

\*UNITED STATES v. 422 CASKS OF WINE; HAZARD & WILLIAMS,  
Claimants.

*Res adjudicata.—Practice and pleading in revenue causes.*

It is not the habit of this court, to consider points again open for discussion, which have been once deliberately decided, and have furnished the ground-work of the judgment already rendered in the same cause, in a former stage of its proceedings.<sup>1</sup> p. 549.

In suits *in rem*, and on the exchequer side of the district courts of the United States, the claimant is an actor, and is entitled to come before the court in that character only, in virtue of his proprietary interest in the thing in controversy: this alone gives him a *persona standi in judicio*. It is necessary, that he should establish his right to that character, as a preliminary to his admission as a party *ad litem*, capable of sustaining the litigation. p. 549.

If the claim be made through an agent, the agent must make oath as to his belief of the verity of the claim, and if necessary, produce proof of his authority, before he can be admitted to put in the claim. p. 549.

Allegations and pleadings to the merits are a waiver of the preliminary inquiry as to proprietary interest, and admission that the party is rightly in court, and capable of contesting the merits. p. 550.

If, after proceeding in a cause, the court finds the claimant has no property, or that it is in another, not represented, the court will retain the *res*, until the real owner shall appear, claim and receive it from the court. p. 550.

Upon a writ of error in an exchequer proceeding, which has been tried by a jury, the evidence given at the time of the trial, is not, in a strict sense, before this court. p. 550.

**ERROR** to the District Court of East Louisiana. This case was before this court, at February term 1823, and is reported in 8 Wheat. 391, under the name of *The Sarah*. The cause having been sent back, the libel was changed into an information, charging the seizure to have been made on land, according to the leave given by the decree of the court in that case.

The information charged the wine to have been, in reality, Malaga wine, falsely exported from New York under the name of Sherry, for the benefit of the drawback. To this information, a claim and answer was given and filed by Benjamin Story, as agent for Hazard & Williams, and on the oath of the said Story, claiming the wine as the property of the said Hazard & Williams, making no answer to the specific fact charged by the information, that the wine was Malaga wine, exported under the name of Sherry, for the benefit of drawback; but denying generally the allegations of the information, or that anything had been done to forfeit the wine, under the revenue laws of the United States, and claiming the restoration of the wine to Hazard & Williams. The record set forth the evidence on the \*ques-  
\*548] tion, whether the wines were Malaga or Sherry.

The verdict of the jury was for the claimants. The district-attorney moved for a new trial, which was overruled; on which he brought this writ of error, and made the following assignment of errors: 1. That on the 18th of December 1819, this case was tried by jury, and verdict and judgment rendered for the United States. 2. The proceedings under this libel were regular; as the amendment related to matter of form merely, and not of substance; and by the 17th section of the act of congress of 24th September 1789, the courts of the United States may establish all necessary rules for conducting the business of the court; and the 22d section of the same act provides, that "there shall be no reversal for error in ruling any plea in

<sup>1</sup> Wright v. Sill, 2 Black 544; Minnesota Mining Co. v. National Mining Co., 3 Wall. 332.

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abatement," &c. The proceedings in this case were in conformity with the rules of the court in which they were instituted. No answer and claim was filed and sworn to, by, or in the name and behalf of, Charles Hall, the real owner of the said 422 casks of wine, at the time of the seizure and forfeiture thereof to the United States.

*Wirt*, Attorney-General, on the part of the United States, submitted the case, on the errors assigned by the district-attorney.

*Ogden and Hall*, on the part of the claimants, made the following points: 1. That there is no error upon the record, for the causes assigned by the attorney for the United States; the same points having been already before this court, and after due consideration, conclusively settled, upon the first trial of this cause. (See *The Sarah*, 8 Wheat. 391.) 2. That there was no necessity for the said Charles Hall to file a claim and answer in his own name, since his title to said wine (if proved) accrued after the seizure thereof; and after a claim and answer had been duly filed by Hazard & Williams, the parties having the legal title to said property. 3. That the objection, "that no answer and claim hath been filed and sworn to by or in the name and behalf of Charles Hall, the real owner of said 422 casks of wine," were it valid, cannot now prevail; because the same should have been taken, when the claim was filed, or, at all events, at the time of the trial of the cause in the court below. 4. That from the whole record it appears, that judgment ought not to be for the United States of condemnation of said wine; but ought, of right, to be for the claimants. 5. "That from the whole of the evidence apparent upon the record, and taken for the purpose of review, &c.," it is manifest, that restitution of said wine ought to be decreed to the claimants.

\**STORY*, Justice, delivered the opinion of the court.—This is the same cause which came before this court at February term 1823, and [\*549 is reported in 8 Wheat. 391. The cause having been remanded to the district court of Louisiana for further proceedings, the libel or information was there amended, so as to become, technically, an exchequer information of seizure; and the parties being at issue upon the question of forfeiture, the jury returned a verdict for the claimants, upon which judgment was rendered in their favor. Upon the writ of error now brought upon this last judgment, two grounds for reversal have been asserted, in the assignment of errors spread upon the record, and the attorney-general has now submitted them, after a brief exposition, to the consideration of the court.

The first is, in substance, the same question which was decided by this court, upon the former appeal, and is presented in the shape of a re-argument, by the district-attorney. Upon this, it is unnecessary to say more, than that we adhere to the opinion formerly expressed, and can perceive no reason for changing it. It is not the habit of this court to consider points again open for discussion, which have been once deliberately decided, and have furnished the ground-work of the judgment already rendered in the same cause, in a former stage of its presentation here.

The second ground is, that Messrs. Hazard & Williams, in whose behalf the claim in this case was interposed, are not the real owners of the wine under seizure, but the same was owned by one Charles Hall; so that the

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claimants are not entitled to any judgment of restitution. The objection is founded upon a mistaken view of the time, nature and order of the proceedings proper in suits *in rem*, whether arising on the admiralty or exchequer side of the court. In such suits, the claimant is an actor, and is entitled to come before the court in that character only, in virtue of his proprietary interest in the thing in controversy; this alone gives him *persona standi in judicio*. It is necessary that he should establish his right to that character, as a preliminary to his admission as a party *ad litem*, capable of sustaining the litigation. He is, therefore, in the regular and proper course of practice, required, in the first instance, to put in his claim, upon oath, averring in positive terms his proprietary interest; if he refuses so to do, it is a sufficient reason for a rejection of his claim. If the claim be made through the intervention of an agent, the agent is, in like manner, required to make oath to his belief of the verity of the claim; and if necessary, he may also \*550] be required to produce and prove his authority, before he \*can be admitted to put in the claim. If this be not done, it furnishes matter of exception, and may be insisted upon by the adverse party, for the dismissal of the claim. If the claim be admitted, upon his preliminary proof, it is still open to contestation, and by a suitable exceptive allegation in the admiralty, or by a correspondent plea, in the nature of a plea in abatement to the person of the claimant, in the exchequer, the facts of proprietary interest, sufficient to support the claim, may be put in contestation, and formally decided. It is in this stage of the proceedings, and in this only, that the question of the claimant's right is generally open for discussion. If the claim is admitted, without objection, and allegations or pleadings to the merits are subsequently put in; it is a waiver of the preliminary inquiry, and an admission that the party is rightly in court, and capable of contesting the merits. If, indeed, it should afterwards appear, upon the trial, even after the merits have been disposed of in favor of the claimants, that the claimant had, in reality, no title to the property; but that the same was the property of a third person, who was not represented by the claimant, or had an adverse interest, or whose rights had been defrauded, it might still be the duty of the court to retain the property in its own custody, until the true owner might have an opportunity to interpose a claim, and receive it from the court. But such cases can rarely occur, and are applications to the discretion of the court, for the furtherance of justice; and in no shape, matters which the original *promovent* could have a right to require at its hands.

From this review of the practice, as to claims in proceedings *in rem*, it is obvious, that the objection now relied on, however apparent it might be from the evidence disclosed upon the record, could not be insisted on as matter of error. In a strict sense, however, this being a writ of error upon an exchequer information, tried by a jury, the evidence given at the trial is not properly before us; and as a common-law proceeding, the affidavit of Mr. Henner constitutes no part of the record. But even if that affidavit were admissible, and the objection were now open, it is by no means clear, that it would be available. The property was, by the consent of Hall, sold and conveyed to Messrs. Hazard & Williams, in trust for himself. If that conveyance was fraudulent as to creditors, it was not absolutely void, and only voidable by them. And at all events, we cannot but see, that they had

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full authority to interpose this claim, by the consent of the real owner; and the irregularity, if any, prejudices no adverse right, and interferes with no rule of justice.

The judgment of the district court must, therefore, be affirmed. But a certificate of probable cause of seizure will be \*granted, as such probable cause is not denied to exist, and indeed, is apparent from [\*551 the verdict of the first jury.

THIS cause came on, &c.: On consideration whereof, it is considered and adjudged by this court, that there is no error in the judgment of the said district court of Louisiana in the premises, and that the same be and hereby is affirmed: And it is further ordered and adjudged, that there was a reasonable cause of seizure of the wines and premises set forth in the information, and that a certificate thereof be entered of record accordingly; and that the cause be remanded, with directions to the district court of Louisiana to make restitution to the claimants, and otherwise proceed in the premises, according to law.

\*ROBERT STEELE'S Lessee, Plaintiff in error, v. JESSE SPENCER and [\*552 others, Defendants in error.

*Recording of deeds.—Erasures and interlineations.*

A decree of the supreme court of Ohio, ordered that the patentee of a certain tract of land, should, within six months, make a deed, &c., with covenants of warranty, conveying a portion of the land held under a patent, to the complainants in that suit, and on the failure of A. to make the said deed, &c., "that then and in that case, the complainant shall hold, possess and enjoy the said portion of land, in as full and ample a manner, as if the same had been conveyed to him:" The decree of the supreme court of Ohio, by which a conveyance of lands is directed to be made, the decree being according to the laws of Ohio, vested in those to whom the deed was ordered to be made, such a legal title to the land to have been conveyed by the deed as would have been vested by a deed of equal date; and the registry act of Ohio applies as well to a title under such a decree, as it would do, if the party held under a *bonâ fide* deed of the same date with the patent of the land; and the decree gives a legal title as ample as a deed. p. 558.

The registry act of Ohio directs that all deeds made within the state shall be recorded within six months from the time of the actual execution thereof, and declares, that if any such deed shall not be recorded in the county where the land lies, within the limits allowed by the law, "the same shall be deemed fraudulent and void, against any subsequent purchaser for a valuable consideration, without notice of such deed." p. 559.

In the construction of the registry act of Ohio, the term "purchasers," is usually taken in its limited legal sense; it means, a complete purchaser; or, in other words, a purchaser clothed with a legal title. p. 559.

It is not necessary, that a deed made to the subsequent *bonâ fide* purchaser, without notice, shall be recorded, to give it operation against a prior unrecorded deed, as by the provisions of the registry acts, the prior deed is declared, in itself, absolutely void, as against such purchaser. p. 560.

Whether erasures and alterations in a deed are material, or not, is a question of law, to be decided by the court.<sup>1</sup> p. 590.

The construction of words belongs to the court, and the materiality of an alteration in a deed, is a question of construction. p. 561.

ERROR to the Circuit Court of Ohio. This was a writ of error to the circuit court of the United States for the district of Ohio, to reverse the

<sup>1</sup> See Burgwin v. Bishop, 91 Penn. St. 336.