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Leon Vs. Galceran

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Court : US Supreme Court

Decided On : 1870

Appeal No. : 78 U.S. 185

Appellant : Leon

Respondent : Galceran

Judgement :

Leon v. Galceran - 78 U.S. 185 (1870)
U.S. Supreme Court Leon v. Galceran, 78 U.S. 11 Wall. 185 185 (1870)

Leon v. Galceran

78 U.S. (11 Wall.) 185

SYLLABUS

1. A suit for mariners' wages *in personam* is maintainable at common law, and is within the exception of the ninth section of the Judiciary Act defining the admiralty jurisdiction.

2. It is no objection to the jurisdiction of a state court in such a suit that the process of sequestration or attachment has been used to bring the vessel on which the services were rendered under the dominion of the court, for the purpose of

subjecting it to such judgment as might be rendered in the cause.

3. And a bond given to relieve the vessel so sequestered or attached is properly sued on in a state court.

Galceran and two other sailors brought each a suit *in personam,* in one of the state courts of Louisiana against Maristany, owner of the schooner *Gallege,* to recover mariners' wages, and had the schooner, which was subject to a lien and "privilege" in their favor, according to the laws of Louisiana, similar in some respects to the principles of the maritime law, sequestered by the sheriff of the parish. The writ of sequestration was levied upon the schooner, which was afterwards released upon Maristany's giving a forthcoming bond, with one Leon as surety, for the return of the vessel to the sheriff on the final judgment. Judgments having been rendered by default against Maristany, the owner, *in personam,* for the amounts claimed, with the mariner's lien and privilege upon the property sequestered, a writ of *fi. fa.* was issued and demand made without effect, of the defendant in execution, by the sheriff, for the return of the property bonded. On the return of the sheriff that the property bonded could not be found, suits (the suits below) were brought in the same court by the three sailors against Leon, to enforce *in personam* against him the obligation of the forthcoming bonds, and judgments were rendered *in personam* against Leon, the surety, in their favor, for the amounts fixed by the original judgments. From the judgments thus rendered in the court below (that having been the highest court in Louisiana where a decision in the suit could be had), Leon took these writs of error.

Page 78 U. S. 187

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Mariners in suits to recover their wages, may proceed against the owner or master of the ship *in personam,* or they

Page 78 U. S. 188

may proceed *in rem* against the ship or ship and freight, at their election.

Where the suit is *in rem* against the ship or ship and freight, the original jurisdiction of the controversy is exclusive in the district courts, as provided by the ninth section of the Judiciary Act, but when the suit is *in personam* against the owner or master of the vessel, the mariner may proceed by libel in the district court, or he may, at his election, proceed in an action at law either in the circuit court, if he and his debtor are citizens of different states, or in a state court as in other causes of action cognizable in the state and federal courts exercising jurisdiction in common law cases, as provided in the eleventh section of the Judiciary Act. [Footnote 1]

He may have an action at law in the case supposed either in the circuit court or in a state court, because the common law in such a case is competent to give him a remedy, and wherever the common law is competent to give a party a remedy in such a case, the right to such a remedy is reserved and secured to suitors by the saving clause contained in the ninth section of the Judiciary Act.

Services as mariners on board the schooner *Gallego* were rendered by each of the appellees in these cases, and their claims for wages remaining unpaid, on the eighth of August, 1868, they severally brought suit *in personam* against Joseph Maristany, the sole owner of the schooner, to recover the respective amounts due to them as wages for their services as such mariners.

Claims of the kind create a lien upon the vessel under the laws of that state quite similar to the lien which arises in such cases under the maritime law. They accordingly applied to the court where the suits were returnable for writs of sequestration, and the same, having been granted and placed in the hands of the sheriff for service, were levied upon the schooner as a security to respond to the judgments which the plaintiffs in the respective suits might recover

Page 78 U. S. 189

against the owner of the vessel, as the defendant in the several suits.

Such a writ when duly issued and served in such a case has substantially the same effect in the practice of the courts of that state as an attachment on mesne

process in jurisdictions where a creditor is authorized to employ such a process to create a lien upon the property of his debtor as a security to respond to his judgment. Neither the writ of sequestration nor the process of attachment is a proceeding *in rem* as known and practiced in the admiralty, nor do they bear any analogy whatever to such a proceeding, as the suit in all such cases is a suit against the owner of the property and not against the property as an offending thing, as in case where the libel is *in rem* in the admiralty court to enforce a maritime lien in the property.

Due notice was given of the suit to the defendant in each case, and he appeared and made defense. Pending the suits, the schooner, which had previously been seized by the sheriff under the writ or writs of sequestration, was released on motion of the defendant in those suits and was delivered into his possession, he, the defendant, giving a bond to the sheriff, with surety conditioned to the effect that he would not send the property out of the jurisdiction of the court nor make any improper use of it, and that he would faithfully present the same in case such should be the decree of the court, or that he would satisfy such judgment as should be recovered in the suit.

Judgment was recovered by the plaintiff in each case against the owner of the schooner, and executions were issued on the respective judgments, and the same were placed in the hands of the sheriff. Unable to find any property of the debtor or to make the money, the sheriff returned the execution unsatisfied, and the property bonded was duly demanded both of the principal obligor and of the present plaintiff in error, who was the surety in each of the forthcoming bonds.

Given, as the bonds were, on the release of the schooner, they became the substitute for the property, and, the obligors

refusing to return the same or to satisfy the judgments, the respective judgment creditors instituted suits against the surety in those bonds. Service having been duly made, the defendant appeared and filed an exception to the jurisdiction of the

court in each case upon the ground that the cause of action was a matter exclusively cognizable in the district courts of the United States, but the court overruled the exception and gave judgment for the plaintiff, whereupon the defendant sued out a writ of error in each case and removed the same into this Court.

Briefly stated, the defense in the court below was that the action was founded on a bond given for the sale of the schooner seized under admiralty process in a proceeding *in rem,* over which the state court had no jurisdiction *ratione materiae,* "and that the bond was taken *coram non judice* and is void." Enough has already been remarked to show that the theory of fact assumed in the exception is not correct, as the respective suits instituted by the mariners were suits *in personam* against the owner of the schooner, and not suits *in rem* against the vessel, as assumed in the exception. Were the fact as supposed, the conclusion assumed would follow, as it is well settled law that common law remedies are not appropriate nor competent to enforce a maritime lien by a proceeding *in rem,* and consequently that the jurisdiction conferred upon the district courts, so far as respects that mode of proceeding, is exclusive.

state legislatures have no authority to create a maritime lien, nor can they confer any jurisdiction upon a state court to enforce such a lien by a suit or proceeding *in rem,* as practiced in the admiralty courts, but whenever a maritime lien arises, the injured party may pursue his remedy by a suit *in personam* or by a proceeding *in rem,* at his election. Such a party may proceed *in rem* in the admiralty, and if he elects to pursue his remedy in that mode, he cannot proceed in any other form, as the jurisdiction of the admiralty courts is exclusive in respect to that mode of proceeding, but such a party is not restricted to that mode of proceeding, even in the admiralty court, as he may waive his lien and proceed

Page 78 U. S. 191

in personam against the owner or master of the vessel in the same jurisdiction, nor is he compelled to proceed in the admiralty at all, as he may resort to his common law remedy in the state courts or in the circuit court if he and his debtor

are citizens of different states.

Suitors, by virtue of the saving clause in the ninth section of the Judiciary Act conferring jurisdiction in admiralty upon the district courts, have the right of a common law remedy in all cases "where the common law is competent to give it," and the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property.

Attempts have been made to show that the opinion of the Court in the case of *The Moses Taylor* [Footnote 2] and the opinion of the court in the case of *The Hine v. Trevor* [Footnote 3] are inconsistent with the views here expressed, that the Court in those cases do not admit that a party in such a case can ever have a remedy in a state court, but it is clear that every such suggestion is without foundation, as plainly appears from the brief explanations given in each case by the Justice who delivered the opinion of the Court. Express reference is made in each of those cases to the clause in the ninth section of the Judiciary Act which gives to suitors the right of a common law remedy where the common law is competent to give it, and there is nothing in either opinion, when the language employed is properly applied to the subject matter then under consideration, in the slightest degree inconsistent with the more elaborate exposition of the clause subsequently given in the opinion of the Court in the case of *The Belfast,* [Footnote 4] in which all the members of the Court as then constituted concurred. Those explanations are a part of the respective opinions, and they expressly recognize the right of the suitor to his common law action and remedy by attachment as provided in the saving clause of the ninth section of the Judiciary Act.

Common law remedies are not competent to enforce a maritime lien by a proceeding *in rem,* and consequently the

original jurisdiction to enforce such a lien by that mode of proceeding is exclusive in the district courts, which is precisely what was decided in each of the three

cases to which reference is made. Authority, therefore, does not exist in a state court to hear and determine a suit *in rem,* found upon a maritime contract in which a maritime lien arises, for the purpose of enforcing such a lien. Jurisdiction in a such cases is exclusively in the district courts, subject to appeal as provided in the acts of Congress, but such a lien does not arise in a contract for materials and supplies furnished to a vessel in her home port, and in respect to such contracts it is competent for the states to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement. [Footnote 5]

Even where a maritime lien arises, the injured party, if he sees fit, may waive his lien and proceed by a libel *in personam* in the admiralty, or he may elect not to go into admiralty at all, and may resort to his common law remedy, as the plaintiffs in these cases did, in the subordinate court. They brought their suits in the state court against the owner of the schooner, as they had a right to do, and having obtained judgments against the defendant, they might levy their executions upon any property belonging to him, not exempted from attachment and execution, which was situated in that jurisdiction.

Undoubtedly they might also resort to the bond given when the schooner was released, but they were not compelled to do so if the sheriff could find other property belonging to the debtor. By the return of the sheriff it appears that other property to satisfy the executions could not be found, and under those circumstances they brought these suits against the surety in those bonds, as they clearly had a right to do, whether the question is tested by the laws of Congress or the decisions of this Court.

Judgment affirmed.

[Footnote 1]

1 Stat. at Large 78; *The Belfast,* 7 Wall. 642, 644.

[Footnote 2]

71 U. S. 4 Wall. 411.

[Footnote 3]

71 U. S. 4 Wall. 555.

[Footnote 4]

71 U. S. 7 Wall. 642.

[Footnote 5]

The Belfast, 7 Wall. 643; *The St. Lawrence,* 1 Black 529.

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