

The Santa Maria

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Decided On : 1825

Appeal No. : 23 U.S. 431

Appellant : The Santa Maria

Judgement :

The Santa Maria - 23 U.S. 431 (1825)

U.S. Supreme Court The Santa Maria, 23 U.S. 10 Wheat. 431 431 (1825)

The Santa Maria

23 U.S. (10 Wheat.) 431

APPEAL FROM THE CIRCUIT

COURT OF MARYLAND

SYLLABUS

Upon an appeal from a mandate to carry into effect a former decree of the court, nothing is before the court but the proceedings subsequent to the mandate.

But the original proceedings are always before the court so far as is necessary to determine any new points in controversy between the parties, which are not

terminated by the original decree.

After a general decree of restitution in this Court, the captors, or purchasers under them, cannot set up in the court below new claims for equitable deductions, meliorations, and charges, even if such claims might have been allowed had they been asserted before the original decree.

Nor can the claimants or original owners in such a case set up a claim for interest upon the stipulation taken in the usual form for the appraised value of the goods, interest not being mentioned in the stipulation itself.

Nor can interest be decreed against the captors personally by way of damages for the detention and delay, no such claim having been set up, upon the original hearing in the court below or upon the original appeal to this Court.

The case of [Rose v. Himely](#), 5 Cranch 313, reviewed, explained, and confirmed.

Upon a mandate to the circuit court to carry into effect a general decree of restitution by this Court, where the property has been delivered upon a stipulation for the appraised value and the duties paid upon it by the party to whom it is delivered, the amount of the duties is to be deducted from the appraised value.

This cause was formerly before the Court, and the decision then pronounced will be found reported

Page 23 U. S. 432

in [20 U. S. 7](#) Wheat. 490. The claim of Mr. Burke as a *bona fide* purchaser was then rejected upon the ground of the illegality of the original capture, it having been made in violation of the neutrality of the United States, and a general decree of restitution was awarded in favor of the libellant, suing in his official character as the Consul of Spain, for the benefit of the original owners. A mandate issued from this Court to the court below to carry that decree into effect. Pending the original proceedings in the court below, and before the appeal, the property, upon the application of Mr. Burke, was delivered to him upon a stipulation given with sureties in the usual manner, for the payment of the appraised value, according to

the future decree of the court. The appraisers estimated the property at \$7,473.43, being, as they declare, "the long price, including custom house duties," and for this sum the stipulation was given. Upon the application to the court below to enforce the mandate of this Court, Mr. Burke filed a petition asserting that he had incurred cost and expenses and paid certain liens upon the property. The specifications now insisted on were the following: (1) insurance on the property from Galveztown to Baltimore, viz., \$751.25; (2) duties paid on the same at Baltimore, viz., \$1,945.14. A petition was also filed on behalf of Mr. Burke and a Mr. Forbes (who now for the first time appeared in the cause) as joint owners of the schooner *Harriet*, in which the property in question

Page 23 U. S. 433

was brought from Galveztown to Baltimore, praying for the allowance of freight for the voyage, amounting to \$1,500. The libellant also made an application for interest upon the amount of the stipulation to be decreed in his favor, either from the time of capture, from the date of the stipulation, or from the decree of this Court.

The respective claims of all the parties for these allowances were rejected by the circuit court, and from the decree dismissing them an appeal was taken to this Court.

Page 23 U. S. 441

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

Several preliminary questions have been argued which must be disposed of before the Court can entertain any question upon the merits of these claims, and if disposed of one way, they put an end to the controversy.

In the first place it is asserted that Mr. Burke is a *malae fidei* claimant, entitled to no favor whatever, and by reference to the original

proceedings, will be found a party to the wrongful capture and detention of the property. And the first question, therefore, that arises is whether upon this appeal the court can look into those proceedings for the purpose of ascertaining the guilt or innocence of the claimant? The principle laid down in the case of [Rose v. Himely](#), 5 Cranch 313, that upon an appeal from a mandate, nothing is before the court but the proceedings subsequent to the mandate, is undoubtedly correct in the sense in which that expression was used, with reference to the doctrine of that case. Whatever had been formerly before the court and was disposed of by its decree was considered as finally disposed of, and the question of interest raised upon the execution of the mandate in that case was in that predicament. But upon all proceedings to carry into effect the decree of the court, the original proceedings are always before the court so far as they are necessary to determine any new points or rights in controversy between the parties which were not terminated by the original decree. The court may therefore inspect the original proceedings to ascertain the merits or demerits of the parties so far as they bear on the new claims, and must decide upon the whole examination what its duty requires. In the present case it is impossible to separate the stipulation from the other proceedings. It is unintelligible without reference to them. The court must inspect them to guide it in its future acts and to enable it to carry into effect the decree of the Supreme Court. That

decree restores the property generally as claimed by the libellant, but what that property is, in what predicament it is, and what are the means by which it is to be restored must be ascertained before the court can institute any further proceedings.

Another preliminary question is whether the subject matter of these claims is, in this stage of the cause, open for discussion. All the claims of Mr. Burke might certainly have been brought forward and insisted upon in the original proceedings. If his right to the property was not established, still he might be entitled to equitable

deductions for meliorations or charges, and if these claims were favored by the court, the decree of restitution would have been subject to these deductions. They would then have constituted a lien upon the property, and the circuit court must have enforced it. But no such claims were insisted upon in the written allegations, or even *viva voce* at the hearing; the omission was voluntary, and the decree of restitution passed in the most absolute and unconditional form. The consequences of now admitting them to be brought before this Court by appeal would be most inconvenient and mischievous in practice. It would encourage the grossest laches and delays. The party might lie by through the whole progress of the original cause until a final decree, holding the real owner out of his property and securely enjoying, as in this case, the profits, and then start new claims for future investigation which would protract the final decision to an indefinite period. Such a

Page 23 U. S. 444

course would have a tendency justly to bring into disrepute the administration of justice and inflict upon the innocent all the evils of expensive litigation. We think, therefore, that upon principle, every existing claim which the party has omitted to make at the hearing upon the merits and before the final decree is to be considered as waived by him, and is not to be entertained in any future proceedings, and when a decree has been made which is in its own terms absolute, it is to be carried into effect according to those terms, and excludes all inquiry between the litigating parties as to liens or claims which might have been attached to it by the court if they had been previously brought to its notice. These remarks apply as well to the claim for freight as the other items. Mr. Burke, as the importer of the goods, would, if the carrier ship had belonged to a mere stranger, have been directly responsible for the freight, and would have been entitled to bring it forward in the original suit as an equitable charge. It can make no difference in his favor that he was, as he now asserts himself in his petition to be, a joint owner of the vessel with Mr. Forbes. Whether, as between himself and his co-proprietor, he would be liable to pay any freight does not appear, for the petition is naked of any proofs, and he may have occupied only his own portion of the vessel. Nor is there any evidence adduced that Mr. Forbes was really a joint

owner, and in his original claim Mr. Burke expressly asserts the vessel to be his own, in terms which imply a sole proprietary interest.

Page 23 U. S. 445

But without relying on these circumstances, it is sufficient to say that it is too late for Mr. Burke in any way to assert the claim for freight, and if payable at all, he must now bear the burden occasioned by his own laches.

This view of the subject makes it wholly unnecessary to enter upon the inquiry how far Mr. Burke is an innocent possessor of the property in controversy, and as such entitled to equitable deductions and charges. The claim, whether a lien or a mere equity, has been totally displaced by the unconditional decree of restitution.

The same doctrine applies to the claim of interest made by the libellant. The question was involved in the original proceedings, and the libel itself contains an express prayer for damages as well as for restitution of the property. Damages are often given by way of interest for the illegal seizure and detention of property, and indeed, in cases of tort, if given at all, interest partakes of the very nature of damages. The ground now assumed is that interest ought to be given since the date of the stipulation, or at all events since the decree of restitution, because the claimant has had the use of the property during this period, and it is but a just compensation to the libellant for the delay and loss he has sustained by the dispossession. It might have been just and proper for the court below to have refused the delivery of the property upon stipulation unless upon the express condition that the same should carry interest, if so decreed by the court. And in cases of this nature it appears

Page 23 U. S. 446

to us highly proper that such a clause should be inserted in the stipulation. But the present stipulation contains no such clause, and therefore, so far as respects the principal and sureties, to decree it upon that would be to include a liability not justified by its terms. It is true that interest might be decreed against Mr. Burke personally, not as the stipulator, but as the claimant in the cause; but then it would

be by way of damages for the detention or delay. In this view it was a matter open for discussion upon the original appeal, and no interest having been then asked for or granted, the claim is finally at rest. What was matter formerly before the court cannot again be drawn into controversy.

We have considered these questions thus far upon principle. But they have been already decided by this Court. The case of [Rose v. Himely](#), 5 Cranch 313, is directly in point. The authority of that case has not been in the slightest degree impugned, and without overthrowing it this Court could not now entertain the present claims. We are not disposed to doubt the entire correctness of that adjudication.

The question in regard to the duties admits of a very different consideration. The decree of restitution awards to the libellant the whole property in controversy, and nothing more. Upon the face of the proceedings, it appears that the stipulation was taken for the appraised value of the property, including the duties paid to the United States by the claimant. The amount of

Page 23 U. S. 447

those duties never constituted any part of the property of the libellant or those for whom he acts. Neither he nor they have ever incurred the charge or made the advance. And if it is now given to the libellant, it is a sum beyond the value of the property, which has been paid upon the importation without his aid and without any injury to him or his principal. It is true that in the hands of the claimant, the property may be assumed to be worth the whole appraised value; but that value includes not only the value of the property *per se*, but the amount of the duties already paid by the claimant. In receiving it, the claimant has received no more of the libellant's property than the sum, deducting the duties already paid. It has been said that the property was wrongfully brought to the United States by the claimant, and therefore he is not entitled to favor. This might be a satisfactory answer to any attempt of the claimant to charge the libellant with the duties as an equitable charge. But no such claim has been asserted, and if the court were now to decree to the libellant the whole sum in the stipulation, the decree in effect would require

the claimant to pay the duties to the libellant as well as to the government. The original decree purports no such thing. It is confined to simple restitution of the property, and the proceeds substituted for that are the net sum, deducting the duties, the market price, or appraised value, being compounded of the original value and the duties. These observations are confined to a case where the error in the

Page 23 U. S. 448

stipulation is apparent upon the face of the proceedings, and it would be dangerous as well as improper to entertain the question where the evidence must be sought from extrinsic sources.

Upon the whole, the decree of the circuit court is

Affirmed as to all things except the disallowance of the claim for the deduction of duties, and as to that it is reversed, and it is ordered that the libellant have restitution of the net appraised value, deducting the duties, and that as to so much thereof as has not been already paid to him, interest be allowed to him at the rate of six percent per annum from the time of the allowance of the present appeal unto the final execution of this decree, and that the stipulation stand security therefor.

DECREE. This cause came on, &c.;, on consideration whereof, it is ORDERED, ADJUDGED, and DECREED that the decree of the circuit court in the premises be and hereby is affirmed except in disallowing the item stated in the petition of the claimants, paid for duties, and except so far as is otherwise directed by this decree, and this Court, proceeding to pass such decree as the circuit court ought to have given, does hereby further ORDER, ADJUDGE, and DECREE that the said items of duties, amounting to the sum of \$1,945.14 be deducted from the appraised value of the property as ascertained in the stipulation, and that the libellant have restitution of the residue of the appraised value, and that upon so much of the

Page 23 U. S. 449

said residue as has not already been paid to the libellant, interest at the rate of six percentum per annum be allowed to the libellant from the time of the present appeal until this present decree shall be executed upon mandate by the circuit court, together with all the costs of suit on the present as on the original appeal, and that the said stipulation do stand as security therefor, and that the circuit court do award execution upon the said stipulation, for the amount of principal and interest so ordered, adjudged, and decreed.

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