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Governor of Georgia Vs. Madrazo

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SooperKanoon Citation : sooperkanoon.com/79136

Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 110

Appellant : Governor of Georgia

Respondent : Madrazo

Judgement :

Governor of Georgia v. Madrazo - 26 U.S. 110 (1828)
U.S. Supreme Court Governor of Georgia v. Madrazo, 26 U.S. 1 Pet. 110 110 (1828)

Governor of Georgia v. Madrazo

26 U.S. (1 Pet.) 110

SYLLABUS

In the District Court of the United States for the District of Georgia, a libel was filed claiming certain Africans as the property of the libellant which had been brought into the State of Georgia and were seized by the authority of the governor of the state for an alleged illegal importation; process was issued against the slaves, but was not served. The case was taken by appeal to the circuit court, and the

Governor of Georgia filed a paper in the nature of a stipulation importing to hold the Africans subject to the decree of the circuit court, &c.; *Held* that such a stipulation could not give jurisdiction in the case to the circuit court, as process could not issue legally from the circuit court against the Africans, because it would be the exercise of original jurisdiction in admiralty, which the circuit court does not possess.

It may be laid down as a rule which admits of no exception that in all cases where jurisdiction depends on the party, it is the party named in the record.

The libel and claim exhibited a demand for money actually in the Treasury of the State of Georgia, mixed up with the general funds of the state, and for slaves in the possession of the government, the possession of both of which was acquired by means which it was lawful in the state to exercise. *Held* that the courts of the United States had no jurisdiction, the same being taken away by the 11th article of the amendment to the Constitution of the United States.

In a case where the chief magistrate of a state is sued, not by his name but by his style of office, and the claim made upon him is entirely in his official character, the state itself may be considered a party in the record.

These cases were brought before this Court from the Circuit Court of the United States for the District of Georgia under the following circumstances.

The schooner *Isabelita,* a Spanish vessel owned by Juan Madrazo, a native Spanish subject domiciliated at Havana, was dispatched by him with a cargo, his own property, in the year 1812 on a voyage to the coast of Africa, where she took in a cargo of slaves. On her return voyage she was captured by a cruiser called the *Successor* under the piratical flag of Commodore Aury, the said cruiser being then commanded by one Moore, an American citizen, and having been fitted out in the port of Baltimore, and manned and armed in the River Severn, within the waters and jurisdiction of the United States. The *Isabelita* and the slaves on board were carried to Fernandina, in Amelia Island, and there condemned by a pretended court

of admiralty exercising jurisdiction under Commodore Aury, and sold under its authority by the prize agent, Louis Segallis, to one William Bowen. The negroes so purchased by Bowen were conveyed into the Creek nation in consequence, as it was alleged, of the disturbed State of East Florida, the insecurity of property there, and with a view to their settlement in West Florida, then a province of the Spanish monarchy. Being found within the limits of the State of Georgia, they were seized by an officer of the customs of the United States and delivered to an agent appointed by the Governor of Georgia under the authority of the act of the Legislature of that state passed in conformity to the provisions of the Act of Congress of March, 1807, prohibiting the importation of slaves into the United States, the negroes having been so brought into the United States in violation of that act.

Some of the negroes were sold by an order of the governor, without any process of law, and the proceeds paid over to the Treasurer of Georgia. The residue of the negroes are in possession of an agent appointed by the Governor of Georgia.

The *Isabelita* was fitted out as a cruiser at Fernandina, taken by Moore to Georgetown, South Carolina, seized there by the United States, sent round to Charleston, libeled in the district court of South Carolina, and, by a decree of that court restored to Madrazo, the claimant.

The Governor of Georgia filed an information in the District Court of the United States for the District of Georgia, praying that a part of these Africans, which remained specifically in his hands, might be declared forfeited, and may be sold.

A claim was given in in this case by William Bowen; Juan Madrazo, the libellant in the other case, did not claim.

The decree of the district court dismissed the claim of William Bowen and adjudged the negroes to be delivered to the Governor of Georgia to be disposed of according to law.

William Bowen appealed to the circuit court, by which court his claim was dismissed, and from the decree of that court dismissing his claim he has not appealed.

Juan Madrazo filed his libel in the District Court of Georgia, alleging that a Spanish vessel called the *Isabelita,* having on board a cargo of negroes, was piratically captured on the high seas, carried into the port of Fernandian, there condemned by some pretended tribunal, and sold; that the negroes were conveyed by the purchaser into the Creek nation, where they were seized by an officer of the United States and by him delivered to the government of the State of Georgia pursuant to an act of the General Assembly of the State of Georgia carrying into effect an act of Congress of the United States; that

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a part of the said slaves were sold, as permitted by said act of Congress and as directed by said act of the general assembly of the said state, and the proceeds thereof deposited in the treasury of the said state; that part of the said slaves remain undisposed of under the control of the governor of the said state or his agents, and prays restitution of said slaves and proceeds. Claims were given in by the Governor of Georgia and by William Bowen. The district court dismissed the libel and the claim of William Bowen. From this appeal Juan Madrazo appealed to the circuit court.

The circuit court dismissed the libel and claim of the Governor of Georgia, and directed restitution to the libellant, and from this decree appeals have been taken by the State of Georgia and by William Bowen. A warrant of arrest was issued by the district court, but was never served. A monition also issued, and was served on the Governor and Treasurer of the State of Georgia.

In the circuit court the following proceedings took place:

"On motion of the proctors of the libellant Madrazo, ordered that he have leave to renew his warrant for the property libeled, but it shall be held a sufficient execution of such warrant if the governor, who appears as claimant, in behalf of the state,

will sign an acknowledgment that he holds the same subject to the jurisdiction of this Court."

Whereupon the following instrument was filed December 24, 1823:

" *Executive Department, Milledgeville, May 15, 1823* "

"The executive having been furnished by the deputy marshal with the copy of an order passed by the circuit court of the United States in relation to certain Africans, the title to which is a matter of controversy in said circuit court, and also in the Superior Court of the County of Baldwin makes the following statement and acknowledgment, in satisfaction of said order and notice."

"Juan Madrazo"

"vs."

"Sundry Africans"

"Libel in admiralty against sundry African negroes"

"The Governor of the State of Georgia acknowledges to hold sundry African negroes, now levied on, by virtue of sundry executions by the Sheriff of Baldwin County, subject to the order of the Circuit Court of the United States for the District of Georgia after the claim of said sheriff, or prior thereto, if the claim in the said circuit court shall be adjudged to have priority of the proceeding in the state court."

"JOHN CLARK, *Governor* "

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Documentary evidence was introduced in the court below and witnesses were examined which proved the interest of Madrazo in the *Isabelita,* the illegality of the capture and condemnation, and which were intended to prove the identity of the negroes, the subject of the proceedings, with those who had been on board

the *Isabelita.*

On the part of Juan Madrazo, it was contended:

1. That his proprietary interest in the slaves, and the illegality of the capture, and condemnation of the *Isabelita* and cargo, were fully proved, and that he is entitled to restitution of the property libeled.

2. That the court below had jurisdiction.

3. That the possession of the property libeled, the service of the monition, and the order of the circuit court and agreement of the Governor of Georgia, filed in that court, fix the parties in possession of the property for it, and that the process of the court will operate on them individually, and not on the State of Georgia.

On the part of the State of Georgia it was contended:

1. That the court below had no jurisdiction.

2. That there is no sufficient proof of proprietary interest to entitle Juan Madrazo to restitution of the property libeled.

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

Sometime in the year 1817, Juan Madrazo, a Spaniard residing in the Island of Cuba, engaged in the slave trade, fitted out a vessel for the coast of Africa which procured a cargo of Africans, and on its return in the autumn of 1817, was captured by a privateer sail under the flag of one of the governments of Spanish America and carried into Amelia Island, where the vessel and cargo were condemned by a tribunal, established by Aury the authority of which has not been acknowledged in this country. The Africans were purchased by William Bowen and were conducted into the Creek nation,

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within the limits of the State of Georgia, where they were seized by McQueen McIntosh, a revenue officer, at Darien, in Georgia, early in January, 1818, under the act of 1807 which prohibits the importation or bringing into the United States, of any negro, mulatto, or person of color. This act annuls the title of the importer or any person claiming under him to such negro, mulatto, or person of color, and declares that such persons

"shall remain subject to any regulation, 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 such negro, mulatto, or person of color."

In December, 1817, the Legislature of Georgia passed an act which empowered the governor to appoint some fit and proper person to proceed to all such ports and places within this state as have or may have, or may hereafter hold any negroes, mulattoes, or persons of color as have been or may hereafter be seized or condemned under the above recited act of Congress, and who may be subject to the control of this state, and the person so appointed shall have full power and authority to receive all such negroes, mulattoes, or persons of color and to convey the same to Milledgeville and place them under the immediate control of the executive of this state.

The second section authorizes the governor to sell such negroes, mulattoes, or persons of color in such manner as he may think most advantageous to the state.

The third directs that they may be delivered up to the Colonization Society on certain conditions therein expressed, provided the application be made before the sale.

Under this act, the Africans brought in by William Bowen, were delivered up to the Governor of Georgia, who sold the greater number of them and paid the proceeds, amounting to $38,000, into the treasury of the state. The Colonization Society applied for those remaining unsold, amounting to rather more than twenty, and offered to comply with the conditions prescribed in the act of December, 1817.

In May, 1820, the Governor of Georgia filed an information in the District Court of Georgia stating the violation of the act of Congress, that the Africans were placed under the immediate control of the executive of the state, where they awaited the decree of the court. He states the application made on the part of the Colonization Society, with which he is desirous of complying as soon as he shall be authorized to do so by the decree of the court.

In November, 1820, William Bowen filed his claim to the said Africans, alleging that they were his property -- that they

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had not been brought into the United States in violation of the act of Congress, but were seized while passing through the Creek nation on their way to West Florida.

In February, 1821, Juan Madrazo filed his libel alleging that the Africans were his property -- that on the return voyage from Africa, they were captured by the privateer *Successor,* commanded by an American, and fitted out in an American port -- that the vessel and cargo were carried into Amelia Island, and condemned by an unauthorized tribunal, after which they were brought by the purchaser into the Creek nation, where they were seized by an officer of the United States, brought into the limits of the District of Georgia, and delivered over to the government of that state in pursuance of an act of the general assembly carrying into effect an act of Congress in that case made and provided. That a part of the slaves were sold, and the proceeds, amounting to $38,000 or more paid into the treasury of the state, and that the residue, amounting to twenty-seven or thirty, remain under the control of the governor.

The libel denies that the laws of the United States have been violated and prays that admiralty process may issue to take possession of the slaves remaining under the control of the Governor of Georgia, and that the governor and all others concerned should be cited to show cause why the said slaves should not be restored to Juan Madrazo and the proceeds of those which had been sold paid over to him.

Upon this libel a monition was issued to the Governor of Georgia, who appeared and filed a claim on behalf of the state in which he says that the slaves were brought into the state in violation of the act of Congress, and that they were taken into the possession of the executive of the state in pursuance of the act of the state legislature enacted to carry the act of Congress into effect. That a number of the said slaves have been sold, and the proceeds paid into the treasury, where they have become a part of the funds of the state, not subject to his control or to the control of the treasurer. That the residue of the said slaves who remain unsold have been demanded under the law by the Colonization Society.

Process was also issued against the Africans, but was not executed. The two causes came on together, and the district court dismissed the claim of Bowen, and also dismissed the libel of Madrazo and directed that the slaves remaining unsold should be delivered by the marshal to the governor of the state, and that the proceeds of those sold, should remain in the treasury.

Both Bowen and Madrazo appealed to the circuit court.

At the hearing in the circuit court, the sentence dismissing

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the claim of Bowen was affirmed. That dismissing the libel of Madrazo was reversed, and a decree was made that the slaves remaining unsold should be delivered to him on his giving security to transport them out of the United States, and further that the proceeds of those which were sold should be paid to him. From this decree the Governor of Georgia and William Bowen have appealed to this Court.

A question preliminarily to the examination of the title to the Africans which were the subject of these suits and to the proceeds of those which were sold has been made by the counsel for the State of Georgia. He contends that this is essentially, and in form, a suit against the State of Georgia, and therefore was not cognizable in the district court of the United States.

The process which issued from the court of admiralty not having been executed, the *res* was never in possession of that court. The libel of Madrazo therefore was not a proceeding against the thing, but a proceeding against the person for the thing. This appeal carried the cause into the circuit court, as it existed in the district court when the decree was pronounced. It was a libel demanding personally from the Governor of Georgia the Africans remaining unsold and the proceeds of those that were sold, which proceeds had been paid into the treasury.

Pending this appeal, the governor filed a paper in the nature of a stipulation, consenting to hold the Africans claimed by the libel of Madrazo, subject to the decree of the circuit court, if it should be determined that the claim in the circuit court had priority to sundry executions levied on them by the Sheriff of Baldwin County. Had this paper been filed in the district court, it would have been a substitute for the Africans themselves, and would, according to the course of the admiralty, have enabled that court to proceed in like manner as if its process had been served upon them. The libel would then have been *in rem.* Could this paper, when filed in the circuit court, produce the same effect on the cause?

We think it could not.

The paper in nature of a stipulation is a mere substitute for the process of the court, and cannot, we think, be resorted to where the process itself could not be issued according to law. The process could not issue legally in this case, because it would be the exercise of original jurisdiction in admiralty, which the circuit court does not possess.

This cause therefore remained in its character a libel against the person of the Governor of Georgia for the Africans in his possession as governor and for the proceeds in the treasury of

those which had been sold. Could the district court exercise jurisdiction in such a cause?

Previous to the adoption of the 11th Amendment to the Constitution, it was determined that the judicial power of the United States, extended to a case in which a state was a party defendant. This principle was settled in the case of *Chisholm v. Georgia,* 2 Dall. 419. In that case, the state appears to have been nominally a party on the record. In the case of *Hollingsworth v. Virginia,* also, in 3 Dall. 378, the state was nominally a party on the record. In the case of *Georgia v. Brailsford,* 2 Dall. 402, the bill was filed by his Excellency Edward Telfair, Esq., Governor and Commander in Chief in and over the State of Georgia, in behalf of the said state. No objection was made to the jurisdiction of the court, and the case was considered as one in which the Supreme Court had original jurisdiction because a state was a party. In the case of *New York v. Connecticut,* 4 Dall. 1, both the states were nominally parties on the record. No question was raised in any of the cases respecting the style in which a state should sue or be sued, and the presumption is that the actions were admitted to be properly brought. In the case of *Georgia v. Brailsford,* the action is not in the name of the state, but it is brought by its chief magistrate in behalf of the state. The bill itself avows that the state is the actor, by its governor.

There is, however, no case in which a state has been sued without making it nominally a defendant.

Fowler v. Lindsey, 3 Dall. 411, was a case in which an attempt was made to restrain proceedings in a cause depending in a circuit court on the allegation that a controversy respecting soil and jurisdiction of two states had occurred in it.

The Court determined that a state, not being a party on the record nor directly interested, the circuit court ought to proceed in it. In *United States v. Peters,* 3 Dall. 121, the Court laid down the principle that although the claims of a state may be ultimately affected by the decision of a cause, yet if the state be not necessarily a defendant, the courts of the United States are bound to exercise jurisdiction.

In the case of *Osbourne v. Bank of the United States,* 9 Wheat. 738, this question was brought more directly before the Court. It was argued with equal zeal and talent and decided on great deliberation. In that case, the auditor and treasurer of

the state were defendants, and the title of the state itself to the subject in contest was asserted. In that case, the Court said

"It may, we think, be laid down as a rule which admits of no exception that in all cases where jurisdiction depends on the party, it is the party named in the record."

The Court added:

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"The state not being a party on the record, and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether, in the exercise of its jurisdiction, the court ought to make a decree against the defendants; whether they are to be considered as having a real interest or as being only nominal parties."

The information of the Governor of Georgia professes to be filed on behalf of the state, and is in the language of the bill filed by the Governor of Georgia on behalf of the state, against Brailsford.

If, therefore, the state was properly considered as a party in that case, it may be considered as a party in this.

The libel of Madrazo alleges that the slaves which he claims

"were delivered over to the government of the State of Georgia pursuant to an act of the general assembly of the said state carrying into effect an act of Congress of the United States in that case made and provided; a part of the said slaves sold, as permitted by said act of Congress and as directed by an act of the general assembly of the said state, and the proceeds paid into the treasury of the said state, amounting to $38,000 or more."

The governor appears and files a claim on behalf of the state to the slaves remaining unsold and to the proceeds of those which are sold. He states the slaves to be in possession of the executive under the act of the Legislature of

Georgia made to give effect to the act of Congress on the subject of negroes, mulattoes, or people of color brought illegally into the United State, and the proceeds of those unsold to have been paid in the treasury and to be no longer under his control.

The case made, in both the libel and claim, exhibits a demand for money actually in the treasury of the state, mixed up with its general funds, and for slaves in possession of the government. It is not alleged, nor is it the fact, that this money has been brought into the treasury or these Africans into the possession of the executive by any violation of an act of Congress. The possession has been acquired by means which it was lawful to employ.

The claim upon the governor is as a governor; he is sued not by his name, but by his title. The demand made upon him is not made personally, but officially.

The decree is pronounced not against the person, but the officer, and appeared to have been pronounced against the successor of the original defendant, as the appeal bond was executed by a different governor from him who filed the information. In such a case, where the chief magistrate of a state is sued not by his name, but by his style of office, and the claim made upon him is entirely in his official character, we think the

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state itself may be considered as a party on the record. If the state is not a party, there is no party against whom a decree can be made. No person in his natural capacity is brought before the court as defendant. This not being a proceeding against the thing but against the person, a person capable of appearing as defendant against whom a decree can be pronounced, must be a party to the cause before a decree can be regularly pronounced.

But were it to be admitted that the governor could be considered as a defendant in his personal character, no case is made which justifies a decree against him personally. He has acted in obedience to a law of the state made for the purpose of giving effect to an act of Congress, and has done nothing in violation of any law

of the United States.

The decree is not to be considered as made in a case in which the governor was a defendant in his personal character, nor could a decree against him in that character be supported.

The decree cannot be sustained as against the state, because if the 11th Amendment to the Constitution does not extend to proceedings in admiralty, it was a case for the original jurisdiction of the Supreme Court. It cannot be sustained as a suit, prosecuted not against the state but against the thing, because the thing was not in possession of the district court.

We are therefore of opinion that there is error in so much of the decree of the circuit court as directs that the said slaves libeled by Juan Madrazo, and the issue of the females now in the custody of the government of the State of Georgia or the agent or agents of the said state be restored to the said Madrazo as the legal proprietor thereof, and that the proceeds of those slaves who were sold by order of the governor or the said state be paid to the said Juan Madrazo, and that the same ought to be reversed, but that there is no error in so much of the said decree as dismisses the information of the Governor of Georgia, and the claim of William Bowen.

MR. JUSTICE JOHNSON, dissenting.

By the new and unexpected aspect which this cause has assumed in this Court I feel myself called upon to accompany the report of this decision with a brief explanation. Such an explanation appears necessary not less in vindication of the course pursued by the State of Georgia than of the judicial course of the circuit court over which I have the honor to preside.

By the state of facts as now exhibited, it would appear as if the Court of the Sixth Circuit of the District of Georgia had been taking very undue liberties both with the executive and treasury departments of that state, and that two of the

governors of that state, acting in behalf of the state, had first come voluntarily into the courts of the United States, and then, only because the decision of that court was against the rights they asserted, repudiated their own act and denied the jurisdiction of the very court which they had voluntarily called to decide on their rights.

Yet nothing can be further from the truth of the case. The real exposition of the incidents to the cause lies in this -- that the actual *promovent contestatio litis* was the colonizing society; that Georgia, at least in its inception, had no interest in it; that the governor only regarded himself as a stakeholder to the three disputants who claimed the property. The slaves, as well as the proceeds of those which were sold, it is notorious, have in fact been delivered up by the state to one of these claimants.

It is true that in this point, the legislature of the state has differed in opinion on the question of right from the court that tried the cause and surrendered them to Bowen, instead of Madrazo; but this fact proves that she was not contending for herself.

There is no necessity, however, for speaking out of the record on this subject. The information as well as the claim filed to Madrazo's libel both explicitly avow that as to the slaves remaining unsold, the governor was acting in behalf of the colonizing society, and had not the decision below been against their claim, and on grounds which cannot be shaken, it is fair to conjecture, that the exception here taken to the jurisdiction would never have been suggested; nor had that society possessed a legal existence, so as to prosecute a suit in its own name, is there the least reason to believe that the Governor of Georgia would ever have presented himself in the courts of the United States upon this subject.

What could he do? This property had come legally into the hands of his predecessor -- a part had been sold -- and the rest transmitted to him specifically. Two parties presented themselves claiming it in their respective rights, and having been constituted by law the guardian of the rights of one, he presents himself to the only court that could take cognizance of the cause in order to have the

question of right decided before he would surrender the slaves in his possession to either claimant. The money raised from the sales, he disavows having any control over.

But in the progress of the cause incidents occur which produce a total change in the views and interests of parties. A third party arises and, on the clearest proofs and best established principles, has made out the proprietary interest to be in himself. An appeal is taken to this Court, and pending the

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appeal, the party who had failed in every court below and must fail wherever the rights are subjected to judicial cognizance succeeds in prevailing on the legislature to abandon the property to him.

Thus, then, the colonizing society have lost all hopes from a suit at law; Bowen has obtained the property; the legislature that gave it to him can at least feel no desire to have Madrazo's rights confirmed in this Court, and all became interested in overturning their own work and crushing Madrazo's interest under the ruins.

It is certainly a purpose which cannot be willingly favored in a court of justice, and I meet it with the most thorough conviction that the law is not with the appellants on the objections to the jurisdiction of the court below which have now here for the first time been moved and argued.

There are two exceptions taken to the exercise of jurisdiction, in the court below:

1. That a state was a party, &c.;

2. That the jurisdiction of the district court never attached, because the *res subjecta* was never actually in possession of that court.

The facts were these -- the negroes were certainly brought into the United States in contravention of the Act of Congress of 1807. That act creates a forfeiture, inasmuch as it divests the owner of all property in the slaves so brought in, and by another provision it is left to the states to dispose of such persons of color in any

manner they may think proper not contravening the provisions of that act. The State of Georgia, by law, authorized its governor to appoint an agent to receive such persons of color and deliver them to the executive to be sold, unless applied for by the colonizing society, and if so applied for, then to be delivered into their possession.

These slaves were seized by a revenue officer of the United States and voluntarily delivered to Governor Rabun, then Governor of Georgia, who had sold all except about thirty before the society applied to him, agreeably to the provisions of the act.

The Georgia law contains no express instructions to the governor how to dispose of the proceeds of the sales. It authorizes him to sell, after sixty days' notice, "in such manner as he may think best calculated for the interest of the state," but whether for cash or credit or to remain in or be shipped from the state be meant by this provision there are no means of determining. The money was in this instance paid into the treasury, or at least so the governor alleges in his claim

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to the Madrazo libel, and so we are bound to consider the facts.

Here, then, was a case of forfeiture under a law of Congress, and the governor of the state legally authorized to sue for and recover the thing forfeited, and *"when seized and condemned,"* as the Georgia law expresses it, to sell it on one state of facts; on another to deliver it to the colonizing society. Who was to sue for this forfeiture if not the state, or the governor as its representative? The society could not, for it had no existence in law.

The governor accordingly sold the greater part, and his successor filed an information in the district court of the United States to have the residue condemned, that he might deliver them to that society. To this libel and information Bowen filed his claim and answer, and while that suit was pending, Madrazo filed his libel in the district court, praying process against the Africans remaining in the governor's hands and the proceeds of those which were sold. On this libel a

warrant of arrest was issued against the slaves, and a monition to the governor and all concerned in relation to the whole subject of Madrazo's claim.

The warrant of arrest was not served in the district court, but Governor Clarke, successor of Governor Rabun, appeared to the monition *without protest* and filed a claim to the Africans in behalf of the society; as to the proceeds of those which had been sold, he simply answers that they had been paid into the treasury, where they remained mixed up with the treasure of the state and beyond his control.

The pleadings were in this state when the district judge entered upon a plenary hearing of the case, taking into view the information of the governor with Bowen's claim, and the libel of Madrazo with the governor's claim and answer, and thereupon sustained the information and dismissed Bowen's claim and Madrazo's libel.

Bowen and Madrazo appealed, and on the hearing in the circuit court, where a body of new evidence was introduced, the decree of the district court was reversed and the information and Bowen's claim dismissed.

But having proceeded so far, the circuit court found itself thus situated.

As the district court had sustained the information, it would have been nugatory to enforce its warrant of arrest upon the slaves, since they were already in possession of the state. Madrazo's libel being dismissed in that court, no further steps were taken to render the *res subjecta* into actual possession.

But when the information was dismissed and Madrazo's

libel sustained in the circuit court, it followed that it was error in the district court not to have enforced the service of the warrant of arrest on the slaves or done some equivalent act. Thus situated, the circuit court could not send back the cause, because by the 24th section of the Judiciary Act of 1789, the circuit court is required to go on and make such decree as this district court ought to have made. That court thought that the obligation to perform this duty carried with it all the

incidents necessary to perform it, and ordered process accordingly. To this the governor again, without protest, responded by voluntarily entering into a stipulation to hold the slaves, subject to the order of that court, and then the court, considering itself legally in possession of the *res,* made the decree in favor of Madrazo which is here brought up for revision.

On the question of right upon the evidence before the circuit court there can scarcely be two opinions. The cargo was Madrazo's -- it was captured by a privateer -- fitted out in Baltimore -- run into Fernandina -- there sold to Bowen -- carried across the country to the Creek agency, within the limits of the United States and where its jurisdiction attached, notwithstanding the Indian title existed -- and although Bowen, the tortious owner, committed an offense by introducing them into the country, Madrazo was not privy to that offense and was innocent of any act that could work a forfeiture of his interest.

But the question now to be considered is exclusively that of jurisdiction, and it is insisted first that as the state was a party and the party defendant in both cases in the circuit court, that court could not maintain jurisdiction of the subject.

That a state is not now suable by an individual is a question on which the court below could not have paused a moment.

The 11th Amendment to the Constitution put that question at rest forever. But where is the provision of the Constitution which disables a state from suing in the courts of the Union?

The second section of the third article extends the judicial power of the United States to all cases arising under the Law of the United States and to all cases of admiralty and maritime jurisdiction, to controversies between two or more states, between a state and citizens of another state, and between a state or the citizens thereof and foreign states, citizens, or subjects.

It is true the next section provides that, in all cases in which a state shall be a party, the Supreme Court shall have

original jurisdiction. But it is obvious that "original" does not mean "exclusive," and in the 13th section of the Judicial Act of 1789 it is so treated, since the legislature there declares in what instances the jurisdiction of the Supreme Court shall be exclusive and in what concurrent when a state is a party. The words of that section are:

"The Supreme Court shall have exclusive jurisdiction of all controversies of a *civil nature* where a state is a party *except between a state and its citizens,* and except also between a state, and citizens of other states, and aliens, in which latter case, it shall have original, but not exclusive jurisdiction."

Now considering this section in connection with the Constitution, it is obvious that the word "exclusive," there used, must be considered as applying solely to the courts of the United States, since it never could have been imagined that the states were to be restricted from suing in their own courts or those of their sister states, and thus construed, it must carry the implication that the states may sue in any other courts of the United States in cases comprised within the jurisdiction vested in those courts by the Judiciary Act, provided the cause of action, or the parties be such as bring the suit within the cases to which the judicial power of the United States is extended by the Constitution.

In a suit against an alien, then, there can be no question that a state may sue in the circuit court and must prosecute a suit there if the alien chooses to assert the right of transfer secured to him under the 12th section of that act.

And so, with regard to suits against consuls and vice-consuls, it is perfectly clear that the suit of a state must, if the defendant insists upon his right, be prosecuted in the district courts of the United States.

The 9th section of the act, being that which prescribes the jurisdiction of the district courts, is explicit on this point. But that section embraces other cases in which, without any strained construction, the states may assert the rights of a suitor in the district court.

The words of the section are:

"The district courts shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under Laws of impost, navigation, and trade of the United States where seizures are made on waters, &c.;, and shall also have exclusive original cognizance of all seizures on land, &c.;, and of all suits for penalties and forfeitures incurred under the laws of the United States."

Now it is very clear that wherever the district court is vested with "exclusive original cognizance," the Supreme Court can possess no original jurisdiction, and such is clearly the case

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with regard to seizures and suits for forfeitures under the Laws of the United States and suits in the admiralty. And unless some reason can be shown why a state should not prosecute a suit for a forfeiture under the Laws of the United States, it follows with regard to the information that the jurisdiction was rightfully exercised by the district court in the present instance. The admiralty suit shall be separately considered. But why may not a state prosecute a suit for a forfeiture under a law of the United States? Take the cases of a law of Congress passed to aid the states in the collection of a tonnage duty, or of a penalty under their inspection laws. In the one case there may be a seizure on the water, and in the other on the land; in either there may be a suit for a forfeiture, and in all the penalty might very rationally be given to the state or its prosecuting officer. The present, so far as it involves the question on the information, is precisely one of those cases. Here was a forfeiture incurred under a law of the United States, and the benefit of it was consigned to the states if they chose to accept it. Here the state did accept it and authorized its executive to assert the rights derived under the law of Congress.

An examination of the exceptions in the thirteenth section of the act, which marks out the jurisdiction of the Supreme Court, will throw light upon this subject.

The language of the section is:

"That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party, except between a state and its citizens, and except also between a state and citizens of other states or aliens, in which latter case it shall have original but not exclusive jurisdiction."

Now it may seem unaccountable at first view why these exceptions should have been extended to controversies between a state and its own citizens, since controversies between a state and its own citizens is not one of the subjects of jurisdiction enumerated in the Constitution. And the solution is to be found in this, that the grant of jurisdiction as to cases arising under the Constitution, Laws, &c.;, of the United States and of admiralty and maritime causes is not restricted to or limited by any relation or description of persons. Controversies in these branches of jurisdiction may therefore by possibility arise between a state and its own citizens; certainly between a state and the citizens of other states or aliens under the laws of the Union or in admiralty and maritime cases.

As the law regards this information as a civil suit *in rem* on the Exchequer side of the admiralty, and it was grounded on a law of Congress -- the citizenship of the claimants can have no influence on the question of jurisdiction. I think,

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however, that it appears somewhere in this voluminous record that Bowen was a citizen of Georgia, but whether of that state, a sister state, or a foreign state, the controversy, if it be regarded as one with individuals, is expressly excepted from the exclusive jurisdiction of the Supreme Court, and I must think is within the original jurisdiction of the district court. And if so, it follows that the state must, upon appeal from a decision there made in its favor, assume the attitude of a defendant in any court into which the cause may be legally carried by appeal or writ of error.

In England, the King cannot be sued, yet he is daily brought before the appellate courts as a defendant in error. It has long since been decided that this is legal.

And thus, too, the United States continually appears upon the docket of this Court as a party defendant; and for the same reason, although not suable originally, yet upon a judgment obtained, injunctions have been granted against parties who could not otherwise have been made defendants, as for example the United States.

The thing is unavoidable -- it is incident to the right of appeal. Justice could not be administered without it. There would be no reciprocity -- the law would operate unequally and to the prejudice of the citizen.

There is no compulsory process used to produce this reversed, I may say nominal, state of parties. The cause is removed by a citation or other less offensive process, and the party appears in the superior court if he will -- if not, the cause is disposed of without an appearance.

So much for the information and the appeal from the district court upon it. We will now consider the rights of the state in the relation in which it stood to Madrazo's libel. I am considering the state, and not the officers of the state, as the real party to the record.

When Madrazo's libel was filed, the governor's information was pending, and as Madrazo's libel sets out the seizure and delivery of the slaves to the executive of Georgia, and the claims advanced to the proprietary interest therein, it was properly considered in the district court in connection with the information and in the double aspect of a claim and libel. In the case of *The Antelope,* the cross-libel of the Portuguese was treated reciprocally as claim and libel. Considered in the relation of a claim to the information, it is impossible to deny that if the state rightly preferred the information, it must have been bound by the decisions both of the district court and of the tribunal to which an appeal lay from the decision of the district court upon that information as regarded the rights of the claimants.

And if we consider Madrazo's libel in the aspect of a suit in the admiralty, it appears to me impossible to assign a sufficient reason why the state should not be equally bound.

The property or possession of the state had been acquired under a capture at sea -- a maritime *tort.* It was therefore clearly a case of admiralty jurisdiction. Where, then, is the limit to this branch of the jurisdiction of the district court? No personal relation, description, or character imposes any such limit. The grant of jurisdiction to the United States, and by the United States to the district court, is without restriction -- and it would be singular if a state should be precluded from the right of appearing to assert its rights before that tribunal. Suppose the case of a capture of a library shipped to state, and a recapture and libel for salvage; surely, in some form or other, the state must have a hearing. There is nothing compulsory upon the state -- the right may be abandoned, if it will, but after preferring a claim, will it be contended that it may withdraw itself from the contest under an assertion of state immunities to the prejudice of individual right? This is not a new question in the admiralty -- it is considered by Godolphin, who observes

"that for the same party in the same cause to surmise and move for a prohibition against that jurisdiction, to which himself had formerly submitted, and in a cause which, by the libel, appears not other than maritime seems quite beside the rule and practice of the law."

Jurisd. of the Adm. 116, 117, and the two adjudged cases of *Jennings and Audley,* Brow. 2, 30, and *Baxter and Hopes, ibid.,* which he cites, do fully establish

"that in all cases where the defendant admits the jurisdiction of the admiralty court by pleading, then prohibition shall not be granted if it do not appear that the act was done out of the jurisdiction."

Now in this case the state appeared and claimed to the monition without protest. In the admiralty a claimant is an actor -- and had the decision of the district court been affirmed, the state would have had the full benefit of this interposition as a

party. And again, at a subsequent period, the state voluntarily surrendered the *res* to the circuit court and took it out again on stipulation, &c.;, and had not this exception now been taken, would have had all the benefit of a decree of restoration, if made by this Court. But it is insisted that consent cannot give jurisdiction -- that this is a sound rule, and as applied to the common law courts, cannot be controverted. But is it so in the admiralty?

It must be recollected that the common law courts have themselves released this rule in relation to the admiralty. I allude to the controversy on the subject of the stipulation bonds, which was finally abandoned on the ground of the assent

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of the party, stipulating to submit to the jurisdiction of that court. These decisions seem fully in point to the present case. 2 Br.C. & A. 97, 98.

But in the proceedings *in rem,* the admiralty wants no consent or concession to enlarge its jurisdiction. All the world are parties to such a suit and bound by it by the common consent of the world. The interest of a state or the United States in the *res subjecta* must be affected by such a decision. The question will now be considered whether the want of an actual reduction of the *res* into possession in the district court deprived that court of jurisdiction, or whether, if it did, that circumstance would affect the appellate jurisdiction of the circuit court. Also whether on the reduction of the *res* into possession there was any assumption of original jurisdiction in the circuit court?

On these points I cannot bring myself to feel a doubt, since the very failure in the district court to grant process for reducing the *res* into possession would be such a *"damnum irreparabile"* as would sustain an appeal to the circuit court. Otherwise, the very ground of appeal -- that which gives jurisdiction -- would take it away. And what, upon an appeal, would be the course of the circuit court upon such a case? It has no power to remand the cause, for the 24th section requires that

"when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree, as the district court should have rendered or passed."

This section, I must believe, necessarily, substitutes the circuit for the district court upon a reversal, and vests it with power to do whatever that court could have done or ought to have done originally. It is very important here to notice that not reducing the *res* into possession in the district court was the necessary consequence of its first error in sustaining the information and dismissing Madrazo's libel. For if Madrazo's pretensions were to be considered as rejected, there could be no reason for pursuing the means of reducing the *res* into possession in the district court -- and while the cause was in the circuit court, that necessity did not arise, for the same reason, until the decree was passed for reversing the decree of the district court and dismissing the information. Thus circumstanced, the power given and duty imposed by the 24th section could not have been exercised otherwise than it was. The circuit court alone could proceed to do justice between the parties, and become *quo ad hoc* vested with original powers.

The question, as it regards the proceeds of the Africans sold is one of more nicety. For the proprietary interest in the negroes unsold could well be disposed of after the court

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became actually possessed of them. The court was not at liberty to doubt that the stipulation would have returned the slaves, specifically, upon monition. But the proceeds of those sold we must suppose had been paid into the treasury, and there is no doubt that the court could not and would not have attempted by compulsory process to get at it. Yet was this a sufficient reason for not proceeding to adjudicate upon the question of right? I think not.

It must be noticed here that the head of the government had omitted no firm or legal means to give authenticity to the submission of the state to the jurisdiction of

the court. The letters of procuration, executed by both Governor Clarke and his successor, Governor Troup, in due form are on the files, expressly authorizing, in the name of the state, all the acts of certain proctors of that court in the name and behalf of the state.

The governor's answer, then, was the answer of the state, and when the answer avows that many of the slaves were sold and the money paid into the treasury, what is it but acknowledging that the property of Madrazo no longer remains in specific existence, but has been sold and appropriated by the respondent under such circumstances as convert Madrazo's rights into a pecuniary demand, a debt due by the state? Now the state could stand in no other relation to Madrazo in this behalf than Bowen or the captor would have stood had the sale been made by them, and can it be supposed that a similar answer from either Bowen or the captor would have deprived the court below of its jurisdiction?

It is almost a work of supererogation to resort to precedents on such a question, but if necessary, there is no want of precedents to prove that the district court was bound to go on and render justice to the libellant according to the forms of the admiralty as far as it could proceed.

The case of *Monro v. Almedia,* decided in this Court in 1825, was just such a case, 10 Wheat. 473. There it was fully considered whether the Court might go on and how to proceed, and the cause was remanded to the circuit court for further proceedings. The libel charged a seizure and appropriation of a sum of money on the ocean, and the respondent appeared under protest, and by demurring, admitted as true what the answer here avows to be true.

And strongly analogous is the case of *McKenzie v. Livingston & Welsh,* reported in a note to the 3d Term 333, in the case of *Stuart v. Wolf,* in which McKenzie preferred a libel in the vice-admiralty court in Jamaica to obtain condemnation of a sum of money captured by him and not paid into the registry of the court. Livingston and Welsh filed a claim, and that court decreed to them "the sum of 1,300

in the possession of the captor." McKenzie appealed to the lords commissioners, who affirmed the decree below, and the cause was remitted for further proceedings.

In that case, the *res* was avowedly out of possession of the court, and yet, upon the submission of the party who held it, the court entertained jurisdiction and decreed upon the cause as if the claimant had been libellant and the libellant stood in his place.

When money is the thing in contest or the thing captured has been converted into money, it becomes essentially a debt, and of course a metaphysical thing -- not to be arrested specifically.

Upon this view of the subject, the district court might have exercised jurisdiction over the whole capture, and did entertain jurisdiction in the very act of dismissing the libel upon the question of right. Then, when the whole cause was brought by appeal before the circuit court, I hold that the circuit court was bound to go as far as it could go without entrenching upon the sovereign rights of the state, which, for the purposes of justice, had thus consented to enter into the litigation between these parties -- that is, as far as a decree.

Had not the progress of the court been arrested by this appeal, it could certainly have gone no further than to issue its monition. But it cannot be doubted that upon Madrazo's petitioning the legislature on the subject, their officers would have been instructed to dispose of the property and money according to the decree of the court. Subsequent events, however, have given a new aspect to things, and Madrazo, with abundant proofs of his rights, is left without remedy.

Decree. -- These causes came on, &c.;, on consideration whereof. This Court is of opinion that there is error in so much of the decree of the said circuit court as directs restitution of the slaves libeled by Juan Madrazo and the issue of the females in the custody of the government of the State of Georgia or the agent or agents of the said state, and that the proceeds of those slaves who were sold by

order of the government of the said state be paid to the said Juan Madrazo, the circuit court not having jurisdiction of a cause in which the plaintiff asserts a claim upon the state, and that the same ought to be reversed and annulled, and the libel of the said Juan Madrazo is ordered to be dismissed. And this Court is further of opinion that there is no error in the residue of the said decree, and the same is hereby affirmed, and it is further considered and ordered that the said cause be remanded to the said circuit court with directions for further proceedings, to be had thereon according to law and justice in conformity to this opinion.

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