

Montgomery Vs. Henry

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Court : US Supreme Court

Decided On : 1780

Appeal No. : 1 U.S. 49

Appellant : Montgomery

Respondent : Henry

Judgement :

MONTGOMERY v. HENRY - 1 U.S. 49 (1780)

U.S. Supreme Court MONTGOMERY v. HENRY, 1 U.S. 49 (1780)

1 U.S. 49 (Dall.)

Montgomery

v.

Henry et al

High Court of Errors and Appeals, of Pennsylvania

April Sessions, 1780

This case, which was an appeal, from a decree in the Admiralty, having been elaborately argued on the 6th of May, the PRESIDENT delivered the opinion of the Court.

REED, President: The case upon which we are now to give our judgment, comes before us under the following circumstances: Captain Montgomery was master and commander of the ship, called the General Greene, designed for a voyage to Martinica. While the ship lay in the river, a severe frost happened, which occasioned a great delay, and the owners thought proper to alter their plan. Differences then arose; they dismissed Capt. Montgomery, and took the ship from him. Upon this he preferred his libel in the Court of Admiralty, complaining of the injury, as done to him in the port of Philadelphia, and within the jurisdiction of the Court of Admiralty. The answer of the owner to the libel is, that they had a right to remove their captain when they pleased, and that they are willing to pay him any damages he may have received by the removal.

Two general questions arise: First Is the matter complained of within the Admiralty jurisdiction? Secondly, On the merits, had the owners a right to remove Capt. Montgomery?

The first question is subdivided into two others. First Had the Court of Admiralty cognizance of this cause, considering the place where the offence is charged to have been done? Secondly, Is the subject matter of Admiralty cognizance?

All the proceedings are laid to have taken place within the port of Philadelphia. The respondents say, that the river Delaware is not within the Admiralty jurisdiction, and to prove this, they cite *Ld. Raym. 1453*. But, it appears to us, that, from the 12th and 15th Rich. 2d. the Admiralty has had jurisdiction on all waters out of the body of the county. There has been great debate as to what is [*Montgomery v. Henry* [1 U.S. 49](#) (1780)

meant by high seas. A road, haven, or even river, not within the body of the county, is high sea, in the idea of Civilians. Therefore, if the river Delaware is out of the body of any county, we think it clear, that it is within the Admiralty jurisdiction. And the Court would endeavour to enlarge its jurisdiction, rather than a place should remain subject to no controul. The place when the fact was done which is complained of as an injury, is expressly alledged in the libel, to be within

the jurisdiction of the Admiralty. This is not contradicted in the answer; and we must take up the matter as it stands upon the libel, not on the evidence; because there is no opportunity to traverse. On this point, therefore, we rather incline to say, the jurisdiction is well laid. But what we found our decree upon, is the other particular, the subject matter. It has been contended by the council for the respondents, that the Court of Admiralty cannot carry an agreement into specific execution; and, also, that this is never done, even in a Court of Chancery, for one party, unless they could do it for the other, in case they wished for a specific performance. To this, it has been answered, that otherwise there is no complete remedy. It was observed, by one of the council for the respondents, that it is difficult to know in what light to consider the application in this instance. It appears to us, however, that it can be considered in no other light, than as an application to compel a specific performance of an agreement: And to shew that this can be done by a Court of Admiralty, Vent. 32 was cited; where, it appears, that a master of a vessel in Spain, had been obliged to take on board his vessel forty butts of wine. But the determination of the Admiralty in England seems to be rather out of respect to the foreign court, than from an opinion, that they could do this by virtue of their authority originally; for, it is introduced by saying, that the judgment of a foreign court ought to be supported, even as to what might not be cognizable originally there. It has been said that the Court of Admiralty acts in rem, that is, only to make the objects of dispute responsible. This, however, is a confidential trust, and we see no instances of any such jurisdiction. Does the master ship himself on the credit of the ship? No: It is no more than a contract. Whether the doctrine of mutuality of remedies be a fixed rule in the Court of Chancery, I am not altogether certain; but it is reasonable that the parties should stand on an equal footing. No such remedy could be obtained by the owners against the captain. It is said he might be attached if he failed of his duty; so might the owners; still the ship would be liable as against the owners. Indeed, I know of no case where an Attachment has issued, unless for some contempt; nor does Carthew contradict this. If the libel is considered as complaining of a Trespass, instead of demanding performance of the agreement, I do not see that this will help the Appellant; for, an Admiralty Court cannot give damages.

This seems to be assigning to this Court a jurisdiction which it has not. We are, therefore, unanimously, of opinion, that from the object of the libel it cannot be supported.

As to the other point, the dismissal of the captain, we are of opinion, that upon a general retainer, for no particular voyage, the captain may be dismissed at any time without cause assigned; but that where there is a charter party, bills of lading, and a particular voyage agreed upon, though the owners may dismiss the captain, yet they would be liable in a Common Law Court. Suspensions might probably be sufficient to discharge, without proofs; but, if the dismissal should appear to have been a wanton abuse, the Jury would give great damages, otherwise, little or, as the circumstances might be nothing.

We therefore affirm the Decree with Costs.