



STEWART et al. VS. M'INTOSH.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

4 H. & J. 233; 1816 Md. LEXIS 14

June, 1816, Decided

PRIOR HISTORY: [**1] APPEAL from Baltimore County Court. This was an action of assumpsit. The declaration contained six counts. The first and second for goods, &c. sold and delivered, and a quantum meruit, &c. The third, fourth and fifth, the common money counts, and the sixth on an insimul computassent. The general issue was pleaded.

1. The plaintiffs, (the appellants,) at the trial, read in evidence the following account in the defendant's hand writing, rendered to them as owners of the schooner Holstein, by the defendant, (the appellee,) and a certain Patrick Wood, trading under the firm of Duncan M'Intosh and Wood, viz. "Dr. The Owners of Schooner Holstein, their account current with Duncan M'Intosh and Wood

To amount of disbursements of schooner Holstein, as per account rendered by Mr. John Imlay, dated 25th of August 1800,	\$ 1,443
To amount of premium of insurance paid on schooner Holstein by Mr. John Imlay, as per his account furnished	780
To this sum due by Messrs. David Stewart and Sons, as per their account furnished Mr. Edward Hall, and which we stop out of Holstein's cargo,	5,195 46
To this sum paid in St. Thomas's on two bills of exchange drawn by us on David Stewart and Sons, and which they suffered to return protested	460
To this sum accounted with Mr. Edward Hall for the balance of this account,	8,677 13

Cr.	\$ 16,555 59
By nett proceeds of sales of the cargo of cof-	
fee from Aux Cayes, as per sales rendered	
pr. Mr. John Imlay, dated 25th of August	
1800	15,355 59
By amount of schooner Holstein sold for,	1,200
	\$ 16,555 59

[**2] Errors and omissions excepted.

Aux Cayes, 9th May 1802."

The plaintiffs also gave in evidence, that the said schooner Holstein, and the cargo, in the said account mentioned, belonged jointly and in equal portions to the house of David Stewart and Sons, and to the house of Hillen & Williams, which two houses (and who are the plaintiffs in this cause,) had jointly purchased said vessel and cargo, and were partners in that transaction, but in no other. That in the original purchase of said vessel, and her outward cargo, on her original voyage from Baltimore to the Island of Saint Thomas's, and in the transaction and management of the business relating to the original voyage, David Stewart and Sons were the agents of the owners, and as such consigned the vessel and outward cargo to the defendant and Wood, at the Island of St. Thomas, in the West Indies, from whence she was to have been sent to Williams, one of the plaintiffs, at Jacquemel, in the Island of Hispaniola, there to be under his direction and management. That the schooner was so dispatched by the defendant and Wood, but was prevented from arriving at Jacquemel, and got into the port of Aux Cayes, in the same Island, [**3] where a certain Edward Hall, acting by the authority of Williams, loaded her with a cargo of coffee, and sent her to St. Thomas, consigned to Wood, which cargo is the one mentioned in the account current herein before set forth; and that at the time of receiving the vessel and cargo, and the proceeds thereof, as stated in the above mentioned account, it was known to the defendant and Wood that both vessel and cargo belonged jointly and equally, to the plaintiffs. The defendant then offered evidence to prove,

that before the said account was made out and rendered as aforesaid, David Stewart and Sons were indebted to the defendant and Wood, in the amount of \$ 5655 46 as stated in said account, and in consideration thereof did expressly authorize and direct verbally the defendant and Wood to retain in their hands, out of the proceeds of the vessel and cargo, and in discharge of the said debt, the several sums charged by them in the said account, as having been by them so retained, and amounting together to the said sum of \$ 5655 46. And further, to show that at the time when the said authority and direction were given to the defendant and Wood, by David Stewart & Sons, Hillen & Williams [**4] were indebted to David Stewart & Sons in a sum larger than the interest and proportion of Hillen & Williams in the said sum of \$ 5655 46, and therefore that David Stewart & Sons had a just right to give the said authority and direction, the defendant produced and offered in evidence certain accounts between David Stewart & Sons, and Hillen & Williams, stated and signed by David Stewart, one of the plaintiffs. But the plaintiffs objected to the evidence so offered by the defendant, and to the said accounts, as competent to prevent the recovery of the plaintiffs. This objection the Court [Nicholson, Ch. J. and Bland, A. J.] sustained, and refused to permit the evidence or accounts to go to the jury. The defendant excepted.

2. The defendant then produced Edward Hall as a witness, who gave evidence that he, by authority from the plaintiff Williams, acting on behalf of all the plaintiffs, purchased at Aux Cayes the cargo of coffee shipped by the schooner Holstein to St. Thomas, and mentioned in the account first stated in the first bill of exceptions, and shipped it as aforesaid for their account and risk, the cost and charges of which shipment and cargo he charged to

them in his [**5] account against them; which account he transmitted to the plaintiff, Williams, some time in the spring of 1800, very soon after the shipment was made; and that the account first exhibited in the first bill of exceptions, was rendered to him, the witness, by the defendant, about the time it bears date, a copy of which account he enclosed to Hillen & Williams, or Williams, some short time after he received the same from the defendant. That Williams, both before and after the rendition of said account to the witness, always alleged against the account rendered against the schooner and her owners, that the voyage from Aux Cayes to St. Thomas, ought not to be charged to the owners of the schooner, but was and ought to be considered as on account of the witness. But the witness insisted on his right to recover the same from said owners, and brought a suit against the plaintiffs, and did recover a verdict and judgment against them for the whole amount of said claim, in Baltimore county court, at March term 1808. That the defendant has never been in Baltimore since the beginning of the year 1800, till just about the time of the institution of this suit. That some time before the said account [**6] was rendered by the defendant, Williams inquired of the witness if he had ever brought the defendant to a settlement about the Holstein's business. The defendant then prayed the court to direct the jury, that from this evidence they might find that the plaintiff, Williams, assented to the application made by the defendant of the said sum of \$ 5655 46, to the payment of the debt due to the defendant from Stewart and Sons. Which direction the court refused to give. The defendant excepted.

3. The defendant then gave in evidence, that after the account of Hall against the plaintiffs, charging them with the cost of the cargo shipped by him to St. Thomas's, was rendered by him to the plaintiff Williams, the said plaintiff did, on the part of the owners, object to the said charge, and refused to consider or accept the said cargo as the property of the plaintiffs, but insisted that it was the property of Hall, and did refuse to pay for it to Hall, and continued so to act and refuse until after the recovery against him, and the other plaintiffs, by Hall. He also gave in evidence, that David Stewart and Sons authorized and permitted the defendant to apply the said sum of \$ 5655 46 to the [**7] payment of the debt due as aforesaid from them to him, but this direction was without the authority of Hillen & Williams. The defendant then prayed the opinion of the court to the jury, that if they believed the facts so given in evidence by the defendant and plaintiffs, as stated in this exception, that

then the said conduct and refusal by the plaintiff, Williams, operates in law to preclude the plaintiffs from recovering in this action. This opinion the court also refused to give. The defendant excepted.

4. The defendant then gave in evidence, that the plaintiffs, in repeated conversations and correspondences, admitted that the schooner Holstein had been sent from Baltimore by David Stewart & Sons, by authority from Hillen & Williams, and for account of the plaintiffs, and belonging to them, under the name of The Speculation, to the Island of St. Thomas's, with a view and for the purpose of there assuming Danish colors and a Danish character, and under them of proceeding to the port of Jacmel, in the Island of Hispaniola, on a trading voyage, for the benefit and account of the plaintiffs. That the schooner, with a cargo of flour on board belonging also to the plaintiffs, accordingly [**8] sailed from Baltimore, for the purpose aforesaid, in the month of October, 1799, to St. Thomas's, and arrived there in the month of November in the same year. That both vessel and cargo were consigned by David Stewart & Sons to the defendant and Wood, by whom they were there put under Danish colors as the property of Jeremiah Vernico, a Danish subject, and despatched to Jacmel, in pursuance of the orders of the owners, and still continuing to be their property according to the original intention and plan. That the vessel and cargo accordingly sailed from St. Thomas's in the month of November 1799, and arrived at Aux Cayes in the island of Hispaniola, on or about the 1st of December following, and were there placed under the direction of the said Edward Hall by the plaintiff, Williams. That the cargo was immediately sold at Aux Cayes by Hall, for account of the said owners, and a new cargo purchased with the proceeds thereof, which new cargo Hall, in the same month of December, sent from Aux Cayes in the schooner to the island of Curracoa, for account of the said owners, from whence the schooner returned to Aux Cayes on or about the 1st of April 1800. That Hall, still acting for the [**9] owners under the authority of the plaintiff Williams, did then purchase a new cargo of coffee at Aux Cayes, for and on account of the said owners, and put it on board of the schooner; and on or about the 20th day of the same month, dispatched the schooner and cargo from Aux Cayes back to St. Thomas's, consigned to Patrick Wood, of the house of M'Intosh and Wood, as his own property apparently, but in fact for the plaintiffs, or in case of his absence, to a certain John Imlay, then the attorney in fact and agent of the said Wood, to be disposed of for and on

account of the plaintiffs. That the said vessel, and the last mentioned cargo, arrived in St. Thomas's in the month of May 1800, and, Wood being then absent, were taken into possession and sold by Imlay as his attorney in fact, who in the month of August in the same year paid to the defendant the nett proceeds of the said sales as a partner of said Wood, for and on account of the plaintiffs, as stated in the account first herein before mentioned. He also gave in evidence, that at the time when the said schooner Speculation was dispatched from Baltimore to the island of Saint Thomas's, with the views and objects aforesaid, and during [**10] the several voyages of the said schooner as aforesaid, the plaintiffs were citizens of the United States, and residents therein. The defendant then prayed the direction of the court to the jury, that if they believed the said facts, then the voyage from Baltimore to St. Thomas's, from St. Thomas's to Aux Cayes, and from Aux Cayes back to St. Thomas's, were illegal, and that the plaintiffs could not therefore recover in this action. This direction the court gave. The plaintiffs excepted; and the verdict and judgment being against them, they appealed to this court.

DISPOSITION: JUDGMENT AFFIRMED.

CORE TERMS: cargo, vessel, voyage, consigned, arrived, coffee, dispatched, belonged, indebted, shipment, insisted, partner, shipped, whence, sailed, colors

HEADNOTES

D and W had all account rendered to them as the owners of a vessel, by M and N. The vessel and her cargo, mentioned in the account belonged to D and W, who were partners in that transaction only. D was the agent in purchasing the vessel and cargo, and in the transactions relating to the original voyage, and as such consigned the vessel and cargo to M and W at *St. Thomas's*, from whence she was to have been sent to W at *Jacquemel*, to be under his directions. The vessel was prevented from arriving at *Jacquemel*, and got into *Aux Cayes*, when E, acting for W, loaded her with a cargo of coffee and sent her to *St. Thomas's* consigned to N, which cargo is that mentioned in the account; and it was known to M and N that both vessel and cargo belonged jointly and equally to D and W. Evidence was offered by M in an action brought against him by D and W, that before the account was rendered, D was indebted to M and N in \$ 5000, as stated in the account, and in consideration thereof did verbally direct M and N to retain in their

hands, out of the proceeds of the vessel and cargo, in discharge of the said debt, the sum of \$ 5000 as charged in the account as retained by them; and to show that when the direction was given to M and N by D, W was indebted to D in a sum larger than the interest of W, in the \$ 5000, M offered in evidence certain accounts between D and W signed by D--*Baltimore* county court refused to permit the evidence or accounts offered by M to go to the jury.

M gave in evidence by E, that he E, by authority from W, on behalf of himself and D, purchased at *Aux Cayes* the cargo of coffee mentioned in the first above mentioned account, and shipped it for their account and risk, the cost and charges of which shipment and cargo, he charged to them in an account which he transmitted to W in 1800 soon after the shipment was made; and the first mentioned account was rendered to E by M in 1802, a copy of which he sent to W soon afterwards. That W, both before and after the rendition of the account to E, always alleged against the account which E rendered against D and W, that the voyage from *Aux Cayes* to *St. Thomas's* was and ought to be considered as on account of E; but E insisted on his right to recover from D and W, and brought suit against them, and recovered judgment. That M had not been in this state since 1800, until just before the time he was sued in this action. Before the account was rendered by M, W inquired of E if he had ever brought M to a settlement as to the business of the vessel--*Baltimore* county court refused to direct the jury that from this evidence they might find that W assented to the application made by M of the \$ 5000 to the payment of the debt due to M from D.

M then gave in evidence, that after the account of E against D and W, charging them with the costs of the cargo shipped to *St. Thomas's* was rendered by him to W, W did, on the part of the owners, object to the said charge, and refused to consider or accept the cargo as the property of D and W, and insisted that it was the property of E, and refused to pay E for it, and continued so to refuse until after a recovery against D and W by E. That D authorized and permitted M to apply the \$ 5000 to the payment of the debt due from D to M but this direction was without the authority of W. *Baltimore* county court refused to direct the jury, that if they believed all the facts as given in evidence by both parties, that then the conduct and refusal of W operated in law to preclude D and W from recovering.

A vessel with a cargo of flour on board belonging to D and W, citizens of the *U S.* sailed from *Baltimore* to *St. Thomas* in the *West Indies* in the month of October 1799, with a view and for the purpose of there assuming *Danish* colors, and a *Danish* character, and under them of proceeding on a trading voyage for the benefit and account of D and W. She arrived there in November 1799, and was there put under *Danish* colors as the property of J V, a *Danish* subject, and dispatched to *Jacmel* by directions of D and W, she still continuing to be their property. In November 1799, she sailed from *St. Thomas's* and arrived at *Aux Cayes* in the island of *Hispaniola*, about the 1st of December following. The cargo was then sold by E H, the agent of D and W, and a new cargo purchased with the proceeds thereof, which new cargo E H in the same month of December sent from *Aux Cayes* in the same vessel to *Curracoa* for account of D and W, from whence the vessel returned to *Aux Cayes* about the 1st of April 1800. E H, still acting for D and W, then purchased a new cargo of coffee at *Aux Cayes* for D and W, and put it on board the same vessel, and about the 20th of April 1800, dispatched the vessel and cargo from *Aux Cayes* back to *St. Thomas's*, consigned to N of the house of M and N, as his own property apparently, but in fact for D and W. The vessel and cargo arrived at *St. Thomas's* in May 1800, and were sold in August 1800, and the proceeds of sale paid to M as the partner of N for and on account of D and W. For the proceeds so paid to M an action of *assumpsit* was brought against him by D and W -- *Held*, that the voyages from *Baltimore* to *St. Thomas's*, from *St. Thomas* to *Aux Cayes*, and from *Aux Cayes* back to *St. Thomas's* were illegal, being contrary to the acts of congress interdicting commerce with any port or place within the territory of the *French* republic, or the dependencies thereof, or with any place in the *West Indies*, or elsewhere under the acknowledged government of *France*; and that D and W could not recover

COUNSEL: Martin, Winder and Mercer, for the Appellants. The defence set up by the defendant in the court below was, that the voyages were illegal, and that although the amount in dispute was received by him as the agent of the plaintiffs, yet that he had a right to retain it, because the plaintiffs could not recover the proceeds of an illegal transaction. They contended--1. That the voyage, under which the proceeds arose, was not an illegal one under the acts of congress then in force. 2. That the money was received by the defendant at the island of *St. Thomas*, and that as he could not have objected there [**11] to the paying it over, he could not

object here. 3. That the money was not received by the defendant in execution of the contract, as with that he had nothing to do, he being no party to it.

On the first point. The act of congress of the 13th of June 1798, ch. 70, interdicted commerce with "any port or place within the territory of the *French* republic, or the dependencies thereof, or with any place in the *West Indies*, or elsewhere, under the acknowledged government of *France*." This act was to continue in force until the end of the next session of congress, which terminated on the 3d of March 1799. By the act of the 9th of February 1799. ch. 108, there was a similar interdiction after the 3d of March 1799. This act was to continue in force until the 3d of March 1800, when it expired. By the act of the 27th of February 1800, ch. 164, (10.) "all commercial intercourse between any person or persons resident within the United States, or under their protection, and any person or persons resident within the territories of the *French* republic, or any of the dependencies thereof, shall be, and from and after the second day of March next is hereby prohibited and further suspended," &c. [**12] The seventh section declares, "that the whole of the island of *Hispaniola* shall, for the purposes of this act, be considered as a dependency of the *French* republic." This act was to continue in force until the 3d of March 1801, "provided, however, the expiration thereof shall not prevent or defeat any seizure, or prosecution for a forfeiture, incurred under this act, and during the continuance thereof." The question arises under the act of 1799, which interdicted the trading to a place acknowledging the government of *France*. The island of *Hispaniola*, did not acknowledge itself to be under the government of *France*, and there is no proof that it was. It is not therefore embraced by the act of 1799. De facto the island was independent, of course the people denied the jurisdiction of *France*. The island having been named and included by the act of 1800 for the purposes of that act, shows that it was not embraced by the act of 1799. If any one of the voyages was legal, the judgment must be reversed.

On the second point. The money was received by the defendant at *St. Thomas*, and came within the laws of that island, and if he was bound to pay the money to the plaintiffs there, he is bound [**13] to pay it to them here. If he had been sued there, he could not have defended himself upon the ground that the money received was the proceeds of an illegal traffic interdicted by the *U. S.* The law of the place where the obligation or cause of action

arises, is the law that is to govern. *Desobry vs. De Laistre*, 2 Harr. & Johns. 191. *Owings & Cheston vs. Nicholson & Williams*, (ante 66.) *Alves vs. Hodgson*, 7 T. R. 241. *Phelps vs. Kent*, 4 Day's Rep. 96.

On the third point. If the voyage was illegal, yet the defendant cannot take advantage of it. He received the money as an agent, and he is bound to pay it over. He was not a citizen of the U. S. and could not be affected by the transaction, if it was illegal. They cited *Cotton vs. Thurland*, 5 T. R. 405. *Jaques vs. Golightly*, 2 W Blk. Rep. 1073. 2 Com. on Cont. 112, 123. *Tenant vs. Elliott*, 1 Bos. & Pull. 3. *Farmer vs. Russell*, Ibid 296. *Faikney vs. Reynous*, 4 Burr. 2069. *Petrie vs. Hannay*, 3 T. R. 418. *Whittingham vs. Thornborough*, Prec. in Chan. 20. *Barjeau vs. Walmsey*, 2 Stra 1249. *Lacausade vs. White*, 7 T. R. 531. *Wilkinson vs. Kitchin*, 1 Ld. Raym. 89; and *Alcinbrook vs. Hall*, 2 Wils. 309.

Harper, for the Appellee. The legal [**14] principles relied upon for the appellants will not be contested; their application to this case however is denied. The laws might always be violated by the intervention of an agent, if the doctrine contended for on the other side was to prevail. The act of Congress of 1799, was further to suspend, &c. and it interdicted the trade 1. With old France. 2. Her colonies; and 3. Places conquered or occupied by her, &c. 1. Any port or place within the territory of the French republic. 2. Or, of the dependencies thereof. 3. Or, any place in the West Indies. The territory of France might include dependencies and places conquered by the French arms, and remaining under the government of France. 1. The only question is, whether St. Domingo in 1799 came within either of the above descriptions? Was St. Domingo then a dependency of France? This cannot be denied. Our courts are bound to take notice of the political state of foreign countries. To do so they must resort, where the fact is doubtful, to

what our government consider to be the particular situation of any country. As to the people of St. Domingo attempting to become independent, it is not to be noticed by our government or our courts, as [**15] that island has never been acknowledged to be independent by France. If our government were to acknowledge the independence of St. Domingo, it would be involving the country in a dispute with France. The public acts of governments are to be taken notice of by courts. If there is a treaty between Great Britain and France, and one of them cedes to the other an island, &c. then our courts are bound to notice such treaty, because our government takes notice of it. But where there is a contest between the mother country and its colony, our government stands neuter, and considers the colony as under the government of the mother country. 2. There is a great distinction between the appellee and the agents and stake-holders in the several cases cited by the counsel for the appellants. Here the appellee was the agent of the parties, and was apprized of the illegal voyage, and he was privy to the illegal transaction, aiding and assisting in it; and as such agent, and with such knowledge, the money now demanded of him came into his hands. He cited 2 Com. on Cont. 109; and *Steers vs. Lashley*, 6 T. R. 61.

JUDGES: The cause was argued on the last bill of exceptions, before BUCHANAN, EARLE, JOHNSON and [**16] MARTIN, J. BUCHANAN, J. dissented.

OPINION

[*240] THE COURT concurred with the court below in the opinion stated in the last bill of exceptions.

BUCHANAN, J. dissented.

JUDGMENT AFFIRMED.