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Owings Vs. Hull

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Decided On : 1835

Appeal No. : 34 U.S. 607

Appellant : Owings

Respondent : Hull

Judgement :

Owings v. Hull - 34 U.S. 607 (1835)
U.S. Supreme Court Owings v. Hull, 34 U.S. 9 Pet. 607 607 (1835)

Owings v. Hull

34 U.S. (9 Pet.) 607

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

Mrs. Van Pradelles, being in New Orleans and about to sail for Baltimore, made her last will and testament and appointed her sisters, residing in Baltimore, executrixes of her will. At the time of her decease, she had real and personal

estate, including some slaves, in New Orleans, and she left a number of children. She sailed from New Orleans, and was never heard of after she left that place. The executrixes, after some time, supposing her dead, proved the will in Baltimore, and in 1816 gave a power of attorney to John K. West, of New Orleans, to receive all the moneys due the estate of their testatrix, and particularly to cause such proceedings to be instituted as might be necessary to effect a sale of the estate, and to give a deed for the same, and generally to perform all acts in the premises, judicially and extrajudicially, for the effectual settlement of the estate, &c.; West obtained letters testamentary from the Court of Probate in New Orleans authorizing him to collect the estate and to do all lawful acts as attorney in fact of the executrixes. He sold the slaves belonging to the estate to Mr. Hull in February, 1817, for eighteen hundred by a bill of sale executed before a notary, and all the purchase money, except four hundred and fifty paid to one of the children of the testatrix, was paid to him; and he, soon after, failed, without having paid over any part of the proceeds of the sale to the executrixes. This sale was communicated to Mr. Winchester, the attorney of the executrixes, and by him to them. In 1826, a suit was brought in the Parish Court of New Orleans by the children and heirs of Mrs. Van Pradelles against Hull, according to the laws of Louisiana, for the delivery and possession of the slaves so sold, in which suit, carried afterwards to the supreme court of the state, the slaves were decreed to the plaintiffs upon the ground that the sale was absolutely void under the laws of Louisiana, as executrixes can only sell after an order of court and by auction, and in this case the requisites of the law were not complied with. Hull brought this suit in the circuit court against the executrixes to recover from them the purchase money paid for the slaves. and his expenses attending the same. The whole proceedings in the Louisiana suit, and the evidence in the same, were read to the jury by agreement, subject to all legal exceptions.

The defendants excepted to the reading in evidence of the record in the case of *Heirs of Testatrix v. Hull* as not evidence in the present suit except as to the judgment -- that is, the pleadings and proceedings on which the judgment was founded, and to which as matter of record it necessarily refers. By the court:

"This objection was well taken. The suit was *res inter alios acta,* and the proceedings and judgment thereon were no further evidence than to show a recovery against Hull by a paramount title."

A copy of the bill of sale of the slaves from West to Hull, on record in the notary's office in New Orleans, was offered in evidence. No evidence to account for the nonproduction of the original was offered by the plaintiff, but, by the laws of Louisiana, copies of such notarial acts are evidence, the

original always remaining, by the law of Louisiana, in the office of the notary. *Held* that the circuit court was bound to take judicial notice of the laws of Louisiana, and that the copy being evidence by those laws, was evidence in this case.

The circuit courts of the United States are created by Congress not for the purpose of administering the local law of a single state alone, but to administer the laws of all the states in the Union in cases to which they respectively apply. The judicial power conferred on the general government by the Constitution extends to many cases arising under the laws of the different states, and this Court is called upon, in the exercise of its appellate jurisdiction, constantly to take notice of and administer the jurisprudence of all the states. That jurisprudence is then in no just sense a foreign jurisprudence, to be proved in the courts of the United States by the ordinary modes of proof by which the laws of a foreign country are to be established, but it is to be judicially taken notice of in the same as the laws of the United States are taken notice of in those courts.

A copy of the letters testamentary granted by the Parish Court of New Orleans was proved by the oath of the clerk and register of the Court of Probates to be a true copy of the original, and that he could not send the original, which is on file in the Court of Probates. By the Court: "This is the best evidence which the nature of the case admits of."

The letters and accounts of J. K. West, the attorney in fact of the executrixes, transmitted by him to Mr. Winchester, their attorney in fact, were legal evidence in

the circuit court.

In order to recover against the executrixes on this point, the plaintiff should have proved that the sale of the slaves made to him by West was in conformity with the laws of the State of Louisiana, and, subsequent to such a sale, a recovery of the slaves from him. Every authority given to an agent or attorney to transact business for his principal must, in the absence of any counterproof, be construed to be to transact it according to the laws of the place where it is to be done. A sale of slaves authorized to be made in Louisiana by an executrix must be presumed to be intended to be done in the manner required by the laws of that state to give it validity, and the purchaser equally with the seller is bound under these circumstances to know what the laws are and to be governed thereby. The law will never presume that parties intend to violate its precepts.

This is not the case of a general agency created by persons acting *in autre droit.* The purchaser was therefore bound to see whether the agent acted within the scope of his powers, and at all events he was bound to know that the agent could not, in virtue of any general power, do any act which was not in conformity with the laws of Louisiana. The principals could never be presumed to authorize him to violate those laws, and the purchaser, purchasing a title invalid by those laws, must have purchased it with full knowledge.

A ratification of the unauthorized acts of an attorney in fact without a full knowledge of all the facts connected with those acts is not binding, on the principals. No doctrine is better settled on principle and authority than this -- that the ratification of the act of an agent previously unauthorized must, in order to bind the principal, be with, a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is invalid because founded on mistake or fraud.

Page 34 U. S. 609

The facts of the case, as stated in the opinion of Court, were:

"The original suit is an action of assumpsit brought by the defendant in error against the plaintiffs in error (the original defendants), the declaration containing the money counts, an *insimul computassent* and a special count as for a deceit in the title upon a sale of certain slaves."

"Upon the trial under the general issue, the facts appeared as follows:"

"Mrs. Van Pradelles, a sister of the plaintiffs in error, being at New Orleans in July 1813, made her will, describing herself to be of Baltimore County in the State of Maryland, and thereby bequeathed all her estate equally among her children named in the will and appointed the plaintiffs in error executrixes of her will. She immediately after sailed from New Orleans, bound, as is supposed, for Baltimore, and has never since been heard of. In May, 1815, the plaintiffs proved the will in the Orphan's Court of Baltimore County and took administration of the estate. The property of Mrs. Van Pradelles, at New Orleans, consisted of real and personal estate, and among other things, of some slaves, and in January, 1816, the executrixes gave a power of attorney to John K. West of New Orleans to receive and give receipts, &c.;, for all the goods &c.;, belonging to the estate, to receive all sums of money, &c.;, and particularly"

"to cause such proceedings to be instituted as may be necessary to effect a sale of the whole real and personal estate of which C. D. Van Pradelles, the testatrix, was seized or possessed at the time of her death, and to execute, &c.;, a good and sufficient deed, &c.;, in the name of the executrixes, for the purpose of transferring all the right and title of the heirs of the testatrix therein or thereto, to the purchaser of the said estate, and generally to do, negotiate, and perform all other acts, matters, and things in the premises that circumstances may require, as well judicially as extrajudicially, for the effectual settlement of the estate, &c.;"

West, in January, 1817, obtained from the Court of Probates of the Parish of New Orleans letters testamentary authorizing him to collect the goods and effects of the testatrix and to make a just inventory thereof, and to do all other lawful acts as attorney in fact of

the executrixes. In February, 1817, West sold the slaves in question, belonging to the estate, to Hull, the defendant in error, for $1,800, by a bill of sale, duly executed before a notary in New Orleans; $1,350, part of the consideration money, was duly paid to West, who afterwards failed in 1819, but it did not appear in the evidence that any part of the money had ever come to the hands of the executrixes; $450 was, after the failure of West, received by Mrs. Donaldson, one of the children and devisees of Mrs. Van Pradelles. The sale was communicated to Mr. Winchester, the attorney of the executrixes, and by him to the latter, and the correspondence between Winchester and West is found in the record. In 1826, a suit was brought in the Parish Court of New Orleans by the heirs of the testatrix against Hull, according to the laws of Louisiana, for the delivery and possession of the slaves so sold and their offspring, upon which such proceedings were had that a recovery was decreed to the plaintiffs in that suit by the supreme court of the state upon the ground that the sale of the slaves was absolutely void because, by the laws of Louisiana, executrixes can only sell after an order of court and by public auction, and not by private sale, and that here there was no order of court, no sale at auction, but a sale by private contract.

The plaintiff, to support the issue on his part, offered in evidence the record of the proceedings in the Parish Court of the City of New Orleans in the case in which the children and heirs of Mrs. Van Pradelles were petitioners against James F. Hull for the recovery of the slaves sold to him by John K. West, which proceedings were certified according to the provisions of the act of Congress. This record contained a duly certified notarial copy of the act of sale of the slaves, dated 27 August, 1817, by John K. West, attorney in fact of the executrixes of Mrs. Van Pradelles, to James F. Hull. The original, of which this was a copy, was the notarial register of the sale recorded by the notary, and in his possession according to the laws of Louisiana.

It also contained certain depositions taken and used as evidence in the cause and documentary proof, such as the letters of J. K. West to J. F. Hull; J. F. Hull to J. K. West; letters from G. Winchester, the counsel of the executrixes

of Mrs. Van Pradelles, and afterwards their attorney in fact, to J. K. West, on the subject of the estate of the testatrix; powers of attorney from the executrixes to J. K. West and Mr. Winchester; a copy of the petition of J. K. West to the Court of Probates of New Orleans for letters of executorship and the order of the court thereon, and the letters testamentary granted on the said petition; the accounts of J. K. West with the executrixes; the correspondence of Mr. Winchester with Morgan, Dorsey & Company on the affairs of West after his failure; and the proceedings of the Supreme Court of Louisiana, on the appeal of J. F. Hull from the parish court.

The plaintiff in the circuit court also gave in evidence, a commission issued to New Orleans and executed there, containing the examination of Martin Blache, register of wills in and for the Parish of New Orleans, and *ex officio* clerk of the court of probates, with a copy of the original power of attorney to John K. West from the executrixes, deposited in the court of probates, under which power of attorney John K. West had acted in the premises. The defendants objected to their admissibility and presented the following objections, which were overruled by the court.

1. That the record in the case of *Donaldson v. Hull,* in the Parish Court of New Orleans, is not evidence in this cause against the defendants except as to the judgment of the court in Louisiana.

2. The copy of the original bill of sale, on record in the notary's office, is not evidence unless the plaintiff accounts for the nonproduction of the original.

3. That to make the act of sale evidence, it must appear by the laws of Louisiana, properly and legally proven, that the original act of sale of which it purports to be a copy is in the custody of a public depository, and cannot be adduced in evidence.

4. The depositions and documentary proof contained in the record, in the cause of *Donaldson v. Hull,* are not evidence against the defendants in this cause.

5. That the papers referred to in the testimony of Martin Blache, purporting to be letters testamentary granted by the court of probates to John K. West, are not legal evidence in this case against the defendants.

6. The evidence of Mr. Winchester, with regard to the letters, and the account of Mr. West, transmitted by him, are not admissible in evidence.

And the defendants, by their counsel, offered the following prayers:

"1. The defendants, by their counsel, prayed the court to direct the jury that there is no evidence in the cause to show that John K. West had any authority from the defendants in this cause to effect a sale of any property belonging to the estate of their testatrix in Louisiana, except in conformity with the laws of said state, and that unless the plaintiff shows a sale to the plaintiff Hull, by West in conformity with those laws, and a subsequent recovery from Hull, he is not entitled to recover."

"2. The defendants, by their counsel, prayed the court to direct the jury that unless it believes that John K. West strictly complied with the special instructions given him by the defendants in the power of attorney of January 30, 1816, and caused such legal proceedings to be instituted as were necessary to effect a sale of the personal estate of which their testatrix died possessed in Louisiana, and, under such legal proceedings, made sale of certain slaves, being part of the said personal estate, to J. F. Hull, the plaintiff in this cause, and the said slaves were subsequently recovered from the said Hull, that the plaintiff is not entitled to recover."

Thereupon the plaintiff's counsel, on their part, contended and insisted that the commission and the return first herein referred to are legal and competent evidence to prove a recovery of the slaves from the plaintiff by due course of law for a defect of title in the defendants, and John K. West, their agent and attorney, and of the plaintiff, who claimed under the said defendants and their said agent as aforesaid.

And also moved the followed prayers to the court:

"1. The acts of John K. West relative to the sale of certain slaves to the plaintiff in this case in Louisiana, which were made known to the defendants, and were assented to, and acquiesced in by them, are binding upon the defendants as West's principals whether those acts did or did not conform to a letter of attorney previously given by the defendants to West."

2. The accounts furnished by John K. West to the defendants,

and retained by them, and no item objected to therein, except the charge of five percent commissions, are proper and legal evidence of the nature and particulars of the transactions between West and the defendants, so far as these transactions are therein detailed, except as to the charge for commissions.

3. The letters of George Winchester, written by the direction and with the approbation of the defendants, to West, and to Morgan, Dorsey & Company, and by them respectively received, and the instructions given to Winchester by the defendants, and by him communicated to West, are proper and legal evidence in this case.

And thereupon the circuit court gave the following opinion.

"The action in this case was brought to recover a sum of money, paid by the plaintiff, for certain slaves purchased by him of John K. West, attorney of the defendants, as executors of Mrs. Van Pradelles, a sister. This sale was declared void by the Supreme Court of the State of Louisiana, where the sale was made, for reasons stated in the opinion of the court; that the sale was made without an order of court, and was not made at public auction."

"The counsel for the defendants contend that, as the sale was not made according to the laws of Louisiana, and was adjudged to be void by the court of that state, the proceedings of the attorney were void for that reason, and that West, being a special agent, did not pursue the instructions of his constituents, but acted

contrary to them."

"The counsel for the plaintiff insists that the instructions of the defendants to their attorney were pursued and that, whether they were special or general, they were ratified by the defendants, and therefore binding on them, and that the plaintiff in this suit is entitled to recover the money paid by him for the slaves thus sold."

"Whether an agent has a general or only a special authority is properly matter of evidence for the consideration of a jury. If an agent exceeds his authority, or if he acts without authority, if the employer subsequently acquiesces in or approves his conduct, he is bound by it, and a small matter will be evidence of such assent. And if, with a knowledge of all the circumstances, an employer adopts the acts of his agent

for a moment, he is bound by them. But the great principle in this cause is this: that where one of two innocent persons must suffer by the fraud or act of a third, he who enabled that person, by giving him credit, to commit the fraud, or to do the act ought to be the sufferer. In this case, it does not appear by the evidence given that West, the attorney, had or had not taken letters of administration on the estate of Mrs. Van Pradelles. The fact is not noticed in the opinion of the court. The court of Louisiana declare the sale void because made without an order of the court, and not at public auction. We know that, in Maryland, after letters are granted, the executor or administrator in many cases cannot sell slaves without an order of court. This court will not presume that letters of administration were granted to the attorney, much less will it presume that they were not granted. The course of proceeding in the courts of Louisiana is according to the principles of the civil law. In our state it is different. With these indications of the opinion of the court, the jury is instructed that if it believes from the evidence that the acts of John K. West, the attorney of the defendants, were made known to them, and were assented to and acquiesced in, they are binding upon them whether the acts did or did not conform strictly to the letter of attorney previously given by them to West. This opinion of the court is deemed a sufficient answer to all the prayers made by counsel for

plaintiff and defendants."

To this opinion of the court on the said prayers, and the refusal of the court to sustain the objections so made by the defendants' counsel, exceptions were taken.

The defendants, by their counsel, objected to the admissibility in evidence of the record from the Parish Court in and for the Parish and City of New Orleans in the State of Louisiana, annexed to the commission for any purpose on the ground of its not being authenticated according to law, but the court overruled this objection. The defendants' counsel excepted.

And the defendants further prayed the direction of the court to the jury, that if it should be of opinion from the evidence that the defendants did ratify the said sale of said negroes,

yet if they should be of opinion that West did not, before such ratification, apprise the defendants of the fact that letters of administration were never taken out by him in Louisiana, upon the estate of Mrs. Van Pradelles, and of the fact that by the laws of Louisiana, the executrixes, the defendants, never could have claimed any property in the said negroes so sold, and that the defendants, in ignorance of the existence of these facts, did ratify said sale, then, such ratification being made without a full knowledge of all circumstances material for them to know before they made such ratification, is not binding upon them. The court said:

"This prayer not arising from the facts of the case, the court refuses to grant it. But the court is of opinion that if the jury should believe from the evidence that the proceedings of their attorney were ratified by them, it is not material whether they knew or did not know that West had not taken out letters of administration on the estate of the testatrix."

To which opinion and to the refusal of the court to grant said prayer the defendants by their counsel excepted.

The defendants prosecuted this writ of error.

MR. JUSTICE STORY, after stating the facts, delivered the opinion of the Court.

The original suit was brought to recover back the purchase money paid by the defendant in error for the slaves, and other compensation for the defect of title [as mentioned in the previous statement of the facts of the case]. The jury found a verdict for the original plaintiff, for $2,636.96, upon which judgment was rendered accordingly, and the present writ of error is brought to revise that judgment upon certain bills of exceptions taken at the trial, on behalf of the plaintiffs in error.

The objections taken to the admissibility of the evidence were, in the first place, that the record in the case of *Heirs of the Testatrix v. Hull,* in Louisiana, was not evidence against the defendants in the present suit, except as to the judgment of the court in Louisiana. By the judgment, we are to understand not that part of the record, which in a suit at the common law technically follows, the *ideo consideratum est,* &c.;, for that would be wholly unintelligible, without reference to the preceding pleadings and proceedings; but that which, in common, as well as legal language, is deemed the exemplification of a judgment -- that is to say, all the pleadings and proceedings on which the judgment is founded, and to which, as matter of record, it necessarily refers. We are of opinion that this objection was well taken. The suit was *res inter alios acta,* and the proceedings and judgment therein were no further evidence than to show a recovery against Hull by a paramount title. There was error, therefore, in the circuit court in refusing to sustain this objection.

The next objection was that the copy of the original bill of sale of the slaves to Hull, on record in the notary's office, was not evidence unless the plaintiff accounts for the nonproduction of the original. The validity of this objection depends upon this consideration, whether the nonproduction of the original was sufficiently accounted for. It was not accounted for by any proofs offered on behalf of the plaintiff, and unless

the circuit court could judicially take notice of the laws of Louisiana, there was nothing before the court to enable it to say that the non production of the original was accounted for.

We are of opinion that the circuit court was bound to take judicial notice of the laws of Louisiana. The circuit courts of the United States are created by Congress not for the purpose of administering the local law of a single state alone, but to administer the laws of all the states in the Union in cases to which they respectively apply. The judicial power conferred on the general government by the Constitution extends to many cases arising under the laws of the different states. And this Court is called upon, in the exercise of its appellate jurisdiction, constantly to take notice of and administer the jurisprudence of all the states. That jurisprudence is then, in no just sense, a foreign jurisprudence, to be proved in the courts of the United States, by the ordinary modes of proof by which the laws of a foreign country are to be established; but it is to be judicially taken notice of in the same manner, as the laws of the United States are taken notice of by these courts.

Under these circumstances, we are at liberty to examine the objection above stated, with reference to the known laws of Louisiana. Now in Louisiana, as indeed, in all countries using the civil law, notaries are officers of high importance and confidence, and the contracts and other acts of parties executed before them and recorded by them, are of high credit and authenticity. Some contracts and conveyances are not valid except they are executed in a prescribed manner before a notary; others again, if executed by the parties elsewhere, may be recorded by a notary, and a copy of such record is in many cases evidence. Where a contract or other act is executed in a particular manner before a notary, the protocol or original remains in his possession *apud acta,* and the act is deemed what is technically called an "authentic act," and a copy of such act, certified as a true copy by the notary, who is the depository of the original, or his successor, is deemed proof of what is contained in the original, for the plain reason that the original is properly in the custody of a public officer, and not deliverable to the parties. This will abundantly appear by a reference to the Civil

Code of Louisiana, from article 2231 to article 2250. Now the bill

of sale in the present case, is precisely in that predicament. It was executed before a notary in the manner prescribed by the laws of Louisiana; the original is in his possession, and is an authentic act, *apud acta,* and therefore the party is not entitled to the possession of it, but only to a copy of it. So that the absence of the original is sufficiently accounted for, and the copy being duly proved, was properly admissible in evidence. There was no error, therefore, in the circuit court in admitting this evidence.

And this constitutes an answer to the next objection, *viz.,*

"that to make the act of sale evidence, it must appear by the laws of Louisiana, properly and legally proved, that the original act of sale, of which it purports to be a copy, is in the custody of a public depository, and cannot be adduced in evidence."

By the laws of Louisiana, as already stated, the original is in the hands of such a depository, and therefore the objection falls to the ground.

The next objection is that the documents, and documentary proofs contained in the record of the Louisiana suit above mentioned, are not evidence against the defendants. This has been already disposed of under the first objection, and there was error in the circuit court in not sustaining the objection.

The next objection is that the papers referred to in the testimony of Martin Blache, purporting to be letters testamentary, granted by the Court of Probates of Louisiana to John K. West, are not legal evidence in the cause against the defendants. We are of opinion that the objection is unfounded, and was rightly overruled by the circuit court. Blache swears that he is the clerk and register of the court of probates; that the copy is a true copy of the original; that he cannot send the original, which is on file in the court of probates. Under such circumstances, the copy is the best evidence which the nature of the case admits of.

The next objection is that the evidence of Mr. Winchester, with regard to the letters and the accounts of J. K. West, transmitted by him, is not admissible evidence in the cause. In our opinion, the circuit court was right in overruling this objection. Mr. Winchester was the attorney in fact of the defendants, and conducted, in their behalf, the correspondence with J. K. West, and the letters which passed between them

must be presumed to have been brought fully to the knowledge of the defendants, and were important to establish a presumption of the ratification of the acts of West by the defendants after the communication of them. How far they ought to avail for that purpose was matter of fact for the consideration of the jury. The only question with which we have to do is their competency for this purpose.

The next and last objection under this head, which properly should have preceded all the others but was taken in a subsequent stage of the trial, is to the admissibility in evidence of the record from the Parish Court of the City of New Orleans, already referred to, for any purpose on the ground of its not being authenticated according to law. This objection was overruled by the circuit court, and, in our opinion, properly overruled. The record is authenticated in the precise manner required by the Act of Congress of 26 May, 1790, having the attestation of the clerk and the seal of the court annexed, together with a certificate of the sole judge of the court that the attestation is in due form of law.

We may now proceed to the consideration of the instructions asked of the court in behalf of the defendants in the further progress of the cause, and refused by the court. With those asked by the plaintiff, in the actual posture of the cause, upon the present writ of error, we have nothing to do.

The first instruction asked was that there was no evidence in the cause to show that John K. West had any authority from the defendants in the cause to effect a sale of any property belonging to the estate of their testatrix in Louisiana except in conformity with the laws of the said state, and that unless the plaintiff shows a sale

to the plaintiff (Hull) by West in conformity with the said laws and a subsequent recovery from Hull, he is not entitled to recover. We are of opinion that this instruction ought to have been given as prayed.

Every authority given to an agent or attorney to transact business for his principal must, in the absence of any counterproofs, be construed to be to transact it according to the laws of the place where it is to be done. A sale of slaves authorized by an executrix, to be made in Louisiana, must be presumed to be intended to be made in the manner required by the laws of that state to give it validity. And the purchaser, equally with the

seller, is bound under such circumstances to know what these laws are, and to be governed thereby. The law will never presume that parties intend to violate its precepts, and indeed the very terms of the letter of attorney under which the present sale was made, clearly point out that it was in contemplation of the parties that judicial as well as extrajudicial acts might be required to be done. The attorney is to execute good and sufficient deeds, &c.;, for the purpose of transferring all the right and title of the heirs of the testatrix in her real and personal estate to the purchasers, and generally to do, negotiate, and perform all other acts, matters, and things in the premises for the effectual settlement of the estate, &c.; Now there could be no effectual settlement unless a valid title to the slaves and other property sold was given according to the laws of Louisiana, and there is no evidence in the case to show that the defendants ever contemplated any sale which should not be valid by those laws. The circuit court therefore erred in not giving the instruction.

The next instruction asked was for the court to instruct the jury that unless it believed that John K. West strictly complied with the special instructions given him by the defendants in the power of attorney of January, 1816, and caused such legal proceedings to be instituted as were necessary to effect a sale of the personal estate in Louisiana of which their testatrix died possessed, and under such legal proceedings made a sale of the slaves, being part of the personal

estate, to the plaintiff (Hull), and that the slaves were subsequently recovered from the plaintiff, the plaintiff is not entitled to recover. For the reasons already given, this instruction ought also to have been given. This is not the case of a general agency, but a special agency, created by persons acting *in autre droit.* The purchaser was therefore bound to see whether the agent acted within the scope of his powers, and at all events he was bound to know that the agent could not, in virtue of any general power, do any act which was not in conformity with the laws of Louisiana. The principals could never be presumed to authorize him to violate those laws, and the purchaser purchasing a title invalid by those laws must have purchased it with his eyes open.

The next instruction asked was for the court to direct the

Page 34 U. S. 629

jury that if it should be of opinion from the evidence that the defendants did ratify the said sale of the slaves, yet if it should be opinion that West did not, before such ratification, apprise the defendants of the fact that the letters of administration were never taken out by him in Louisiana upon the estate of the testatrix and of the fact that, by the laws of Louisiana, the executrixes, the defendants, never could have claimed any property in the slaves so sold, and that the defendants, in ignorance of the existence of these facts, did ratify the said sale, then such ratification, being made without a full knowledge of all circumstances material for them to know before they made such ratification, is not binding upon them. The court refused to give this instruction because the prayer did not arise from the facts of the case. But the court did direct the jury that if the jury should believe from the evidence that the proceedings of their attorney were ratified by them, it was not material whether they did or did not know that West had taken out letters of administration on the estate of the testatrix.

It is wholly unnecessary for us now to consider whether the instruction as prayed ought to have been given or not, for we are of opinion that the instruction actually given cannot in point of law be supported. No doctrine is better settled both upon principle and authority than this -- that the ratification of an act of an agent

previously unauthorized must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is treated as invalid because founded in mistake or fraud. Now by the laws of Louisiana (Civil Code, art. 1681, 1682), testaments made in foreign countries and other states of the union cannot be carried into effect on property in that state without being registered in the court within the jurisdiction of which the property is situated and the execution thereof is ordered by the judge, which may be done if it be established that the testament has been duly proved before a competent judge of the place where it was received. So that there is no doubt that the due probate of the will of the testatrix before the proper court of probate of Louisiana was an indispensable preliminary to any sale of the property in that state. If West had not taken out letters of

Page 34 U. S. 630

administration on the estate of the testatrix in Louisiana, it is clear that he could have no authority to sell the slaves or to bind the executrixes.

For these reasons, we are of opinion, that the judgment of the circuit court ought to be

Reversed and the cause be remanded to the circuit court with directions to award a venire facias de novo.

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 the opinion of the Court that there was error in the said circuit court in refusing to sustain the objections made by the original defendants (now plaintiffs in error) contained in their first specification in the record, *viz.,*

"That the record in the case of *Donaldson v. Hull,* in the Parish Court of New Orleans, is not evidence in this cause against the defendants except as to the judgment of the court in Louisiana."

And also in their fourth specification, *viz.,*

"That the depositions and documentary proof contained in the record in the cause of *Donaldson v. Hull* are not evidence against the defendants in this cause."

And also that there was error in the said circuit court in refusing to grant the first instruction prayed by the defendants, *viz.,*

"To direct the jury that there is no evidence in the cause to show that John K. West had any authority from the defendants in this cause to effect a sale of any property belonging to the estate of their testatrix in Louisiana except in conformity with the laws of said state, and that unless the plaintiff shows a sale to the plaintiff Hull by West in conformity with said laws, and a subsequent recovery from Hull, he is not entitled to recover."

And also in refusing the second instruction prayed by the defendants, *viz.,*

"To direct the jury that unless they believe that John K. West strictly complied with the special instructions given him by the defendants in the power of attorney of January 30, 1816, and caused such legal proceedings to be instituted as were necessary to effect a sale of the personal estate of which their testatrix died possessed of in Louisiana, and under such legal proceedings made sale of certain slaves, being part of the said

personal estate, to J. F. Hull, the plaintiff in this cause, and that the said slaves were subsequently recovered from the said Hull, that the plaintiff is not entitled to recover."

And also in giving the following instruction to the jury, *viz.,*

"That if the jury should believe from the evidence that the proceedings of their attorney were ratified by them, it is not material whether they knew or did not know that West had not taken out letters of administration on the estate of the testatrix."

It is therefore considered by the Court that for these errors, the judgment of the said circuit court be and the same is hereby reversed and annulled and the cause is remanded to the said circuit court with directions to award a *venire facias de novo.*

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