because the County Court
even if your Petitioners had been guilty of an
^{intentional} contempt in their presence, ^{which they disclaim,} had no authority
to commit them to prison for a longer period
than ten days without the intervention of

a jury in Sep. to read Code pages 143. 144.

For these and other reasons to be assigned
your Petitioners pray your Honor to grant unto
them the Commonwealth; writ of Habeas Corpus
ad subjiciendum directed to the Sheriff
and Keeper of the Jail of the County of Rocking-
ham commanding them to produce the bodies
of your Petitioners forthwith before your
Honor with the cause of their confinement
and detention in custody that the same
may be inquired into and legally exam-
ined by your Honor and your Petitioners
well ever pray &c.

4th Sept. 1839

G. W. Rockwell
Wm. Witts

Rockingham County to wit:

This day the above named George W. Rock-
well and William Witts came before the sub-
scribed a justice of the peace in and for the
said County and made oath that the facts
stated in the foregoing Petition are true to
the best of their knowledge and belief given
under my hands this 4th day of September 1839
Aug. Waterman

I Thomas Clarke a practicing Attorney in the Circuit
Superior Court of Law and Chancery for the County
of Rockingham do hereby certify that I am of opin-
ion that the above Petitioners are illegally imprisoned
given under my hands this 4th day of Sept. 1839
Thomas Clarke

Be it remembered that on the 7th day of September 1839. George W Cockrell & William With were brought before me Daniel Smith a Judge of the General Court and Judge of the Circuit Superior Court of Law and Chancery of Rockingham County at the Town of Harrisonburg in said County by virtue of the annexed writ of Habeas Corpus ad subjiciendum heretofore issued by the said Daniel Smith, to which the Sheriff returned as the cause of the Caption and detention of the said George W Cockrell & William With. An order of the County Court of Rockingham made on the 21st day of August 1839, a copy of the record of which is hereto annexed, and to which order a writ of error was this day awarded by me as a Judge of the General Court, —

And be it further remembered that thereupon the said George W Cockrell and Alexander McGlvery came before the said Daniel Smith one of the Judges of the General Court as aforesaid and severally acknowledged themselves to be indebted to David Campbell Esq. Governor of Virginia each in the sum of fifty dollars to be respectively levied on their

goods and chattels land and tenements and to the said Governor or his successors rendered. — Nevertheless upon this condition that if the said George W Cockrell shall personally appear before the Circuit Superior Court of Law & Chancery of the said County of Rockingham on the first day of the next term to abide by and perform the order and judgement of said Court upon the said writ of Habeas Corpus and upon the writ of error aforesaid and not depart without the leave of said Court then the above recognizance to be void — And be it further remembered that thereupon came also the said William With and

Alexander McGlvery before me the said Daniel Smith and acknowledged themselves to be severally indebted to his excellency David Campbell Esq Governor or chief Magistrate of Virginia, each in the sum of fifty — dollars to be respectively levied of their goods and chattels land and tenements and to the said Governor or his successors rendered —

Nevertheless upon this condition that if the said William With shall personally appear before the Circuit Superior Court of Law and Chancery of the said County of Rockingham on the first day of the next term to abide by and perform the final

order and judgment of said Court upon the said writ
of Habeas Corpus and upon the writ of error aforesaid
and not depart without the leave of said Court then
this recognizance to be void - both of the
forfeiting recognizances acknowledged before me
this 7th day of September 1839 -

Saml Smith

The Commonwealth of Virginia to the Justices of the County Court of
Rockingham Greeting: Whereas in the Records and proceedings, and
also in the rendition of the ^{Ordn and} Judgment, in our said Court, given on
the 21st day of August in the present year, against George W. Cockrell
and William Wills, Manifest error has happened to the great
damage of the said George W. Cockrell and William Wills as by
their Complaint, we have understood; We being Welling that the
error, if any has been, should be duly corrected, and full and
speedy Justice done to the said George W. Cockrell and William
Wills in this behalf, Command you, and every of you, that the
Record and proceedings aforesaid, with all things touching the
same, you, or one of you, under your, or one of your seals
distinctly and plainly send to the Judge of our Circuit Superior
Court of Law and Chancery of Rockingham County at the Court
house thereof on the first day of October Term Next, so that our
said Judge the Record and proceedings aforesaid being inspected
may farther cause to be done therein what of right and
according to Law, ought to be done, and have them there
the said Wills Henry J. Gambell Clerk of our said
Court, at the Court house the 10th day of September 1839 and in
the 66th year of the County

H. J. Gambell

Cockrell R
^{ad,} & writ of
Tuteen Error

To a Juagt. of the County
Court of Nottingham

This day George M. Cockrell and William Wells, appeared in Court
in discharge of their Recognizances entered into before the Judge of this
Court, (they having been brought before him,) on a writ of Habeas Corpus,
(spied in Vacation,) which was directed to the Jailor of this County,
and the said Jailor, having Certified that the said Geo. M. Cockrell and
William Wells, were detained in his Custody by virtue of an Order of
the County Court of Rockingham, hereto annexed, and that the said Geo. M.
Cockrell and William Wells are not detained for any other Cause known
to him known, and it appearing to the Court, that the said Order of
the County Court of Rockingham, ^{was this day reversed by the J^{ts} of this Court in a writ of error by the said} ~~in error~~, it is considered by the
Court that the said Cockrell and Wells, ~~were illegally imprisoned, &~~
~~in the said Order that they be discharged.~~

x Cockrell & Wells ag^t the Commonth it is therefore

George W. Cochrall & William Wills . . . Plaintiffs

agst

The Commonwealth

upon a writ of Error to an Order
granted on the 21. August 1839 by
the Judge of the County Court of

Rockingham, ~~reversed on the~~ against the

„said Cochrall & Wills, by which ^{Order} judgment they
were committed to the jail of ~~the~~ County.

This day came ^{as well} the Plaintiffs by their attorney as the attorney for the
Commonwealth, and the Court having maturely considered the Transcript
of the record of the said Order & Judgment, and the arguments of Counsel
~~both~~ is of opinion that the said Judgment is erroneous; therefore it
is considered by the Court, that the same be revised and annulled. —

In pursuance of the writ to me
directed I have produced the bodies of
George W. Cockrell and Wm. With, who
are detained in my custody by virtue
of an order of the County Court of
Rockingham County annexed and
the said G. W. Cockrell and Wm.
With are not detained for any
other cause to me known. Given
under my hand this 7th Sept. 1839.
J. B. Stirling, J. C. of N. C.

Cockrell & With
vs
Common to J. B. Stirling, J. C.

The bodies of Geo W Cockrell & William
With were produced before me in pursuance of
the writ in writ. as appears by the return
of the Gaoler this 7th of Sept. 1839. and
the case continued until the first day
of the next term of the Circuit Superior
of Law & Chancery of Rockingham County
and a recognizance taken & filed
herein for the appearance of
the said Geo W Cockrell & William
With. — who are thereupon
discharged from custody by
my order —

J. B. Stirling

To the jailor of Rockingham County -

Whereas George W Cockrell and William With have this day complained to me Daniel Smith one of the Judges of the general court of Virginia that they said George W Cockrell and William With are illegally held in custody and confined in your jail - These are therefore in the name of the Commonwealth of Virginia to require you on receipt hereof, with all convenient speed to bring before me or some other Judge of the said State duly authorized to proceed in that behalf, at the town of Harrisonburg in the said county of Rockingham the bodies of the said George W Cockrell & William With ~~the same~~ together with the cause of their caption and detention then & there to do submit to and receive whatsoever may be considered in that behalf -

Witness Daniel Smith one of the Judges of the general Court of Virginia at Harrisonburg in said county of Rockingham this 7th day of September 1839 -

Dan Smith

Virginia to wit, Amongst the Records & proceedings of the

Virginia to wit. Amongst the Records & proceedings of the
County Court of Rockingham there is the following to wit

At a Court Continued and held for
the County of Rockingham on Wednesday the 21st day
of August 1839

The Grand Jury sworn for this
County on Monday last appeared in Court agreeably to
their adjournment and retired from the bar to Consider
of their presentments and after some time returning into
Court and stated that they had before them two witnesses
to wit, George W. Backwell and William Writts, who
after being sworn to give evidence to the Grand Jury and
being interrogated whether they knew of any unlawful
gaming in the County of Rockingham stated that they
knew of no gaming at any Tavern or other publick
place as they believe, nor did they know of any gaming
at private place where more than \$20 were won or
lost the Grand jury then interrogated the said witnesses
if they knew of any gaming at the house of Joseph Cagle
in the Town of Harrisonburg this question the witnesses
both refused to answer. They were informed and admonished
of their duty and instructed ^{answer the questions thus submitted to them} that unless they would ^{be} ^{would} be compelled
to jail untill they would answer the questions both the
witnesses again promptly refused to answer the questions
they were ordered to jail there to remain untill they were
willing to give to the Grand Jury the evidence required &
untill the Grand Jury should be sitting and prepared to receive
the ^{said} evidence as above required & the Grand Jury having no
further business they were discharged

Attest

Teste

W. J. Gambill C. R. L.

Commonwealth

vs

Abby of
the Record

backwell &c

To the Clerk of the Circuit Superior Court of Law
of Law and Chancery of Rockingham County

A writ of error is to be awarded returnable
to the first day of the next term wherein
operate and expire

Dea Smith

To the Clerk of Rockingham County -