

**Harris Vs. Dennie**

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**Court :** US Supreme Court

**Decided On :** 1830

**Appeal No. :** 28 U.S. 292

**Appellant :** Harris

**Respondent :** Dennie

**Judgement :**

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**Harris v. Dennie**

**28 U.S. (3 Pet.) 292**

*ERROR TO THE SUPREME JUDICIAL*

*COURT OF MASSACHUSETTS*

## **SYLLABUS**

Twenty-three cases of silk were imported from Canton in the ship *Rob Roy* into the port of Boston, consigned to George D'Wolf and John Smith. After the arrival of the vessel with the merchandise on board, the collector caused an inspector of the

customs to be placed on board. Soon afterwards and prior to the entry of the merchandise, and prior to the payment or any security for the payment of the duties thereon, the merchandise was attached by the deputy sheriff of the county in due form of law as the property of G. D'Wolf and J. Smith by virtue of several writs of attachment issued from the Court of Common Pleas for the County of Suffolk at the suit of creditors of G. D'Wolf and Smith. These attachments were so made prior to the inspector's being sent on board the vessel. At the time of the attachment, the sheriff offered to give security for the payment of the duties on the merchandise, which the collector declined accepting. The merchandise was sent to the custom house stores by the inspector, and several days after, the custom house storekeeper gave to the deputy sheriff an agreement signed by him, reciting the receipt of the merchandise from the inspector and stating "hold the said merchandise to the order of James Dennie, Deputy Sheriff." The marshal of the United States afterwards attached, took, and sold the merchandise under writs and process in favor of the United States against George D'Wolf, which writs were founded on duty bonds, due and unpaid, for a larger amount than the value of the merchandise, given before by D'Wolf and Smith, who before the importation of the merchandise were indebted to the United States on various bonds for duties besides those on which the suits were instituted. *Held* that the attachments issued out of the Court of Common Pleas of the County of Suffolk did not affect the rights of the United States to hold the merchandise until the payment of the duties upon them, and that the merchandise was not liable to any attachment by an officer of the State of Massachusetts for debts due to other creditors of George D'Wolf and John Smith.

It has often been decided in this Court that it is not necessary that it shall appear in terms upon the record, that the question was presented in the state court whether the case was within the purview of the twenty-fifth section of the Judicial Act of 1789 to give jurisdiction to this Court in a case removed from a state court. It is sufficient if, from the facts stated, such a question must have arisen and the judgment of the state courts would not have been what it is if there had not been a misconstruction of some act of Congress, &c.;, or a decision against the validity of the right, title, privilege, or exemption set up under it.

The United States has no general lien on merchandise the property of the importer for duties due by him upon other importations. The only effect of the first provision in the sixty-second section of the Act of 1799, ch. 128, is that the delinquent debtor is denied at the custom house any further credit for duties until his unsatisfied bonds are paid. He is compellable to pay the duties in cash, and upon such payment he is entitled to the delivery of the goods

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imported. The manifest intention of the remaining clause in the section is to compel the original consignee to enter the goods imported by him.

No person but the owner or original consignee, or in his absence or sickness his agent or factor, is entitled to enter the goods at the custom house or give bond for the duties or to pay the duties. Sec. 36 and 62. Upon the entry, the original invoices are to be produced and sworn to, and the whole objects of the act would be defeated by allowing a mere stranger to make the entry or take the oath prescribed on the entry.

The United States having a lien on goods imported for the payment of the duties accruing on them, and which have not been secured by bond, and being entitled to the custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right to custody, and, being repugnant to the laws of the United States, is void.

The acknowledgment by the custom house storekeeper that he holds goods upon which duties have not been secured or paid, subject to an attachment issued out of a state court at the suit of a creditor of the importer, was a plain departure from his duty, and is not authorized by the laws of the United States, and cannot be admitted to vary the rights of the parties.

In the Court of Common Pleas of the County of Suffolk, Massachusetts, James Dennie, the defendant in error, a deputy sheriff of that county, under a precept issued by the authority of the state, attached twenty-three cases of silks imported in the brig *Rob Roy* from Canton for a debt due by the importers and owners of

the goods, George D'Wolf and James Smith. Soon after the arrival of the vessel, the collector of the port caused an inspector of the customs to be placed on board. The attachment was made before the entry of the merchandise and payment made or security given for the payment of the duties thereon and before an inspector was put on board the vessel. At the time of the attachment, the plaintiff offered to give the collector security for the payment of the duties to the United States, which he declined to accept. About seventeen days after the attachment, the merchandise being in the custom house stores, under the following agreement, to-wit,

"District of Boston and Charleston, port of Boston, August 29, 1826. I certify that there has been received into store from on board the brig *Rob Roy*, whereof \_\_\_\_\_ is master, from Canton, the following merchandise, to-wit, twenty three cases silks, A. O. 1 to 23, lodged by D. Rhodes, Jr. inspector, under whose care the

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vessel was unladen. B. H. Scott, public storekeeper. I hold the above described twenty-three cases silks subject to the order of James Dennie, Esq., deputy sheriff. B. H. Scott."

The defendant, being the Marshal of the United States for the District of Massachusetts, attached and took the same merchandise, by virtue of several writs in favor of the United States against D'Wolf duly issued from the district Court of the United States. These writs were founded upon bonds for duties given by D'Wolf and Smith, amounting to a sum much larger than the value of the merchandise, which duties were due and unpaid when the merchandise arrived.

The deputy sheriff, James Dennie, brought an action of trover against the marshal for the goods, and the judgment of the supreme judicial court of the state, to which the case was removed by writ of error from the inferior court, was in favor of the original plaintiff, and the defendant prosecuted this writ of error.

The following errors were assigned in the Supreme Judicial Court of Massachusetts: that according to the true construction of the several acts of the Congress of the United States imposing duties on certain goods, wares, and merchandise imported into the United States from foreign ports, and also of the act of said Congress made and passed on 2 March, 1799, entitled "an act to regulate the collection of duties on imposts and tonnage," it is contended,

"1. That upon the arrival of the said merchandise in question at the port of Boston and Charleston, and prior to the supposed attachment thereof by the said Dennie, a debt immediately accrued to the United States for the amount of the duties thereon, and the collector for said port had therefore a legal lien on the said merchandise for the debt aforesaid, and consequently they were not then subject to the said Dennie's attachment aforesaid."

"2. That the offer of the said Dennie, at the time of making his said attachment, to give to the said collector security for the payment of the duties on said merchandise did not in point of law give validity to the said attachment inasmuch as the said collector was not at that time, it being prior to any entry of the merchandise at the custom house, authorized

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by law to receive security from the said Dennie or any other person or persons whomsoever for payment of the duties aforesaid."

"3. That after the said merchandise was placed in the custom house store, as is found by the special verdict, and from that period to the time when they are stated to have been attached in behalf of the United States by the said Harris as marshal of said district, the legal lien of the United States constantly remained with them, and that the certificate of B. H. Scott, the storekeeper, which appears in the said verdict can have had no effect to discharge or in any degree to impair the force of the said lien."

"4. That by the provisions contained in the sixty-second section of the aforesaid Act of March 2, 1799, the goods in question, the same having been imported by

and consigned to George D'Wolf and John Smith, as by said verdict is found, are in point of law to be considered as their property so far as to be holden liable for the payment of all the debts then due from them to the United States for duties on merchandise heretofore imported by them into the said port of Boston and Charleston."

It was also in this Court contended that the defendant in error had no property, either absolute or special, nor possession, nor the right of possession in the goods which were the object of the supposed trover and conversion in the declaration mentioned.

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MR. JUSTICE STORY delivered the opinion of the Court.

The original action was trover, brought by the defendant in error against the plaintiff in error for twenty-three cases of silk which had been attached by Dennie as Deputy Sheriff of the County of Suffolk and afterwards attached by Harris as Marshal of the District of Massachusetts. The cause was tried upon the general issue, and a special verdict found upon which the state court rendered judgment in favor of the original plaintiff.

The special verdict was as follows.

"The jury finds that

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the merchandise described in the declaration was brought in a vessel of the United States into the port of Boston, in the collection district of Boston and Charleston in Massachusetts, from a foreign port prior to the commencement of this action. That the said merchandise came consigned to George D'Wolf and John Smith, as was evidenced by the manifest of the cargo of the said vessel at the time of the importation. That soon after the arrival of the said vessel with the merchandise on board, as aforesaid, the collector of the said port caused an inspector of the

custom house to be placed on board thereof in conformity with the requirements of law in such cases. That soon after the arrival of the said vessel, and prior to the entry of the said merchandise with the collector and prior to the payment or any security for the payment of the duties thereupon, the same were attached in due form of law as the property of the said George D'Wolf and John Smith by virtue of several writs of attachment issued from the Court of Common Pleas for the said County of Suffolk in favor of Andrew Blanchard and others, the said attachment having been made by the plaintiff in his capacity of a deputy of the Sheriff of the aforesaid County of Suffolk prior to the inspector's being put on board as aforesaid. That at the time of the said attachment, the said sheriff offered to give to said collector security for the payment of the duties upon the said merchandise, which the said collector declined to accept. That about seventeen days subsequently to the time of the attachment, the said merchandise being in the custom house stores under the following agreement, *viz.*, "

" District of Boston and Charleston, port of Boston, August 29, 1826. I certify that there has been received in store from on board the brig *Rob Roy*, whereof \_\_\_\_\_ is master, from Canton, the following merchandise, *viz.*, twenty-three cases of silk, A. O. 1 to 23, lodged by D. Rhodes, Jr. inspector, and under whose care the vessel was unladen. (Signed) B. H. Scott, public storekeeper. I hold the above twenty-three cases of silks subject to order of James Dennie, Deputy Sheriff. (Signed) B. H. Scott."

"The defendant (Harris) being marshal, &c.;, attached the said merchandise, and took the same, by virtue of several writs to

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him directed, in favor of the United States, against the said D'Wolf, which writs were duly issued from the District Court of the United States for the District of Massachusetts, which writs were founded on bonds for duties theretofore given by the said D'Wolf and Smith, and which bonds were then due and unpaid, being for a large sum of money. That the said D'Wolf and Smith, at the time of the said importation of the merchandise aforesaid, were jointly and severally indebted to

the United States on various other bonds for duties besides those on which the writs aforesaid were instituted, which said first mentioned bonds were also then due and unsatisfied, and that the bonds for duties above referred to and upon which the attachment by the said marshal was made amounted to a much larger sum than the value of the merchandise thus attached. But whether or not, &c.;"

in the common form of special verdicts.

As this case comes from a state court under the twenty-fifth section of the Judiciary Act of 1789, ch. 20, it is necessary to consider whether this Court can entertain any jurisdiction thereof consistently with the terms of that enactment. That section, among other things, enacts that a final judgment of the highest state court may be revised where is drawn in question the validity of a statute of or an authority exercised under any state on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision is in favor of their validity, or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the said Constitution, treaty, statute or commission.

The objection is that this Court has not jurisdiction of this case, because it does not appear upon the record that any question within the purview of the twenty-fifth section arose in the state court upon the decision on the special verdict. But it has been often decided in this Court that it is not necessary that it should appear in terms upon the record that any such question was made. It is sufficient if from the

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facts stated such a question must have arisen and the judgment of the state court would not have been what it is if there had not been a misconstruction of some act of Congress, &c.;, or a decision against the validity of the right, title, privilege or exemption set up under it. [17 U. S. 4](#) Wheat. 311; [25 U. S. 12](#) Wheat. 117; [27 U. S. 2](#) Pet. 245, [27 U. S. 380](#) , [27 U. S. 409](#) .

In the present case it is contended that the United States, by virtue of the sixty-second section of the Revenue Collection act of 1799, ch. 128, had a lien on the present merchandise for all debts antecedently due on custom house bonds by D'Wolf and Smith, and that consequently the attachment of the marshal overreached that of the private creditors, and that the state court have decided against such lien. If there be no such lien, still it is contended that under the provisions of the Revenue Collection act of 1799, ch. 128, the merchandise was not liable to attachment at the suit of any private creditors under the circumstances, and that the state court, in giving judgment for the plaintiff, must have overruled that defense and misconstrued the act.

The question as to the lien of the United States for duties antecedently due was certainly presented by the special verdict. But we are all of opinion, that the decision of the state court disallowing such a lien was certainly correct.

The sixty-second section of the Act of 1799, ch. 128, after providing for the manner of paying duties and of giving bonds for duties and the terms of credit to be allowed therefor, goes on to provide

"That no person whose bond has been received, either as principal or surety, for the payment of duties or for whom any bond has been given by an agent, factor, or other person in pursuance of the provisions herein contained, and which bond may be due and unsatisfied, shall be allowed a future credit for duties until such bond be fully paid or discharged."

The only effect of this provision is that the delinquent debtor is denied at the custom house any future credit for duties until his unsatisfied bonds are paid. He is compellable to pay the duties in cash, and upon such payment he is entitled to the delivery of the goods imported. There is not the slightest suggestion in the clause that the United States shall have any lien on such

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goods for any duties due on any other goods for which the importer has given bonds and for which he is a delinquent. It was at once perceived by Congress that

the salutary effect of this provision denying credit upon duties would be defeated by artifices and evasions and the substitution of new owners or consignees after the arrival of the goods in port and before the entry thereof at the custom house. To repress such contrivances, the next succeeding clause of the act provides

"That to prevent frauds arising from collusive transfers, it is hereby declared that all goods, &c., imported into the United States, shall, for the purposes of this act, be deemed and held to be the property of the persons to whom the said goods, &c., may be consigned, and sale, transfer, or assignment prior to the entry and payment or securing the payment of the duties on the said goods, &c., and the payment of all bonds then due and unsatisfied by the said consignee to the contrary notwithstanding."

The manifest intent of this clause was to compel the original consignee to enter the goods, and if he was a delinquent to compel him to pay his prior bonds or to relinquish all credit for the duties accruing upon the goods so imported and consigned to him. It does not purport to create any lien upon such goods for any duties due upon other goods, but merely ascertains who shall be deemed the owner for the purpose of entering the goods and securing the duties. The state court therefore did not, so far as this question is concerned, misconstrue the act of Congress or deny any right of the United States existing under it.

The other point is one of far more importance, and in our opinion deserves a serious consideration. If, consistently with the laws of the United States, goods in the predicament of the present were not liable to any attachment by a state officer, it is very clear that the present suit could not be sustained and that judgment ought to have been given upon the special verdict in favor of the original defendant. And in our opinion these goods were not liable to such an attachment. In examining the Revenue Collection act of 1799, ch. 128, it will be found that numerous provisions have been solicitously introduced in order to prevent

any unlivery or removal of any goods imported from any foreign port in any vessel arriving in the United States until after a permit shall have been obtained from the proper officer of the customs for that purpose. These provisions not only apply to vessels which have already arrived in port, but to those which are within four leagues of the coast of the United States. The sections of the act from the twenty-seventh to the fifty-eighth are in a great measure addressed to this subject. From the moment of their arrival in port, the goods are, in legal contemplation, in the custody of the United States, and every proceeding which interferes with or obstructs or controls that custody is a virtual violation of the provisions of the act. Now an attachment of such goods by a state officer presupposes a right to take the possession and custody of those goods and to make such possession and custody exclusive. If the officer attaches upon mesne process, he has a right to hold the possession to answer the exigency of that process. If he attaches upon an execution, he is bound to sell or may sell the goods within a limited period, and thus virtually displace the custody of the United States. The act of Congress recognizes no such authority and admits of no such exercise of right.

No person but the owner or consignee, or, in his absence or sickness, his agent or factor in his name, is entitled to enter the goods at the custom house, or give bond for the duties or pay the duties. Sec. 36, 62. Upon the entry, the original invoices are to be produced and sworn to, and the whole objects of the act would be defeated by allowing a mere stranger to make the entry or take the oath prescribed on the entry. The sheriff is in no just or legal sense the owner or consignee, and he must, to have the benefit of the act, be the original consignee or the agent or factor of the owner or consignee. He is a mere stranger, acting *in invitum*. He cannot then enter the goods or claim a right to pay the duties or procure a permit to unlade them, for such permit is allowed in favor only of the party making the entry, and paying or giving bond for the duties. Sec. 49, 50. If within the number of days allowed by law for unlading the cargo the duties are not paid or secured, the

goods are required to be placed in the government stores under the custody and possession of the government officers. And at the expiration of nine months, the goods so stored are to be sold if the duties thereon have not been previously paid or secured. Sec. 56.

It is plain that these proceedings are at war with the notion that any state officer can in the interval have any possession or right to control the disposition of these goods, and the United States has nowhere recognized or provided for a concurrent possession or custody by any such officer. In short, the United States, having a lien on the goods for the payment of the duties accruing thereon and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right of custody, and being repugnant to the laws of the United States, is void.

It has been suggested that the certificate of the storekeeper declaring that he held the silks subject to the order of the attaching officer might vary the application of this doctrine. But such an agreement was a plain departure from the duty of the storekeeper, and was unauthorized by the laws of the United States. It cannot, then, be admitted to vary the rights of the parties. See fifty-sixth section of the Act of 1799, ch. 128.

This view of the subject renders it wholly unnecessary to consider the point, so elaborately argued at the bar, whether by the laws of Massachusetts an attachment would lie in such a case. If it would, the present attachment would not be helped thereby, because it involves an interference with the regulations prescribed by Congress on the subject of imported goods.

Upon the whole, it is the unanimous opinion of the Court that the judgment of the state court ought to be

*Reversed, and that a mandate issue to that court, with directions to enter judgment upon the special verdict, in favor of the original defendant.*

This cause came on to be heard on the transcript of the record from the Supreme Judicial Court of the Commonwealth of Massachusetts and was argued by counsel, on consideration whereof it is the opinion of this Court that the goods in the special verdict mentioned were not by the laws of the United States, under the circumstances mentioned in the said verdict, liable to be attached by the said Dennie upon the process in the said verdict mentioned, but that the said attachment so made by him as aforesaid was repugnant to the laws of the United States and therefore utterly void. It is therefore considered and adjudged by this Court that the judgment of the said Supreme Judicial Court of Massachusetts rendered upon the said verdict be, and the same is hereby reversed and that a mandate issue to that court with directions to enter a judgment upon the said verdict in favor of the original defendant, Samuel D. Harris, and that such further proceedings be had in said cause as to law and justice may appertain.

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