

The Haytian Republic

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Decided On : May-26-1894

Appeal No. : 154 U.S. 118

Appellant : The Haytian Republic

Judgement :

The Haytian Republic - 154 U.S. 118 (1894)

U.S. Supreme Court The Haytian Republic, 154 U.S. 118 (1894)

The Haytian Republic

No. 1138

Argued April 27, 1894

Decided May 26, 1894

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CERTIORARI TO THE CIRCUIT COURT

OF APPEALS FOR THE NINTH CIRCUIT

SYLLABUS

When a vessel, libeled for smuggling and for violations of the Chinese Exclusion Act, is discharged on giving the bond required by law, it may be again libeled in another district for similar offenses alleged to have been committed prior to the offences charged in the first libel; but if both suits proceed to judgment, there can be but one forfeiture of the vessel.

On June 7, 1893, in the District Court of the United States for the District of Washington, the United States libeled the steamship *Haytian Republic* for violations of the Chinese Exclusion Act and for smuggling opium. It was averred that the violations of the Exclusion Act occurred at the following dates: first, September 20, 1892; second, October 8, 1892; third, October 12, 1892; fourth, October 15 and 16, 1892; fifth, November 1, 1892; sixth, November 26, 1892; seventh, December 12, 1892; eighth, December 13, 1892; ninth, January 2, 1893; tenth, January 26, 1893; eleventh, February 2, 1893; twelfth, March 28, 1893; thirteenth, May 11, 1893.

The offenses of opium smuggling, according to the libel, were committed as follows:

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November 21, 1892 at Portland, Oregon, 2,000 pounds, of the value of \$22,000; December 7, 1892 at St. Johns, on the Columbia River, 1,000 pounds, of the value of \$11,000.

The prayer was for the forfeiture of the vessel on account of the violations of the Exclusion Act, and for judgment for \$32,000, the value of the opium, with recognition of a lien on the ship for that amount.

The Northwest Loan and Trust Company claimed the vessel, and, after due appraisement, she was bonded.

On the 6th day of July, 1893, in the District Court of the United States for the District of Oregon, the United States again libeled the same steamship for violations of the Chinese Exclusion Act and for smuggling opium. In this libel it was

alleged that the violations of the act were committed at the following dates: 1st, October 29, 1892; 2d, June 14, 1893, and 3d, June 28, 1893, all at the port of Portland, Oregon. And the opium smuggling was charged as follows:

1st, October 29, 1892 at Portland, Oregon, 1,640 cans, containing 820 pounds, of the value of \$9,840; 2d, December 27, 1892 at St. Johns, Oregon, 1,000 pounds, valued at \$12,000.

The prayer of this second libel was for forfeiture of the vessel for the violations of the Exclusion Act, and for judgment for \$28,840, the value of the opium, with recognition of a lien on the vessel for that amount.

On the 14th of July, 1893, an amended libel was filed charging the smuggling of opium: 1st, on July 28, 1892, Willamette River, 300 pounds of opium, of the value of \$3,300; 2d, on August 30, 1892, on the Columbia River, near the mouth of the Willamette River, of 800 pounds, of the value of \$8,800; 3d, on the second of September, 1892, near Swan Island, 1,400 pounds, worth \$15,400; 4th, on the 27th of January, 1893 at Portland, Oregon, 1,200 pounds, worth \$11,220, and 5th, on the 22d of February, 1893 at Portland, Oregon, 900 pounds, value \$9,900.

The prayer of the amended libel was also for the forfeiture of the vessel and for a decree for the penalty to the value of the opium, which was \$48,620, with lien upon the vessel.

The original and amended libel claimed therefore the forfeiture

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of the vessel for three violations of the Chinese Exclusion Act, the first occurring in October, 1892, and the last two after June 7, 1893, and also sought to enforce against the vessel an aggregate penalty of \$77,460 for seven acts of opium smuggling, which, they charged, had taken place at various dates between the 28th of July, 1892, and the 22d of February, 1893.

Thus, all the offenses against the Chinese Exclusion Act charged by these libels except the two last occurred prior to June 7, 1893, the date of the filing of the libel

in the District Court of Washington, and all the offenses of opium smuggling therein charged occurred prior to the filing of the suit in Washington.

The Northwest Loan and Trust Company appeared as claimant in the new suit. It excepted to all the averments as to violations of the Exclusion Act and smuggling which, according to the allegations, were committed before the filing of the suit in the District of Washington. Its exception therefore covered all the charges of smuggling opium and one of the charges of violation of the Chinese Exclusion Act. To the two averments of violation of the act which were not excepted to an answer was filed.

The court sustained the exception and dismissed the libels except as to the two charges of violation of the Exclusion Act subsequent to the filing of the suit in the Washington District. As to these, it held that the averments of the libel stated no violation of the laws of the United States.

The case was taken by appeal to the Circuit Court of Appeals for the Ninth Circuit, where the judgment of the district court was affirmed. This action of the circuit court of appeals was brought up for review under a writ of certiorari.

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MR. JUSTICE WHITE, after stating the case, delivered the opinion of the Court.

All question as to the correctness of the rulings below, that the two alleged violations of the Exclusion Act after June, 1893, constituted no offense against the laws of the United States, was waived in the discussion at bar.

The first question, then, for consideration is was the action of the court correct in dismissing all the charges, both as to the introduction of Chinese and as to the importation of opium prior to June 7, 1893, because of the pendency of the suit in the District of Washington?

Pretermitted all question as to whether the pendency of suits in district courts of the United States sitting in different states is a subject matter of the defense "other

suit pending," the issue is did the suit in Washington prevent the

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bringing of suit in Oregon? Both the introductions of Chinese and the importations of opium which were averred in the suit in Oregon were distinct and different acts from those charged in the libel filed in the district court of Washington. The elementary principle which governs the availability of the plea of "other suit pending" was thus stated in [Watson v. Jones](#), 13 Wall. 715:

"When the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interests, there must be the same rights asserted and the same relief prayed for, the relief must be founded upon the same facts, and the title, or essential basis, of the relief sought must be the same."

Tested by these principles, it is obvious that the plea of pendency of the suit in Washington was not available here. There were the same parties, but not the same rights asserted, and the claim of relief was not founded upon the same facts. In the case just cited, it was said that the true test of the sufficiency of a plea of "other suit pending" in another forum was the legal efficacy of the first suit, when finally disposed of, as "the thing adjudged," regarding the matters at issue in the second suit. *Dick v. Gilmer*, 4 La. Ann. 520; *Bischoff v. Theurer*, 8 La. Ann. 15.

The efficiency of the test thus applied results from the fact that the elements constituting the thing adjudged and those necessary for the plea of "other suit pending" are identical.

It is obvious that the decision of the suit in Washington would not have constituted the thing adjudged as to the matters averred in the suit in the District of Oregon. The charges were different. If the court in Washington had found that at the times and places named, the vessel had not smuggled opium, and had not illegally imported Chinese, and adjudged accordingly, such judgment would not have affected the question of whether or not similar offenses had been committed at other times and places.

It is contended, however, that, although the two suits involved the assertion of different rights, as the rights asserted

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in the last suit were in existence at the time the first suit was brought, therefore they should have been asserted in that suit, and could not be afterwards relied upon in a separate suit in a different forum. In support of this proposition, we are referred to the case of *Stark v. Starr*, [94 U. S. 477](#) , and this language is quoted from the opinion in that case:

"It is undoubtedly a settled question that a party seeking to enforce a claim legally or equitably must present to the court, either in pleading or in proof, or both, all the grounds upon which he expects a judgment in his favor. He is not at liberty to split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit if the first fail. There would be no end to litigation if such a practice were permissible."

This statement, however, is qualified by the following, which is not included in the citation:

"But this principle does not require distinct causes of action -- that is to say, distinct matters, each of which would authorize by itself independent relief -- to be presented in a single suit, though they existed at the same time, and might be considered together."

The qualification states the elementary rule. One of the tests laid down for the purpose of determining whether or not the causes of action should have been joined in one suit is whether the evidence necessary to prove one cause of action would establish the other. *Crips v. Talvande*, 4 McCord 20.

It is evident that proof showing that a particular lot of opium had been smuggled on a particular day, or a particular number of Chinese had been imported at a particular time, would have no relevancy or tendency to prove the smuggling of a

different lot of opium at a different time or the importation of a different number of Chinese at a different date.

It was conceded in argument that where a vessel had been bonded and then committed an offense which made her liable to forfeiture, she could be proceeded against in a court other than where the bond was given. This admission practically involves the whole point at issue here. If the

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vessel, after the bond had been given, was not in the custody of the court of first resort to the extent of preventing a second libel from being filed against her in another court for a subsequently arising offense, she was not in the custody of the court so as to prevent a seizure for an offense which existed at the time of the first libel, and which the libellants were under no legal necessity to join therein. The attempted distinction rests upon the theory that, after bonding, the vessel was in the custody of the court for the purposes of all claims existing at the time of the bonding, and out of the custody of the court as to all claims arising subsequent thereto. But if the vessel was in the custody of the court at all, it was there for all purposes, and the admission that it was not in the custody of the first court so as to preclude proceedings against it in another forum under certain circumstances carries with it the concession that it was not in that custody to such an extent as to affect the question of proceedings elsewhere under any circumstances whatever.

It is true that where a fraudulent appraisement has been had or a fraudulent or illegal bond has been given in an admiralty proceeding, the court has the power to recall the vessel for the purpose of requiring an honest appraisement and of exacting a legal bond. *United States v. Ames*, [99 U. S. 35](#) ; *The Union*, 4 Blatchford 90; *The Favorite*, 2 Flippin 87; *The Thales*, 3 Ben. 327; 2 Parsons on Shipping 411. This special power, however, to meet a particular contingency does not affect the general rule or imply that the vessel, after a legal bond has been given, remains in the exclusive custody and jurisdiction of the court. *The Union*, *supra*.

It is urged that as in the first case the issue was the forfeiture of the vessel, and this involved her entire value, and as the bond given represented that entirety, the existence of the bond in the Washington court precluded the raising of any question concerning the liability of the vessel to forfeiture elsewhere. The fallacy here lies in supposing that the bond took the place of the entire value of the vessel for any other purpose than the subject matter of the suit in which the bond

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was given. The claim for forfeiture alleged in the cause wherein the bond was given was alone covered by the bond, and therefore the assertion of a right to forfeiture for another and distinct cause was not embraced in its condition, although its penalty was the full value of the vessel. The authorities are clear upon this point. In *The Wild Ranger*, decided by Dr. Lushington, the facts were these: a collision occurred between the *Wild Ranger* and the *Coleroon*. The *Wild Ranger* was libeled by the owners of the other vessel, who claimed 3,500, and was released under bond. Subsequently she was libeled by the owners of the cargo of the *Coleroon*. In this last proceeding, a decree of condemnation was rendered, the vessel was sold, and the proceeds of sale were paid into court. The price of the sale exceeded the sum of the damages awarded to the owners of the cargo. Pending these proceedings under the second libel, the damages due to the owners of the *Coleroon* were ascertained to be greater than the sum of the bond given in their case. The owners of the *Coleroon* thereupon claimed the balance realized by the sale of the *Wild Ranger* over and above the amount which had been decreed to the owners of the cargo. Upon this state of facts, Dr. Lushington thus ruled:

"In order to justify me in directing these proceeds to be paid to the owners of the *Coleroon*, it is not sufficient that they should show that the debt is due them from the owners of the *Wild Ranger*. They must either prove that they have a lien upon the proceeds or produce a statute authorizing me to apply these proceeds in satisfaction of the judgment they have obtained. Now there is no lien on these proceeds by reason of the action's being in the nature of an action *in rem*. The proceeds of the ship sold are in legal consideration the same as the ship itself, and

the ship was wholly released from all claim by the owners of the *Coleroon* from the moment that they took bail."

2 New.Rep. 402, 403.

In the *T. W. Snook*, 51 F. 244, the *Snook* had been libeled by the *Georgia*, and released under bond for \$4,000, double the amount of the *Georgia's* claim. After the

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release of the *Snook*, the Continental Insurance Company, which had paid for a loss on the cargo of the *Georgia*, intervened and asserted its right to be reimbursed for its expenditure out of the balance of the bond over and above the claim of the *Georgia*. The court (Blodgett, J.) said:

"I do not think this application on the part of the insurance company should prevail, my reasons being briefly that at the time the bond was given on which the *Snook* was released, no claim was made in the proceedings except for damage to the hull of the *Georgia*, and in fact it was not until about two months after this bond had been given that the insurance company paid the loss on the cargo, and thereby acquired any right of intervention or subrogation. The sureties on the bond must be presumed to have signed it on the understanding that their liability was only to satisfy the cause of action set out in the libel, which was for the damages to the hull of the *Georgia*. "

See also The Union, supra.

There is no force in the argument that, as the suit in Washington claimed the forfeiture of the vessel, and the suit in Oregon claimed the same thing, there was a practical identity between them. The fallacy results from a failure to distinguish between the right and the remedy. True, the remedy sought in Washington was the forfeiture of the vessel, and the same remedy was invoked in Oregon, but the causes of action upon which the remedy was prayed in the two cases were entirely different. As we have seen, not only identity of relief but identity of cause

of action is essential to the plea of pending suit, and both are also necessary to the efficacy of the plea of the thing adjudged.

It is urged that as the matters could have been joined in the Washington suit, therefore they would have been concluded by a decree rendered therein, the argument being that a judgment concludes not only the matters actually in controversy, but all those which might have been adjudged.

In support of this contention we are referred to [Osborn v. Bank of the United States](#), 9 Wheat. 738, to [Beloit v. Morgan](#), 7 Wall. 619, and other authorities. It is unnecessary to examine these in detail. The proposition which they support

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is well stated in an excerpt from Freeman on Judgments quoted in the brief of counsel:

"An adjudication is final and conclusive not only as to the matter actually determined, but as to every other matter which the parties might have litigated and have decided as incident to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action, both in respect to matters of claim and of defense."

If the deduction drawn by counsel from this and similar language were true, then a judgment upon one cause of action would be conclusive as to every other existing at the time, although not embraced in the suit and although the parties were not obliged to join it therein. This would destroy the right of parties to sue separately upon distinct causes of action, and would be subversive of the entire theory of the thing adjudged. The mistake lies in construing the words "which might have been raised" as applying to a cause of action other than the cause of action embraced in the suit. In other words, the doctrine is that the thing adjudged includes not only the direct results of the cause of action which the judgment concludes, but also all things necessarily incident to and growing out of that cause which the parties might have joined in the suit. *Dowell v. Applegate*, [152 U. S. 343](#) . Of course, whilst concluding that the separate causes of the action here under consideration

need not have been joined in one suit, and that the suit in Washington was no bar to the suit in Oregon, we must not be considered as intimating that there could be more than one forfeiture of the vessel. The distinct charges give rise to distinct causes of action, but the forfeiture for either would have consummated the proceedings.

Judgment reversed, and case remanded for further proceedings in accordance with this opinion.

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