

Jennings Vs. Carson

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Appeal No. : 8 U.S. 2

Appellant : Jennings

Respondent : Carson

Judgement :

Jennings v. Carson - 8 U.S. 2 (1807)

U.S. Supreme Court Jennings v. Carson, 8 U.S. 4 Cranch 2 2 (1807)

Jennings v. Carson

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APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF PENNSYLVANIA

SYLLABUS

The owner of a privateer capturing neutral property is not liable to a decree of restitution unless the property or its proceeds came to his hands.

The district courts of the United States are courts of prize, and have power to carry into effect the sentences of the old continental courts of appeals in prize causes.

In all proceedings *in rem*, the court has a right to order the thing to be taken into custody of the law, and it is to be presumed to be in custody of the law unless the contrary appears.

The thing does not follow the appeal into the superior court, but remains in the court below, which has a right to order it to be sold, if perishable, notwithstanding the appeal.

By the Judicial Act, the district courts of the United States are also courts of admiralty, and no law has regulated their practice. Yet they proceed according to the general rules of the admiralty.

It must be supposed that a court of admiralty having prize jurisdiction, and consequently proceeding *in rem*, and not having its practice precisely regulated by law, would conform to those principles which especially govern those courts proceeding *in rem* and which seem necessarily to belong to the proper exercise of their functions.

A sentence of reversal and restoration, by which property captured on the high seas is again restored to the owners, is not conclusive evidence that the captors were wrongdoers.

A belligerent cruiser which, with probable cause, seizes a neutral and takes her into port for adjudication and proceeds regularly is not a wrongdoer -- the act is not tortious. The order of restoration proves that the property was neutral, not that it was taken without probable cause.

This was an appeal from the sentence of the Circuit Court for the District of Pennsylvania in a cause civil and maritime in which Jennings was the libellant and Carson the respondent, the former claiming to be owner of the sloop *George* and cargo, captured in the year 1778 by the American privateer *Addition*, commanded by Moses Griffin, of which the respondent Carson was part owner and which was

libeled and condemned on 31 October, 1778, as lawful prize by the Court of admiralty for the State of New Jersey, from which sentence of condemnation there was an appeal to the continental court of appeals, established under authority of the old Congress, where the sentence of condemnation was, on 23 December, 1780, reversed and restitution ordered, but never obtained. In the meantime, however, the vessel and cargo had been sold by the marshal of the state court of admiralty for paper money under an order of the court contained in the sentence of condemnation, and it did not appear what had been done with that money. No measures were taken to enforce the decree of restitution during the old confederation.

On 19 May, 1790, after the adoption of the present Constitution of the United States, Jennings filed his libel in the district court for the District of Pennsylvania alleging that he was a subject of the States

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General of the United Provinces, an inhabitant and domiciled at the island of St. Eustatius, and owner of the sloop *George* and her cargo, at the time of capture bound to the port of Egg Harbor in the United States, and consigned to A. and G. Caldwell, in the prosecution of which voyage she was illegally captured by the privateer *Addition*, owned in part by the respondent, Carson, and praying process for arresting Carson to answer, &c.; A supplemental libel was filed setting forth the proceedings against the vessel in the Court of Admiralty of New Jersey; the sentence of condemnation, the appeal, the reversal of that sentence, and the order of restitution.

Neither the original nor supplemental libel prayed any specific or general relief other than process for arresting Carson, so that he should appear to answer the libellant

"in his said complaint of the wrongs and injuries aforesaid according to the resolutions of the continental Congress, the laws of the United States, and of the Commonwealth of Pennsylvania, and the laws and usages of nations in this behalf

practiced, used, and established."

Carson, being taken upon the writ of arrest, appeared and filed his plea and answer, averring the sloop *George* to have been the property of a subject of the King of Great Britain at the time of capture and employed in carrying goods to the British army and navy; that the goods were imported directly or indirectly from Great Britain or Ireland, contrary to the regulations of Congress and the law of nations, the King of Great Britain then being at war with the United States.

It admits that Carson was the owner of one-third of the privateer. It admits the capture, the condemnation, and sale, the appeal and reversal, and the order of restitution, but denies that any part of the proceeds of the sale ever came to the hands of the owners of the privateer or either of them, but remained in the hands of the marshal of the Court of Admiralty of New Jersey, who alone is answerable for the same. It avers that Griffin, the commander of the privateer, had probable cause for

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making the capture, and therefore the owners are not liable.

It denies the jurisdiction of the district Court of Pennsylvania to take cognizance of the question, the same belonging exclusively to the Court of Admiralty of the State of New Jersey and to the court of appeals established by the continental Congress. It denies the jurisdiction of the court as a prize court in any case, and especially in cases of capture made during the British war, and avers that it has no authority to carry into effect a decree of either of those courts established under the old government.

After filing his plea and answer, Carson died and Jennings filed a petition suggesting the death of Carson and charging his executors with assets, and praying that the suit may stand revived against them, upon which a citation issued and the executors appeared and answered generally by a reference to the answer and plea of their testator, and further pleaded that by the law maritime, the law of the land, and the laws and ordinances of the United States, they, as executors, are

not liable to be proceeded against in that court for the several matters set forth in the libel, for that they are not answerable for the wrongs and offenses, or the pretended wrongs and offenses of their testator, and also for that courts maritime have not authority to intermeddle with the estates and effects, real or personal, of deceased persons, or to give relief against the same, or to seize or take the same effects or estates in execution, or to imprison the bodies of executors for the default of the testator.

To these pleas and answers there were general replications.

On 30 March, 1792, the judge of the district court gave an opinion in favor of its jurisdiction in general cases as a prize court; but on 21 September, 1793, he dismissed the libel on the ground that the district court was not competent to compel the execution of a decree of the late continental court of

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appeals. This sentence was affirmed in the circuit court on 11f April, 1798, but was reversed by this Court at February term, 1799, so far as the same

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decreed that the district court had not jurisdiction to carry into effect the decree of the court of appeals, and the cause was remanded to the district court for further

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proceedings, the respondent being at liberty to contend before that court, as matter of defense to the merits or to the form of proceedings, that the libel should first

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have been filed in the District Court of New Jersey, but not to make the decision of the judge on that point a ground of excepting to the jurisdiction of the District Court of Pennsylvania, and that costs should await the event of the cause.

Upon the second hearing of the cause, on 2 April, 1802, the judge decreed in favor of the libellant for the amount of sales of the sloop and cargo, reduced by the scale of depreciation with interest until two months after the order of restitution by the court of appeals and from the time of the institution of the present suit until the day of final decree, which decree was, on 10 May, 1804, reversed by the circuit court, and the libel dismissed with costs. From which sentence, the libellant appealed to this Court.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The privateer *Addition*, cruising under a commission granted by the Congress of these United States during the war between this country and Great Britain, captured the sloop *George*, brought her into port, and libeled her in the Court of Admiralty for the State of New Jersey, where she was condemned as lawful prize by a sentence rendered on 31 October, 1778, and ordered to be sold by the marshal. From this sentence Richard D. Jennings, the owner, prayed an appeal, which, on 23 December, 1780, came on to be heard before the court of appeals constituted by Congress, when the sentence of the court of New Jersey was reversed and restitution of the vessel and cargo was awarded. Pending the appeal, on 13f November, 1778, the order of sale

was executed, and the proceeds of sale remained in possession of the marshal. It does not appear that any application was ever made to the court of New Jersey to have execution of the decree of the court of appeals, and this suit is brought to carry it into execution, or on some other principle to recover from the estate of Joseph Carson, who was part owner of the privateer *Addition*, the value of the *George* and her cargo.

So far as this bill seeks to carry into effect the decree of 23 December, 1780, there is no doubt of the jurisdiction of the Court; but the relief granted can only be commensurate with that decree. It is therefore all essential to the merits of this cause to inquire how far Joseph Carson, the testator of the defendants, was bound by the sentence which this Court is asked to carry into effect.

The words under which the plaintiffs claim are those which direct the restoration of the *George* and her cargo. As the captors are not ordered by name to effect this restoration, and as the order bound those in possession of the subject on which it must be construed to operate, it must be considered as affecting those who could obey it, not those who were not in possession of the thing to be restored, had no power over it, and were consequently unable to redeliver it. Had Richard D. Jennings appeared before the court of New Jersey with this decree in his hand, and demanded its execution, the process of that court would have been directed to those who possessed the thing to be restored, not to those who held no power over it, either in point of fact or law.

This position appears too plain to require the aid of precedent, but if such aid should be looked for, the case of *Doane v. Penhallow* unquestionably affords it. In that case, a decree of reversal and restitution was satisfied by directing the proceeds of the sales to be paid, and even the judge who tried the cause at the circuit concurred with his brethren in reversing his own judgment so far as it had decreed joint damages and had thereby rendered the defendant liable for more than he had received. The case of *Doane v. Penhallow*, therefore, which must be considered as expounding the decree

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of the court of appeals now under consideration, has decided that Joseph Carson was bound to effect restitution by that decree so far only as he was, either in law or in fact, possessed of the *George* and her cargo, or of the proceeds.

To this point, therefore, the inquiries of the court will be directed.

In prosecuting them, it will be necessary to ascertain whether

1st. The *George* and her cargo were, previous to the sentence, in the custody of the law, or of the captors.

2d. Whether the court of admiralty, after an appeal from its sentence, possessed the power to sell the vessel and cargo, and to hold the proceeds for the benefit of those having the right.

It appears that the court of New Jersey, which condemned the *George* and her cargo as prize, was established in pursuance of the recommendation of Congress, and that no legislative act had prescribed its practice or defined its powers. The act produced in court was passed at a subsequent period, and consequently cannot govern the case. But the Court cannot admit the correctness of the argument drawn from this act by the counsel for the plaintiffs in error. It cannot be admitted that an act defining the powers and regulating the practice of a preexisting court, contains provisions altogether new. The reverse of this proposition is generally true. Such an act may rather be expected to be confirmatory of the practice and of the powers really exercised.

Since we find a court instituted and proceeding to act as a court without a law defining its practice or its powers, we must suppose it to have exercised its powers in such mode as is employed by other courts instituted for the object and as is consonant to the general principles on which it must act.

That by the practice of courts of admiralty, a vessel when libeled is placed under the absolute control of the

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court is not controverted, but the plaintiffs contend that this power over the subject is not inherent in a court of admiralty, but is given by statute, and in support of this opinion the prize acts of Great Britain have been referred to, which unquestionably contain regulations on this point. But the Court is not of opinion that those acts confer entirely new powers on the courts whose practice they regulate. In Browne's Civil and admiralty Law, in his chapter on the jurisdiction of the prize courts, it is expressly stated that those courts exercised their jurisdiction anterior to

the prize acts, and the same opinion is expressed by Lord Mansfield in the case of *Lindo v. Rodney*, which is cited by Browne. The prize acts therefore most probably regulated preexisting powers in the manner best adapted to the actual circumstances of the time.

It is conceived that the Constitution and character of a court of admiralty, and the object it is to effect, will throw much light on this subject.

The proceedings of that court are *in rem*, and their sentences act on the thing itself. They decide who has the right, and they order its delivery to the party having the right. The libellant and the claimant are both actors. They both demand from the court the thing in contest. It would be repugnant to the principles of justice and to the practice of courts to leave the thing in possession of either of the parties without security while the contest is depending. If the practice of a court of admiralty should not place the thing in the custody of its officers, it would be essential to justice that security should be demanded of the libellant to have it forthcoming to answer the order of the court.

If the captor should fail to libel the captured vessel, it has been truly stated in argument that the owner may claim her in the court of admiralty. How excessively defective would be the practice of that court if, on receiving such a claim, it neither took possession of the vessel nor required security that its sentence should be performed. Between the rights of a claimant where a libel is filed and where it is not filed no distinction is perceived,

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and the

Court conceives the necessary result of proceedings *in rem* to be that the thing in litigation must be placed in the custody of the law, and cannot be delivered to either party but on sufficient security.

In conformity with this opinion is the practice of the court of admiralty, not only when sitting for the trial of prizes and acting in conformity with the directions of

positive law, but when sitting as an instance court and conforming to the original principles of a court of admiralty. In his chapter "on the practice of the instance court," under the title of "proceedings *in rem*," p. 397, Browne states explicitly that when the proceeding is against a ship, the process commences with a warrant directing the arrest of the ship. In Browne, p. 405, the course of proceedings against a ship not for a debt but to obtain possession is stated at length, and in that case too the court takes possession of the ship.

It must be supposed that a court of admiralty, having prize jurisdiction, and consequently proceeding *in rem*, and not having its practice precisely regulated by law, would conform to those principles which usually govern courts proceeding *in rem*, and which seem necessarily to belong to the proper exercise of their functions. If in proceeding against a ship to subject her to the payment of a debt or to acquire the possession of her on account of title, the regular course is that the court takes the vessel into custody and holds her for the party having right, the conclusion seems irresistible that in proceeding against a ship to condemn her as prize to the captor or to restore her to the owner who has been ousted of his possession, the court will also take the vessel into custody and hold her for the party having the right.

This reasoning is illustrated, and its correctness in a great measure confirmed, by the legislation of the United States and the judicial proceedings of our own country. By the Judicial Act, the district courts are also courts of admiralty, and no law has regulated their practice. Yet they proceed according to the general rules of the admiralty, and a vessel libeled is always in possession of the law.

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An objection, however, to the application of this reasoning to the case before the Court is drawn from the defectiveness of the record in the original cause, which does not exhibit a warrant to the officer to arrest the *George*. The first step which appears to have been taken by the court is an order to the marshal to summon a jury for the trial of the case.

The carelessness with which the papers of a court created for the purposes of the war and which ceased to exist before the institution of this suit have been kept may perhaps account for this circumstance. At any rate, the court of admiralty must be presumed to have done its duty and to have been in possession of the thing in contest if its duty required that possession. The proceedings furnish reasons for considering this as the fact.

The libel does not state the *George* to have remained in possession of the captors, that the sale was made for them or by their means, nor that the proceeds came to their hands. The answer of the defendants avers that on bringing the *George* into port, she was delivered up with all her papers to the court of admiralty, and although the answer is not testimony in this respect, yet the nature of the transaction furnishes ample reason to believe that this was the fact, and it is the duty of the plaintiff to show that the defendants are in a situation to be liable to his claim. If the process of the court of admiralty does not appear regular, this Court, not sitting to reverse or affirm their judgment but to carry a decree reversal and restoration into effect, must suppose the property to be in the hands of those in whom the law places it unless the contrary appears. The *George* and her cargo therefore must be considered as being in custody of the law unless the contrary appears.

If this conclusion be right, it follows that the regularity of the sale is a question of no importance to the defendants, since that sale was the act of a court having legal possession of the thing and acting on its own authority.

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If the reasoning be incorrect, it then becomes necessary to inquire

2d. Whether the court of New Jersey, after an appeal from its sentence, possessed the power of selling the *George* and her cargo and holding the proceeds for the party having the right.

That the British courts possess this power is admitted, but the plaintiffs contend that it is conferred by statute, and is not incident to a prize court.

That the power exists while the cause is depending in court seems not to be denied, and indeed may be proved by the same authority and the same train of reasoning which has already been used to show the right to take possession of the thing whenever proceedings are *in rem*. Browne, in his chapter on the practice of the instance court, shows its regular course to be to decree a sale where the goods are in a perishable condition.

The plaintiffs allege that this power to decree a sale is founded on the possession of the cause, but the Court can perceive no ground for such an opinion. It is supported by no principle of analogy, and is repugnant to the reason and nature of the thing.

In cases only where the subject itself is in possession of the court is the order of sale made. If it be delivered on security to either party, an order of sale pending the cause is unheard of in admiralty proceedings. The motive assigned for the order never is that the court is in possession of the cause, but that the property in possession of the court is in a perishable state. A right to order a sale is for the benefit of all parties, not because the case is depending in that particular court, but because the thing may perish while in its custody, and while neither party can enjoy its use.

If then the principle on which the power of the court to order a sale depends, is not that the cause is depending in court, but that perishable property is in its possession, this principle exists in as much force after as before an appeal. The property does not follow the appeal into the superior

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court. It still remains in custody of the officer of that court in which it was libeled. The case of its preservation is not altered by the appeal. The duty to preserve it is still the same, and it would seem reasonable that the power consequent on that duty would be also retained.

On the principles of reason, therefore, the Court is satisfied that the tribunal whose officer retains possession of the thing retains the power of selling it when in a perishing condition, although the cause may be carried by appeal to a superior court. This opinion is not unsupported by authority.

In his chapter on the practice of the instance court, page 405, Browne says

"If the ship or goods are in a state of decay, or of a perishable nature, the court is used, during the pendency of a suit or sometimes after sentence, notwithstanding an appeal, to issue a commission of appraisement and sale, the money to be lodged with the registrar of the court, *in usum jus habentis*. "

This practice does not appear to be established by statute, but to be incident to the jurisdiction of the court, and to grow out of the principles which form its law. A prize court not regulated by particular statute would proceed on the same principles -- at least there is the same reason for it.

But there is in this case no distinct order of sale. The order is a part of the sentence from which an appeal was prayed, and is therefore said to be suspended with the residue of that sentence.

The proceedings of the court of admiralty, if they are all before this Court, were certainly very irregular, and much of the difficulty of this case arises from that cause, but as this case stands, it would seem entirely unjust to decree the defendant to pay a heavy sum of money, because the court of admiralty has done irregularly that which it had an unquestionable right to do.

Since the court of admiralty possessed the power of making a distinct order of sale immediately after the appeal was entered, and this, but for the depreciation, would

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have been desirable by all, it is not unreasonable to suppose the practice to have been to consider the appeal as made from the condemnation, and not from the order of sale. The manner in which this appeal was entered affords some countenance to this opinion. In the recital of the matter appealed from, the

condemnation alone, not the order of sale, is stated.

The Court will not consider this irregularity of the admiralty, in ordering what was within its power, as charging the owners of the privateer, under the decree of 23 December, 1780, with the amount of the sales of the *George* and her cargo, which in point of fact never came to their hands, and over which they never possessed a legal control, for the marshal states himself to hold the net proceeds to the credit of the former owners.

It is therefore the unanimous opinion of this Court that the decree of 23 December, 1780, does not require that the restoration and redelivery which it orders should be effected by the captors, but by those who in point of law and fact were in possession either of the *George* and her cargo, or of the money for which they were sold. As the officer of the court of New Jersey, not the captors, held this possession, the decree operates upon him, not upon them.

On that part of the libel in this case which may be considered as supplemental and as asking relief in addition to that which was given by the decree of 23 December, 1780, the Court deems it necessary to make but a very few observations.

The whole argument in favor of this part of the claim is founded on the idea that the captors were wrongdoers, and are responsible for all the loss which has been produced by their tortious act. The sentence of reversal and restoration is considered by the plaintiffs as conclusive evidence that they were wrongdoers.

But the Court can by no means assent to this principle. A belligerent cruiser who with probable cause seizes a neutral and takes her into port for adjudication

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and proceeds regularly is not a wrongdoer. The act is not tortious. The order of restoration proves that the property was neutral, not that it was taken without probable cause. Indeed, the decree of the court of appeals is in this respect in favor of the captors, since it does not award damages for the capture and detention nor give costs in the suit below.

If we pass by the decree, and examine the testimony on which it was founded, we cannot hesitate to admit that there was justifiable cause to seize and libel the vessel.

Upon the whole case then, the Court is unanimously of opinion that the decree of the circuit court ought to be affirmed.

Sentence affirmed.

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