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OLMSTEAD's CASE.

...the circuit court of the United States ...he Pennsylvania district, April session ...present judges Washington and Peters.

...d States vs. Michael Bright, James Atkinson, Charles Westfall, Abraham Ogden, Charles Hong, William Cole, Samuel Wilkins, Daniel Phyle, John Knipe.

...INGTON, Judge, delivered the opinion of the court.

...pressed with the magnitude of the ques... which have been discussed, we could ...wished for more time to deliberate up... ...em, and for an opportunity to commit ...ting the opinion which we have formed, ...it might have been rendered more intel... ...e to you, and less susceptible of being ...understood by others. But we could not ...pose the charge without being guilty of ...impropriety of suffering the jury to sepa... ...after the arguments of counsel were clos... ...r of keeping them together until Mon... ...a hardship which we could not think of ...sing upon them. I shall proceed there... ...to state to you, in the best way I can, ...pinion of the court upon this novel and ...esting case.

...may not be improper, in the first place, ...fresh your minds with a short history of ...ransactions which have led to the offence ...which these defendants are charged; ...o consequences which might have been ...rious import to the nation.

...deon Olmstead and three others, having ...n into the hands of the enemy, during ...atter part of the year 1778, were put on ...d the sloop Active, at Jamaica, as prison ...of war; in order to be conducted to New ...whither this vessel was destined with su... ...for the British troops.

...ring the voyage, Olmstead and his com... ...ns, who had assisted in navigating the ...el, formed the bold design of taking her ...the enemy; in which, with great hazard ...themselves, they ultimately succeeded. ...ng confined in the cabin the officers, ...agers, and most of the men, they steered ...ome port in the United States, and had ...within five miles of Egg harbour, when ...in Houston, commanding the brig Con... ...on, belonging to the state of Pennsylvania, ...up with them and captured the Active ...ize. The sloop was conducted to Phila... ...ia, and libelled in the court of admiralty, ...lished under an act of the legislature of ...state.

...aims were filed by Olmstead and his as... ...tes, for the whole of the vessel and cargo, ...by James Josiah, commander of a pri... ...armed vessel, which was in sight at the ...of the capture by Houston, for a propor... ...of the prize. Depositions were taken in ...cause.

...jury was empannelled to try it. The ...tion of fact was, whether the enemy was ...pletely subdued or not, by Olmstead and ...companions, at the time when captain ...ston came up with them. The jury, ...out stating a single fact, found a general ...ict, for one fourth to Olmstead and his ...tates, and the residue to Houston and ...ch, to be divided according to law and to ...greement between them. From the sen... ...e of the court upon this verdict, Olmstead ...aled to the court of appeals in prize cases ...lished by congress, where after a hear... ...of the parties the sentence of the admiral ...ourt was reversed; the whole prize de... ...d to the appellants, and process was di... ...ed to issue from the court of admiralty, ...manding the marshal to sell the vessel ...cargo, and to pay over the net proceeds ...ose claimants. The judge of the court ...dmiralty refused to acknowledge the juris... ...on of the court of appeals over a verdict ...d in the inferior court; directed the mar... ...to make the sale and to bring the pro... ...into court. This was done; and the ...e acknowledged the receipt of the money, ...e marshal's return. In May 1779, Geo. ..., the judge of the court of admiralty, ...ered over to David Rittenhouse, treasurer ...'s state, £11,496 9 9. in loan office ...ficates issued in his own name, being the ...ortion of the prize money to which the ...e was entitled by the sentence of the infe... ...court of admiralty. Rittenhouse at the ...e time executed a bond to Ross, obliging ...self, his heirs, executors, &c. to restore ...um so paid in case Ross should, by due ...se of law, be compelled to pay the same ...ding to the decree of the court of appeals. ...he condition of this bond, the obliger is ...ribed as being treasurer of the state; and ...money is stated as having been paid to him ...the use of the state. Indents were issued ...ittenhouse on the above certificates, and ...e were afterwards funded, in the name of ...enhouse for the benefit of those who might ...tually appear to them. After the death ...ittenhouse, these certificates together with ...interest thereon which had been received, came to the hands of Mrs. Sergeant and Mrs. Waters, his representatives. The paper which covered the certificates was endorsed in the hand writting of Mr. Rittenhouse with a memorandum declaring that they will be the property of the state of Pennsylvania when the state released him from the bond he had given to George Ross, judge of the admiralty, for paying the 50 original certificates into the treasury as the state's share of the prize. No such release ever was given. The certificates thus remaining in the possession of the representatives of Rittenhouse, Olmstead filed his libel against them in the district court of Pennsylvania, praying execution of the decree of the court of appeals. Answers were filed by these ladies; but no claim was interposed nor any suggestion made of interest on the part of the state, and in Jan. 1803, the court decreed in favor of the libellants. On the 2d of April in the same year, the legislature of Pennsylvania passed a law authorizing the attorney general to require Mrs. Sergeant & Mrs. Waters to pay into the treasury the money acknowledged by them in their answer in the district court to have been received, without regard to the decree of that court; and in case they should refuse, that a suit should be instituted against them in the name of the commonwealth, for the said monies. The governor was also required to protect the just rights of the state by any further measures he might deem necessary; and also to protect the persons and properties of those ladies from any process which might issue out of any federal court, in consequence of their obedience to this requisition; and further should give them a sufficient instrument of indemnification in case they should pay the money to the state. No further proceedings took place in the district court, for some time after the passage of this law. And when at length an application was made for process of execution, the judge of that court, with a very commendable degree of prudence, declined ordering it; with a view to bring before the supreme court of the United States a question so delicate in itself, and which was likely to produce the most serious consequences to the nation. Upon the application of Olmstead, the supreme court issued a mandamus to the judge of the district court, commanding him to execute the sentence pronounced by him in that case, or to shew cause to the contrary. The reasons for withholding the process assigned in answer to this writ, not being deemed sufficient by the supreme court, a peremptory mandamus was awarded. It may not be improper here to state, that no person appeared in the supreme court on the part of the state, or on that of Mrs. Sergeant and Mrs. Waters, and that no arguments were offered on the part of Olmstead. The idea which I understand has gone abroad, that the mandamus was awarded upon the single opinion of the chief justice, is too absurd to deserve a serious refutation. No instance of that sort ever did or could occur, and in this particular case I do not recollect that there was one dissentient from the opinion pronounced.

Process of execution having been awarded by the judge of the district court in obedience to the mandamus, the defendant, General Michael Bright commanding a brigade of the militia of the commonwealth of Pennsylvania, received orders from the governor of the state —"Immediately to have in readiness such a portion of the militia under his command as might be necessary to execute the orders, and to employ them to protect and defend the persons and property of the said Elizabeth Sergeant and Esther Waters from and against any process founded on the decree of the said Richard Peters, judge of the district court of the United States aforesaid; and in virtue of which any officer under the direction of any court of the United States may attempt to attach the persons and property of the said Elizabeth Sergeant and Esther Waters."

A guard was accordingly placed at the houses of Mrs. Sergeant and Mrs. Waters, and it has been fully proved, and is admitted, that the defendants, with a full knowledge of the character of the marshal of this district, and of his business, his commission and the process which he had to execute having been read to them, opposed, with muskets and bayonets, the persevering efforts of that officer to serve the writ; and by such resistance prevented him from serving it.

There is no dispute about the facts—The defendants have called no witnesses—and their defence is rested upon the lawfulness of the acts laid in the indictment.—They justify their conduct upon two grounds—1st. That the decree of the district court under which the process issued was *coram non Judice*, and to all intents and purposes void; and 2dly. That though it were a valid and binding decree, still that they cannot be questioned criminally for acting in obedience to the orders of the governor of this state.

The decree of the district court is said to be void, for two reasons; first, because the court of appeals had not a power to reverse the sentence of the court of admiralty founded upon the verdict of a jury; and 2dly, because the state of Pennsylvania claims an interest in the subject which was in controversy in the district court.

The first question is, was the decree of the court of appeals void for want of jurisdiction of the case in which it was made? But first let me ask, can this be made a question, at the present day, before this or any other court in the United States? We consider it to be so firmly settled by the highest judicial authority in the nation, that it is not now to be questioned or shaken. The power of the court of appeals to re-examine and reverse or affirm the sentence of the courts of admiralty established by the different states, though founded upon the verdicts of juries, was first considered and decided in the case of Doan and Penhallow, in the supreme court of the United States. The jurisdiction of that court to re-examine the whole cause as to both law and fact, was considered as resulting from the national character of an appellate prize court, and not from any grant of power by the state from whose court the appeal had been taken. The right of the state to limit the court of appeals in the exercise of its jurisdiction, was determined to be totally inadmisible. The same question was considered by the supreme court upon the motion for the mandamus, and decided to be settled and at rest. If it were necessary to give further support to the authority of these cases, the opinion of the supreme court of Pennsylvania in Ross's executors, vs. Rittenhouse, and the unanimous opinion of the old congress, with the exception of the representatives of this state, and one of the representatives of New-Jersey might be mentioned. If reasons were required to strengthen the above decisions, those assigned by the committee of congress, upon the case of the Active, are believed to be conclusive.

But I think it will not be difficult to prove that the law of Pennsylvania passed on the 9th of September, 1778, establishing a court of admiralty in that state, neither by the terms of it, nor by a fair construction of its meaning, was intended to abridge the jurisdiction of the court of appeals in cases like the one under consideration. The words are, "that the jury shall be sworn or affirmed to return a true verdict upon the libel according to evidence; and the finding of the jury shall establish the facts without re-examination or appeal." The obvious meaning of this provision was, that if the jury found the facts upon which the law was to arise, those facts were to be considered as conclusive by the appellate court, and not open to re-examination by the judges of that court; the legislature thinking it, no doubt, most safe to intrust the finding of facts to a jury of twelve men. But what was to be done, if the jury found no facts, as was the present case? If the appellate court were precluded from an enquiry into the facts affirmance of the sentence appealed from would be inevitable. This absurdity then followed—In *all cases* it was necessary to impannel a jury to establish the facts, and in *all cases*, without exception, the party thinking himself aggrieved might appeal. But in every case where the jury choose to find a general verdict, the sentence appealed from must of necessity be affirmed. I cannot believe that this was the meaning of the legislature; and I do not think that the words of the law will fairly warrant such a construction.

Let me then put this question seriously to the jury: Will they have the vanity to think themselves wiser than all those who have passed opinions upon this important *question of law?* and will they undertake to decide that those opinions were erroneous? Miserable indeed must be the condition of that community where the law is unsettled, and decisions upon the very point are disregarded when they again come directly or incidentally, into discussion. In such a state of things good men have nothing to hope, and bad men nothing to fear. There is no standard by which the rights of property, and the most estimable privileges to which the citizen is entitled can be regulated. All is doubt and uncertainty until the judge has pronounced the law of the particular case before him; but which carries with it no authority as to a similar case between other parties.

But suppose for a moment against the settled law upon the point, that the court of appeals had not a power to re-examine the verdict of the case of the Active; and on that account that the decree of the district court, in opposition to the court of admiralty was erroneous, it does not therefore follow, that the district court had no jurisdiction of the case on which this process issued. If erroneous, it could only be re-examined and corrected in a superior court. But if the subject depended upon a question of prize or no prize, it was completely within the cognizance of the district court by the constitution and the laws of the United States; the former of which grants to the federal courts, and the latter to the district courts *cognizance of all civil causes of admiralty and maritime juridiction. This is such a case;* and we consider that circumstance to be decisive of the first point. We are happy on this occasion, as we are on all others to coincide in opinion with the learned and respectable gentleman who presides in the supreme judiciary of this state.*

The next ground of objection to the jurisdiction of the district court is, that the state of Pennsylvania claimed an interest in the subject in dispute between the parties to that cause.

The amendment to the constitution upon which this question occurs, declares that "the judicial power of the United States shall not be construed to extend to any suit in *law or equity* commenced or prosecuted *against one of the United States*, by citizens of another state, or by citizens or subjects of any foreign state." It is certain that the suit in the district court was not commenced or prosecuted against the state of Pennsylvania. She was in no respect a party to that suit. But it is contended that under a fair construction of this amendment, if a state claims an interest in the subject in dispute, the case is not cognizable in a federal court. In most cases it will be found that the soundest and safest rule by which to arrive at the meaning and intention of a law, is to abide by the words which the law maker has used. If he has expressed himself so ambiguously that the plain interpretation of the words would lead to absurdity, and to a contradiction of the obvious intention of the law, a more liberal course may be pursued. But if upon any occasion the strict rule should be observed, it ought to be in expounding the constitution; although I do not mean to say that even in that case this rule should be inflexible. Every reason is opposed to the construction contended for by the defendants' counsel; and, to our apprehension, there is not one sound reason in favour of it. If the title to the thing in dispute be in the state, and this is made to appear to the court, it is inconceivable that the plaintiff should recover so as to disturb that right. But if he should recover, the state would not be bound by the judgment not being a party to it. This is by no means a new case—If one individual obtains a judgment or decree against another, the interest of a third person not a party, will not be bound or prejudiced by the decision; but he may nevertheless assert his right in a court of justice against the party in possession of the property to which he claims title. The state cannot be forced into court; but she may come there, if she pleases, in pursuit of her rights, and will no doubt do so upon all proper and necessary occasions.—But if on the other hand, the mere claim of interest by a state in the subject in dispute between two citizens can have the magic effect of suspending all the functions of the court of justice over that subject, and of annihilating its decrees when pronounced, this effective and necessary branch of our government, and of all free governments, may be rendered useless, at any moment at the pleasure of a state. If the suit be prosecuted against a state, the court perceives at once its want of jurisdiction, and can dismiss the party at the threshold. But if a latent claim in the state, not known perhaps by any of the litigant parties, is sufficient to oust the jurisdiction, to annul the judgment when rendered, and to affect all the parties concerned with the consequences of carrying a void judgment into execution, the federal courts may become more than useless—they will be traps in which unwary suitors may be ensnared to their ruin. To illustrate this position the district attorney mentioned many very strong and very supposable cases. I will add one other. A sues B. for a debt, or for property either real or personal in his possession. Conscious that he must pay the money, or lose his possession in consequence of the unquestionable title of his adversary, B. pays over the money, or conveys the property even pending the suit, to a third person, for the use of the state, and by this operation arrests the farther progress of the suit, or avoids the

* "It is unnecessary for me to give any opinion concerning the right of the old court of appeals to reverse the decision of justices, contrary to the provisions of the act of assembly of Pennsylvania, under which the state court of admiralty was instituted. That single point which occasioned so much jealousy and heart-burning between several of the states and the old congress—it divided the opinions of many men of unquestionable talents and integrity, and certainly was a question of no small difficulty. But the state of Pennsylvania having retained the present constitution, did thereby virtually invest the courts of the United States with power to decide this controversy. They have decided it, and being clearly within their jurisdiction, I am not at liberty to consider it as now open to discussion. The supreme court of the United States has more than once decided, that the old court of appeals had the power to reverse the verdicts of juries, notwithstanding the law of any state to the contrary. From the establishment of this principle, it irresistably results, that Gideon Olmstead and his associates were entitled to the whole proceeds of the Active and her prize, and may pursue them into whatever hands they may have fallen, unless indeed they have fallen into the hands of persons not subject to an action in the courts of the United States."—[*Chief justice Tilghman's opinion on the writ of habeas corpus, &c.*]

(See last Page.)