Manro Vs. Almeida

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Decided On : 1825

Appeal No. : 23 U.S. 473

Appellant : Manro

Respondent : Almeida

Judgement :

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Manro v. Almeida

23 U.S. (10 Wheat.) 473

APPEAL FROM THE CIRCUIT

COURT OF MARYLAND

SYLLABUS

The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, have jurisdiction in cases of maritime torts, *in personam* as well as *in rem.*

The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, may issue the process of attachment to compel appearance both in cases of maritime torts and contracts.

Under the Process Act of 1792, ch. 137, sec. 2, the proceedings in cases of admiralty and maritime jurisdiction in the courts of the United States are to be according to the modified admiralty practice in our own country engrafted upon the British practice, and it is not a sufficient reason for rejecting a particular process which has been constantly used in the admiralty courts of this country that it has fallen into desuetude in England.

The process by attachment may issue wherever the defendant has concealed himself or absconded from the country and the goods to be attached are within the jurisdiction of the admiralty.

It may issue against his goods and chattels and against his credits and effects in the hands of third persons.

The remedy by attachment in the admiralty in maritime cases applies even where the same goods are liable to the process of foreign attachment issuing from the courts of common law.

It applies to the case of a piratical capture, and the civil remedy is not merged in the criminal offense.

In case of default, the property attached may be condemned to answer the demand of the libellant.

It is not necessary that the property to be attached should be specified in the libel.

It seems that an attachment cannot issue without an express order of the judge, but it may be issued simultaneously with the monition, and where the attachment issued in this manner and in pursuance of the prayer of the libel, this Court will presume that it was regularly issued.

This was a libel filed in the district court by the appellants, resident merchants of Baltimore, against the respondent, Almeida, charging him with having forcibly and piratically taken from on board a certain vessel, off the capes of the Chesapeake, and within the territorial limits of the United States, the sum of $5,000 in specie belonging to the appellants and converted the same to his own use without bringing it into any port or place for adjudication. The libel further stated that the said Almeida had absconded from the United States and fled beyond the jurisdiction of the court, and that no means of redress remained for the libellants unless by process of attachment against the goods, chattels, and credits of the said Almeida, which were also about to be removed by his orders to foreign parts. The libel also prayed a personal monition, and likewise *viis et modis,* and that the respondent might answer the premises on oath, and be compelled to pay the appellants the said sum of $5,000, and damages, and in default thereof that his goods, chattels, and credits, when attached, be condemned to answer the premises, &c.; The marshal returned that he had attached certain goods and chattels of the said Almeida; that the said Almeida was not to be found within the district and that he had left a copy of the monition at the late dwelling house of Almeida, and had affixed it at the public exchange

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and on the mast of the vessel containing the goods and chattels attached by him. But although the transcript of the record contained a petition for the sale of the attached goods and an order of the court denying the prayer of the petition, yet it did not appear by the record by what authority the attachment issued. But it appeared by the admission of counsel at the hearing that the attachment had been issued by the clerk of the district court as a process of course, without any particular order of the judge. The respondent appeared by a proctor of the court and demurred to the libel. On the argument of the demurrer, the district court dismissed the libel and ordered that the goods, chattels, and credits attached should be restored with costs. This decree being affirmed *pro forma* by the circuit court, the cause was brought by appeal to this Court.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

The record in this cause sets out the libel, the demurrer, and the decision of the court upon the demurrer. So far the case is consistent and intelligible, but the record contains also a petition for the sale of certain attached goods, a survey of the goods, and a decision against the petition, but no exhibition of the process or mode by which these goods came into the custody of the marshal. As the decision of the court sustains the demurrer, we are left at a loss upon the record to discover how process of attachment came to be issued. To obtain such process is the very prayer of the libel, and the decision of the court is against that prayer.

All the solution that the case presents is to be

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found in the argument of counsel and their mutual admissions.

The clerk, it seems, issued the attachment as process of course, and the respondent, instead of moving to quash it for irregularity, appeared to the libel, filed his demurrer, and was content to let the regularity of the attachment abide the decision of the court upon the general questions raised upon the libel. The court appears to have treated the subject under the same views, since the decree of the district court after dismissing the libel, contains an order "that the goods, chattels, and credits attached, be restored, with costs," which decree was affirmed *pro forma* in the circuit court.

Upon this state of the case, the cause has been argued as one bringing up to this Court a question on the regularity of the process issued by the clerk, and if the process so issued, and the return of the marshal upon it and a motion to quash the writ had been set out on the record, there is no question that the appeal would have brought up the whole subject. But as the record is deficient in these particulars, we do not perceive how we can take notice of that part of the judge's decision which orders the restoration of the goods attached.

We must therefore confine ourselves to the questions raised on the libel and demurrer.

The immediate question presented is whether the court below erred in refusing to the libellant the process of attachment on the case made out in his libel.

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And this resolves itself into two questions -- the first arising on the right, the second on the remedy of the case. It must be here noticed that the legality of the seizure made by Almeida is not now in question; that question may be undergoing adjudication, for aught we know, in a court of competent jurisdiction, and we are not to be understood as prejudging the influence which the decision of a foreign tribunal may have upon the final adjudication between these parties. The defendant has demurred under protest, and the only question now is whether the libellant has made out *prima facie* a good cause for relief in the admiralty.

The ground of complaint is a maritime tort, the violent seizure on the ocean of a sum of money, the property of the libellants. That the libellant would have been entitled to admiralty process against the property had it been brought within the reach of our process no one has questioned. The only doubt on this part of the subject is whether the remedy *in personam,* for which this is a substitute (or, more properly, the form of instituting it) can be pursued in the admiralty.

On this point we consider it now too late to express a doubt. This Court has entertained such suits too often without hesitation to permit the right now to be questioned. Such was the case of *Maley v. Shattack,* 3 Cranch 458. Such is the principle recognized in *Murray v. Charming Betsey,* 2 Cranch 64, where the Court decrees damages against the libellant.

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Such also was the principle in the case of *The Apollon,* 9 Wheat. 362, in which the libel was directly *in personam* and damages decreed. We consider that question, therefore, as not to be stirred.

The remedy by attachment, also, to compel appearance, has very respectable support in precedent. In the District Court of South Carolina during the administration of a very able admiralty judge, it was resorted to habitually, both in cases of tort and contract. Bee's Adm. 141. The case of *Del Col. v. Arnold,* 3 Dall. 333, is the only one we know of in which any view of this question appears to have been presented to this Court. And there, undoubtedly, the exception taken was not to the issuing of the attachment in the abstract, but to the issuing of it against a prize made from a friendly power, before the property had been devested by condemnation. The response of the court on this point would seem to imply something more, since their decision is reported to have been

"that whatever might originally have been the irregularity in attaching the *Industry* and cargo, it is completely obviated, since the captors had a power to sell the prize, and by their own agreement they have consented that the proceeds of the sale should abide the present suit."

Still there is nothing to be deduced from this case which can affect the question now under consideration. The point as stated to have been presented to the Court in argument was certainly one of which a captor could not avail himself,

and the original owner of the prize was not in court. And although the Court would appear to have had the present question in view when disposing of that point, yet it is only noticed *arguendo,* as they pass on to take a ground which precluded the necessity of considering the point made in argument.

We therefore consider this altogether a new question before this Court.

The jurisdiction of the admiralty rests upon the grant in the Constitution, and the terms in which that grant is extended to the respective courts of the United States. The forms and modes of proceeding in causes of admiralty and maritime jurisdiction are prescribed to the courts by the second section of the Process Act of 1792. In the Process Act of 1789, the language made use of in prescribing those forms implied a general reference to the practice of the civil law, but in the

act of 1792, the terms employed are, "according to the principles, rules, and usages, which belong to courts of admiralty, as contradistinguished from courts of common law."

By the laws of Maryland, the right of attachment may be asserted in the courts of common law, and the court below appears to have considered the libel in this instance as an attempt by the libellant to avail himself in the admiralty of the common law remedy by attachment. The forms of the libel must determine this question, and there we find the prayer expressed in these words:

"To the end, therefore, that your libellants

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may obtain speedy relief in the premises, they pray process of attachment against the said goods, and chattels and credits of the said J.A. which may be found within the jurisdiction of this honorable court and the process thereof according to the just course of the admiralty, and that monition *viis et modis* be made accordingly . . . to compel an answer,"

and

"finally, that the said goods, and chattels, and credits, when duly attached, may by a decree of this honorable court be condemned to answer the premises."

There can be little doubt as well from the objects embraced in this prayer as from the argument that the identity of the remedy in the common law and admiralty courts appears to have been in the mind of the party libellant. Yet this was no ground for the total refusal of the relief prayed for; the writ should have been granted and the question as to ulterior proceedings under it retained to be disposed of afterwards. The prayer of the libel contemplates two purposes -- first to compel appearance; secondly to condemn for satisfaction. Now although the latter may be only incidental and not the primary object of the attachment, yet if it be legal for the purpose of compelling appearance, the demand for the one purpose was no ground for refusing it for the other.

In giving a construction to the act of 1792, it is unavoidable that we should consider the admiralty practice there alluded to as the admiralty practice of our own country, as grafted upon the

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British practice; it is known to have had some peculiarities which have been incorporated into the jurisprudence of the United States. We had then been sixteen years an independent people, and had administered the admiralty jurisdiction as well in admiralty courts of the states as in those of the general government, and if in fact a change had taken place in the practice of the two countries, that of our own certainly must claim precedence.

On the subject particularly under consideration, it appears from an English writer that the practice of issuing attachments had been discontinued in the English courts of admiralty, while in some of our own courts it was still in use, perhaps not so generally as to sanction our sustaining it altogether on authority, were we not of opinion that it has the highest sanction also, as well in principle as convenience.

It is a mistake to consider the use of this process in the admiralty as borrowed from or in imitation of the foreign attachment under the custom of London. Its origin is to be found in the remotest history as well of the civil as the common law.

In the simplicity of the remote ages of the civil law, the plaintiff himself arrested the defendant and brought him before the pretor. But as the sanctuary of his own habitation was not to be violated, if he came not abroad, a summons was attached to his door posts citing him to appear and answer. Hence our monition *viis et modis.* If he still proved recusant after three

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times repeating this solemn notice, a decree issued to attach his goods, and thus this process of the admiralty had a common origin with the common law mode of instituting a suit by summons and distress infinite. If the defendant obeyed, he could only appear upon giving bail, and thus again the analogy was kept up with

the appearance at common law, which was synonymous with filing special bail.

Thus, this process has the clearest sanction in the practice of the civil law, and during the three years that the admiralty courts of these states were referred to the practice of the civil law for their "forms and modes of proceeding," there could have been no question that this process was legalized. Nor is there anything in the different phraseology adopted in the act of 1792 that could preclude its use. That it is agreeable to the "principles, rules, and usages which belong to courts of admiralty" is established not only by its being resorted to in one at least of the courts of the United States, but by the explicit declaration of a book of respectable authority and remote origin, in which it is laid down thus:

"If the defendant has concealed himself or has absconded from the kingdom so that he cannot be arrested, if he have any goods, merchandise, ship, or vessel on the sea or within the ebb or flow of the sea and within the jurisdiction of the Lord High Admiral, a warrant is to be impetrated to this effect, *viz.,* to attach such goods or ship of D., the defendant, in whose hands soever they may be, and to cite the said

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D. specially as the owner, and all others who claim any right or title to them, to be and appear on a certain day to answer unto P. in a civil and maritime cause."

Clerke's Praxis by Hall, part 2. tit. 28.

I have cited the passage at length in order to facilitate a reference which must be made to it on several other points in this opinion. And

1. It appears from this authority that where a defendant has concealed himself or absconded from the kingdom, this process may issue. In this particular, the averments in the libel conform literally to the authority.

2. It is required that the goods and effects to be attached should be within the jurisdiction of the admiralty. To this the libel conforms also, for the prayer is for process against

"the said goods, and chattels, and credits, of the said J.A. which may be found within the jurisdiction of the court and the process thereof according to the just course of the admiralty."

3. It is required that the attachment issue against any goods, merchandise, ship, or vessel, on the sea, &c.; The only deviation in this particular is that the process prayed for is against the credits as well as the goods and chattels, &c.;, within the jurisdiction of the court.

On this part of the prayer, the question is raised as to what goods and chattels the attachment may issue, where situated, and whether against credits and effects in the hands of third persons, but not tangible or accessible to the marshal.

This question arises from a comparison of the tit. 32, 70, Clerke's Praxis by Hall, with the 28th before cited. The language of the 28th would seem to confine the operation of the attachment to goods and chattels "on the sea, or within the ebb and flow of the sea." But by reference to the 32d, it appears that it is consistent with the practice of the admiralty also, in cases where there is no property which the officer can attach by manucaption, to proceed to attach goods or credits in the hands of third persons by means of the simple service of a notice.

To all the questions which may be supposed to arise on this part of the case, we give one general answer, *viz.,* that as goods and credits in the hands of a third person, wherever situated, may be attached by notice, there cannot be a reason assigned why the goods themselves, if accessible, should not be actually attached; and although it is very clear that the process of attaching by notice seems given as the alternative, where the officer cannot have access to the goods themselves, yet all this may be confided to the discretion of the judge who orders the process, and if the party libellant was entitled to the process at all, the court was not justified in refusing it altogether.

4. The libel prays that the articles attached may be condemned to answer the demand of the libellant.

On this subject it is very clear that the primary object of the attachment is to obtain an appearance.

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But it is equally clear that upon the third default in personal actions, the goods arrested were estreated, and, after a year, finally abandoned to the plaintiff. But as this proceeding was too dilatory for the movements of the admiralty, the condemnation and sale, after proof of the cause of action, was substituted for it. There was therefore nothing incorrect in uniting the prayer for condemnation with the acknowledged end of forcing an appearance, and if there had been, it was no ground for refusing relief as far as the claim was sustainable in the admiralty.

It may be remarked here that the case is somewhat embarrassed by the state of the pleadings, inasmuch as, after appearance, it is hardly conceivable on what ground the attachment could be granted. It would seem that the defendant, for some cause, had been permitted by the court to appear and plead without giving bail to the action. There are such causes known to the practice of the civil law, and we are compelled to take the case as we find it.

It has been further argued that as the libel alleges the trespass complained of to have been piratically done, the civil remedy merges in the crime. But this we think clearly cannot be maintained. Whatever may have been the barbarous doctrines of antiquity about converting goods piratically taken into droits of the admiralty, the day has long gone by since it gave way to a more rational rule, and the party dispossessed was sustained in his remedy to reclaim the

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property as not devested by piratical capture. It is hardly necessary to quote authority for this doctrine, but it will be found to have been the rule of justice as early as the reports of Croke and Ventris.

If the party may recover his property, why not recover the value of it from any goods of the offender within reach of the admiralty? We think the doctrine of merger altogether inapplicable to the case. Even at common law, it was confined to felonies, and piracy was no felony at common law.

On the question whether the property to be attached should have been specified in the libel or process, we have before remarked that as neither the process nor return is before us, we can express no opinion respecting its form. The libel contains no specification of the articles to be attached, and if this were fatal, the demurrer might have been sustained. But, pursuing the analogy with the civil law process to compel appearance, we can see no reason for requiring such a specification. There is no reason to conclude that the decree for attachment issued against the recusant at the civil law was otherwise than general. And although the other course may be pursued and might be most convenient and satisfactory, yet we know of no imperative rule upon the subject. The authority on which the libel was filed sanctions the general language in which it is couched.

The last point made in argument was whether the process of attachment could issue without an

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order of the judge. But here again we have to remark that we can take no notice of the circumstances under which the writ actually did issue. And looking to the libel, it appears to have been its express object to obtain such an order from the court. That the process of attachment at the civil law did not issue of course is very well known. It was obtained for contumacy after monition, and analogy as well as public convenience would seem to render the judge's order necessary. Yet we see no objection to pursuing the prayer of the libel and issuing it simultaneously with the monition; the purposes of justice would seem to require that course.

Upon the whole, we are of opinion that for a maritime trespass, even though it savors of piracy, the person injured may have his action *in personam* and compel appearance by the process of attachment on the goods of the trespasser

according to the forms of the civil law as engrafted upon the admiralty practice. And we think it indispensable to the purposes of justice and the due exercise of the admiralty jurisdiction that the remedy should be applied even in cases where the same goods may have been attachable under the process of foreign attachment issuing from the common law courts. For it will necessarily follow in all such cases that a question peculiarly of admiralty cognizance will be brought to be examined before a tribunal not competent to exercise original admiralty jurisdiction, and that as a primary, not an incidental, question, since the whole proceeding will have

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for its object to determine whether a maritime trespass has been committed, and then to apply the remedy.

Judgment reversed and the cause remanded for further proceedings.