

Hills Vs. Ross

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Court : US Supreme Court

Decided On : 1796

Appeal No. : 3 U.S. 331

Appellant : Hills

Respondent : Ross

Judgement :

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SYLLABUS

A libel was filed against Hills, May & Woodbridge, merchants in partnership under that firm, and John Miller. Hills, one of the partners, pleaded "in behalf of himself and his said co-partners," and concluded with a prayer, "on behalf aforesaid, to be dismissed, as far as respects Hills, May & Woodbridge." There was a replication and a rejoinder which was signed by the "proctor for the defendants." *Held* that there was a sufficient legal appearance for all the defendants.

The plaintiffs in error, as agents of a French privateer, had sold a vessel and cargo illegally captured, and which were restored to the British owners by the decree of the District Court of the United States for the District of South Carolina, and damages were assessed in that court in relation to the value of the captured goods. *Held* that the agents were not liable for more than actually came into their hands as proceeds of the sales made by them, and that they were not trespassers *ab initio*.

This cause came again before the Court (*see ante*, p. [3 U. S. 184](#)) and after a discussion upon the merits, it became a question whether there had been a regular appearance of the parties to the suit below? The libel was filed by the British consul, on behalf of Walter Ross, against Hills, May & Woodbridge (who formed a partnership in Charleston under that firm) and John Miller. The plea was headed, "the plea of Ebenezer Hills, one of the company of Hills, May & Woodbridge, in behalf of himself and his said co-partners, who are made defendants in the libel of Walter Ross," and concluded with praying, "on the behalf aforesaid, to be dismissed, as far as respects the said Hills, May & Woodbridge." The replication regarded the plea of Hill as the plea of all the company, and the rejoinder was signed by "Joseph Clay, Jr., proctor for the defendants." The decree below was against all the defendants, and the writ of error was issued out in all their names, but there was evidence on the record that May had been in Europe during the whole of the proceeding, and no warrant of attorney or other authority to appear for him was produced.

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On 11 August, THE CHIEF JUSTICE delivered the opinion of the Court that, in the present case there was a sufficient legal appearance of all the defendants.

On the merits, it appeared that the plaintiffs in error had directed to be sold certain prize cargoes captured by Captains Talbot and Ballard under the circumstances stated in the case of *Jansen v. Talbot*, *ante*, [3 U. S. 133](#) , and that after notice of the claims filed by the owners of the prizes, they had received and paid over the

proceeds to the captors, but in so doing, they had acted merely as commercial agents, without any share in the ownership of the privateers or any participation in the direction or emoluments of their illicit cruising. The principal questions, therefore, were 1st, whether in point of fact the plaintiffs had notice of the claims of the original owners of the prizes, and 2d, whether after paying over the proceeds of the cargoes, they were responsible to the claimants for anything, and for how much?

By the Court:

It appears that the damages have been assessed in the courts below in relation to the value of the goods that were captured, but the plaintiffs in error were not trespassers *ab initio*, and, acting only as agents, they should be made answerable for no more than actually came into their hands. The accounts of sales are regularly collected and annexed to the record. We are therefore at no loss for criterion. And we think that the decree should be so modified as to charge them with the amount of sales, after deducting the duties on the goods, if the duties were paid by them.

The decree was in the following words:

"Ordered that the decree of the Circuit Court for Georgia District pronounced on 5 May, 1795, be reversed, so far as the same respects the said Hills May & Woodbridge, and it is further ordered that the said Hills, May & Woodbridge, pay to the said Walter Ross \$32,090.58, the net amount of the sales of the cargo of the said ship, and \$5,605.12 interest thereon from 6 June, 1794, to 12 August, 1796, making together the sum of \$37,696.70, and that the said Hills, May & Woodbridge do pay the costs of suit, and a special mandate, etc."