

Sheppard Vs. Taylor

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Appellant : Sheppard

Respondent : Taylor

Judgement :

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Sheppard v. Taylor

30 U.S. (5 Pet.) 675

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND

SYLLABUS

The ship *Warren*, owned in Baltimore, sailed from that port in 1806, the officers and seamen having shipped to perform a voyage to the northwest coast of America, thence to Canton, and thence to the United States. The ship proceeded

under the instructions of the owners to Conception Bay on the coast of Chili by the orders of the supercargo, he having full authority for that purpose. The cargo had in fact been put on board for an illicit trade against the laws of Spain on that coast. After the arrival of the *Warren*, she was seized by the Spanish authorities, the vessel and cargo condemned, and the proceeds ordered to be deposited in the royal chest. The officers and seamen were imprisoned and returned to the United States, some after eighteen months and others

not until four years from the term of their departure. The King of Spain subsequently ordered the proceeds of the *Warren* and cargo to be repaid to the owners, but this was not done; afterwards, the owners, having become insolvent, assigned their claims for the restoration of the proceeds and for indemnity from Spain to their separate creditors, and the commissioners under the Florida treaty awarded to be paid to the assignees a sum of money, part for the cargo, part for the freight, and part for the ship *Warren*. The officers and seamen having proceeded against the owners of the ship by libel for their wages, claiming them by reason of the change of voyage, from the time of her departure until their return to the United States respectively, and having afterwards claimed payment out of the money paid to the assignees of the owners under the treaty, it was held that they were entitled, towards the satisfaction of the same, to the sum awarded by the commissioners for the loss of the ship and her freight, with certain deductions for the expenses of prosecuting the claim before the commissioners, with interest on the amount from the period when a claim for the same from the assignees was made by a petition.

If the ship had been specifically restored, the seamen might have proceeded against it in the admiralty in a suit *in rem* for the whole compensation due to them. They have by the maritime laws an indisputable lien to this extent. There is no difference between the case of a restitution in specie of the ship itself, and a restoration in value. The lien

reattaches to the thing, and to whatever is substituted for it. This is no peculiar principle of the admiralty. It is found incorporated into the doctrines of courts of common law.

Freight, being the earnings of the ship in the course of the voyage, is the natural fund out of which the wages are contemplated to be paid, for although the ship is bound by the lien of the wages, the freight is relied on as the fund to discharge it, and is also relied on by the master to discharge his personal responsibilities for disbursements and wages.

Over the subject of seamen's wages the admiralty has an undisputed jurisdiction, *in rem* as well as *in personam*, and wherever the lien for the wages exists and attaches upon the proceeds, it is the familiar practice of that court to exert its jurisdiction over them, by way of monition to the parties holding the proceeds. This is familiarly known in the cases of prize and bottomry, and

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salvage, and is equally applicable to the case of wages. The lien will follow the ship and its proceeds into whose hands soever they may come by title or purchase from the owner.

In December, 1810, a libel was filed by James Sheppard and others, officers and seamen of the merchant ship *Warren*, against Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins, and Michael McBlair, owners of the merchant ship *Warren*, claiming wages, they having shipped in 1806, at Baltimore, for a voyage from that port to the northwest coast, thence to Canton, and home to the United States.

The facts of the case, as they appeared in the libel and supplemental libels, petition, and in the depositions and documents filed and taken in the case, were that the ship *Warren*, of the burden of about six hundred tons, and armed with twenty-two guns, commanded by Andrew Sterrett, sailed from Baltimore on 12 September, 1806. The crew, including the officers and apprentices, consisted of about 112 persons, and were shipped for a voyage designated in the shipping articles, to be from the port of Baltimore to the northwest coast of America, thence to Canton and home to the United States. No other voyage but that expressed in the articles was known to be intended by anyone on board of the *Warren*, except

Mr. Pollock, who was the supercargo of the vessel. There were, however, two sets of instructions, one, those which expressed the voyage as stated, and which were given to captain Sterrett, the other, sealed, private instructions, and which were delivered to Mr. Pollock.

When the ship arrived at a certain latitude, the sealed instructions were opened and were communicated to the captain. These instructions changed the destination of the ship, and the nature and character of voyage. They gave the entire control over the course of the voyage to Mr. Pollock, and from that time she proceeded directly for the coast of Chili to prosecute an illicit and smuggling trade with the Spanish provinces, on the western coast of South America, all trade with those provinces being then notoriously forbidden, under

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heavy penalties, unless conducted under a license from the Crown of Spain.

The officers and crew of the *Warren* protested against this deviation from the prescribed voyage, and captain Sterrett, from disappointed and wounded feelings, disdaining himself to engage in an illicit trade and unwilling to expose his officers and men to its perils and consequences, became partially deranged and shot himself as the *Warren* was doubling Cape Horn.

Mr. Evans, the chief mate, succeeded in the nominal command of the ship, but Mr. Pollock asserted and maintained the entire control over her, and he ordered her to steer direct for Conception Bay and the port of Talcahuana, on the coast of Chili, where they were to feign distress and ask for an asylum.

The vessel arrived on 20 January, 1807, within a short distance of that port, after an absence from Baltimore of 120, and on her arrival was hailed by the *guarda costas* of the government. Mr. Pollock answered in Spanish, and took the ship's papers with him on shore, where he had an interview with the commandant of Talcahuana.

During his absence an altercation took place between captain Evans and the Spanish armed vessels, which resulted in the exchange of some guns, but no lives were lost on either side. Mr. Pollock having remained on shore under a flag of truce, on the following day communicated by a verbal message to captain Evans, an order to enter the port, alleging, that the firing on the *Warren* by the *guarda costas* had been through mistake, and that all things would be well managed. The crew remonstrated, and proposed to proceed with the ship on the voyage for which they had sailed, and to leave the supercargo on shore. Captain Evans refused to enter the port unless by a written order, which was then sent to him, and he was informed by the messenger that Mr. Pollock was under no restraint whatever.

The *Warren* then entered the port of Talcahuana, and captain Evans went on shore, and the seamen, under a pretense that their depositions were required relative to the death of captain Sterrett, were taken on shore, twenty at a time, and at once put into prison. The officers and the apprentices being

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put on board the ship, proposed to rescue her, and communicated the purpose of Mr. Pollock, who immediately took his baggage and that of captain Evans on shore. Soon afterwards, some Spanish officers came on board the *Warren*, unbent the sails, and unshipped the rudder.

The officers and crew of the ship were ordered to Concepcion, and thence were marched to various prisons and dungeons, and suffered captivity from eight months to four years, being permitted to return to the United States at various periods. The apprentices and some of the officers were the first who were allowed to return; their absence from the United States was after an imprisonment of from six to eighteen months.

On the part of the libellants it was alleged that by arrangements between the Spanish commandant and Mr. Pollock, the cargo was smuggled on shore. By a sentence of a court, the vessel and cargo were sold, and the proceeds of the

same were ordered to be deposited in the King's Treasury, subject to an appeal interposed by the supercargo. Thus, either by the private arrangements between Mr. Pollock and the Spanish governor, or by the proceedings of the court, the voyage was broken up, and the ship and the whole of the cargo were sold. The cargo appeared to have been peculiarly adapted to the coast of Chili and Peru, and altogether unfit for the northwest coast of America or Canton.

The libellants claimed wages from the time of the sailing of the *Warren*, to the time of their return to the United States, respectively, deducting the wages advanced, and any sum of money received as wages during absence.

The proceedings in the case, asserted by the libellants to be amply accounted for by various causes, were delayed from 1810 to 1819. In 1819, all the owners became insolvent, and on 13 December, 1819, Lemuel Taylor assigned to Robert Oliver the *spes recuperandi* of his interest in the *Warren*, her cargo &c.; On the 9 November, 1820, Smith & Buchanan assigned their interest in the *Warren* and cargo to Elicott and Meredith, trustees, for the use of the Bank of the United States at Baltimore, and, on 15 May, 1821, Hollins & McBlair assigned their interest in said vessel, cargo, &c.;, to the Union Bank of Maryland.

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The owners of the ship *Warren* and cargo, having made application to the Crown of Spain for the restoration of the proceeds of the same, which were under the decree of the court condemning the same to be deposited in the royal treasury, the following proceedings took place:

" *COPY OF THE ROYAL ORDER OF RESTITUTION*"

"Most Excellent Sir -- In the month of September, 1806, the ship called the *Warren*, belonging to Samuel Smith, Buchanan, Hollins, McBlair, and Lemuel Taylor, of Baltimore, sailed from that port, under the command of Andrew Sterrett, and laden with sundry merchandise for Canton in China. In the month of December following, after the vessel and crew had experienced various

misfortunes, they were in the latitude of Concepcion in Chili, when finding it impossible to continue the voyage, they were obliged to take shelter in some port contiguous to that of Talcahuana, on 20 January, 1807. The commander of the port gave the vessel permission to enter, which she had scarcely done, however, before she was taken possession of by troops, and her cargo seized, under the pretense of her being a smuggler. This was followed by a sentence for the confiscation and sale of the goods, which was carried into execution, notwithstanding the protest of the supercargo, and the proceeds, amounting to about \$300,000, deposited in the royal chests, to await the decision of the appeal carried before and received by the Supreme Council of the Indies. Smith and his partners, having received intelligence of this, made a complaint before the Senate in Maryland, who looking only to the registers of the custom house, from which it appeared that the vessel had cleared out for China, declared the confiscation unjust, and gave the complainants permission to detain by way of indemnity, any property which might be in that country belonging to the Spanish government. Don Luis de Onis, the Spanish minister in the United States, received unofficial information of this decision, and knowing that there had not been sufficient cause for the sentence of confiscation, and desiring to prevent the disagreeable consequences which might arise from claims, made an agreement with Smith and his companions that he would cause to be returned to them in this capital the

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amount of the proceeds of the cargo of the ship *Warren*, which had been deposited in the Treasury, and that he would permit then to send out a vessel, laden with a small cargo of licit merchandise and some tobacco, upon which the customary royal duties were to be paid, for the purpose of prosecuting it, upon which they were to acknowledge themselves indemnified for all the losses and expenses resulting from the voyage. The King, having been gradually informed of what has been related, notwithstanding that the ministry here had received no intelligence of the confiscation in question, has thought proper for good and prudential reasons to ratify without delay the agreement made by the minister Onis with Smith, Buchanan, and their companions, and has desired that instructions

should be sent to Your Excellency, to have the ship *Warren* and her cargo, or the amount produced from their sale, delivered to the agents of those persons, and to permit them to import another small cargo of licit merchandise, and some leaf tobacco, upon which they must pay the royal duties, and take the value of it in silver or produce, paying duties in like manner. Which I notify to Your Excellency, by His Majesty's orders, for your information and in order that you may issue the necessary orders for its fulfillment. God preserve Your Excellency many years. Madrid, 13 June, 1815."

"LANDIZABAL"

" *To the Viceroy of Peru* "

" *PETITION*"

"Most Excellent Sir -- We, Samuel Smith and Anthony Faulac, supercargo of the American ship *Sydney*, on behalf of the owners of the ship *Warren* and cargo, and by virtue of their power of attorney which we formally exhibit, respectfully appear before Your Excellency, and say that by a royal order of 13 June, 1815, His Catholic Majesty has ordered restitution to be made of the said ship *Warren* and her cargo, and notwithstanding that she was sentenced to be confiscated, has been pleased, upon just and prudential considerations, to absolve her, and decree her restoration. Your Excellency, in a decree of the 9 October, 1815, commanded that the said royal order should be obeyed and fulfilled, and in order that the necessary measures conducive to the restitution

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of ship and cargo might be adopted, commanded the original order to be deposited in the archives and a certified copy to be made of it and annexed to the records on the case."

"The immediate execution of this royal order is much to be desired under present circumstances as it is necessary that we should return to the United States, where we must notify the result both to Don Luis de Onis, the Spanish minister

plenipotentiary, and to the owners, for whom we are to recover the money from the royal treasury. For the fulfillment of the agreement, ratified by the Spanish sovereign, and of the decree of restitution sent to Your Excellency, there is nothing more requisite than the tenor of the royal order, which is sufficiently intelligible in its origin and object. Any delay will occasion a serious injury, and it was from His Catholic Majesty's desire to avoid this that he ordered the restitution, even before he had received official notice of the confiscation. The ship *Warren* was sold in this capital; the purchaser's title to the property, which is the record of the proceedings on her confiscation, must therefore have been exhibited. The value of the cargo which His Catholic Majesty orders to be restored is estimated in the royal order at near \$300,000; which can by some means or other be procured; it being a matter of indifference to the owners whether it was deposited in the chests here, or in any others of the Kingdom. Under the impression, therefore, that restitution ought to be made by the royal treasury, without any further testimony than the appraisement of the vessel and cargo, in conformity with the just and wise considerations which induced His Majesty to decree the restoration and delivery, we implore Your Excellency that, on view of the records relative to the sale of the ship *Warren*, and knowing the sum at which her cargo was valued; you will be pleased to draw a bill against the officers of the royal treasury, and represent to them the serious injuries which would result from any delay in fulfilling the royal order issued under such circumstances. Wherefore we pray and supplicate Your Excellency that considering as duly exhibited the power of attorney, and in consequences of what has been set forth; you will be pleased to order an authenticated copy of the royal order, the fulfillment of which is required, to be annexed to the records of the sale of the ship *Warren*,

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and on view of them issue the orders for which we pray, as is just, and as we expect from Your Excellency's equity."

"SMITH, NICHOLAS, ANTHONY FAULAC"

ORDER

"Lima, 21 March, 1817"

"Let it be filed with the records of the subject, and be seen by His Majesty's officer of the Exchequer, and let the tribunal of accounts make a report."

"HIS EXCELLENCY'S RUBRICK"

" *Acebal* "

" *REPORT*"

"Most Excellent Sir -- The tribunal of accounts, in compliance with Your Excellency's order of this date, has examined the petition of Don Samuel Smith and Don Antonio Faulac, filed with the records which originated in the letters written by the Spanish counsel in Baltimore respecting the fitting out in that port, of the ship *Warren*, for the purpose of carrying on an illicit commerce in these seas, and all that it can represent is that the said vessel was captured off the coasts, or in some port of the Kingdom of Chili, and all the proceedings in such cases had, without this government being informed of anything further than the sale of the vessel, which was sent hither for that purpose by the president of Chili, as will appear by his official letter of 14 January, 1808, registered in folio 22, and the proceeds deposited, at his request to the credit of his treasury. The vessel was sold for the sum of \$25,000, to Don Xavier Maria Aguirre, and the amount deposited in the royal chests in this capital, on 4 February, 1819, and along with \$263,285 six reals, which had been received from various sources on deposit to the credit of the Chilian Treasury, was remitted to the Peninsula, in the ships *Primero* and *Joaquina* in consequence of an official letter from the president of 12 April, 1809, and in obedience to an order of this vice-regal government, dated 13 May of the same year. Authenticated copies of which are enclosed along with an account, No. 585, from the office of the royal chests in this capital. Your Excellency on

view of all this, and of the royal order of 13 June, 1815, in which the proceeds of the vessel and cargo are ordered to be restored to the claimants, will resolve whatever you may deem most conducive to the royal service. Tribunal, 21st May 1817."

"THE MARQUIS DE VALDELUIES"

"LEON DE ASTOLAQUINE"

"JOAQUIM BONET"

" *REPORT*"

"Most Excellent Sir -- The officer of the Exchequer having examined the petition of Samuel Smith and his agents for the ship *Warren* relative to the royal order of 13 June, 1815, in which His Majesty commands that restitution should be made to them in this capital of the proceeds of the cargo of the said vessel, which were deposited here, states that from the records of the only proceedings in the case which were had before this government, which are ready to be exhibited, it appears that the seizure and confiscation took place in Chili, and that the amount of the proceeds of the vessel only was deposited in the chests here. It results therefore that the supposition in the royal order that the proceeds of the cargo had been deposited here is erroneous. And as moreover the impoverished condition of this treasury and its indispensable disbursements will not allow it to refund so large an amount, and as the royal order has so far been complied with as to permit the entrance of the vessel which they brought here, Your Excellency might find it expedient to give His Majesty a knowledge of these facts by sending him an authenticated copy of the records in order that he may determine according to his sovereign pleasure."

"PAREJA"

"Lima, 24 May, 1818"

ORDER

"Lima, 3 June, 1817"

"Having seen the foregoing, let the records be carried to the superior board of the royal revenue in order that it may determine as soon as possible what course ought to be pursued."

"HIS EXCELLENCY'S RUBRICK"

" *Acebal* "

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The owners of the ship *Warren* and cargo and their assignees presented memorials for indemnity to the commissioners of the United States, appointed under the Florida Treaty of 22 February, 1819, and thereupon the commissioners made the following award:

" *SHIP WARREN, EVANS*"

"24 April 1824"

" *Thomas Ellicott and others, claimants* "

"The board having heretofore received, examined, and allowed this claim as valid, this day proceeded to ascertain the amount thereof, and do award to the claimants the sum of \$184,162.35 (less the unclaimed interest of Bonnifils, a foreigner, of \$15,011.37), in full, for the loss sustained for the seizure, confiscation, and sale of this vessel and cargo by the Spanish authorities at Talcahuana in 1806, the proceeds of which sale were ordered to be paid to the claimants by His Catholic Majesty in 1815, which sum is to be thus divided: "

No. 471. -- To Robert and John Oliver, as trustees

of Lemuel Taylor \$ 63,920.88

Ellicott & Meredith, as trustees of Smith and

Buchanan	45,034.14
Union Bank of Maryland, as trustees of Hollins and McBlair.	40,030.34
John Stiles, as executor of George Stiles.	20,015.17
The unclaimed interest of Bonnifils.	15,011.37

\$184,011.90

"True copy from the record,"

"JOSEPH FORREST, Clerk"

Eight and one-third percent, or one-twelfth in all cases, was abated from the gross amount. The items forming the aggregate sum allowed by the commissioners in the case of the ship *Warren*, Evans, master, were as follows:

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For the value of the vessel.	\$ 25,000.00
Cargo.	125,131.93
Taylor's adventure	4,025.83
Premium, twelve percent.	16,144.59
Freight one-third off.	13,860.00

\$184,162.35

Deduct therefrom 150.45 -----

\$184,011.90

The last final report, made to the Department of State of the United States on 8 June, 1824, by the commissioners under the Florida treaty, contained the following general observations:

"In making such allowances to underwriters, the commission was well aware that its effects would be to allow them more than they had lost, by the amount of the premium received from the party insured, which premium he had voluntarily paid and must have lost in any event; so too, in making the allowance of freight, the commission was well aware that the full wages of seamen had not been paid, probably, in any of the cases where such freight was given. But in these and many other cases which occurred, the board having ascertained the full amount of the loss, distributed this amount so ascertained amongst the different parties claiming it before them and seeming to have a right to receive it (no matter in what character), without deciding or believing itself possessed of the authority to decide upon the merits of conflicting claims to the same subject. To whom of right the sum thus awarded, when paid, may belong or for whom, how, or in what degree the receiver ought to be regarded as a trustee of the sum received were questions depending upon the municipal laws of the different states of the union, the application of which to the facts existing in any case the board did not feel itself authorized to make, and therefore abstained from instituting any inquiry as to the facts necessary to such a decision. These remarks the commission think it proper thus to state, lest their award may be considered as barring and finally settling pretensions, into which this board have in truth neither made or believed itself authorized to make any examination whatever, but have purposely left open for the adjudication of others who will have better means of ascertaining the facts. "

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Answers were put in by the owner of the *Warren* and cargo.

After the assignments made by them, answers were filed by the several assignees.

The answer of Robert Oliver denies the jurisdiction of the district court of the United States over the funds in his hands under the assignment. It states the assignment made to him by Lemuel Taylor on 13 December, 1819, of his interest in the ship and cargo, and that the claim was prosecuted before the commissioners under the Florida treaty, and the net sum of \$58,594.32 was received; all knowledge of any agreement between the owners of the *Warren* and cargo with the seamen is denied.

The Bank of the United States answered and denied the jurisdiction of the court, and also all knowledge of the alleged contract between the original parties to the cause. The answer states that the firm of Smith & Buchanan executed a deed of trust to Ellicott & Meredith on 9 November, 1820, being an assignment of their interest in the ship and cargo in trust for the Bank of the United States in the first instance, and that the trustees had received about \$50,000. That at May Term, 1825, of the Circuit Court of the United States, the bank filed a bill in equity calling on the trustees to pay them the money so received, and the same was paid into court, and the libellants filed a petition in the cause praying the court to retain for them so much of the said sum as they should prove themselves entitled to. The circuit court directed the sum received by the trustees to be deposited in the Bank of the United States.

Ellicott & Meredith, assignees in trust of Smith & Buchanan, answered, stating the assignment and the payment of the money received by them. The Union Bank of Maryland answered, protesting against the jurisdiction of the court and stating the assignment to the bank by Hollins & McBlair and that they were ignorant of the claims of the libellants.

On 16 March, 1827, the district court dismissed the libel and petition, and the libellants appealed to the circuit court. In that court on 20 May, 1828, the decree of the circuit court was affirmed and the libellants appealed to this Court. It was understood, that both in the district and circuit courts, the decrees were entered

pro forma.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from a *pro forma* decree of the Circuit Court of the District of Maryland in a case in admiralty for mariners' wages. The original libel (which was filed in December, 1810) was against the owners *in personam*, alleging among other things, that the libellants (six in number) shipped on board the *Warren* in August, 1806, to perform a voyage from Baltimore to the northwest coast, thence to Canton in the East Indies, and thence back again to Baltimore; that they proceeded on the voyage, but that with the privity and consent of the owners, the ship deviated, without any justifiable cause, from the voyage and arrived at Conception Bay on the coast of Chili for the purpose of carrying on an illicit trade against the colonial laws of Spain; that the vessel was there

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seized by the Spanish authorities and finally decreed to be forfeited; the crew was taken on shore and held for a great length of time in imprisonment, and afterwards, having effected their escape, arrived in the United States in 1810. The owners appeared and made a defensive answer; which was excepted to and afterwards amended. Some testimony was taken, but no further proceedings appear to have been had until October, 1818, when an amended libel was filed by the libellants and others (in all fifty-seven persons), and in June, 1819, another amended libel by another of the seamen. The only allegation in these supplements which it is material to mention is that the owners had received the whole or a part of the proceeds of the ship and cargo. At a later period in the year 1819, all the owners became insolvent. In December, 1819, Lemuel Taylor (one of the owners) assigned to Robert Oliver all his interest in the proceeds of the *Warren* and cargo, whenever recovered; in November, 1820, Smith & Buchanan (two other owners) assigned, among other things, all their interest in the proceeds of the ship and cargo to Jonathan Meredith and Thomas Ellicott, in trust for the Bank of the

United States and other creditors, and in May, 1821, Hollins & McBlair, the other owners, assigned all their interest in the proceeds of the ship and cargo to the Union Bank; all these assignments were made to secure debts antecedently due. Long before these assignments, to-wit in June, 1815, the owners had procured from the King of Spain a royal order for the restitution of the ship and cargo. But no restitution having been in fact made, the assignees laid their claim before the commissioners appointed under the treaty with Spain of 1819, commonly called the Florida Treaty, and the commissioners in 1824 awarded them compensation as follows: for the ship *Warren* \$25,000; for the cargo, \$125,131.93, and for the freight \$13,860. This amount was accordingly paid to them by the United States. In December, 1825, the libellants filed a new libel by way of petition against the owners and against their assignees setting forth their grievances in a more aggravated form and alleging the award and receipt of the proceeds

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by the assignees, and the promises of the owners to indemnify and pay them out of the proceeds, whenever recovered, to the full amount of their wages, and accounting for their not having proceeded to a decree *in personam* against the owners except so far as to have a docket entry, in June, 1822, of a "decree on terms to be filed" (which was afterwards rescinded), solely upon the faith of those promises, and praying process against the owners and also against the assignees to pay them the amount out of the proceeds in their hands. Answers were duly filed by the owners and the assignees, the former asserting that they had parted with all their interest in the funds and the latter asserting their exclusive title to the same under the assignments and denying any knowledge of any agreement of the owners in respect to the claim of wages or of the other matters stated in the petition.

Further testimony was taken, and finally, by consent of the parties, at May term 1828, a decree *pro forma* passed, affirming the decree of the district court dismissing the libels and petition exhibited in the cause, from which decree the case now stands upon appeal before this Court.

Such is a very brief statement of the principal proceedings in this protracted suit, in its duration almost unparalleled in the annals of the admiralty, whose anxious desire and boasted prerogative it is to administer justice, as the metaphor is, *velis levatis*. A great portion of the delay (which would otherwise seem a reproach to our law) can be attributed to no other cause than the voluntary acquiescence of all the parties under the peculiar circumstances growing out of new emergencies in its progress.

The cause has been most elaborately and learnedly argued at the bar upon a variety of points suggested by the different postures of the case. The view, however, taken by us of the merits renders it wholly unnecessary for us to go into any examination of many of these points, and this opinion will be accordingly confined to those only which are indispensable to a decision, and which, we trust, after such a lapse of time will prove a final decision.

The first question is whether in point of fact the libellants have substantially sustained the allegations in the libels and

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petition in respect to the voyage; to their ignorance of the intended illicit trade; to the seizure of the ship and to their own imprisonment and separation from it: which are necessary to maintain their claim for wages. And we are of opinion that the evidence upon these points is conclusive. Without going into the particulars, it may be said that few cases could be presented under circumstances of more aggravation and in which the proofs were more clear that the seamen were the victims of an illicit voyage for which they never intended to contract and in which they had no voluntary participation.

Such then being the state of the facts, the law upon the subject is very clear. It is that the seamen are entitled to full wages from the time of their shipping on the voyage, to the time of their return to the United States, deducting their advance wages, and whatever they have earned (if any) in any intermediate employment. This is the general rule in courts of admiralty in cases of this nature where the libel

seeks nothing beyond compensation in the nature of wages. To this extent, the seamen are entitled to a decree against the owners. But they being insolvent, it becomes necessary to inquire whether they have not also a remedy against the assignees holding the proceeds of the ship, cargo, and freight in their hands.

If the ship had been specifically restored, there is no doubt that the seamen might have proceeded against it in the admiralty in a suit *in rem* for the whole compensation due to them. They have by the maritime law an indisputable lien to this extent. This lien is so sacred and indelible that it has on more than one occasion been expressively said that it adheres to the last plank of the ship. 1 Pet. Adm. note, 186, 195; 2 Dodson 13; *The Neptune*, 1 Hagg. Adm. 227, 239.

And, in our opinion, there is no difference between the case of a restitution in specie of the ship itself and a restitution in value. The lien reattaches to the thing and to whatever is substituted for it. This is no peculiar principle of the admiralty. It is found incorporated into the doctrines of courts of common law and equity. The owner and the lien holder, whose claims have been wrongfully displaced, may follow the proceeds wherever they can distinctly trace them. In respect,

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therefore, to the proceeds of the ship, we have no difficulty in affirming that the lien in this case attaches to them.

In respect to the freight there is more room for argument. That there is an intimate connection between the freight and the wages, that the right to the one is generally, though not universally, dependent upon the other, is doctrine familiar to all those who are conversant with maritime law, and has given rise to the quaint expression that freight is the mother of wages. Indeed, freight being the earnings of the ship in the course of the voyage, it is the natural fund out of which the wages are contemplated to be paid, for though the ship is bound by the lien of wages, the freight is relied on as the fund to discharge it, and is also relied on by the master to discharge his personal responsibility. We think, then, that this relation between the freight and wages does, by the principles of the maritime law,

create a claim or privilege in favor of the seamen to proceed against it under the circumstances of the present case.

Here the owner of the ship is also owner of the cargo. There has been an award allowing the assignees freight as a distinct item, and the owners are insolvent. If the master of the ship were living, he would have a direct lien upon the freight for his disbursements, and liability for wages, and through him the seamen would have the means of asserting a claim on it. We can perceive no principle then, why in the present case the seamen may not justly assert a claim on the freight, if the proceeds of the ship are exhausted, without satisfying the amount of their wages. No authority has been produced against it, and we think it justly deducible from the general doctrines of the maritime law on this subject.

It has been argued that the admiralty has no jurisdiction in this case, but we are of opinion that the objection is unfounded. Over the subject of seamen's wages the admiralty has an undisputed jurisdiction, *in rem* as well as *in personam*, and wherever the lien for the wages exists and attaches upon proceeds, it is the familiar practice of that court to exert its jurisdiction over them by way of monition to the parties holding the proceeds. This is familiarly known in the cases of prize and bottomry and salvage, and is equally applicable to the case of wages.

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In respect to the claim of the assignees to hold the proceeds for their exclusive use as *bona fide* purchasers, we think it cannot be maintained in point of law. In respect to the ship and its proceeds, they stand in no better situation than the original owners. They take the title *cum onere*. The lien will follow the ship and its proceeds into whosever hands they may come by title or purchase from the owner. In respect to the freight, the same consideration does not necessarily apply. But here the assignees (though there is no doubt that they are *bona fide* holders) have taken their assignments as mere securities for antecedent debts, and had either actual or constructive notice of the claims of the seamen when they received their conveyances. There was not only the *lis pendens* to affect them with

constructive notice, but the very circumstance of the derivation of their title from the owners was sufficient to put them upon inquiry. It was indispensable to enable them to make an available claim before the commissioners. So that in both views they are unprotected as against the libellants.

This view of the matter disposes of the principal questions necessary for the decision of the cause, as we are of opinion that the whole proceeds of the ship and freight, in the hands of the assignees, are liable to the payment of the seamen's wages. We think there is no claim whatsoever upon the proceeds of the cargo, as that is not in any manner hypothecated or subjected to the claim for wages.

It has been supposed at the argument that there is some repugnancy in the petition of the seamen in asserting a claim for wages on the ground that the voyage was illicit, and in asserting a claim against the proceeds in the hands of the assignees, upon the ground that the voyage was lawful, and therefore the award of compensation to the owners was rightful. But upon a just consideration of the matter, no such repugnancy exists. The allegation on the part of the seamen is that they shipped on one voyage, which was lawful, and that they were carried on another voyage for which they did not ship and in which the ship was seized and they were imprisoned for being engaged in an illicit trade. Now the voyage in respect to them might be wholly tortious and illicit because it was not within the scope of their contract, and they may have been thereby subjected to all the consequences of an

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illicit trade, although, as between the owners and the Spanish authorities, the voyage may have been specially permitted as an exception to the general colonial prohibitions, or at least may not have been disapproved of in the particular instance. If the King of Spain had a right to make the seizure and pursue it to condemnation, yet he might, under all the circumstances, deem it just or expedient, as between the owners and himself, to order restitution, and when such restitution was so made, as between himself and them, the voyage might be

deemed no longer subject to the imputation of illegality. If the order of restitution was not complied with, it constituted a good claim against Spain, and consequently a good claim under the Florida treaty.

The award of the commissioners is conclusive on this subject, but it concludes no more than its own correctness. Suppose the ship, after a seizure and condemnation by the local Spanish authorities, had upon appeal been specifically restored by the King of Spain; there is no pretense to say that she might not have been proceeded against in the admiralty for the full compensation of the seamen. Their right to such compensation in such a case would depend not upon the fact whether there were an illegal service or not, but upon the fact whether there had been an unjustifiable deviation from the voyage contracted for, and there is no legal distinction, as has been already stated, between proceeding against the ship and against the proceeds restored in value.

In respect to the claim of interest made by the libellants, we are of opinion that under the peculiar circumstances of this case, none ought to be allowed upon their wages except for the period of time which has elapsed since the petition was filed against the assignees and owners on 1 December, 1825. The previous delay was, as it seems to us, either a voluntary delay, assented to by all parties, or else under circumstances of so much doubt as to the nature and extent of the claim as ought to preclude any claim for interest. The assignees having had the funds in their hands since that period, must be presumed to have made interest on them, and therefore there is no hardship in considering them liable to pay interest to the seamen.

The cause not having been heard upon the merits either in

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the district or circuit court, it is impossible for this Court to ascertain the precise amount to which the libellants are respectively entitled without a reference to a commissioner to ascertain and report the amount upon the principles already stated. It will be necessary therefore to remand the cause to the circuit court for

this purpose, and it is to be understood, in order to avoid any further delays, that the commissioner is to proceed with all reasonable dispatch and is to report to the court the amount due to each seaman as soon as he shall ascertain the same, so that each may have a separate decree (as in libels of this sort he well may), for his own share, without waiting for any final decree upon the claims of the others.

Where the exact time of the return of any seaman cannot be ascertained, the commissioner will make an average estimate as near as the facts will enable him to do so. In case of the death of any seaman who is a libellant, his administrator is to be brought before the court before any final decree is entered upon his claim.

A special order will be drawn up by the court, to be sent to the circuit court for its direction upon these points, and the decree of the circuit court is

Reversed and the cause remanded accordingly.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland, and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by the court that the decree of the circuit court affirming the decree of the district court dismissing the libels and petition in this cause be and the same is hereby reversed, and this Court, proceeding to render such decree as the circuit court ought to have rendered, it is further ordered, adjudged, and decreed that the libellants are entitled to full wages according to the terms of their original shipping articles or contract from the time of their shipping until their return and arrival in the United States after the seizure of the said ship *Warren* and cargo, in the manner in the proceedings mentioned, deducting therefrom any advance wages paid to them and any wages earned by them in any employment in the intermediate period,

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and that a decree be entered against the owners of the said ship in the said proceedings mentioned for the amount of such wages as soon as the same shall be ascertained in the manner hereinafter stated, with interest thereon, from 1 December, 1825.

And it is further ordered, adjudged, and decreed that a decree be rendered against the other respondents in this cause for the payment of the same wages when so ascertained, with interest as aforesaid out of the funds and proceeds (but not exceeding the funds, and proceeds) of the said ship *Warren*, and freight received by them under the assignments and the award of the commissioners under the treaty with Spain in the said proceedings mentioned, to-wit, out of the sum of \$25,000 awarded for the said ship and the sum of \$13,860 awarded for the freight thereof according to the proportions thereof by them respectively received as aforesaid, and that interest at the rate of six percent per annum be paid by them and considered as a part of the said funds and proceeds from the time when the petition and libel against them was filed, to-wit from 1 December, 1825, until the time when a final decree is and shall be made in the premises by the circuit court or until the same funds and proceeds shall by order of the circuit court be brought into the registry of the court.

And it is further ordered and adjudged and decreed that this cause be remanded to the circuit court with the following directions.

1. To refer it to the commissioner to ascertain from the evidence and proceedings and other proper evidence the amount due to each of the libellants for wages and interest thereon upon the principles stated in this decree, and that he be required forthwith and as soon as may be to proceed upon this duty and to report to the circuit court the amount due to each of the libellants separately, as soon as he shall have ascertained the same, so that a separate and several decree may be entered therefor to each libellant respectively.

2. In cases where the exact time of the return of any of the libellants cannot be ascertained, the commissioner is to make

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an average estimate of the time, as near as the facts will enable him to do so, and to report accordingly.

3. In cases where any of the libellants have died during the pendency of the proceedings in this suit, no final decree is to be entered in respect to such libellant until his personal representatives shall become party to the suit.

Mr. Taney, of counsel for the appellees in this cause, filed the following suggestions in writing:

"The Supreme Court having announced their intention to send a special direction to the circuit court stating the principles on which this case is to be finally settled, and the case on the part of the assignees, who are appellees, having been prepared merely with a view to obtain the decision of this Court on the points which have been argued and decided, they pray that they may be allowed to offer further proof on the following points, either in this Court or the circuit court."

"1. The expenses incurred by the owners in prosecuting this claim in Spain in order to procure the order of restoration."

"2. The expenses of the assignees in prosecuting the claim before the commissioners under the Florida treaty."

3. The amount of the compensation to which the assignees are entitled for their services, as general agents for those interested in the fund.

"4. The said appellees beg leave also to be permitted to offer in evidence, either in this Court or in the circuit court, the records of the proceedings against them in the said court, sitting as a court of chancery, in relation to the fund now in question, in which said proceedings the money received by them under the award of the commissioners under the Florida treaty was by order of the said circuit court paid into court by the aforesaid assignees and by the decree of the said court distributed among certain claimants."

"5. The said appellees also pray to be permitted to offer in evidence the record of the proceedings in the Chancery Court of Maryland in relation to a part of the said fund, so that, in case there should be a conflict of the jurisdiction, they may not be made liable to pay the amount due into both courts."

The counsel for the appellee, on these suggestions, moved the Court to rescind and annul the decree entered in this cause and for leave to reargue the same.

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This motion was opposed by the counsel for the appellants; and an argument in writing, for and against the motion, was submitted.

Afterwards the Court made the following order:

"And now, upon another and subsequent day of said January term, upon hearing the written motion made in behalf of the assignees, who are respondents in the said cause, and the arguments thereon by the parties, it is further ordered, adjudged, and decreed by this Court that the said assignees shall be allowed, in taking an account of the funds in their hands, to deduct therefrom a portion, *pro rata*, of the disbursements and expenses which have been actually incurred by them in prosecuting their claim before the commissioners, under the Florida treaty, in the proceedings mentioned, and also shall be allowed to deduct therefrom two and one-half percent commission as a compensation for their services in and about the prosecution thereof as aforesaid, and for this purpose they shall be allowed to produce new proofs before the said circuit court, and any commissioner appointed by the said court to take an account in the premises. But the parties (respondents) shall not be at liberty to adduce any proof of, or be allowed to deduct from said funds any expenses or disbursements or charges incurred by the owners of the said ship *Warren* in Spain or otherwise in order to procure the royal order of restoration in the said proceedings mentioned. And it is further ordered, adjudged, and decreed that the said assignees shall be at liberty to offer in evidence the proceedings in the said chancery suits, in the said written motion, mentioned in the said circuit court, and before the commissioner aforesaid, reserving to the said circuit court and commissioner respectively the full right and liberty to judge whether the same suits, or either of them, are properly admissible or competent as evidence in any matter before the said court or commissioner under the further proceedings in this cause, to be had in the said circuit court."

MR. JUSTICE BALDWIN dissented from the order in relation to the proceedings in the circuit court and the allowance of a commission to the defendants.

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