

Grant Vs. Poillon

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Court : US Supreme Court

Decided On : 1857

Appeal No. : 61 U.S. 162

Appellant : Grant

Respondent : Poillon

Judgement :

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61 U.S. (20 How.) 162

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Where the master of a vessel was also part owner, and made a contract of affreightment with a lumber company, of which he was also a member, and the cargo was consigned to the master, the case is not within admiralty jurisdiction,

but appropriate to that of a court of chancery.

Flitner was one of the libellants, and, as he was also a member of the Constellation Lumber Company, he was on both sides of the case.

The circumstances under which the libel was filed are stated in the opinion of the Court. The district court dismissed the libel, and upon an appeal, this decree was affirmed by the circuit court. The libellants then appealed to this Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The libellants, Grant and others, are the sole owners of the ship *Constellation*, and they bring an action of affreightment, civil and maritime, against the respondents, and allege that William L. Flitner was master of the ship; that the respondents were co-partners, under the name of the "Constellation Lumber Company," and that, on or about the 12th November, 1849, they agreed to ship on board the *Constellation*, then lying in the port of New York, 230,655 feet of lumber and 29,700 cypress shingles, to be delivered at the port of Valparaiso, Sandwich Islands, or San Francisco, unto the above-named Flitner, or his assigns, he paying the freight upon the same. The ship proceeded on her voyage, and delivered the lumber and shingles unto the said William L. Flitner, at San Francisco, on or about the ___ day of _____, in the year 1850. That there was due for the freight of the lumber, with primage, the sum of \$13,944.02, of which sum Flitner paid \$11,494.93, which were the net proceeds of the lumber, leaving a balance of \$2,449.09 due and unpaid, and it is averred that Flitner, acting as consignee and in making sale of the lumber, was the agent of the respondents, and a decree for the payment of this balance by the respondents is prayed.

The respondents deny that they compose the company and that Flitner acted as their agent &c.;, and they say that the lumber was shipped on account of the said vessel and of said company, the said vessel being interested in said company, and that the transaction was a partnership one, and not a subject of jurisdiction in

this Court; that Flitner, named as a libellant, was and is interested, and one of the parties in the "Constellation Lumber Company," and is a proper party respondent herein; that the subject matter of the suit is not within the admiralty or maritime jurisdiction of this Court, and of which it has no cognizance.

It was agreed that ten persons named -- about the 22d of September, 1849 -- of whom William L. Flitner was one, constituted the lumber company, each individual taking one share, not to exceed in value five hundred dollars, with the exception of Flitner, who took two shares, and Hicks and Bailey also

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took two. That Flitner was the agent of the company and the consignee, a commission of five percent to be paid to him; that the ship *Constellation* belonged to the libellants, and that Flitner was master and part owner; that the lumber company purchased the cargo, and it was shipped the 12th November, 1849, and a bill of lading was signed by Flitner.

The proof shows that the lumber was sold at San Francisco for the prices stated, and that the proceeds of the sale, after deducting commissions, fell short of paying the freight, the sum named.

The principal question is whether the case made is within the admiralty jurisdiction. That it would not be within the admiralty jurisdiction in England is clear. In general, contracts upon land, though to be executed on the sea, and contracts at sea, if to be executed on the land, are not cognizable by the English admiralty. There are some exceptions to this rule in that country, but none, it is believed, which affect the question now before us. There are conflicting decisions as to the admiralty jurisdiction in England and also in this country. It may be difficult, if not impracticable, to state with precision the line of this jurisdiction, but we may approximate it by consulting the decisions of our own courts.

In the case of *Willard v. Dorr*, 3 Mason 91, it was held, "no suit for services performed by the master, as a factor, or in any other character than that of master, is cognizable in the admiralty." And again, in *Plummer v. Will*, 4 Mason C. 380, it

was said,

"a contract of a special nature is not cognizable in the admiralty merely because the consideration of the contract is maritime. The whole contract must, in its essence, be maritime or for compensation for maritime service."

In [36 U. S. 11](#) Pet. 175, *Steamboat Orleans v. Phoebus*, it was said the admiralty has no jurisdiction in matters of account between part owners. And further,

"the jurisdiction of courts of admiralty, in case of part owners having unequal interests and shares, is not and never has been applied to direct a sale upon any dispute between them as to the trade and navigation of the ship engaged in maritime voyages, properly so called."

Ib.

The jurisdiction of courts of admiralty is limited, in matters of contract, to those and to those only which are maritime. *Ib.*

An agreement by the master of a vessel to pay wages may be sued upon in the admiralty, but a stipulation in the same contract to pay a sum of money in case the voyage should be altered or discontinued can be enforced only at common law. *L. Arira v. Manwaring*, Bee's Rep. 199. The admiralty jurisdiction of the district courts of the United States, being exclusive,

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cannot be extended to cases of law or equity, cognizable by the circuit and state courts, under the 11th section of the Judiciary Act. 1 Baldwin 554.

A contract between two persons, one of whom had chartered a vessel, whereby he was to act as master, and the other as mate of the vessel, and the two were to share equally in the profits of the contemplated voyages, was held not to be within the admiralty jurisdiction. *The Crusader*, Ware's Rep. 437. A distribution cannot be claimed in the admiralty, except by those who have a lien. 1 Pet.Ad. 223

The lumber company was formed to engage in an enterprise of shipping lumber to San Francisco. Twelve shares were taken by the company, consisting of ten persons, each having one share of the value of five hundred dollars, and two of them had two shares each, one of them being the master of the vessel. He was also a part owner of the vessel, the consignee of the cargo, and had a right of primage. As part owner of the vessel, he was entitled to his share of freight, and as being a member of the lumber company, having two shares in it, he was proportionately liable for the freight. In his capacity of master he was entitled to primage, and as consignee he was also entitled to compensation. Now this individual, in interest, is both plaintiff and respondent, and has claims in his capacities of master, consignee, and agent. The proceeds of the sale of the cargo, after paying commissions, left a balance due for freight of \$2,449.09.

Here is a complicated account to adjust, apportioning the loss between the members of the lumber company, exacting from them what may be necessary not only to pay the balance of freight due, but whatever may be required to discharge what may be due to the master as part owner of the ship, as master, consignee, or agent, at the same time holding him liable, as having two shares in the lumber company. And in an enterprise in which the whole of the capital has been sunk, leaving a large sum due for freight, it would seem that some inquiry might reasonably be made into the conduct of the master in the various capacities in which he acted. And it is probable that, to settle the controversy, a procedure against the members of the lumber company may become necessary, to compel them to contribute respectively and equally what may be necessary to meet the exigency. It is clear that the exercise of the powers indicated do not belong to a court of admiralty, but are appropriate to a court of chancery.

The decree of the circuit court is affirmed, with costs.