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Mclane Vs. United States

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Appellant : Mclane

Respondent : United States

Judgement :

McLane v. United States - 31 U.S. 404 (1831)
U.S. Supreme Court McLane v. United States, 31 U.S. 6 Pet. 404 404 (1831)

McLane v. United States

31 U.S. (6 Pet.) 404

APPEAL FROM THE DECREE OF THE CIRCUIT COURT OF

THE UNITED STATES FOR THE DISTRICT OF DELAWARE

SYLLABUS

The ship *Good Friends* and her cargo of British merchandise, owned by Stephen Girard, a citizen of the United States, was seized by the Collector of the Delaware District on 19 April, 1812, for a violation of the nonintercourse laws of the United

states, then in force. The ship and cargo were condemned as forfeited in the District and Circuit Courts of the Delaware District. On 29 July, 1813, Congress passed an "act for the relief of the owners of the *Good Friends,* &c.;," and a remission of the forfeiture was granted by the Secretary of the Treasury under the authority of that act, with the exception of a sum equal to the double duties imposed by an act of Congress passed on 1 July, 1812. The collector was entitled to one moiety of the whole amount reserved by the Secretary of the Treasury as the condition of the remission.

Where a sentence of condemnation has been finally pronounced in a case of seizure, this Court, as an incident to the possession of the principal cause, has a right to proceed to decree a distribution of the proceeds according to the terms prescribed by law. And it is a familiar practice to institute proceedings for the purpose of such distribution whenever a doubt occurs as to the rights of the parties who are entitled to share in the distribution.

The duty of the collector in superintending the collection of the revenue and of making seizures for supposed violations of law is onerous and full of perplexity. If he seizes any goods, it is at his own peril, and he is condemnable in damages and costs if it should turn out upon the final adjudication that there was no probable cause for the seizure. As a just reward for his diligence and a compensation for his risks, at once to stimulate his vigilance and secure his activity, the laws of the United States have awarded to him a large share of the proceeds of the forfeiture. But his right by the seizure is but inchoate, and although the forfeiture may have been justly incurred, yet the government has reserved to itself the right to release it either in whole or in part until the proceeds have been actually received for distribution, and in that event and to that extent it displaces

the right of the collector. Such was the decision of this Court in the case of *United States v. Morris,* 10 Wheat. 246.

But whatever is reserved to the government out of the forfeiture is reserved as well for the seizing officer as for itself, and is distributable accordingly. The government has no authority under its existing laws to release the collector's share as such

and yet to retain to itself the other part of the forfeiture.

In point of law, no duties as such can legally accrue upon the importation of prohibited goods. They are not entitled to entry at the custom house or to be bonded. They are, *ipso facto,* forfeited by the mere act of importation.

The material facts of the case appear in the following agreed

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statement made in the circuit court, and brought up to the Supreme Court of the United States, to-wit:

"On motion of C. A. Rodney, on behalf of Colonel A. McLane, Collector of the Delaware District, for a distribution of the forfeiture decreed by the court, of which the said A. McLane claims one full moiety of the whole exacted from, and paid by the claimant, the following statement of facts is agreed to, and submitted to the court by the counsel on both sides: "

"The ship *Good Friends,* laden with the cargo above stated consisting of goods, wares, and merchandise, of British growth, produce, or manufacture, was seized as prohibited by the said A. McLane, collector as aforesaid, within the district aforesaid, on 19 April, 1812, for a violation of the acts of Congress, in such case made and provided; the said ship and cargo were afterwards libeled and prosecuted to condemnation in the District Court of the Delaware District, and the sentence of that court was afterwards affirmed on appeal by a decree of the circuit court, from which decree an appeal was not prosecuted."

"That by virtue of an Act of Congress entitled, 'An act for the relief of the owners of the ships called *The Good Friends, the Amazon,* and *The United States* and their cargoes, and also of Henry Bryce,' passed 29 July, 1813, upon the petition of Stephen Girard, claimant of the cargo of the ship *Good Friends* as aforesaid, a remission of the forfeiture was granted by the Secretary of the Treasury, with the exception of a sum equal to the amount of the double duties imposed by an act of Congress passed on 1 July, 1812; that the said sum was afterwards paid by the

said S. Girard, to C.J. Ingersoll, District Attorney of the United States for the District of Pennsylvania."

"That it has been decided by the Treasury Department that the said Allen McLane is entitled to one moiety of the additional duties imposed by the act of 1 July aforesaid on goods not prohibited, and which is therefore undisputed, but not to a full moiety of the whole sum exacted from the said S. Girard and paid as aforesaid, whereas the said A. McLane, collector as aforesaid, insists that he is legally and justly entitled to one full moiety of the whole amount paid as aforesaid, considering

it all as forfeiture, inasmuch as the cargo of the ship *Good Friends* consisted entirely of goods prohibited, and not subject to any duty, and that whatsoever portion was not remitted is to be considered as forfeiture, and that, as the sum exacted is one and indivisible, he is entitled to a full moiety of it."

"It is further agreed that a decree *pro forma* be entered on this motion against the said A. McLane, for the purpose of bringing this question before the Supreme Court of the United States for final decision, and that an appeal be entered in due form from such decree, and that this statement of facts, with the records, exhibits, depositions and documents herein referred to, be transmitted to the said Supreme Court for hearing, at the ensuing term."

The particular facts referred to in the statement appeared at large on the record of the proceedings in the district and circuit courts. The following are abstracted from the record:

The seizure was made on 19 April, 1812, at New Castle, in the State of Delaware. The libel was filed on 5 May, 1812. The goods were appraised and delivered to claimant upon bond, with sureties for the appraised value, 9 May, 1812. The decree of condemnation in the district court was given 17 April, 1813, and, the same day, an appeal to the circuit court was entered.

This decree was affirmed in the circuit court on 29 September, 1818, subject to the operation of the Act of Congress of 29 July, 1813, and the remission of February, 1813, 1814.

On the same day an appeal was entered to the Supreme Court of the United States, which was not prosecuted.

In March, 1812, Mr. Girard presented a memorial to Congress praying for relief.

On 29 July, 1813, an act of Congress was passed, of which the following is a copy, to-wit:

"An act for the relief of the owners of the ships called *The Good Friends, The Amazon,* and *The United States* and their cargoes, and also of Henry Bryce."

"SECTION 1. Be it enacted by the Senate and House of Representations of the United States of America in Congress assembled that the owners of the ships called *The Good Friends, The Amazon,* and *The United States,* and of the cargoes on board

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said vessels, which vessels arrived in the month of April, 1812, in the District of Delaware from Amelia Island with cargoes that were shipped on board said vessels in the united Kingdom of Great Britain and Ireland, shall be entitled to, and may avail themselves of all the benefits, privileges, and provisions of the act entitled 'An act directing the Secretary of the Treasury to remit fines, forfeitures, and penalties in certain cases,' passed on 2 January last past, in like manner and on the same conditions as though said vessels had departed from the Kingdom aforesaid between 23 June and 15 September, mentioned in said act, and had arrived within the United States after 1 July last."

The District Judge of the United States for the District of Delaware certified the following statement of facts to the Secretary of the Treasury of the United States on 25 November, 1813.

"Having inquired into the facts stated in the annexed petition, after reasonable notice thereof had been given to the district attorney and the collector of Wilmington, I do find and cause to be stated to the Secretary of the Treasury of the United States: "

"1. That Stephen Girard, the petitioner, is a citizen of the United States, as stated in his petition."

"2. That the said petitioner is the owner of the ship *Good Friends* and her cargo, and that he was the owner at the time of the shipment of the cargo at London, and also at the time of the arrival of the ship and cargo in the district of Delaware."

"3. That the said ship and cargo arrived in the said District of Delaware before the declaration of war, to-wit, in the month of April, 1812, and were thereupon seized and prosecuted, as forfeited for a breach of the nonimportation laws."

The following protest was presented by Allen McLane, Esq. November 25, 1813.

"On motion, on behalf of the Collector of the Delaware District, in the case of the petition of S. Girard for the remission from forfeiture of his ship *Good Friends* and cargo, which had arrived in the Delaware District from London via Amelia Island, and was thereupon by the said collector, acting from his own knowledge of the matter, seized and forfeited, and in pursuance to instructions from the Secretary of the Treasury

bearing date 6 May, A.D. 1812, libeled in the District Court for the Delaware District, and afterwards condemned as forfeited, by the sentence of the said court, whereby a right to one moiety or half part of the appraised value of the said ship and cargo became vested in the said collector; it is suggested and alleged by the said collector that the right and interest which thus vested in him by virtue of the said seizure, forfeiture, and sentence of condemnation in the said moiety of the said ship and her cargo was absolute and indefeasible so long as the said sentence of condemnation remained in force, so that by no act of Congress

passed subsequently to the said sentence of condemnation could such his right or interest be affected, impaired, or divested, and it is therefore insisted on behalf of the said collector, protesting against the allowance of the prayer of the said petition or the said petitioner's obtaining the benefit thereof, that this Court should not, by its certificate or act upon the said petition, impair or infringe the right of the said collector in the said moiety of the said ship and cargo, and to the end that this allegation and protest may appear, that a copy thereof may be annexed to the honorable district judge's certificate and act upon the said petition."

"And it is further suggested by the said collector that the act of Congress under which the petition is presented was not intended in its provisions to extend to any case in which a sentence of condemnation had been rendered, but only to the cases from Amelia Island, which were *sub judice* and undecided at the time of passing it, and the case of the *Good Friends* having been regularly prosecuted to condemnation before the passing of the said act, it is thereupon ordered and directed by his honor the judge that a copy of this suggestion be transmitted to the Secretary of the Treasury with the certificate in this case granted by this Court."

The remission by the Secretary of the Treasury on 24 February, 1814, was in these terms:

"To all to whom these presents shall come, I, George Washington Campbell Secretary of the Treasury of the United States, send greeting: "

"Whereas a statement of facts bearing date 25 November, 1813, together with the petition of Stephen Girard, owner of the ship *Good Friends,* and cargo thereto annexed,

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touching the forfeitures and penalties which, by reason of the importation of certain merchandise in the said ship *Good Friends,* have been incurred under a statute of the United States, entitled 'An act to interdict the commercial intercourse between the United States, and Great Britain and France and their dependencies, and for other purposes,' and a statute entitled 'An act concerning the commercial

intercourse between the United States and Great Britain and France, and for other purposes,' and the statute supplementary to the last mentioned statute, has been transmitted to the Secretary of the Treasury by the Judge of the United States for the District of Delaware pursuant to the statute of the United States entitled 'An act to provide for mitigating or remitting the forfeitures, penalties or disabilities accruing in certain cases therein mentioned,' and pursuant to two other statutes of the United States, one of which is entitled"

"An act for the relief of the owners of the ships called the *Good Friends, The Amazon,* and *The United States* and their cargoes, and also of Henry Bryce,"

"and the other, which is therein referred to, is entitled 'An act directing the Secretary of the Treasury to remit fines, forfeitures, and penalties in certain cases,' as by said statement of facts and petition, remaining in the Treasury Department of the United States, may fully appear, and whereas I, the said Secretary of the Treasury, have maturely considered the said statement of facts and petition, and whereas it has been proved to my satisfaction that the goods, wares, and merchandise by the importation whereof the forfeitures and penalties aforesaid have been incurred were, at the time of their shipment and importation, *bona fide* owned by a citizen of the United States and the said forfeitures and penalties were incurred without willful negligence or intention of fraud,"

"Now therefore know ye that I, the said Secretary of the Treasury, in pursuance of the directions of the said act entitled 'An act for the relief of the owners of the ships called *The Good Friends, The Amazon,* and *The United States* and their cargoes, and also of Henry Bryce,' and by virtue of the power and authority vested in me by the aforesaid several other acts, do hereby remit to the petitioner aforesaid all the right, claim, and demand of the United States and of all others whomsoever to the whole or any part of the fines, penalties, and

forfeitures incurred as aforesaid, upon the costs and charges that have arisen or may arise, being paid, and on payment of the duties, which would have been

payable by law on the goods, wares and merchandise imported in the said ship *Good Friends,* if the same had been legally imported into the United States after 1 July, 1812, and also do hereby direct the prosecution or prosecutions, if any shall have been instituted for the recovery thereof, to cease and be determined, on payment of the costs, charges and duties as aforesaid. "

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MR. JUSTICE STORY delivered the opinion of the Court.

This case comes before the Court upon an application made by Allen McLane, Collector of the District of Delaware, to the Circuit Court of that district for a decree of distribution of the forfeiture accruing from the seizure and condemnation of the ship *Good Friends* and cargo, one moiety whereof is claimed by the said collector as seizing officer, there having been a remission of the forfeiture by the Secretary of the Treasury under the

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authority of the Act of Congress of 29 July, 1813, ch. 33. Upon the conditions required by that act, the only controversy existing in the cause is between the United States and the collector in respect to his distributive share. The United States and the collector agreed upon a special statement of the facts, upon which it was further agreed that a decree *pro forma* should be entered by the circuit court against the collector for the purpose of a final decision in the Supreme Court, and by an appeal from the *pro forma* decree so rendered, the cause now stands before this Court.

Upon the argument at the bar, some objection was suggested, though not strenuously urged, against the jurisdiction of the circuit court to entertain the cause under the peculiar circumstances. But this objection appears to us not well founded. Where a sentence of condemnation has been finally pronounced in a case of seizure, the court, as an incident to the possession of the principal cause, has a right to proceed to decree a distribution of the proceeds according to the terms prescribed by law. And it is a familiar practice to institute proceedings of this

nature wherever a doubt occurs as to the rights of the parties who are entitled to share in the distribution. There is nothing in the circumstances of the present case to displace this jurisdiction. And it now appears that the proceeds of which the distribution is now claimed have been, by an express agreement between the United States and the collector, put in a situation to be forthcoming to meet the exigency of the decree which may be rendered upon the statement of facts.

The Act of Congress of 29 July, 1813, enacts

"That the owners of the ships called *The Good Friends, The Amazon,* and *The United States,* and of the cargoes on board said vessels, which arrived in the month of April, 1812, in the District of Delaware from Amelia Island with cargoes that were shipped on board said vessels in the united Kingdom of Great Britain and Ireland shall be entitled to and may avail themselves of all the benefits, privileges, and provisions of the act entitled 'An act directing the Secretary of the Treasury to remit fines, forfeitures, and penalties in certain cases,' passed on 2 January last past, in like manner and on the same conditions as though said vessels had departed from the Kingdom aforesaid between 23 June and 15

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September mentioned in said act and had arrived within the United States after the first day of July last."

The Act of 2 January, 1813, chap. 149 [chap. 7], enacts that in all cases where goods, wares and merchandise, owned by a citizen or citizens of the United States have been imported into the United States from the united Kingdom of Great Britain and Ireland, which goods, &c.;, were shipped on board vessels which departed therefrom between 23 June last and 15 September last, and the person or persons interested in such goods, &c.;, or concerned in the importation thereof, have thereby incurred any fine, penalty, or forfeiture under an act, &c.;, (reciting the titles of the nonintercourse acts of 1 March, 1809, and of 1 May, 1810, and of 2 March, 1811), on such person or persons petitioning for relief to any judge or court proper to hear the same, in pursuance of the provision of the act entitled "an act to

provide for mitigating or remitting the fines, penalties and forfeitures in certain cases therein mentioned," and on the facts being shown, on inquiry had by said judge or court, &c.; in all such cases, wherein it shall be proved to his satisfaction, that said goods, &c.;, at the time of their shipment were *bona fide* owned by a citizen or citizens of the United States and shipped, and did depart from some port or place in the United Kingdom of Great Britain and Ireland, owned as aforesaid, between 23 June last and 15 September last, the Secretary of the Treasury is hereby directed to remit all fines, penalties, and forfeitures that may have been incurred under the said act, in consequence of such shipment, importation or importations upon the costs and charges, which have arisen, or may arise, being paid, and on payment of the duties which would have been payable by law on such goods, &c.;, if legally imported, &c.;

The result of both of these acts taken together, as applicable to the case of the *Good Friends,* is that the Secretary of the Treasury was directed to remit the forfeiture, upon the payment of costs and charges, and the duties upon the cargo, which would have been payable upon the same goods, if legally imported, after 1 July, 1812, that is to say, upon payment of the double duties imposed by the act of 1 July, 1812, ch. 112. Without question, these acts of Congress were

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directory and mandatory to the Secretary, and in his remission, which forms a part of the case, he purports to act, and has in fact acted in obedience to their requirements.

It is wholly unnecessary to inquire whether the secretary would have had authority to remit the forfeiture in this case, under the remission act of 3 March, 1797, ch. 67; because, in the first place, the terms, upon which the remission is to be granted by that act, essentially differ from those prescribed by these acts, and because, in the next place, the Secretary purports to have acted in obedience to the latter.

The question then arises in what light the reservation and payment of the double duties, as conditions upon which the remission is granted, are to be considered. Are the double duties to be deemed a mere payment of lawful duties; or are they to be deemed a part of the forfeiture reserved out of the proceeds of the cargo? If the latter be the true construction, then the collector is entitled to a moiety; if the former, he is barred of all claim.

The duty of the collector in superintending the collection of the revenue, and in making seizures for supposed violations of law, is onerous and full of perplexity. If he seizes any goods, it is at his own peril, and he is condemnable in damages and costs, if it shall turn out, upon the final adjudication, that there was no probable cause for the seizure. As a just reward for his diligence, and a compensation for his risks, at once to stimulate his vigilance and secure his activity; the laws of the United States have awarded to him a large share of the proceeds of the forfeiture. But his right by the seizure is but inchoate, and although the forfeiture may have been justly incurred, yet the government has reserved to itself the right to release it either in whole or in part, until the proceeds have been actually received for distribution, and in that event and to that extent it displaces the right of the collector. Such was the decision of this Court in the case of *United States v. Morris,* 10 Wheat. 246. But whatever is reserved by the government out of the forfeiture is reserved, as well for the seizing officer, as for itself, and is distributable accordingly. The government has no authority, under the existing laws, to release the collector's share as such, and yet to retain to itself the other part of the forfeiture.

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In the present case, it is perfectly clear that the seizure of the *Good Friends* and her cargo was justifiable, and that they were forfeited for a violation of the nonintercourse acts. This is established not only by the final decree of condemnation, but by the very terms of the remission granted by the Secretary of the Treasury. In point of law, no duties, as such, can legally accrue upon the importation of prohibited goods. They are not entitled to entry at the custom house

or to be bonded.

They are, *ipso facto,* forfeited by the mere act of importation. The *Good Friends,* then, having arrived in April, 1812, long before the double duties were laid, and her cargo being prohibited from importation; it is impossible in a legal sense to sustain the argument, that the importation could be deemed innocent, and the government could be entitled to duties as upon a lawful importation. It was entitled to the whole property, by way of forfeiture, and to nothing by way of duties. When, therefore, Congress authorized the remission upon the payment of double duties, the latter was imposed as a condition of restitution upon the offending party. In the language of the act of 2 January, 1813, the remission was to be "on payment of the duties, which would have been payable by law on such goods, &c.;, if legally imported;" not upon payment of the duties which had lawfully accrued upon the same goods. The act presupposes that no duties had accrued or could accrue by operation of law upon the goods, and the Act of 29 July, 1813 expressly treats it as a condition. Indeed it is impossible that double duties could have lawfully accrued upon the importation of the cargo of the *Good Friends,* in April, 1812, when the double duties were not imposed until the passage of the act of 1 July of the same year.

If the government had reserved a gross sum, equivalent to the double duties, out of the forfeiture, as a condition of the remission, there could be no doubt that the collector would have been entitled to his moiety of the sum so reserved. Can it make any difference in point of law that the reservation is made by a reference to double duties as a mode of ascertaining that sum? It has not been pretended that the Act of 29 July, 1813, could divest the rights of the collector, antecedently vested in him by the existing laws. And if such a

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doctrine could be maintained at all, it would still be necessary to establish that there was an unequivocal intention on the part of the government to remit his share, and to retain its own share of the forfeiture. Such an extraordinary exercise of power, if it could be even maintained, where it is subversive of existing rights, ought to be evidenced by terms susceptible of no doubt. We are of opinion that the

present act neither justifies nor requires any such construction. The double duties are referred to as a mere mode of ascertaining the amount intended to be reserved out of the forfeiture, and not as a declaration of intention on the part of the government that they were to be received as legal duties due upon a legal importation.

But a distinction has been taken at the argument on behalf of the United States, and an apportionment or division of the duties has been insisted on. It is said that so much of the duties demanded as were equal to the single duties payable by law on imported goods in April, 1812, ought to be considered as received in that character by the government, since this case has been treated by the government as an innocent importation. But as to the additional duties imposed by the Act of 1 July, 1812, they may be considered as a reservation of forfeiture. And it is added that the government has itself acted upon this distinction in this very case, for it has allowed the collector his moiety of the latter, and denied it in respect to the former.

The true answer to be given to this argument is that the act itself contemplates no such apportionment or division of the duties. The duties are reserved as a whole, and not in moieties. And it could not well be otherwise, for, as has been already shown, no duties at all were legally payable on the goods. They were in fact and were treated by the government as prohibited goods. And when the government imposed the double duties as a condition, they were imposed as a sum which would have accrued upon a legal importation after the 1 July, 1812. The very circumstance that the government itself has treated any part of the reservation as forfeiture and as distributable accordingly is conclusive to show that the whole is incapable of being treated as duties. The distinction contended for, then, not

being found in the act itself, and part of it being confessedly received in the character of a forfeiture; we think the whole must be treated as received as a reservation by way of forfeiture. Our opinion is grounded upon the fact that the act refers to the double duties as a mere mode of ascertaining the amount, and that it

is undistinguishable from the case of a reservation of a gross sum.

Upon the whole, the decree of the circuit court refusing the distribution is to be

Reversed and the cause remanded to that court with directions to decree to the legal representatives of Allen McLane, the collector, one moiety of the double duties, deducting that portion which has been already received by him.

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 Delaware and was argued by counsel, on consideration whereof this Court is of opinion that there is error in the decree of the circuit court whereby it was ordered that the said Allen McLane take nothing by his motion for a decree of distribution of the forfeiture decreed by the circuit court in the proceedings in this cause, mentioned upon the statement of facts in the same proceedings mentioned, and for this error it is ordered, adjudged, and decreed that the decree of the said circuit court upon the motion aforesaid be and hereby is reversed and annulled. And this Court, proceeding to render such decree as the said circuit court ought to have passed, does hereby order, adjudge, and decree upon the said motion, and statement of facts, that the said Allen McLane as collector, as herein mentioned, was in his lifetime entitled, and that his legal representative is now entitled to receive as his distributive share of the forfeiture aforesaid one full moiety of the whole sum which has been paid by Stephen Girard according to the act of Congress, and the remission by the Secretary of the Treasury, as in the same statement of facts mentioned. And the said Allen McLane being now dead, it is further ordered, adjudged, and decreed that the same full moiety be paid over to his legal representative, now appearing and made a party to these proceedings in this Court, *viz.,* Louis McLane, the

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executor of the last will and testament of the said Allen McLane, deceased, as his distributive share accordingly, deducting, however, therefrom the moiety of the said moiety, which has been decided by the Treasury Department to belong to the said Allen McLane if the same has been received by the said Allen McLane or by

his legal representative.

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