Prince *v.* Bartlett. (*a*)

Priority of the United States.

In case of insolvency, the United States are not entitled to priority of payment, unless the insolvency be a legal and known insolvency, manifested by some notorious act of the debtor, pursuant to law.

Bartlett *v.* Prince, 9 Mass. 431, affirmed.

Error to the Supreme Judicial Court of Massachusetts, in an action of trover, in which was involved the construction of the acts of congress giving to the United States a right of priority in payment of the debts due by insolvent debtors. The case was submitted to the court, without argument, and is fully stated in the opinion which was delivered, as follows, by—

Duvall, J.—The material facts upon the record are these: On the 4th of June 1810, sundry goods, wares and merchandise, the property of Wellman & Ropes, were attached by the deputy of Bailey Bartlett, sheriff of the county of Essex, state of Massachusetts, by virtue of certain writs of attachment sued out by several creditors of Wellman & Ropes. On the 18th day of September 1810, two several executions, issued on judgments recovered by the United States against Wellman & Ropes, at the September term 1810, of the district court, held at Salem, on their joint and several bond for duties at the custom-house. The actions in which these judgments in favor of the United States were rendered, were first commenced on *the — day of August 1810; but no attachment of property was made thereon: on the 19th day of September following, two suits of attachment, in favor of the United States, one against Wellman, and one against Ropes, issued in due form of law, directed to the marshal of the district, or his deputy, returnable to the district court to be held in December then next ensuing.

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On the 11th of October, in the same year, the goods, wares and merchandise before mentioned, being in custody of Bartlett, a sheriff of the county, and in a store hired by him for the purpose, Sprague, one of the appellants, and deputy of Prince, the marshal, after the refusal of the sheriff to open the store, forcibly broke into it and seized, attached and conveyed away the property which had been attached by the sheriff in the manner before stated, by virtue of the executions and writs of attachment in behalf of the United States, and disposed of it in satisfaction of the judgments.

Wellman & Ropes continued in business until the aforesaid 4th day of June, and then failed; and then were, and ever since have continued to be, debtors unable to pay their debts. Wellman has continued at his usual place of abode in Salem, ever since his failure, and has not for any whole day confined himself within his house, but has sometimes kept his person within doors, and had his doors fastened, and occasionally used other vigilance and caution to avoid any arrest of his person, for two or three weeks next following the said 4th day of June, but has never been arrested by any officer, or pursued for that purpose: Ropes has always continued at large in Salem, and has never confined or concealed himself from his creditors at any time.

(*a*) March 16th, 1814.

Prince v. Bartlett.

An action of trover was commenced by Bartlett, the sheriff, for the property by him attached as aforesaid, against Prince and Sprague, who had thus forcibly dispossessed him of it, in the court of common pleas in Essex county, where, upon trial, judgment was rendered in favor of the defendants. An appeal was prayed and granted to the supreme judicial court of the commonwealth of Massachusetts, and at November term 1811, the cause came on to be tried upon the facts before stated. Upon the plea of not guilty and issue, *the counsel for Prince and Sprague insisted, that the several matters so alleged and proved in evidence on their part, [*433 was sufficient to maintain the issue on their part, and to bar the plaintiff of his action. This was denied by the counsel for the plaintiff, and the judge who sat on the trial delivered his opinion to the jury, that the several matters produced and proved on the part of the defendants, were not, upon the whole case, sufficient to maintain the issue on the part of the defendants, and to bar the plaintiff of his action. With this direction, the jury found a verdict for the plaintiff, and $10,240.69 damages. To this opinion of the court, an exception was taken, and the proceedings removed by writ of error to this court.

The sole question for the consideration of this court is, whether the priority to which the United States are entitled by law, attaches in this case? This priority is given by the 5th section of the act of the 3d of March 1797, ch. 74. It is also given by the 65th section of the collection law, in the words following: "And in all cases of insolvency, or where any estate in the hands of the executors, administrators or assigns shall be insufficient to pay all the debts due from the deceased, the debt or debts due to the United States on any such bond or bonds shall be first satisfied." In the same section, the legislature explain their meaning of insolvency, by declaring that it shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his debts, shall have made a voluntary asssignment thereof, for the benefit of his creditors, or in which the estate and effects of an absconding, concealed or absent debtor, shall have been attached by process of law, as to cases in which an act of legal bankruptcy shall have been committed.

At present there is no existing bankrupt law in the United States; but in many of the states, provision is made by law for the relief of insolvent debtors. In the act of congress of the 4th of August 1790, the word insolvency only is used. In the acts lately passed on the same subject, the words insolvency and bankruptcy *are both adopted and appear to [*434 be used as synonymous terms.

It is admitted, that the property seized by the attachments and executions before stated, was insufficient to satisfy the several claims exhibited, and that Wellman & Ropes were unable to pay their debts, but it does not appear, that their property was attached, as the effects of absconding, concealed or absent debtors; nor does it appear, or is it even alleged, that they or either of them have made a voluntary assignment of their property for the benefit of their creditors; nor is it alleged, that either of them has committed an act of legal bankruptcy. It appears to be the true construction of the act, to confine it to the cases of insolvency specified by the legislature. Insolvency must be understood to mean a legal and known insolvency, manifested by some notorious act of the debtor, pursuant to law: not a

vague allegation, which, in adjusting conflicting claims of the United States and individuals, against debtors, it would be difficult to ascertain.

The property in question being in the possession of the sheriff, by virtue of legal process, before the issuing the writ on behalf of the United States, was bound to satisfy the debts for which it was taken ; and the rights of the individual creditors, thus acquired, could not be defeated by the process on the part of the United States, subsequently issued. The court is of opinion, that priority does not attach in this case, and that there is no error in the judgment of the supreme judicial court of the commonwealth of Massachusetts.

Judgment affirmed.

The St. Lawrence, Webb, Master.

Trade with the enemy.—Suppression of papers.

A vessel sailing to an enemy's country, after knowledge of the war, and taken, bringing from that country a cargo, consisting chiefly of enemy goods, is liable to confiscation as prize of war.

Suppression of papers, where it appears to have been intentional and fraudulent, and attended with other suspicious circumstances, is good cause for refusing further proof.

But where the suppression appears to be owing to accident or mistake, and no other suspicious circumstances appear in the case, further proof may be allowed.

The St. Lawrence, 1 Gallis. 467, affirmed.

This was an appeal from the sentence of the United States Circuit Court for the district of New Hampshire. *The material facts of the case were as follows : *435]

The ship St. Lawrence, Silas Webb, master, was captured, on the 20th of June 1813, by the private armed vessel America, and with her cargo, libelled as prize, in the district court of New Hampshire. On the proceedings which were had there, it appeared, that the St. Lawrence, owned by Robert Dickey, of New York, and Hugh Thompson, of Baltimore, arrived at Liverpool, from Sweden, in April 1813, with a cargo of iron and deals. In the month of May 1813, the agent of Dickey and Thompson entered into a contract for the sale of the St. Lawrence, with the house of Ogden, Richards & Selden, of Liverpool, the contract to be ratified or disaffirmed by Dickey and Thompson, and the bill of sale to be executed by them, in case of affirmance, to Andrew Ogden and James Heard, of New York, or either of them. On the 5th of May 1813, a license was granted by the privy council of Great Britain, to Thomas White, of London, and others, permitting them to export, direct to the United States, an enumerated cargo, in the St. Lawrence, provided she cleared out before the last day of that month. On the 30th of May 1813, she sailed from Liverpool for the United States, with the cargo specified in the license, Mr. Alexander McGregor and his family were passengers on board.

Upon the return of the monition in the district court, Andrew Ogden interposed a claim, in behalf of himself and McGregor, to the ship and part of the cargo. He also claimed another part of the cargo as his sole property. He likewise interposed a claim in favor of Selah Strong & Son ; of John Whitten ; of the firm of Howard, Phelps & Co. ; of Abraham and George Smedes ; of Peter and Ebenezer Irving & Co. ; of Henry Van Wart ; of Irving & Smith ; of Jabez Harrison ; of Hugh R. Toler ; and