Hemmenway Vs. Fisher

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Appeal No. : 61 U.S. 255

Appellant : Hemmenway

Respondent : Fisher

Judgement :

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Hemmenway v. Fisher

61 U.S. (20 How.) 255

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Where a judgment of the circuit court, sitting in admiralty, was affirmed here by a divided court, interest was not to be calculated upon the judgment.

The eighteenth rule of this Court never applied to cases in admiralty which are brought up by appeal, and the rule itself is repealed by the sixty-second rule.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case was decided at the last term. It was an appeal from the decree of the Circuit Court for the District of Massachusetts, sitting as a court of admiralty. The decree was affirmed here by an equal division of the Justices of this Court, and the decree of affirmance was entered by the clerk for the sum awarded by the circuit court and costs, and did not give interest on the amount decreed by the court below. The mandate was issued according to the decree, but it was not filed or proceeded on by the appellee, because he supposed that, under the eighteenth rule of this Court, he was entitled to interest upon the amount recovered in the circuit court, from the date of the decree, and that its omission was a clerical error. And he has now moved the Court to correct it by amending the decree and mandate.

If an error has been committed by the clerk, it is, without doubt, in the power of the Court to correct it at the present term.

But the judgment is correctly entered, and the mandate conforms to it. And the mistake on the part of the appellee has arisen from supposing the eighteenth rule to be still in force, and to be applicable to cases in admiralty. But it never applied to admiralty cases.

It will be observed by reference to the seventeenth rule, to which the eighteenth refers, that these rules are in express terms confined to cases brought here by writ of error. And it is true that, by the original Judiciary Act of 1789, decrees in chancery and admiralty, as well as judgments at common law, in the circuit courts, were removable to this Court by writ of error, and were not made removable in any other manner. And if that provision in the act of 1789 was still in force and the rule unrepealed, the appellee would be entitled to the interest he claims, to be calculated under the twentieth rule, to the day of the affirmance of the decree.

But the writ of error, from its form and the principles which govern it, is peculiarly appropriate to judgments at common law, and is inconvenient and embarrassing when used as process to remove decrees in chancery and admiralty to a superior

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court. The ordinary and uniform mode of removing such decrees to the appellate and revising court, wherever such jurisdictions have been established, has been by appeal, with the single exception of this act of Congress. And in order to remove the inconvenience and embarrassment which this provision in the act of 1789 created, it was repealed by the Act of March 2, 1803, and the ordinary mode of appeal substituted in the place of the writ of error. And as this case came up by appeal, the rules of this Court referred to in the argument do not apply to it.

Nor indeed were they intended to apply to chancery or admiralty decrees. They were adopted at February term, 1853, and that term continued until the 2d of March. It was on that day that the act of Congress changing the provision in the act of 1789 was approved by the President. And it appears by the minutes of the court that the rules in question were adopted on the same day -- that is, March 2d. This act of Congress had therefore undoubtedly passed both Houses of Congress before these rules were adopted, and it is evident that they were carefully framed with reference to this change in the law, so as to exclude from their operation admiralty and chancery appeals.

It may be proper to add that the eighteenth and twentieth rules are no longer in force, even in common law cases. They have been superseded and annulled by the sixty-second rule, adopted in 1851. By this last-mentioned rule, judgments at common law and decrees in chancery, upon affirmance in this Court, carry interest until paid, and the interest is to be calculated according to the rate of interest allowed in the state in which the judgment or decree of the court below was given. The object in changing the rule in this respect was to place the suitors in the courts of the United States upon the same footing with the suitors in the state courts in like cases. For the interest allowed in the several states differs, and in many of them it is higher than six percent, and in most if not all of them a judgment or decree in a court of the state carries interest until it is paid.

Cases in admiralty, however, are not embraced in the sixty-second rule. It applies to cases of law and equity only. And indeed, cases in admiralty could not have been justly included. For there could be no reason for giving one rate of interest where a case of collision or salvage was in the first instance tried and decided in Louisiana and another rate of interest where it was tried and decided in New York or in any other state where the interest allowed by the state laws was different.

Moreover, in cases of collision and salvage, and more especially in the latter, it is impossible to fix the sum that ought to be awarded with absolute certainty by any rule of calculation. It must depend mainly upon estimates, and the opinions of persons acquainted with the subject, and, acting upon mere estimates and opinions, different minds unavoidably come to different conclusions as to the amount proper to be allowed.

And it will sometimes happen in an admiralty case that this Court will think that the damages estimated and allowed in the circuit court are too high, and yet the opinion here may approximate so nearly to that of the court below that this Court would not feel justified in reversing its judgment. Besides, new testimony may be taken here, in an admiralty case, and a new aspect given to it. No rule, therefore, fixing any certain rate of interest upon decrees in admiralty, whenever the decree is affirmed, could be adopted with justice to the parties. And a discretionary power is reserved to add to the damages awarded by the court below further damages by way of interest in cases where, in the opinion of this Court, the appellee, upon the proofs, is justly entitled to such additional damages. But this allowance of interest is not an incident to the affirmance affixed to it by law or by a rule of Court. If given by this Court, it must be in the exercise of its discretionary power, and, *pro tanto,* is a new judgment.

In the case before us, no new judgment could be given in this Court because, upon the question of affirming or reversing the decree of the circuit court, the justices of this Court were equally divided, and the judgment was affirmed by operation of law, which from necessity affirms the judgment of the inferior tribunal when the judges of the appellate court are equally divided. Upon such an affirmance, the appellee was entitled to the full benefit of the decree of the circuit court, but nothing more. The Court, being equally divided, could not change the decree of the circuit court nor exercise its discretionary power to allow interest on the decree, for this would have been a new decree. And those Justices who were of opinion that the decree of the circuit court ought to be reversed because the damages were too high, were of course opposed to making it still higher by the addition of interest.

The motion to amend the decree and mandate, and give interest on the amount awarded by the circuit court, must therefore be overruled.