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The Palmyra

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Court : US Supreme Court

Decided On : 1825

Appeal No. : 23 U.S. 502

Appellant : The Palmyra

Judgement :

The Palmyra - 23 U.S. 502 (1825)
U.S. Supreme Court The Palmyra, 23 U.S. 10 Wheat. 502 502 (1825)

The Palmyra

23 U.S. (10 Wheat.) 502

APPEAL FROM THE CIRCUIT

COURT OF SOUTH CAROLINA

SYLLABUS

No appeal lies from a decree of restitution, with costs and damages, in the circuit court, the report of the commissioners appointed to ascertain the damages not having been acted on by the court when the appeal was taken. Such a decree is not a final decree.

This was the case of an armed vessel called the *Palmyra,* taken under Spanish colors by the United States schooner *Grampus,* commanded by Lieutenant Gregory and cruising, with instructions from the President, against pirates, and brought into the port of Charleston, S.C. for adjudication. A libel was filed by the captors, and a claim interposed by Mr. Depau, as agent of the alleged owners of the *Palmyra,* Spanish merchants domiciled at Porto Rico, and of the captain, offices, and crew. In the district court, the libel was dismissed without costs and damages against the captors. The decree of restitution was affirmed in the circuit court with costs and damages, and the cause was brought by appeal to this Court.

Page 23 U. S. 503

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The Court has had the question submitted in this cause under consideration, and is of opinion that the appeal is not well taken. The decree of the circuit court was not final in the sense of the act of Congress. The damages remain undisposed of, and an appeal may still lie

Page 23 U. S. 504

upon that part of the decree awarding damages. The whole cause is not, therefore, finally determined in the circuit court, and we are of opinion that the cause cannot be divided so as to bring up successively distinct parts of it.

The case in 7 U. S. 3 Cranch 179 is essentially different. In that case, which was an appeal in an equity cause, there was a decree of foreclosure and sale of the mortgaged property. The sale could only be ordered after an account taken or the sum due on the mortgage ascertained in some other way, and the usual decree is that unless the defendant shall pay that sum in a given time, the estate shall be sold. The decree of sale therefore is, in such a case, final upon the rights of the parties in controversy, and leaves ministerial duties only to be performed.

Appeal dismissed.

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