Vandewater Vs. Mills

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Appeal No. : 60 U.S. 82

Appellant : Vandewater

Respondent : Mills

Judgement :

Vandewater v. Mills - 60 U.S. 82 (1856)
U.S. Supreme Court Vandewater v. Mills, 60 U.S. 19 How. 82 82 (1856)

Vandewater v. Mills

60 U.S. (19 How.) 82

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF CALIFORNIA

SYLLABUS

Maritime liens are *stricti juris,* and will not be extended by construction.

Contracts for the future employment of a vessel do not, by the maritime law, hypothecate the vessel.

The obligation between ship and cargo is mutual and reciprocal, and does not take place till the cargo is on board.

An agreement between owners of vessels to form a line for carrying passengers and freight between New York and San Francisco is but a contract for a limited partnership, and the remedy for a breach of it is in the common law courts.

This was a libel, filed originally in the district court by Vandewater against the steamer *Yankee Blade* for a violation of the following agreement:

"This agreement, made this twenty-fourth day of September, 1853, at the City of New York, between Edward Mills, as agent for owners of steamship *Uncle Sam* and William H.

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Brown, as agent for the owners of steamship *America,* witnesseth, that said Mills and Brown hereby agree with each other, as agents for the owners of said ships before named, to run the two ships in connection for one voyage, on terms as follows, *viz.:* "

"Of all moneys received from passengers and for freight contracted through between New York and San Francisco, both ways, the *Uncle Sam* shall receive seventy-five percent, and the *America* shall receive twenty-five percent. The money to be received here, by said E. Mills, and the share of the *America* to be paid over to William H. Brown or to his order before the sailing of the ship, and the share due the *America* of moneys received on the Pacific side to be paid over to said Brown or to his order immediately on the arrival of the passengers in New York, by E. Mills, who guarantees, as agent aforesaid, the true and honest return of all funds received by his agents on the Pacific. It is understood that this trip is to be made by the *Uncle Sam,* leaving San Francisco on or about the 15th of October, and the *America* leaving New York on or about the 20th of October

next."

"Each ship is to pay all expenses of her running and outfits, and to be responsible for her own acts in every respect. Each ship is to retain all the money received for local freight or passengers -- that is, for such freight and passengers as only pay to the ports the individual ship runs to, without any division with the other ship."

"No commissions are to be charged anywhere on any receipts for the *America* by said Mills, in division, but the expense of advertising and the amount paid out for runners at all points are to be borne by each ship in the same proportion as receipts are divided between them."

"In consideration of all the above well and truly performed in good faith, Edward Mills, as agent for the steamship *Yankee Blade,* hereby agrees that when the *America* arrives at Panama on her voyage hence for the Pacific Ocean, said ship *Yankee Blade* shall leave New York at such time as to connect with the *America,* conveying passengers and freight on the same terms as is herein before agreed, say 25 percent to the *Yankee Blade,* and 75 percent to the *America,* provided only that said connection shall be made at a time that will not prevent the *Yankee Blade* from making her connection with the *Uncle Sam* at her regular time."

After the usual preliminary proceedings in cases of libel, the proctors for the claimant filed the following exceptions:

The exceptions of Edward Mills, claimant and sole owner of the steamship *Yankee Blade,* to the libel of Robert J. Vandewater,

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libellant, allege that the said libel is insufficient, as follows:

" *First Exception.* That on the face of said libel it appears that the alleged cause or causes of action therein set forth are not within the admiralty and maritime jurisdiction of this honorable court."

" *Second Exception.* There is no cause of action set forth in said libel, whereby the said steamship *Yankee Blade* can be proceeded against *in rem* in this honorable court."

" *Third Exception.* On the face of said libel, it appears the libellant is not entitled to the relief therein prayed for, nor to any decree against the said steamship."

"And therefore the said claimant prays that the said libel may be dismissed with costs."

In June, 1855, the district judge sustained the exceptions and dismissed the libel, whereupon the libellant appealed to the circuit court.

In September, the circuit court affirmed the decree, and the libellant brought the case up to this Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The libel in this case sets forth a contract between the owners of certain steamboats, of which the *Yankee Blade* was one,

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to convey freight and passengers between New York and California. Among other things, it was agreed that the *America* should proceed to Panama, and the *Yankee Blade* should leave New York at such time as to connect with the *America.* The owner of the *Yankee Blade* refused to employ his vessel according to this agreement, and sent her to the Pacific under a contract with other persons. For this breach of contract the libellant demands damages, assuming that the vessel is subject, under the maritime law, to a lien which may be enforced *in rem* in a court of admiralty.

The circuit court dismissed the libel, being of opinion

"that the instrument is of a description unknown to the maritime law; that it contains no express hypothecation of the vessel, and the law does not imply one."

In support of his allegation of error in this decree, the learned counsel for the appellant has endeavored to establish the following proposition:

"Agreements for carrying passengers are maritime contracts, pertaining exclusively the business of commerce and navigation, and consequently may be enforced specifically against the vessel by courts of admiralty proceeding *in rem.* "

Assuming, for the present the premises of this proposition to be true, let us inquire whether the conclusion is a legitimate consequence therefrom.

The maritime "privilege" or lien is adopted from the civil law, and imports a tacit hypothecation of the subject of it. It is a *"jus in re,"* without actual possession or any right of possession. It accompanies the property into the hands of a *bona fide* purchaser. It can be executed and divested only by a proceeding *in rem.* This sort of proceeding against personal property is unknown to the common law, and is peculiar to the process of courts of admiralty. The foreign and other attachments of property in the state courts, though by analogy loosely termed proceedings *in rem,* are evidently not within the category. But this privilege or lien, though adhering to the vessel, is a secret one; it may operate to the prejudice of general creditors and purchasers without notice; it is therefore *"stricti juris,"* and cannot be extended by construction, analogy, or inference. "Analogy," says Pardessus, Droit Civ., vol. 3, 597,

"cannot afford a decisive argument, because privileges are of strict right. They are an exception to the rule by which all creditors have equal rights in the property of their debtor, and an exception should be declared and described in express words; we cannot arrive at it by reasoning from one case to another."

These principles will be found stated, and fully vindicated

by authority, in the cases of *The Young Mechanic,* 2 Curtis 404, and *Kiersage,* id., *421;* see also Harmer v. Bell,@ 22 E.L. & E. 62.

Now it is a doctrine not to be found in any treatise on maritime law that every contract by the owner or master of a vessel for the future employment of it hypothecates the vessel for its performance. This lien or privilege is founded on the rule of maritime law as stated by Cleirac 597: *"Le batel est obligee a la marchandise et la marchandise au batel."* The obligation is mutual and reciprocal. The merchandise is bound or hypothecated to the vessel for freight and charges unless released by the covenants of the charter party, and the vessel to the cargo. The bill of lading usually sets forth the terms of the contract and shows the duty assumed by the vessel. Where there is a charter party, its covenants will define the duties imposed on the ship. Hence it is said, 1 Valin, Ordon. de Mar., b. 3, tit. 1, art. 11, that "the ship, with her tackle, the freight, and the cargo, are respectively bound *(affectee)* by the covenants of the charter party." But this duty of the vessel, to the performance of which the law binds her by hypothecation, is to deliver the cargo at the time and place stipulated in the bill of lading or charter party without injury or deterioration. If the cargo be not placed on board, it is not bound to the vessel, and the vessel cannot be in default for the nondelivery, in good order, of goods never received on board. Consequently if the master or owner refuses to perform his contract or for any other reason the ship does not receive cargo and depart on her voyage according to contract, the charterer has no privilege or maritime lien on the ship for such breach of the contract by the owners, but must resort to his personal action for damages, as in other cases.

See 2 Boulay, Paty Droit Com. & Mar. 299, where it is said,

" *Hors ces deux cas, viz.,* default in delivery of the goods, or damages for deterioration, *il n'y a pas de privilege a pretendre de la part du marchand chargeur, car si les dommages et interets n'ont lieu que pour refus de depart du navire, pour depart tardif ou precipite, pour saisie du navire ou autrement il est evident que a cet egard la creance est simple et ordinaire, sans aucune sorte de privilege.* "

Thus, in the case of *The City of London,* 1 W. Robinson 89, it was decided that a mariner who had been discharged from a vessel after articles had been signed might proceed in the admiralty in a suit for wages, the voyage for which he was engaged having been prosecuted; but if the intended voyage be altogether abandoned by the owner, the seaman must seek his remedy at common law by action on the case.

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And this Court has decided, in the case of *The Schooner Freeman v. Buckingham,* 18 How. 188,

"that the law creates no lien on a vessel as a security for the performance of a contract to transport cargo until some lawful contract of affreightment is made and a cargo shipped under it."

Now the damages claimed by the libellant in this case are not for the nondelivery of merchandise or cargo at the time and place according to the covenants of a charter party, or for their injury or deterioration on the voyage, but for a refusal of the owners to employ the vessel in carrying passengers and freight from New York, so as to connect with the *America* when she should arrive at Panama. The owners have not made it a part of their agreement that their respective vessels should be mutually hypothecated as security for the performance of their agreement, and, as we have shown, there is no tacit hypothecation, privilege, or lien, given by the maritime law.

We have examined this case from this point of view because the libel seems to take it for granted that every breach of contract, where the subject matter is a ship employed in navigating the ocean, gives a privilege or lien on the vessel for the damages consequent thereon, and because it was assumed in the argument that if this contract was in the nature of a charter party, or had some features of a charter party, the Court would extend the maritime lien by analogy or inference for the sake of giving the libellant this remedy and sustaining our jurisdiction. But we have shown this conclusion is not a correct inference from the premises, and that

this lien, being *stricti juris,* will not be extended by construction. It is, moreover, abundantly evident that this contract has none of the features of a charter party. A charter party is defined to be a contract by which an entire ship or some principal part thereof is let to a merchant for the conveyance of goods on a determined voyage to one or more places. Abbott on Ship. 241

Now by this agreement the libellant has not hired the *Yankee Blade,* or any portion of the vessel, nor have the master or owners of the ship covenanted to convey any merchandise for the libellant, nor has he agreed to furnish them any. But the agent for the *Yankee Blade* "agrees that when the *America* arrives at Panama, the *Yankee Blade* shall leave New York, conveying passengers and freight," which were afterwards to be received by the *America,* and transported to San Francisco, and the passage money and freight earned was to be divided between them -- 25 percent to the *Yankee Blade* and 75 to the *America.*

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This is nothing more than an agreement for a special and limited partnership in the business of transporting freight and passengers between New York and San Francisco, and the mere fact that the transportation is by sea, and not by land, will not be sufficient to give the court of admiralty jurisdiction of an action for a breach of the contract. It is not one of those to which the peculiar principles or remedies given by the maritime law have any special application, and is the fit subject for the jurisdiction of the common law courts.

The decree of the circuit court is therefore affirmed.