

Wright Vs. Ellison

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Court : US Supreme Court

Decided On : 1863

Appeal No. : 68 U.S. 16

Appellant : Wright

Respondent : Ellison

Judgement :

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Wright v. Ellison

68 U.S. (1 Wall.) 16

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

1. To constitute an equitable lien on a fund, there must be some distinct appropriation of the fund by the debtor. It is not enough that the fund may have been created through the efforts and outlays of the party claiming the lien.

2. A power of attorney drawn up in Spanish South America and by Portuguese agents in which throughout there is verbiage and exaggerated expression will be held to authorize no more than its primary and apparent purpose. Hence, a power to prosecute a claim in the Brazilian courts will not be held to give power to prosecute one before a Commissioner of the United States at Washington, notwithstanding that the first named power is given with great superfluity, generality, and strength of language.

In 1827, the American brig *Caspian* was illegally captured by the naval forces of Brazil and condemned in the prize courts of that country. There being nothing else to be done in the circumstances, her master, one Goodrich, instituted legal proceedings to recover the brig, and gave to Zimmerman, Frazier & Co., an American firm of the country, a power of attorney with right of substitution, to go on with matters. The power was essentially in these words:

"I authorize &c., in my name and representing me, to appear in and prosecute the cause I am this day prosecuting before the

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tribunal of justice &c., in which this vessel is interested; said vessel has been detained by force of the blockade of Buenos Ayres, and that they make petitions, request, and protests, here and before all tribunals, superior and inferior, before whom it is customary to appeal; that they present all the documents favorable to my rights; that they except to and decline jurisdiction; that they give and refuse terms; that they submit written evidence and proof; that they retort and contradict everything unfavorable; that they challenge jurisdiction; that they express the causes of accusation if it be necessary so to do; that they take cognizance of all decrees and interlocutory as well as final sentences; that they admit the favorable and appeal from the adverse; that they *prosecute the appeal before his Imperial Majesty* in the superior tribunals of war and justice, that in right they can and ought to do; *that they insinuate where and against whom they may deem advisable, doing in effect everything requisite and necessary that I, being present, would or could do;* that they make transactions and obligations, name arbitrators

and mediators, demanding damages or adjusting them amicably with the opposite parties, receiving in my name the said brig *Caspian* and her cargo; that they give all receipts right and proper to be given in faith of delivery and acquittance; and after the restitution of said vessel they may name, in my absence, any other captain and crew to navigate her if they deem it advisable, and if not, they may sell her per account of her legitimate owners, and they may receive amount of said sale. And as to the necessary power referred to, with all *incidental and resulting powers*, I give it to and confer it upon my aforesaid attorney, *with free, frank, and general administration without limit*, in order that there be no clause or special expression which would destroy the effect of it, because I gave them full power to substitute another, to revoke the appointed one's authority, and to name again substitutes, all of whom I exonerate from costs."

Under the power of substitution thus given to them, Zimmerman, Frazier & Co. substituted in their place Mr. Wright the consul of the United States, and a merchant of standing at Rio, whose official influence, it was apparently supposed, might be more potential than their own private efforts. Wright prosecuted the case diligently through the

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Brazilian courts, but without success. He afterwards came to the United States and urged our government to demand indemnity for this as for other wrongs of a like kind. He spent money, removed difficulties, advanced proof, and furnished information. The result of his or of other efforts was that our government finally made a demand for indemnity, and obtained it in this case, as in many others, under a treaty subsequently made. A commissioner was appointed to hear claims and decide them. But it was probable that, except for Wright's knowledge, effort and outlay, this result would not have been had, and neither this claim nor any other been asserted by our government as they all were.

After the labor of Wright had been undergone by him, and when the money was open for claim, one Ellison, an executor of a part owner, applied to the commissioner, proved his case, and received his share of the indemnity. Wright

now instituted, in the court below -- the Circuit Court for the District of Columbia -- this proceeding, a bill in equity, against this same Ellison and others interested, to have a commission out of this fund. The bill set forth Wright's long and effective services, his large outlays, and insisted that, "by the general maritime law and law of the place where the contract was made," he was entitled to compensation, and "that such compensation should be retained and received by him *out of the fruits of his said labors, services and expenses,* " and it set forth further,

"that as well by agreements as by reason of the premises, and by force of the maritime law and the principles of equity, and the law and established usage of the place of said contract, he had"

" *a lien upon the fruits and proceeds of the claim, in whatever form of proceeding the same was realized, through or by reason of his labors, advances, or services performed, advanced and rendered.* "

It did not appear that the owners of the vessel had, in form, ever ratified what Wright did; but the evidence apparently was that they were cognizant, to a greater or less degree, of what he was doing, though he himself was the promoter of what was done everywhere.

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The chief question now, therefore, was whether the complainant Wright had an equitable lien upon the fund? and a preliminary question, whether the power of attorney authorized him to do anything more than prosecute the case effectively through the Brazilian courts, and dispose of the vessel afterwards, if he should prosecute it successfully?

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

The determination of the case depends upon the solution of the question whether the complainant has shown himself entitled to an equitable lien upon the fund, to which the controversy relates.

The instrument executed by Goodrich, the master of the *Caspian*, to Zimmerman, Frazier & Co., we think it quite clear, contemplated only judicial proceedings, and the disposition of the vessel, after those proceedings were successful. Zimmerman, Frazier & Co., in substituting the complainant in their place, did not attempt to give, nor could they have given, any greater authority than they themselves were clothed with. The acquiescence of the owners whose rights are here in question may be properly held to have ratified the acts of Goodrich in their behalf, but it cannot be held to enlarge the powers conferred by the instrument which he executed, beyond what is expressed, and the objects in the minds of the parties at the time of the transaction.

The services of the complainant in bringing into activity the diplomatic agencies of the United States, and otherwise, at Rio, and subsequently in prosecuting the claim in this city, were outside of his original authority. Nevertheless they were beneficial to the claimants, and the approval of the defendants may be fairly implied from their silence and inaction.

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When the defendant, Ellison, interposed, the fruit was ripe and ready to fall into the hands of those entitled to receive it. We regard the case as a proper one for compensation, and in an action at law the complainant could hardly fail to recover.

But this is a suit in equity. The rules of equity are as fixed as those of law, and this Court can no more depart from the former than the latter. Unless the complainant has shown a right to relief in equity, however clear his rights at law, he can have no redress in this proceeding. In such cases, the adverse party has a constitutional right to a trial by jury. The objection is one, which though not raised by the pleadings nor suggested by counsel, this Court is bound to recognize and enforce. [[Footnote 1](#)]

The evidence in the case is wholly silent as to any agreement touching the compensation of the complainant. It is nowhere intimated what he was to receive, or when or how he was to be paid. No established usage is shown. The matter seems to have been left to rest upon the principle of *quantum meruit*, and to be settled by the agreement of the parties when the business was brought to a close. The doctrine of equitable assignments is a comprehensive one, but it is not broad enough to include this case. It is indispensable to a lien thus created, that there should be a distinct appropriation of the fund by the debtor, and an agreement that the creditor should be paid out of it. [[Footnote 2](#)] This case is wholly wanting in these elements.

Decree affirmed with costs.

[[Footnote 1](#)]

Hipp v. Babin, 19 How. 278; *Parker v. Winnipiseogee Company*, 2 Black 551.

[[Footnote 2](#)]

Morton v. Naylor, 1 Hill 583; *Hoyt v. Story*, 3 Barbour S.C. 262; *Burn v. Carvalho*, 4 Mylne & Craig 690; *Watson v. Duke of Wellington*, 1 Russell & Mylne 602.

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