

The Rio Grande

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Decided On : 1873

Appeal No. : 86 U.S. 178

Appellant : The Rio Grande

Judgement :

The Rio Grande - 86 U.S. 178 (1873)

U.S. Supreme Court The Rio Grande, 86 U.S. 19 Wall. 178 178 (1873)

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86 U.S. (19 Wall.) 178

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF LOUISIANA

SYLLABUS

1. Five libellants, on separate libels *in rem*, got a decree in the circuit court of one circuit against a vessel for sums each one under \$2,000, and so without right of appeal here, *and costs*. Before they could get satisfaction from the vessel, she was taken out to sea.

The vessel happening to be subsequently in *another* district, the same five libellants now sent and libeled her there, not filing five separate libels, as in the former district, but all five persons joining in one libel, claiming for each the old sums, with interest from a day named, and claiming in one sum, and without any, specification of what portion of it was for which libellant, the sum of \$1,767.62, costs of the courts of the first district, "and also all costs in this behalf expended." The circuit court decreed in favor of the libellants the amount claimed by each, with 8 percent interest from a day named, to the date of the circuit court's decree, and "the further sum of \$1,767.62 costs in the district and circuit courts" of the former district, and all costs in the district and circuit courts where the libels had last been filed. With the interest thus allowed, the claims of two of the five libellants exceeded the sum of \$2,000, but even with it added the claims of the remaining three did not do so.

The owners of the vessel having taken an appeal to this Court, a motion "to dismiss the appeal" for want of jurisdiction because "the matter in dispute did not exceed the sum or value of \$2,000," was denied; the ground for the denial assigned being that "the motion is to dismiss the appeal," and that the decree in favor of two of the libellants was greater than \$2,000 when the interest allowed by the circuit court to the date of its decree was included with the principal.

2. Great faith given to a certificate of a clerk below (in the face of things apparent on the transcript itself, and in face of the assertion by counsel of one side and the admission by counsel of the other), that a record sent here by him is a full, complete, true, and perfect transcript of the record and proceedings in a court below.

3. On an allegation of deficiency in the record, the deficiency, if any, may be supplied by certiorari. A motion to dismiss the appeal upon such allegation denied.

The Judiciary Act as amended by an act of 1803 gives appeals to this Court from the circuit courts in admiralty causes, "where the matter in dispute exceeds the sum or value of \$2,000, *exclusive of costs.* "

These provisions of law being in force, the steamer *Rio Grande*, owned, as was alleged, by persons in Mexico, being in the port of Mobile, in the *Southern District of Alabama*, certain materialmen, on the 26th of November, 1867, filed separate libels against her in the district court for the said district. The libels, with their numbers and the names of the libellants on the docket, were thus:

No. 221. William Otis, for \$1,508.00

No. 222. Joseph Hastings 83.75

No. 223. R. D. Post & Co. 125.00

No. 224. Lyons & Keyland 1,411.83

No. 225. G. B. & C.B. Gwin & Co., . . . 713.00

Upon process issued on these libels, the vessel was seized by the marshal and held by him during the pendency of the proceedings in the said court.

Several other libels had apparently been filed against the same steamer. The record at least contained this entry, which, as it is referred to in what is said by the learned justice who delivered the opinion of this Court, and apparently as affecting the case, is here set out:

" *Order granting Motion to consolidate Causes* "

"Tuesday Morning, December 10, 1867"

"Court met pursuant to adjournment. Present: the honorable Richard Busteed, judge presiding."

" *JOSEPH HASTINGS ET AL. v. STEAMBOAT RIO GRANDE* "

"In this cause G. N. Stewart, Esquire, attorney for the claimants, moves the *consideration* of admiralty cases Nos. 127, 128, 129, 130, 131, 132, 133, 134,

135, 136, 137, and 138, with the above-mentioned case; which motion was granted by the court upon a written agreement being filed that *such* consolidation should not prejudice the officers of the court in respect to costs."

One Williams and others appeared as claimants and owners of the vessel.

On the 11th of May, 1868, the court dismissed all the libels, on the ground that the credit had been a personal one to the owners, and that there had been no credit to the

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ship. Hereupon the claimants, on the 12th, and before it was possible to perfect an appeal, got -- through some clerical accident apparently -- an order of restoration of the vessel to themselves, and carried her right out to sea. The libellants nevertheless, on the 14th, 15th, and 16th of May took their appeal with supersedeas to the circuit court, the circuit court, of course, for the District of Alabama, and on the appeal that court, holding that the credit had been to the vessel, reversed, January 11, 1869, the decree of the district court, and awarded to each of the libellants above-named the amount claimed by him, with interest at 8 percent from the 1st of August, 1867. The order of decree, after setting out the numbers of the cases and the names of the libellants, proceeded thus:

"The above-stated cases having been appealed to this Court from the District Court of the United States for the Southern District of Alabama, came on to be heard this day, upon the libels, answers, and proofs; and, it appearing to the court that each of said claims are liens upon said steamer Rio Grande, and it further appearing to the court from the evidence:"

"That the claim of William Otis is sustained, \$1,508, with interest on the same from the 1st day of August, 1867;"

"And the claim of Lyons & Keyland is sustained, for the sum of \$1,411.83, with interest on the same from the 1st day of August, 1867;"

"And the claim of Joseph Hastings, for the sum of \$83.75, with interest from the 1st day of August, 1867;"

"And the claim of R. D. Post, for the sum of \$121.75, with interest from the 1st day of August, 1867;"

"And the claim of G. B. & C. B. Gwin & Co., for the sum of \$713.14, with interest from the 1st day of August, 1867;"

"It is therefore ordered and decreed that the said steamer *Rio Grande* be condemned for the payment of said respective sums, ascertained and admitted to be due to the respective libellants, and that she be sold to pay the same, *and the costs of this court and of the district court.* "

Subsequently to all this the materialmen, from whose process in the Judicial District of Alabama the vessel had been withdrawn, hearing that she was now in the port of New

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Orleans, in the *District of Louisiana*, sent over there and, on the 8th of June, 1871, there libeled her.

In this new libel they all joined in *one* libel. This libel set forth that the steamer was indebted to them severally in the sums already named, with interest, at the rate of 8 percent per annum, from the 1st of August, 1867, until paid, that they had libeled her in the District of Alabama, and had got a decree of the circuit court, such as has been already stated, and decreeing that the vessel should be sold to pay their claims, *"and the costs of both district and circuit courts aforesaid;"* that after the decree of the district court, the claimants had removed the vessel from the jurisdiction of the Circuit Court for the District of Alabama, and brought her into the jurisdiction of the Circuit Court for the District of Louisiana, where the same materialmen now libeled her. The libel reasserted the old liens for materials, asserted further a lien for \$1767.62 for said *costs*, and prayed that the steamer "be sold to satisfy the claims of the libellants in the sum of \$1767.62, costs of the

courts of *Alabama*, with also all costs in this behalf expended." After referring to the proceedings in the district and circuit court, it added:

"All which will more fully appear by the *transcript of the record of said case, which is filed herewith and made part of this libel.* "

The District Court for Louisiana (Mr. Justice Durell), like the District Court in Alabama, dismissed the libel. The Circuit Court of Louisiana on appeal, like the Circuit Court for Alabama, reversed the decree of the district court, and the claimants of the vessel took this appeal.

The transcript of the record, as it came to this Court, was composed of what was called in the index the "original record" (103 pages) and an "additional record" by way of continuation, and running from page 103 to page 183.

At the conclusion of the former, on page 103, and just above a certificate of the clerk of the Circuit Court of Louisiana, appeared:

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" *Instructions from F. Michinard, Esq., to make transcript* "

" *[Filed September 11, 1873]*"

" *WILLIAM OTIS ET AL. v. S.S. RIO GRANDE -- No. 6819*"

"In making out the transcript of appeal in the above case, the clerk will please omit the following documents."

" *In the case proper:* "

"All appeal bonds filed in Judge Durell's court."

"Notices to take testimony and continuances."

" *In the transcript filed with the libel:* "

"Omit all libels except those of William Otis (1), Lyons & Keyland (2), R. D. "

"State that the original libel of Joseph Hastings is for \$183.75, for 26 1/4 days' labor at \$7."

"Omit bills attached to libels."

"Omit all admiralty warrants and returns, monitions &c.;, except in the case of William Otis."

"Omit motion for subpoena duces tecum."

"Omit orders allowing master further time, and leave to counsel to file briefs."

"Omit appeal-bonds."

"Very respectfully,"

"F. MICHINARD"

"For Rio Grande."

These instructions had been apparently more or less fully complied with. Moreover, the "original record" did not contain any transcript of a record of the proceedings in the circuit and district courts of Alabama, the record, namely, which the libel in the District Court of *Louisiana* referred to as appended to it, but it did contain, and following the libel, what it called " *Extracts* from the transcript annexed to libel and filed in the United States district court, June 8, 1871."

Nevertheless, the clerk of the circuit court for Louisiana put, under date of 26th September, 1873, and at the close of the "original record," the usual certificate that the 103 pages named contained and formed a

"full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of *William Otis v. Steamer Rio Grande*, No. 6819 of the docket, so far as the same now remain of record

"

Then followed in the transcript sent here the "addition to the record." This opened with an agreement signed by the counsel of both sides, and dated November 27, 1873, thus:

"It is agreed that the appellants may make perfect and complete the transcript in this case, by having the following documents, forming part of the record of the circuit court, copied by the clerk and filed in the Supreme Court, before the trial of the motion to dismiss, to-wit."

[Here followed a list of documents, some, but not all of those which the clerk had omitted.]

Then came what were entitled:

"Extracts from the transcript filed with libel in the United States District Court, District of Louisiana, June 8, 1871, and in the circuit court of the United States, November 2, 1872."

This part of the transcript, that is to say, the "addition to the record," the clerk of the circuit court for Louisiana did not certify as before to be a "full, complete, true, and perfect copy" of anything; but on the contrary, under date of December 6th, 1873, certified to contain

"true and perfect copies *extracts from* the transcript of the record and proceedings had in the suits in Southern District of Alabama, and *filed in the case of William Otis v. Steamship Rio Grande*, No. 6819 of the docket, so far as the same now remain of record, or on file in said court."

A motion was now made to dismiss the appeal, because,

1st. The transcript did not contain a true copy of the record and of all the proceedings in the case.

2d. This Court had no jurisdiction in the case, as the amount in dispute was less than \$2000.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Separate libels were filed by the appellees, in the District Court of the United States for the Southern District of Alabama, against the steamboat *Rio Grande*, to enforce the payment of certain claims made by those parties against the steamboat for materials furnished for repairs and for necessary supplies, which it is alleged constituted a maritime lien upon the steamboat. Process was issued and served and the parties appeared and were heard, and the decree states that the court ordered, adjudged, and decreed that the claims contained in the libels in this cause do not constitute such a maritime lien as to give the court jurisdiction, and the court entered a decree that the libel in each case be dismissed with costs. Immediate application was made to the court by the claimants for an order that the possession of the steamboat should be delivered to them by the marshal, and the record shows that on the twelfth of May, 1868, the motion was granted. Notice of appeal was immediately given by the libellants, and two days after the order was passed delivering the steamboat to the trustees named in the application for the order, the appeal bonds were filed. During the pendency of the several libels in the district court and before the final decree, to-wit, on the tenth of December, 1867, the causes were consolidated by the court upon a written agreement being filed that the consolidation should not prejudice the officers of the court in respect to costs.

On the eighth of June, 1871, the same materialmen filed a libel in the District Court of the United States for the District of Louisiana, against the same steamboat, to enforce the maritime lien for the same claims, in which they alleged that during the pendency of the said admiralty proceedings

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in the District Court for the Southern District of Alabama, the court there ordered the marshal to deliver the possession of the same, as in the order previously described, and that the order was executed as made, notwithstanding the libellants appealed and gave appeal bonds operating as a supersedeas within the period allowed by law for perfecting such appeals. Process was issued and served and the appellants appeared as claimants and filed an answer. Testimony was taken, and the parties having been heard, the court entered a decree dismissing the libel, and the libellants appealed to the circuit court, where the parties were again heard, and the circuit court reversed the decree of the district court and entered a decree that the libellants do have and recover from the steamboat the following sums, to-wit: William Otis, \$1,508; Lyons & Keyland, \$1,411.83; Joseph Hastings, \$83.75; R. D. Port & Co., 121.25; G. B. & C.B. Gwin & Co., \$713.14, with eight percent interest on said different amounts, from the first of August, 1867, until paid, and costs of suit as therein specified. By the record, it appears that the decree was entered on the first day of March, 1873, and of course five years and seven months' interest must be added to each of the several sums awarded in the decree. Whereupon the respondents appealed to this Court.

Two grounds for dismissing the appeal are set forth in the motion under consideration:

1st. That the transcript does not contain a true copy of the record and of all the proceedings in the case, under the hand and seal of the circuit court.

2d. That this Court has no jurisdiction in the case, as the amount in dispute is less than \$2,000.

1. Probably the stipulation filed in the case allowing the appellants to complete and perfect the transcript in the case may be regarded as an answer to the first ground of the motion, but if not it is quite clear that the certificate of the clerk of the court must be regarded as *prima facie* evidence that the matter of fact alleged in the motion is not well founded. Deficiencies, if any, may be supplied by certiorari.

2. Nor can the motion be sustained for the other reason set forth, as it is certain that the decree against the appellants here in favor of two of the respective appellees exceeds the sum of \$2,000. True, the sums recovered by the other three appellees respectively were not sufficient to give this Court jurisdiction, but the motion is to dismiss the appeal, which must be denied, as the decree in favor of the two libellants first named in the decree is, as it respects each of those, greater than \$2,000, when the interest allowed by the circuit court to the date of the decree is included with the principal. * Interest to that date being specifically allowed by the decree must be included with the principal in order to determine what "the sum or value in dispute was" at the time the appeal was taken and allowed.

Motion denied.

* [The Patapsco](#), 12 Wall. 451.