Jennings Vs. the Perseverance

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Court : US Supreme Court

Decided On : 1797

Appeal No. : 3 U.S. 336

Appellant : Jennings

Respondent : The Perseverance

Judgement :

Jennings v. The Perseverance - 3 U.S. 336 (1797)
U.S. Supreme Court Jennings v. The Perseverance, 3 U.S. 3 Dall. 336 336 (1797)

Jennings v. The Perseverance

3 U.S. (3 Dall.) 336

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF RHODE ISLAND

SYLLABUS

Where the evidence is sent up from the circuit court, but no statement of facts by the court, the decree of the court below was affirmed, as no errors could be shown on the record.

Interest on the amount of the debt as ascertained by the decree of the circuit court was allowed from the time of the judgment, but the damages allowed by the court were not permitted to bear interest.

The cost of printing a statement of the case for the court was refused to be allowed as part of the plaintiff's costs.

This was a writ of error to remove the proceedings in an admiralty cause from the Circuit Court for the District of Rhode Island. Soon after the decree was there pronounced, the district judge died, and Judge Chase had left the district, so that the record was sent up with all the evidence annexed, but no statement of facts by the court.

Page 3 U. S. 337

PATERSON, JUSTICE:

Though I was silent on the occasion, I concurred in opinion with JUDGE WILSON upon the second rule laid down in *Wiscart v. D'Auchy,* and of course the Court was divided four to two upon the decision. I thought, indeed, that excluding a consideration of the evidence (which virtually amounts to a statement of facts) was shutting the door against light and truth, and was leaving the property of the country too much to the discretion and judgment of a single judge. But conceiving myself bound by the rule, and that, in some shape, the facts must be made to appear on the record, I have always since thought it my duty to make a statement, where the counsel would not or could not agree in forming one.

As to the present point, though there is no express determination, it was the subject of discussion among the judges at their chamber; an opinion was formed, but not delivered, by the same majority that established the second rule in *Wiscart v. D'Auchy,* and the reasoning of THE CHIEF JUSTICE in support of that rule, went clearly to this case. I do not, therefore, think, that any new argument can be necessary. However disposed I might have been originally to give the most liberal construction to the act of Congress, the decision of the Court precludes me from

considering the evidence, at this time, as a statement of facts, and if there is no statement of facts, the consequence seems naturally to follow that there can be no error.

The Court concurring in the representation made by JUDGE PATERSON, they proceeded, without further argument on the principal question, to

Affirm the Decree.

E. Tilghman suggested, however, that the damages were very high, and that, in fact, an allowance for counsel fees was included, though it did not appear on the record.

Du Ponceau urged that the Court could not travel out of the record to ascertain a fact. In the case where an allowance for counsel's fees had been struck out, that charge and all the items on which damages had been awarded were stated in an account annexed to the record. *See Arcambel v. Wiseman, ante,* p. 3 U. S. 306 .

CHASE, JUSTICE:

An account of items, as a foundation to award damages, was exhibited in the court below, but it is a sufficient answer here that the allowance does not appear on the record.

The Court concurred in this opinion, and Du Ponceau prayed an increase of damages for the delay occasioned by bringing this writ of error, contending that under the 23rd section of the

Judicial Act, damages for delay were peremptorily prescribed, and that the discretion of the court only went to the award of single or double costs.

But by the Court:

The prize was sold by the agreement of the parties, the captor and the French consul, but the money was afterwards stopped in the hands of the marshal upon a monition issued by a third person (the original owner of the prize) who was not a party to the agreement. The decree must be affirmed without an increase of damages, and the interest to the present day must run upon the debt only, and not on the damages.

Du Ponceau next prayed an allowance of $12.50, the cost of a printed state of the case for the use of the judges.

But the Court observed that however convenient it might be, there was no rule authorizing the charge, and therefore it could not be allowed.

Proceedings in the district court, 20 September, 1794.

The now plaintiffs in error, subjects of the King of Great Britain, file their libel complaining of the capture made on 27 July preceding, of their brig *Perseverance* and her cargo, on the high seas, on a voyage from Turks Island, to St. John's, New Brunswick.

They state that she was captured by two armed vessels, each of about 35 tons burden, one called the *Sanspareil,* the other the *Senora,* brought into the District of Rhode Island, under the care of John Baptiste Bernard, prize master, sold by his order at Providence, for $5,028, and the proceeds lodged in the hands of the marshal of the district where they now are.

They complain that the *Senora* was originally fitted out, and the force of the *Sanspareil* was increased and augmented, by adding to the number of guns and gun carriages, at Charleston, South Carolina, with intent to cruise, etc.

That at the time of capture, there were on board both the captured vessels divers citizens of the United States, to-wit, on board the *Sanspareil* 12, and on board the *Serona* 21, all of whom were aiding and assisting at the capture.

That there was no person on board of either of the capturing vessels duly commissioned to make captures, etc.

They pray restitution of the vessel and cargo, or the proceeds thereof.