

**The Collector**

**The Collector**

**SooperKanoon Citation :** [sooperkanoon.com/78893](http://sooperkanoon.com/78893)

**Court :** US Supreme Court

**Decided On :** 1821

**Appeal No. :** 19 U.S. 194

**Appellant :** The Collector

**Judgement :**

The Collector - 19 U.S. 194 (1821)

U.S. Supreme Court The Collector, 19 U.S. 6 Wheat. 194 194 (1821)

**The Collector**

**19 U.S. (6 Wheat.) 194**

*APPEAL FROM THE CIRCUIT*

*COURT OF MARYLAND*

## **SYLLABUS**

In all proceedings *in rem* on an appeal, the property follows the cause into the circuit court and is subject to the disposition of that court. But it does not follow the cause into the Supreme Court on an appeal to that Court.

After an appeal from the district to the circuit court, the former court can make no order respecting the property, whether it has been sold and the proceeds paid into court or whether it remains specifically, or its proceeds remain, in the hands of the marshal.

It is a great irregularity for the marshal to keep the property or the proceeds thereof in his own hands or to distribute the same among the parties entitled, without a special order from the court, but such an irregularity may be cured by the assent and ratification of all the parties interested if there be no *mala fides*.

The facts of this case were as follow:

In the year 1807, the schooner *Collector* and cargo were libeled in the District Court of the District of Maryland, as forfeited under the act of Congress

Page 19 U. S. 195

prohibiting commercial intercourse with certain ports of St. Domingo.

John Wilmot, the present petitioner and libellant, and the house of Tag art & Caldwell, claimed the whole property.

Pending the proceedings in the district court, the vessel and cargo were sold under an order to "bring in the proceeds, subject to the future disposition thereof." The money, notwithstanding this order, was never paid to the clerk, nor was it ever deposited by him in any court, and the court never afterwards made any order respecting it.

The property was condemned in the district and circuit courts, which latter decree was reversed by the Supreme Court in the Term of February, 1809, and the property libeled ordered to be restored. The mandate of the Supreme Court was filed below 11 May following. The present libel and petition was filed in the district court 8 June, 1816, when a decree passed dismissing the same, which was afterwards affirmed by the circuit court, from whose sentence this appeal was taken.

The object of the present appeal was to obtain the benefit of the decree of the Supreme Court -- that is, restitution of the property, according to the rights of the respective claimants, the appellant insisting on one-half of the proceeds of vessel and cargo, as joint owner, and also upon a lien on the other half as ship's husband for advances made beyond his proportion of the outfits of the voyage, as well as for expenses in defending the vessel and cargo against the information which had been filed against them,

Page 19 U. S. 196

and for this purpose prayed that the marshal might be ordered to bring in the proceeds, according to the interlocutory decree, and that the same might be restored, pursuant to the decree of the Supreme Court, preserving to the parties their respective rights, liens, &c.;, concluding with a general prayer for relief.

From the petition of the appellant, the answer of the marshal, and the proofs in the cause it appeared that the marshal, although he sold the schooner and her cargo, did not in fact bring the money into court. That for the moiety of the proceeds belonging to Tagart & Caldwell, an order was given by them in favor of Van Wyck & Dorsey as early as March, 1807, in consequence of which order Van Wyck & Dorsey, who sold the property at auction under the marshal's directions, were permitted to retain the part belonging to Tagart & Caldwell upon an understanding to keep it if the vessel and cargo were acquitted, but to return it in case of a different issue. That the other moiety of the proceeds was paid on 6 April, 1809, which was previous to the filing of the mandate in the court below by the marshal to the present appellant, as appears by his receipt of that date, and which expresses the sum therein mentioned to be for his one-half of the net proceeds of the sale of the schooner *Collector* and cargo. The marshal died pending the proceedings, and they were revived against his executors.

Page 19 U. S. 201

MR. JUSTICE LIVINGSTON delivered the opinion of the Court, and after stating the facts, proceeded as follows:

This is, to say the least, a very novel and extraordinary proceeding. The marshal, probably without any improper views or an intention of making use of the proceeds of the vessel and cargo, disobeys the order of the judge and instead of depositing them in the registry of the court, keeps them under his own control and finally distributes them among the parties without any direction of the court on the subject. This was a great irregularity, but the owners of the schooner *Collector* and cargo have no right at this day to complain of it. They were early apprised of the situation of their

Page 19 U. S. 202

property. Two of them gave an order on the marshal for their proportion of the proceeds before any sale had taken place, and the other, who is the present appellant, received of the marshal his share before the sentence of reversal, which was pronounced here, had been made known to the court below. After this ratification or sanction on their part of the irregular conduct of the marshal, neither of them ought now to be permitted to seek any other redress from him. Before any distribution of the proceeds by the marshal, they might have applied to the court to enforce obedience to its order as it regarded the bringing of them into court, and then have had their respective pretensions adjudicated by the court itself. Not having proceeded in this manner, the district court, if it have jurisdiction of the case, could not now, without great danger of doing injustice, interfere in this business. Whatever notice it might have taken of the lien, which is now set up by the appellant on a part of these proceeds beyond his moiety, if the proceeds were still in that court, it is by no means clear that the marshal ought now to be rendered liable to the appellant for them, there being nothing like satisfactory proof that he had notice of such a claim when the appellant took from him his moiety, nor until long after he had parted with the whole of the property. Under this view of the case, the Court is of opinion that the appellant, under the particular circumstances of this case, is not entitled, on the merits, to any relief against the marshal. But the Court is further of

Page 19 U. S. 203

opinion that the proceeding on the present petition and that in the district court was *coram non iudice*.

By an appeal from the sentence of a district court to a circuit court, the latter becomes possessed of the cause, and executes its own judgment without any intervention of the former. It is fit, therefore, that the proceeds of the property, if it have been converted into money, should follow the appeal into the circuit court and be deposited in such bank or other place as it may direct, there to remain, subject to the disposition and direction of the circuit court. And if the property at the time of the appeal remain in specie in the marshal's custody, and any order or direction shall become necessary for its sale or preservation after an appeal, such order must emanate from the circuit court. But if a further appeal be had to the Supreme Court, the property, or its proceeds, will still continue in the circuit court, because the Supreme Court, in such cases does not execute its own judgments, but sends a special mandate to the circuit court to award execution thereon.

The proceeds, therefore, of the *Collector* and cargo at the time of filing the present petition and libel, even if the order of the district court in relation to them had been complied with, could not, after the appeal, be regarded as in or under the control of the district court, which was therefore incompetent when this petition was filed to make any order respecting them.

*Sentence affirmed with costs.*