The Josefa Segunda

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Appeal No. : 23 U.S. 312

Appellant : The Josefa Segunda

Judgement :

The Josefa Segunda - 23 U.S. 312 (1825)
U.S. Supreme Court The Josefa Segunda, 23 U.S. 10 Wheat. 312 312 (1825)

The Josefa Segunda

23 U.S. (10 Wheat.) 312

APPEAL FROM THE CIRCUIT

COURT OF LOUISIANA

SYLLABUS

The district courts have jurisdiction under the slave trade acts to determine who are the actual captors under a state law made in pursuance of the fourth section of the Slave Trade Act of 1807, c. 77, and directing the proceeds of the sale of the negroes to be paid "one moiety for the use of the commanding officer of the capturing vessel," &c.;

In order to constitute a valid seizure, so as to entitle the party to the proceeds of a forfeiture, there must be an open, visible possession claimed and authority exercised under the seizure.

A seizure, once voluntarily abandoned, loses its validity.

A seizure not followed by an actual prosecution or by a claim in the district court before a hearing on the merits insisting on the benefit of the seizure becomes a nullity.

Under the seventh section of the Slave Trade Act of 1807, c. 77, the entire proceeds of the vessel are forfeited to the use of the United States unless the seizure be made by armed vessels of the navy or by revenue cutters, in which case distribution is to be made in the same manner as prizes taken from the enemy.

Under the Act of the State of Louisiana of 13 March, 1818, passed to carry into effect the fourth section of the Slave Trade Act of Congress of 1807, c. 77, and directing negroes imported contrary to the act to be sold and the proceeds to be paid

"one moiety for the use of the commanding officer of the capturing vessel, and the other moiety to the Treasurer of the Charity Hospital of New Orleans for the use and benefit of the said hospital;"

no other person is entitled to the first moiety than the commanding officer of the armed vessels of the navy or revenue cutter who may have made the seizure, under the seventh section of the act of Congress.

This is the same case which was reported in 18 U. S. 5 Wheat. 338. It was a proceeding against the vessel, and the negroes taken on board of her under the Slave Trade act of 3 March, 1807, c. 77, in which the vessel was condemned in the court below, and that decree was affirmed on appeal by this Court. After the condemnation of the vessel in the district court and before the appeal to this Court, the negroes found on board of her were (under the 4th section of the act of

Congress and under an Act of the State of Louisiana passed on 13 March, 1818, in pursuance of the act of Congress) delivered by the Collector of the Customs for the port of New Orleans to the Sheriff of the Parish of New Orleans for sale according to law. A cross-libel was afterwards filed by the alleged original Spanish owners claiming restitution of the negroes, which was dismissed, and on appeal the decree affirmed by this Court. By consent of all the parties in interest, the negroes were sold by the sheriff, and the proceeds lodged in the Bank of the United States, subject to the order of the court below. After the cause had been remanded to the district court, a question arose in that court respecting the manner in which these proceeds, as well as those of the vessel and effects, were to be distributed and the parties respectively entitled to them. Mr. Roberts, an inspector of the revenue, claimed a moiety of the proceeds as the original seizor or captor; Messrs. Gardner, Meade, and Humphrey, respectively, made similar claims under subsequent

Page 23 U. S. 314

military seizures alleged to be made by them; and Mr. Chew, the Collector of the port of New Orleans, conjointly with the naval officer and surveyor of the port, filed a like claim as the true and actual captors and seizors, who made the last and only effectual seizure, and prosecuted the same to a final sentence of condemnation.

Page 23 U. S. 315

It appeared by the evidence that Roberts, being employed as an inspector in a revenue boat at the Balize, near the mouth of the Mississippi,

Page 23 U. S. 316

on the 18th of April, 1818, boarded the vessel and declared that he had seized her. He soon afterwards went on shore and put a person on board to take charge of the vessel, which remained at anchor opposite the blockhouse until 21 April, when Lieutenant Meade, with six soldiers in a boat, went from Fort St. Philip, in company with a custom house boat, and Mr. Gardner, an officer of the customs,

on board, took possession of the vessel and brought her up under the guns of the fort. It appeared that Roberts afterwards, came on board the vessel, but did not remain on board until her arrival at the City of New Orleans, he having left her in order to board another vessel in the river. On 21 April, Mr. Chew, the Collector at New Orleans, acting on independent information which he had received, sent an armed revenue boat with an inspector of the customs down the river with instructions to seize the vessel. On arriving at

Page 23 U. S. 317

Fort St. Philip, they found the vessel at anchor opposite the fort with a sergeant's guard on board which had been placed there by Major Humphrey, the commanding officer at the fort. The inspector received from that officer the ship's papers, and took possession of the vessel and negroes, the guard having been withdrawn, and brought them up to the City of New Orleans. Proceedings were commenced against the property at the instance of Mr. Chew and the other officers of the customs, and though his name was not inserted in the libel, the prosecution was conducted by him until its final determination, and the other parties claiming as captors, or seizors, did not intervene until after the decree of this Court on the appeal in the original cause.

The court below pronounced a decree dismissing the claims of Messrs. Roberts, Humphrey, Meade, and Gardner and allowing that of the collector and other officers of the customs, and the cause was brought by appeal to this Court.

Page 23 U. S. 319

MR. JUSTICE STORY delivered the opinion of the Court.

The case of *The Josefa Segunda,* in which the present controversy had its origin, is reported in the fifth volume of Mr. Wheaton's Reports. It is only necessary to mention that after the condemnation of the vessel in the District Court of Louisiana and before the intervention of the appeal to this Court, the negroes seized on board of her in pursuance of the act of Congress and the act of Louisiana which

will be hereafter commented on, were delivered by Mr. Chew, the

Page 23 U. S. 320

collector of the customs, to the Sheriff of the Parish of New Orleans to be sold according to law, and a few days afterwards a new libel claiming the property of the negroes having been filed by the Spanish owners (which was afterwards dismissed and on appeal the dismissal confirmed by this Court) by consent of all the parties in interest, the negroes were sold by the sheriff and the proceeds lodged in the Bank of the United States subject to the order of the district court. The question now in contestation respects the manner in which the proceeds of this sale, as well as of the sale of the vessel and effects, are to be distributed and the parties who are entitled to them. Mr. Roberts, who is an inspector of the customs, claims title as the original seizor or captor; Messrs. Gardner, Meade, and Humphrey, make a like claim under a subsequent military seizure made by them; and Mr. Chew, and the surveyor and naval officer of the port of New Orleans a like claim as the true and actual captors and seizors, who made the last and only effectual seizure and prosecuted the same to a final decree of condemnation.

Mr. Chew caused the original libel against the vessel to be brought, and though his name is accidentally omitted in it as the officer through whose instrumentality the seizure was made, yet it is admitted, and indeed could not be denied, that he was the sole responsible prosecutor of the suit until the final condemnation of the vessel and the final dismissal of the second libel,

Page 23 U. S. 321

brought by the original Spanish claimants. The claims of all the other parties now before the Court adverse to that of Mr. Chew have intervened since the final judgment pronounced in the Supreme Court in the cause.

The *Josefa Segunda* was finally condemned under the seventh section of the Slave Trade Act of 2 March, 1807, ch. 77. It will be necessary to refer to the terms of that section at large, because the question here respects as well the distribution of the proceeds of the vessel, which must be made according to the rules

prescribed in that section, as of the proceeds of the sale of the negroes, who were unlawfully brought into the United States, and in the progress of the discussion it will materially aid us in the decision of the latter to ascertain who, by the construction of that section, are the captors entitled to the distribution of the former.

The fourth section of the act of 1807 provides that

"Neither the importer nor any person or persons claiming from or under him shall hold any right or title whatsoever to any negro, &c.;, who may be imported or brought within the United States or territories thereof in violation of this law, but the same shall remain subject to any regulations not contravening the provisions of this act which the legislatures of the several states or territories at any time hereafter may make for disposing of any such negro,"

&c.; Accordingly the Legislature of Louisiana, on 13 March, 1818, passed an act avowedly to meet the exigency of this section, which act, after

Page 23 U. S. 322

reciting the substance of the same section, proceeds to declare that the Sheriff of the Parish of New Orleans is authorized and required to receive any negro, &c.;, delivered to him in virtue of the act of Congress until the proper court pronounces a decree of condemnation, and after such condemnation it authorizes him to sell such negro, &c.;, as a slave for life, and then declares that

"The proceeds of such sale shall, after deducting all charges, be paid over by the said sheriff, one moiety for the use of the commanding officer of the capturing vessel, and the other moiety to the Treasurer of the Charity Hospital of New Orleans for the use and benefit of the said hospital."

There is no doubt that this act is not in contravention of the intention of the act of Congress, for the sixth section contains a proviso recognizing the validity of such a sale when made under the authority of a state law.

Some objection has been suggested as to the jurisdiction of the District Court of Louisiana to entertain the present proceedings upon the ground that the distribution is to be made under this act by the Sheriff of New Orleans. But upon a full consideration of the act of 1807, we are of opinion that the objection cannot be maintained. By the Judiciary Act of 1789, as well as by the express provisions of the act of 1807, the district court has jurisdiction over seizures made under the latter act. The principal proceedings are certainly to be against the vessel and the goods and effects found on board. But

Page 23 U. S. 323

the negroes are also to be taken possession of for the purpose of being delivered over to the state governments according to the provision of the act, and it is obvious that this delivery can only be after a condemnation has occurred, since it is only in that event that the state legislature can acquire any right to dispose of them. The proviso in the seventh section that the officers to whom a moiety of the proceeds is given on condemnation shall be so entitled only in case they safely keep and deliver over the negroes according to the laws of the states operates by way of condition to the completion of their title, but does not import any requirement that the delivery shall be until after the condemnation. On the contrary, as by a decree of restitution of the vessel and effects the claimants would be entitled to a restitution of the negroes, the reasonable construction seems to be that they remain subject to the order of the district court as property in the custody of the law, though in the actual possession of the seizing officers. The possession of the latter is the possession of the court as much in respect to the negroes as the vessel and cargo, and it must remain until the court, by pronouncing a final decree, directs in what manner it is to be surrendered. In the present case, the negroes were sold and the proceeds substituted for them were in the custody of that court. It was therefore authorized to deliver them over to the parties who should be entitled under the state law. In terms, the state law required the delivery to the

Page 23 U. S. 324

sheriff to the use of the parties, but who the parties were to whose use the sheriff must hold them could not be ascertained by him, but must be awarded by the court to whom, as an incident to the principal cause, it exclusively belonged. In what manner could any other court be authorized to ascertain who was the commanding officer of the capturing vessel? The decree of the court in distributing the proceeds of the vessel and cargo must necessarily involve this inquiry, and certainly it cannot for a moment be maintained in argument that any other person than the commander of the capturing vessel, who would share the proceeds of the prize and her cargo, could be within the meaning of the law of Louisiana. The common form of drawing up decrees in cases of condemnation is that the proceeds be distributed according to law. But if any difficulty arises, upon petition, the court always proceeds to decide who are the parties entitled to distribution, and to make a supplementary decree. But it may do the same in the first instance, and make the particulars of the distribution a part of the original decree. In the present case, if the original decree had been drawn out at large, it ought to have been that the negroes so captured be delivered over to the Sheriff of New Orleans for sale according to the act of Louisiana in this behalf provided, and that the net proceeds of the sale be afterwards paid over, *viz.,* one moiety to A.B., adjudged by the court to be the commanding officer of the capturing vessel, and the other moiety to the Charity Hospital

Page 23 U. S. 325

of New Orleans. This course of proceeding is very familiar in prize causes, where the court of admiralty always ascertains who are the captors entitled to the prize proceeds, and the courts of common law will never entertain any jurisdiction over the proceeds until after such adjudication. Considering this cause, then, as a cause of admiralty and maritime jurisdiction belonging exclusively to the courts of the United States, we are not aware how any other court could adjudge upon the question who were the captors or seizors entitled to share the proceeds, and we think that the district court has jurisdiction over the present proceedings.

In respect to the claim of Mr. Roberts, we do not think that the evidence establishes that he ever made any valid seizure of the vessel. It is not sufficient

that he intended to make one or that on some occasions he expressed to third persons that he had so done. There must be an open, visible possession claimed, and authority exercised under a seizure. The parties must understand that they are dispossessed and that they are no longer at liberty to exercise any dominion on board of the ship. It is true that a superior physical force is not necessary to be employed if there is a voluntary acquiescence in the seizure and dispossession. If the party, upon notice, agrees to submit and actually submits to the command and control of the seizing officer, that is sufficient, for, in such cases, as in cases of captures *jure belli,* a voluntary surrender of authority and an agreement to obey the captor

Page 23 U. S. 326

supplies the place of actual force. But here Mr. Roberts gave no notice of the seizure to the persons on board; he exercised no authority and claimed no possession. He had no force adequate to compel submission, and his appearance in the vessel gave no other character to him than that of an inspector rightfully on board in performance of his ordinary duties. To construe such an equivocal act as a seizure would be unsettling principles.

Messrs. Humphrey, Meade, and Gardner certainly did make a seizure by their open possession of the vessel and bringing her under the guns of Fort St. Philip. But there is this objection to the seizure both of Mr. Roberts, (assuming that he made one) and of the other persons that it was never followed up by any subsequent prosecution or proceedings. The seizure of Messrs. Humphrey, Meade, and Gardner seems to have been voluntarily abandoned by them, and even that of Mr. Roberts, if he made one, does not seem to have been persisted in. Now a seizure or capture, call it which we may, if once abandoned without the influence of superior force, loses all its validity and becomes a complete nullity. Like the common case of a capture at sea and a voluntary abandonment, it leaves the property open to the next occupant. But what is decisive in our view is that neither of these gentlemen ever attempted any prosecution or intervened in the original proceedings in the district court claiming to be seizors, which was indispensable to consummate their legal right, and their claim

was for the first time made after a final decree of condemnation in the District Court. This was certainly a direct waiver of any right acquired by their original seizures. It is not permitted to parties to lie by and allow other persons to incur all the hazards and responsibility of being held to damages in case the seizure turns out to be wrongful, and then to come in after the peril is over and claim the whole reward. Such a proceeding would be utterly unjust and inadmissible. If the parties meant to have insisted on any right as seizors, their duty was to have intervened in the district court before the hearing on the merits, according to the course pointed out by Lord Hale in the passage cited at the bar, where there are several persons claiming to be seizors of forfeited property. In the present case, Mr. Chew actually advanced a considerable sum of money for the maintenance of these negroes during the pendency of the suit, and if it had been unsuccessful, he must have exclusively borne the loss. Upon the plain ground, then, that Mr. Roberts and Messrs. Humphrey, Meade, and Gardner have not followed up their seizure by any prosecution, such as the act of 1807 requires,

we are of opinion that there is no foundation in point of law for their claims.

That Mr. Chew, on behalf of himself and the surveyor and naval officer of the port of New Orleans, did make the seizure on which the prosecution in this case was founded is completely proved by the evidence; it is also admitted by the United States in its answer to the libel of Messrs. Carricaberra, &c.;, the Spanish claimants, and is averred by Mr. Chew, and his coadjutors in their separate allegation and answer to the same libel. While the vessel lay at Fort St. Philip, armed boats under revenue officers were sent down by him with orders to seize her and bring her up to New Orleans for prosecution, which was done accordingly.

The remaining question, then, is whether Mr. Chew, for himself and his coadjutors in office, is to be considered as entitled to the proceeds of the vessel under the act of Congress and to the proceeds of the negroes as "the commanding officer of the

capturing vessel" within the sense of the Louisiana law.

If he is entitled to the proceeds of the vessel and cargo under the 7th section of the act of 1807, then, we think, he must be fairly considered as within the spirit, if not the letter, of the act of Louisiana.

The 7th section is certainly not without difficulty in its construction. In the first clause, it declares that vessels found

"in any river, port, bay, or harbor, or on the high seas within the jurisdictional limits of the United States or

Page 23 U. S. 329

hovering on the coast thereof, having on board any negro, &c.;, for the purpose of selling them as slaves, &c.;, contrary to the prohibitions of this act, shall be forfeited to the use of the United States, and may be seized, prosecuted, and condemned in any court of the United States having jurisdiction thereof."

Under this clause, standing alone, it cannot be doubted that any person might lawfully seize such a vessel at his peril, and if the United States should choose to adopt his act and proceed to adjudication, he would, in the event of a condemnation, be completely justified. But it may be considered as peculiarly the duty of the officers of the customs to watch over any maritime infractions of the laws of the United States, and by the Collection Act of 1799, ch. 128, s. 70, it is made the duty of all custom house officers, as well within their districts as without, to make seizures of all vessels violating the revenue laws.

The section, then, in the next clause authorizes the President of the United States to employ any of the armed vessels of the United States to cruise on any part of the coast to prevent violations of the act, and to instruct and direct the commanders of such armed vessels to seize all vessels contravening the act "wheresoever found on the high seas," omitting the words, "in any river, port, bay, or harbor" contained in the former clause. It then proceeds to declare that the proceeds of all such vessels, when condemned,

"shall be divided equally between the United States and the officers and men, who shall make

Page 23 U. S. 330

such seizure, take or bring the same into port for condemnation, whether such service be made by an armed vessel of the United States or revenue cutters thereof, and the same shall be distributed in like manner as is provided by law for the distribution of prizes taken from an enemy."

In a strict sense, the present seizure was not made by an armed vessel of the United States, nor by a revenue cutter, which, by the Act of 1799, ch. 128, s. 98, the President is at liberty to require to cooperate with the navy. But if we consider these cases as put only by way of example, or if we give an enlarged meaning to the words "revenue cutter" so as to include revenue boats, such as the collector is, by the Act of 1799, ch. 128, s. 101, authorized to employ with the approbation of the Treasury Department, then the seizure of Mr. Chew may be brought within the general terms of the act. The United States does not appear to have resisted this construction as to the proceeds of the sale of the *Josefa Segunda.* And on the other hand, if we consider that the act meant to deal out the same rights to all parties who might seize the offending vessel, whether they were officers of armed vessels or of revenue cutters or merely private individuals who may seize and prosecute to condemnation, then under that construction, Mr. Chew may be properly deemed the seizing officer, entitled, with his crew, to the proceeds of the vessel. If such a construction is not admissible within the equity of the act, then it is a *casus omissus,*

Page 23 U. S. 331

and the property yet remains undisposed of by law.

Upon the best consideration which we have been able to give the case, we are of opinion that it is a *casus omissus* -- or rather that all the beneficial interest vests in the United States. The first clause of the seventh section declares that all vessels offending against it "shall be forfeited to the use of the United States," and

may be seized, prosecuted, and condemned accordingly. The seizure may be made by any person, but the forfeiture is still to be, by the terms of the act, for the use of the United States. If the act had stopped here, no difficulty in its construction could have occurred. As nothing is given by it to the seizing officer, nothing could be claimed by him except from the bounty of the government. The subsequent clause looks exclusively to cases where the seizure is made by armed vessels of the navy or by revenue cutters, and directs in such an event a distribution to be made in the same manner as in cases of prizes taken from an enemy. Correctly speaking, these cases constitute exceptions from the preceding clause, and take them out of the general forfeiture "to the use of the United States." It might have been a wise policy to have extended the benefit of these provisions much further, or to have given, as the Act of 20 April, 1818, ch. 85, was given, a moiety in all cases to the person who should prosecute the seizure to effect. But courts of law can deal with questions of this nature only so far as the legislature has clearly

Page 23 U. S. 332

expressed its will. Mr. Chew appears to be a very meritorious officer, and deserving of public respect for his good conduct on this occasion. But as the act has made no provision for his compensation, he must be left, in common with those who made the military seizure, to the liberality of the government.

The remarks which have been already made dispose of the case so far as respects the proceeds of the vessel, and we think they are decisive as to the claim to the proceeds of sale of the negroes. The case as to this matter is also a *casus omissus* in the act of Louisiana. That act had a direct reference to the act of Congress, and "the commanding officer of the capturing vessel," in the sense of the former, must mean the commanding officer of such an armed vessel or revenue cutter as is entitled to share in the distribution of the proceeds by the latter. It would be going very far to give a larger construction to the words than in their strict form they import, and since they admit of a reasonable interpretation by confining them to the cases provided for by Congress, we are satisfied that our duty is complied with by assigning to them this unembarrassed limitation.

The decree of the district court, so far as it dismisses the claims of Messrs. Roberts, Humphrey, Mead, and Gardner, is affirmed, and so far as it sustains the claim of Mr. Chew and the naval officer and surveyor of the port of New Orleans, is reversed.

Decree accordingly.