The Monte Allegre

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Decided On : 1824

Appeal No. : 22 U.S. 616

Appellant : The Monte Allegre

Judgement :

The Monte Allegre - 22 U.S. 616 (1824)
U.S. Supreme Court The Monte Allegre, 22 U.S. 9 Wheat. 616 616 (1824)

The Monte Allegre

22 U.S. (9 Wheat.) 616

APPEAL FROM THE CIRCUIT

COURT OF MARYLAND

SYLLABUS

In judicial sales, there is no warranty, express or implied.

Upon a sale by the marshal under an order of the court, no warranty is implied.

Neither the marshal nor his agent the auctioneer has any authority to warrant the article sold.

Quaere how far the marshal is responsible to the vendee in his private capacity if he undertake to warrant or to do what would imply a warranty in a private sale?

Upon an admiralty proceeding *in rem,* where the proceeds of the sale are brought into court, they are not liable to make good a loss sustained by the purchaser, in consequence of a defect being discovered in the article sold.

The appellant, Thomas Tenant, filed his petition on 14 November, 1821, in the Circuit Court for the Maryland District, setting forth that at a public sale of part of the cargo of the ship *Monte Allegre,* under an interlocutory order of the district court in the case of *Joaquim Jose Vasques, Consul-General of Portugal, against the ship Monte Allegre, and her cargo,* he became the purchaser of six hundred and fifty-three seroons of Brazil tobacco, part of said cargo, for which he paid to the marshal of the district, under whose superintendence the sale was conducted, $15,495.46. That the tobacco was sold by samples which were sound and merchantable, and that, believing the bulk of the tobacco

Page 22 U. S. 617

corresponded in this respect with the samples, he became the purchaser. That shortly afterwards, he exported the whole of the tobacco so purchased to Gibraltar, and after its arrival there it was found, upon examination, to be wholly unsound and unmerchantable, the greater part being entirely rotten, and the remainder unsalable but at very reduced prices, and was in fact sold for $4,818.52.

The appellant in his petition further alleges that the tobacco received no damage in its transportation to Gibraltar, but was, at the time it was sold by the marshal, wholly unsound, rotten, and unmerchantable; that the cause in which the order was passed, by virtue of which the tobacco was sold, was still pending in this court, and that the proceeds of said sale remained in the circuit court under its authority and control, and thereupon prayed for such relief as, upon proof of the

allegations, he might be considered by the court entitled to.

To this petition an answer was filed on 2 May, 1822, in the name of Joaquim Jose Vasques, Consul-General of Portugal, on behalf of the owners of the proceeds of the ship *Monte Allegre* and her cargo, resisting the claim of the appellant:

1. Because the court had no jurisdiction or power whatever to sustain the petition inasmuch as it was calling on the court to award damages on a claim in the nature of an action for a deceit or on a warranty as an incident to a cause in its nature wholly of admiralty and maritime cognizance,

Page 22 U. S. 618

the claim being entirely of common law jurisdiction, and could not be made an incident to that which appertains exclusively to the admiralty. And secondly the claim was resisted upon the merits. Proofs were taken on both sides in the court below and a decree *pro forma* was entered by consent dismissing the petition with costs, on which the cause was brought by appeal to this Court.

Page 22 U. S. 640

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

Upon the argument in this Court, the counsel for the respondent abandoned the objection to the jurisdiction of the court. It becomes unnecessary therefore that we should notice that question.

In examining into the merits of the claim set up by the appellant in his petition, it ought to be borne in mind that the *Monte Allegre* and her cargo were illegally captured and brought within the United States, and that judgment of restitution

Page 22 U. S. 641

has been awarded in favor of the original owners. 20 U. S. 7 Wheat. 520. Granting the claim now set up will be throwing upon the owners an additional

sacrifice of their property without any misconduct of theirs, but on the contrary growing out of the illegal and wrongful acts of others. Such a result, in order to receive the sanction of a court of justice, ought to be called for by some plain and well settled principles of law or equity. It may be said that the appellant is not chargeable with any of the misconduct imputable to those who have occasioned the loss upon the *Monte Allegre* and her cargo. But when one of two innocent persons must suffer, he to whom is imputable negligence or want of the employment of all the means within his reach to guard against the injury must bear the loss.

The proceedings to obtain the order of sale of the tobacco were without the knowledge or consent of the owners, and their property exposed to sale against their will. The appellant became the purchaser voluntarily, and with full opportunity of informing himself as to the state and condition of the tobacco he purchased. The loss, therefore, for which he now seeks indemnity has come upon him by his own negligence.

Keeping in view these considerations, we proceed to an examination of the appellant's claim, which, if sustained, must be on the ground of fraud or warranty or some principles peculiar to admiralty jurisdiction and unknown to the common law.

Page 22 U. S. 642

If the appellant has sustained an injury by a fraud not imputable in any manner to the appellee, it would be obviously unjust that he or his property should be made answerable for the damages. No part of the proof in the case affords the least countenance to the idea that the appellee had any agency, directly or indirectly, in the sale of the tobacco; he of course cannot be chargeable with fraud, and this alone would be sufficient to reject any claim on this ground. But any allegation of fraud is not better supported against the marshal or auctioneer. The petition does not allege directly and in terms fraudulent conduct in anyone, but only states that from the representations of the marshal and auctioneer, the petitioner, and other

purchasers, believed the tobacco to be sound and merchantable, and that under such belief he became a purchaser at a fair price for sound and merchantable tobacco. Whether this allegation is sufficient to let in an inquiry at all upon the question of fraud is unnecessary to examine, because, if sufficiently alleged, it is wholly unsupported by proof. No witness undertakes to say that the marshal made any representations whatever respecting the tobacco, and the marshal himself testifies that he was present at the sale, which was made by the auctioneer under his direction, and that he gave him no instructions other than telling him it was public property and was to be sold as it was and by order of the court. Nothing was therefore done by the marshal calculated to mislead or deceive purchasers. And the auctioneer testifies that he knew

Page 22 U. S. 643

the property was sold by order of the court and that he received from the marshal no instructions other than to sell for cash; that there was no deception intended or practiced in the sale. And that this was true so far as respected himself is fully confirmed by the fact that the house of which he was a partner, after the sale and before the shipment to Gibraltar, purchased one-third of the tobacco from the appellant.

There is therefore no color for charging anyone with fraudulent conduct in the sale of the tobacco. And indeed this did not seem, on the argument, to be relied upon as a distinct and independent ground for relief, but only to be brought in aid of the claim on the ground of warranty, which we proceed next to examine.

It was made a question on the argument by the counsel for the appellee whether the evidence in the case warranted the conclusion that the tobacco, at the time of the sale, was in as deteriorated a state as it was found at Gibraltar. According to the view taken by the Court of the case this inquiry becomes wholly unnecessary. It would be very reasonable to conclude that if the tobacco was in a decaying condition at the time of sale, it would become more injured by lapse of time. But were the inquiry necessary, the agreement of the counsel, filed 18 May, 1922, would seem to put that question at rest, for it is there expressly admitted that the

tobacco sustained no damage on the voyage.

In support of the claim on the ground of warranty it is said this was a sale by sample, and

Page 22 U. S. 644

that all such sales carry with them a guarantee that the article, in bulk, is of the same quality in all respects as the sample exhibited. If the rules of law which govern sales by sample are at all applicable to this case, it becomes necessary to ascertain by whom the warranty is made. In private transactions, no difficulty on this head can arise. A merchant who employs a broker to sell his goods knows or is presumed to know the state and condition of the article he offers for sale, and if the nature or situation of the property is such that it cannot be conveniently examined in bulk, he has a right, and it is for the convenience of trade that he should be permitted, to select a portion and exhibit it as a specimen or sample of the whole and that he should be held responsible for the truth of such representation. The broker is his special agent for this purpose, and goes into the market clothed with authority to bind his principal. In such cases, if the article does not correspond with the sample, the injured purchaser knows where to look for redress, and the owner is justly chargeable with the loss, as he was bound to know the condition of his own property and to send out a fair sample if he undertook to sell in that way.

But in judicial sales like the present, there is no analogy whatever to such practice. The proceedings are altogether hostile to the owner of the goods sold, which are taken against his will and exposed to sale without his consent. And it would be great injustice to make him responsible for the quality of the goods thus taken from him.

Page 22 U. S. 645

Nor can the marshal or auctioneer, while acting within the scope of their authority, be considered in any respect whatever as warranting the property sold. The marshal, from the nature of the transaction, must be ignorant of the particular state

and condition of the property. He is the mere minister of the law to execute the order of the court, and a due discharge of his duty does not require more than that he should give to purchasers a fair opportunity of examining and informing themselves of the nature and condition of the property offered for sale. An auctioneer, in the ordinary discharge of his duty, is only an agent to sell, and in the present case he acted only as the special agent of the marshal, without any authority, express or implied, to go beyond the single act of selling the goods. And the marshal, as an officer to execute the orders of the court, has no authority in his official character to do any act that shall expressly or impliedly bind anyone by warranty. If he steps out of his official duty and does what the law has given him no authority to do, he may make himself personally responsible, and the injured party must look to him for redress. With that question, however, we have not necessarily any concern at present. But in that point of view we see nothing in the present case to justify the conclusion that the marshal went beyond what was strictly his official duty. This was not a sale by sample according to the mercantile understanding of that practice or the legal acceptation of the term. In such sales, the purchaser

Page 22 U. S. 646

trusts entirely to his warranty, and in general is not referred to, nor has he an opportunity of examining, the article in bulk, and at all events is not chargeable with negligence if he omits to make the examination which he has it in his power to do.

Although most of the witnesses speak of the tobacco exhibited at the auction as a sample, we must look at the whole transaction and see what is the judgment of law upon it, and not be governed by what may be miscalled a sample. The marshal denies that he ever authorized the auctioneer to sell by sample; he says he saw some seroons opened, but he supposed it was to show the description of property, or the species of goods offered for sale; that he never examined the tobacco himself, and knew nothing about it; that he never did sell by sample, and never conceived himself authorized so to do, and the auctioneer does not pretend to have had any authority or instructions from the marshal to sell by sample.

Whatever, therefore, from the testimony of the auctioneer, bears the appearance of a sale by sample was of his own mere motion, and without authority, and if the appellant has been misled by anyone, it must have been the auctioneer, and if he has exceeded his authority so as to make himself personally responsible, redress, if at all to be had, must be from him alone, and in examining his testimony it ought not to be lost sight of that after the sale, he became interested in the purchase and probably looks to the event of this suit for indemnity for his own loss. But his testimony, when taken together, affords no just inference against

Page 22 U. S. 647

him. He states that a part of the tobacco was stored at Fell's Point, a part on Smith's Wharf, and from sixty to eighty seroons in the warehouse of himself and partner, which was so announced at the time of the sale; that fifteen or twenty seroons were taken into the street, out of which three or four were opened as a sample of the whole parcel, by which the whole quantity was sold. But he also states that the mode in which this tobacco was sold is the usual and ordinary mode in which merchandise is generally sold at auction, when no specific directions to the contrary are given. This shows very satisfactorily that he did not understand the sale to be by sample in the legal sense of the term, so as to carry with it a warranty. For sales at auction, in the usual mode, are never understood to be accompanied by a warranty. Auctioneers are special agents, and have only authority to sell, and not to warrant unless specially instructed so to do. Information was given to those who attended the auction, where the tobacco was stored, to give them an opportunity of examining it if they were disposed to do it. Some who attended with a view of purchasing did examine, and satisfied themselves that it was unsound. Not only that which was stored at a distance was found in this condition, but also that which was in the storehouse, where the auction was held and under the immediate view of purchasers. The appellant had it, therefore, in his power to obtain the same information with respect to the condition of the tobacco if he had thought it worthwhile to give himself the trouble. So that

Page 22 U. S. 648

whatever loss he has sustained is attributable solely to his own negligence, without the fault or misconduct of anyone, and the law will not and ought not to afford him redress. In sales of this description particularly, and generally in all judicial sales, the rule *caveat emptor* must necessarily apply from the nature of the transaction, there being no one to whom recourse can be had for indemnity against any loss which may be sustained.

Is there, then, anything peculiar in the powers of a court of admiralty that will authorize its interposition or justify granting relief to which a party is not entitled by the settled rules of the common law? We know of no such principle. Courts of admiralty proceed in many cases *in rem.* But this does not alter the principles by which they are to be governed in the disposition of the *res.* It is true that the proceeds of the *Monte Allegre* and her cargo remain in the circuit court and may be subject to the order of this Court if a proper case was made out which, in law or equity, fixed a charge upon this fund. These proceeds are in court as the property of the original owners, and for distribution only. And if such owners would not be liable at law for the loss upon the tobacco, it is not perceived that any principles of justice or equity will throw such loss upon their property. The principle, if well founded, cannot depend upon the contingency whether or not the proceeds shall happen to remain in court until the defect in the article sold is discovered. If the proceeds are liable, they ought to be followed into the hands of the owner after distribution, and if

they cannot be reached, the remedy ought to be *in personam.* Such is the end to which the doctrine must inevitably lead if well founded. But it is presumed no one would push it thus far.

There is no rule in courts of equity to sanction what is now asked for on the part of the appellant. The case of *Savile v. Savile,* 1 P.Wms. 746, is not at all analogous. The application there was to compel the purchaser of certain property to complete his contract, he wishing to forfeit his deposit and go no further, and the question was whether he should be compelled to go on and complete the contract, and the

court permitted him to forfeit the deposit, considering it a hard bargain, not fit to the case before us, the contract was executed. Everything respecting it had been consummated months before the discovery of the damaged condition of the tobacco. The property had been delivered and the consideration money paid; and the bargain was as much beyond the control of the court, as if the discovery of the defect had been made years afterwards. We are therefore brought back to the question whether, in sales like the present, the rule *caveat emptor* is to be applied, and thinking, for the reasons already suggested, that it is, the decree of the circuit court, dismissing the petition, must be affirmed.

Decree affirmed.