

**PROCEEDINGS IN THE QUO
WARRANTO CASE OF THE STATE
EX RELATIONE THE ATTORNEY-
GENERAL VS. THOMAS P.
WALKER**

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Thomas P. Walker by Thomas P. Walker

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THOMAS P. WALKER

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EX RELATIONE THE ATTORNEY-
GENERAL VS. THOMAS P.
WALKER**

Wm. Laddan
with report of
PROCEEDINGS
W. H. Chaney

IN THE

QUO WARRANTO CASE

OF

THE STATE EX RELATIONE THE ATTORNEY-GENERAL

VS.

THOMAS P. WALKER.

COLUMBIA, S. C.:
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South Carolina —

THE STATE EX RELATIONE THE ATTORNEY-
GENERAL VS. THOMAS P. WALKER.

The following correspondence will show the origin of this case :

OFFICE ATTORNEY-GENERAL SOUTH CAROLINA.
COLUMBIA, S. C., August 5, 1868.

Thomas P. Walker :

SIR : I am informed on undoubted authority that you are assuming to act as Coroner of Richland County, although your successor has been elected, and has been duly qualified and entered upon the duties of his office as Coroner.

I hereby notify you to desist from any further assumption of the duties of the office of Coroner of Richland County. In case this notice is disregarded by you, I shall take immediate steps to restrain you from further unlawful assumption of the functions of the office aforesaid.

Very respectfully,

Your obedient servant,

D. H. CHAMBERLAIN,
Attorney-General South Carolina.

COLUMBIA, S. C., August 5, 1868.

D. H. Chamberlain, Esq. :

SIR : I have received yours of the 5th instant, purporting to be signed by you as Attorney-General of South Carolina. I do not recognize you as the Attorney-General of South Carolina by any constitutional law now in existence or by any military appointment. You are, therefore, neither *de jure* nor *de facto* Attorney-General of this State.

You direct that I shall desist from any further assumption of the duties of the office of Coroner of Richland County; otherwise you will take immediate steps to restrain me from further unlawful assumption of the functions of the office aforesaid. I do not exercise any such office in any such County, nor do I recognize any such County to exist; but I do exercise the office of Coroner of Richland District, under a constitutional appointment, and from that office I have never been removed, either by military appointment of a successor or by any constitutional law or appointment whatever. I shall therefore continue to exercise the functions of the said office for Richland District until removed by due process from the civil Courts.

I beg to refer you to Mr. James D. Tradewell, my attorney, who will be assisted by Messrs. Fickling & Pope on my behalf.

Very respectfully,

Your obedient servant,

THOMAS P. WALKER,

Coroner for Richland District.

The next step in the case was an application by the Attorney-General, D. H. Chamberlain, Esq., in the form of a suggestion or information in the nature of a *quo warranto*, as follows :

STATE OF SOUTH CAROLINA, }
 RICHLAND COUNTY. }

To the Honorable A. J. WILLARD, one of the Associate Justices of the Supreme Court of the said State :

Informing, on the part of the State, showeth unto your Honor, Daniel H. Chamberlain, Attorney-General of the State of South Carolina, that, in accordance with the provisions of a Constitution adopted by a Convention of the people of South Carolina, and ratified by the people of said State on the 14th, 15th and 16th days of April, in the year 1868, which Constitution provides, in Section 30, Article 4, thereof, as follows, that is to say : "The qualified electors of each County shall elect a Sheriff and a Coroner for the term of four years, and until their successors are elected and qualified;" and under authority of the Commanding General of the Second Military District, conferred upon said Commanding General by the terms of the Acts of the Congress of the United States known as the Reconstruction Acts and the Acts supplementary thereto, an election was ordered and held on the 2d and 3d days of June, in the year 1868; that at said election William B. Johnston was duly elected to the office of Coroner for Richland County, in the State aforesaid, which election was duly proclaimed in General Orders No. 122, emanating from the Headquarters of the Second Military District, and dated at Charleston, in the said State, on the 1st day of July, 1868; that subsequently to the order aforesaid, the said William B. Johnston was duly qualified and commissioned as Coroner of the County aforesaid, in the State aforesaid, and entered upon the duties of his office; that by the terms of General Orders No. 120, from the Headquarters of the Second Military District, dated at Charleston, June 30, 1868, Paragraph 7, it is declared that the officers elected at the election held on the 2d and 3d days of June shall, after qualification, perform the duties prescribed for said officers by law, under the existing Provisional Government of the State, until the General Assembly of the State of South Carolina shall otherwise prescribe by law; that nevertheless, notwithstanding the facts above set forth, one Thomas P. Walker, of Richland County, in the said State, claims to exercise, and does usurp and exercise, the office of Coroner, of the County aforesaid, in violation of law, and in derogation of the rights of the people of the said State, and especially of the rights of the aforesaid William B. Johnston.

In consideration whereof, and to the end that justice may be done in

the premises, the Attorney-General. aforesaid prays your Honor that a writ of *quo warranto* be directed to be served upon the said Thomas P. Walker, commanding him at a certain day, and under a certain pain therein to be inserted, to be and appear before your Honor, and then and there to show by what authority he claims to exercise the office of Coroner of Richland County aforesaid, and to answer all and singular the premises, and to stand to, perform and abide such order and judgment therein as to your Honor shall seem meet.

(Signed)

DANIEL H. CHAMBERLAIN,
Attorney-General of South Carolina.

STATE OF SOUTH CAROLINA, }
RICHLAND COUNTY. }

Personally appeared before me, Daniel H. Chamberlain, the Attorney-General mentioned in the foregoing suggestion, who, being first duly sworn, saith that the matters and things therein set forth, as of his own knowledge, are true, and such as are derived from the information of others he believes to be true.

(Signed)

DANIEL H. CHAMBERLAIN.

Sworn to before me this 6th day of August, 1868.

(Signed)

W. B. NASH, Magistrate.

IN THE MATTER OF THE STATE EX PARTE THE ATTORNEY-GENERAL VS. THOMAS
P. WALKER.

On reading the suggestion in the above matter, it is ordered that the said Thomas P. Walker do show cause before me, at Chambers, at Columbia, on Friday, the 7th August, 1868, at half-past 9 o'clock A. M., why the writ of *quo warranto* should not issue as in the said information is prayed. Let a copy of the said suggestion accompany this order, and be served on the said Thomas P. Walker.

(Signed)

A. J. WILLARD,
Associate Justice of South Carolina.

AT CHAMBERS, COLUMBIA, August 6, 1868.

The hearing of the case was opened on Saturday, the 8th instant, at half-past 9 o'clock, A. M., when counsel for respondent appeared and moved a delay. His Honor granted until Monday the 10th instant.

On Monday, the 10th instant, the hearing was resumed, and counsel for respondent presented a plea which they denominated a "Plea to the jurisdiction of the Court," as follows:

EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

And the said Thomas P. Walker, upon whom a notice had been served, signed by one A. J. Willard, naming himself "Associate Justice, South Carolina," from which it is inferred that he meant to style himself one of the Associate Justices of the State of South Carolina, commanding him to show cause, at Chambers, at Columbia, on Friday, the 7th day of August, 1868, at half-past 9 o'clock A. M., why a writ of *quo warranto* should not issue as in the said information is prayed, in his proper person, comes and prays that the said Associate Justice ought not to have or take further cognizance of the said supposed information at the relation of one Daniel H. Chamberlain, styling himself Attorney-General of South Carolina, because he says that the said Daniel H. Chamberlain is not the Attorney-General of the State of South Carolina, in whose name and at whose relation only such information can be made in behalf of the said State; and that Isaac W. Hayne, Esq., is such Attorney-General, under the Constitution and laws of the State of South Carolina, and under the Constitution of the United States. And because he says that the said A. J. Willard is not an Associate Justice of the State of South Carolina, before whom such information could be preferred, and that the Hon. Benjamin F. Dunkin is the Chief Justice of the said State, and the Hon. David L. Wardlaw and John A. Inglis are Associate Justices of said State, and the Hon. Thomas N. Dawkins, Alfred P. Aldrich and Franklin J. Moses, (if the last named has not accepted a disqualifying office,) are the Judges of the Court of Common Pleas and General Sessions of the said State, under the Constitution and laws of the State of South Carolina and under the Constitution of the United States, one of whom only is legally authorized and empowered to hear such information, and sign a rule to show cause under the writ of *quo warranto* aforesaid. That the said ground of information, if any such grounds of information have accrued to the said so-called Attorney-General of South Carolina, accrued to the said so-called Attorney-General out of the jurisdiction of the said supposed Court, that is, to say, at Columbia, in the District of Richland, and not at Columbia, in the County of Richland, or elsewhere, in the jurisdiction of the said supposed Court. And this the said defendant is ready to verify. Whereof he prays judgment whether the so-called Associate Justice can or will take further cognizance of the action aforesaid.

JAMES D. TRADEWELL,
FICKLING & POPE,
Respondent's Attorneys.

Immediately upon the reading of this so-called plea, the Attorney-General moved that it be peremptorily overruled, on the ground that the plea contradicted itself, being entitled "A plea to the jurisdiction of the Court," while by its averments it denied the official existence of His Honor Judge Willard, and thus sought to introduce a matter which

could not so much as be entertained by the Judge before whom it was brought. After argument heard, His Honor sustained the motion of the Attorney-General, and the plea was overruled and declared inadmissible.

The respondent, by his counsel, next moved that time be granted to prepare a proper answer to the original information of the Attorney-General, and the further hearing of the case was postponed until 10 o'clock A. M. on the 10th instant.

On resuming the case, on the 10th instant, the respondent, by his counsel, presented a petition to remove the case from the jurisdiction of the State Court to that of the United States, as follows :

EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

To the Honorable A. J. WILLARD, Associate Justice of the State of South Carolina :

The petition of Thomas P. Walker sheweth that the above stated case arises under the Constitution and laws of the United States. He therefore prays that the same may be removed for trial into the next Circuit Court of the United States to be held in the District of South Carolina, or that the same may be ordered to be heard by His Honor George S. Bryan, Judge of the United States Circuit Court, at Charleston, at such time and place as he shall appoint. And your petitioner shall ever pray.

THOMAS P. WALKER.

Messrs. TRADEWELL, FICKLING & POPE for petitioner.

Upon the reading of the foregoing petition, the Attorney-General moved that the prayer of the petitioner be denied. A long, animated discussion ensued. Messrs. Fickling & Pope made extended arguments in support of the petition, taking the ground generally that the case was one which came within the provisions of the Judiciary Act of the United States of 1789, and citing several decided cases, no one of which could possibly be assimilated to the present case.

The Attorney-General replied and showed clearly that by the terms of the Judiciary Act, and from all the cases cited for the respondent in support of the petition, there was no show of authority for removal of the present cause.

His Honor Judge Willard decided that the prayer of the petitioner should be denied upon substantially the same grounds as those taken by the Attorney-General.

The counsel for the respondent then presented the following return to the original Suggestion in this case :