CASES DETERMINED

IN THE

SUPREME COURT OF THE UNITED STATES.

PROPERTY OF UNITED STATES SENATE COMMITTEE COPY

FEBRUARY TERM, 1794.

On the meeting of the Court, a commission was read, dated the 28th of January 1794, appointing William Bradford, Esquire, Attorney-General of the United States.(*a*)

State of Georgia *v.* Brailsford *et. al.*

Confiscation.— Law and fact.

The act of the state of Georgia, of the 4th May 1782, did not confiscate, but only sequestered debts owing to British subjects; and the right to recover them revived at the peace.[1]

It is the province of the court to decide the law, and of the jury to decide the facts.

The jury, nevertheless, have a right to take upon themselves to determine both the law and the fact.

This cause was now tried, by a special jury, upon an amicable issue, to ascertain whether the debt due from Spalding, and the right of action to recover it, belonged to the state of Georgia, or to the original creditors, under all the circumstances which are set forth in the pleadings and arguments on the equity side of the court? See 2 Dall. 403, 415.

For the plaintiff, *Ingersoll* and *Dallas* proposed two objects for inquiry: 1. Was the debt due from Spalding, at any time, the property of the state? 2. Has the title of the state ceased or been removed, and the right of action revested in the defendants?

1. On the first point, they contended, that Georgia, as a sovereign state,

(*a*) Mr. Bradford was appointed in the room of Edmund Randolph, who had accepted the office of secretary of state.

[1] A statute confiscating the estate of a mortgagor, did not destroy the security of the mortgagee, an alien enemy, whose debt was only sequestrated during the war. Higginson *v.* Mein, 4 Cr. 415. In that case, it was said by Chief Justice Marshall, that the decisions of the supreme court had been uniform, that the acts of the states, confiscating debts, were repealed by the treaty of peace, and therefore, it had been held, that the treaty enabled British creditors to recover debts previously owing to them by American citizens, notwithstanding a payment into a state treasury, under a state law of sequestration. Ware *v.* Hylton, *post*, p. 199; Hamilton *v.* Eaton, Mart. (N. C.) 1; s. c. 1 Hughes 249.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

had power to transfer the debt in question, from the original creditor, an alien enemy, to herself, notwithstanding some of the debtors were citizens of another state; that by her confiscation law, she had declared the intention to make the transfer; and that, without an inquest of office, her intention had
*2] been carried into effect, in due form, and according to *law, as well in relation to her own citizens, as to the parties who were citizens of South Carolina. In support of these several propositions the following authorities were cited: 1 H. Bl. 149; Vatt. lib. 3, c. 77; Lee on Capt.; Bynk. lib. 1, c. 7; Vatt. lib. 3, c. 18, § 295; Jenk. 121; Sir T. Park. 121; Plowd. 243, 324; 1 H. Bl. 413; 2 Bl. Com. 405, 409; 2 Wood. 130; 4 Bl. Com. 386; 1 Hale P. C. 413; 3 Inst. 55; 1 Hawk. 68; 3 Bl. Com. 259; 3 T. R. 731, 2 3, 4; 1 Woodes. 146; Cro. Car. 460; 16 Vin Abr. 85–6; 3 Bl. Com. 260; Park. 267; 1 P. Wms. 307; 1 Dall. 393; Hind. Ch. 129; 1 Vern. 58.

2. On the second point, it was urged, that although the word "sequestration" was used in the Georgia law, yet, that the law directed the debt to be collected, in the same manner as debts confiscated, and to be put into the treasury, for the use of the state, until it should be otherwise appropriated; and that the state had never made any other appropriation; but, on the first opportunity, claimed it as a forfeiture. The election, therefore, to consider it as a confiscation, was reserved by the state to herself; and her subsequent conduct makes the reservation absolute. The exception of debts in the South Carolina law, cannot govern the case as to Powell & Hopton; for that law is only referred to, for the manner and form, not for the subjects of confiscation. It only remains, therefore, to inquire, whether, independent of Georgia, the operation and existence of her law can be, and has been defeated and annulled. The peace merely does not affect the right of the state; for the condition of things at the conclusion of the war is legitimate; and all things not mentioned in the treaty, are to remain as at the conclusion of it. The treaty of 1783 does not affect the right of the state; for though it provides, generally, in the 4th article, that creditors, on either side, shall meet with no lawful impediment, in recovering their debts, this ought to be understood merely as a provision that the war, abstractedly considered, shall make no difference in the remedy, for the recovery of subsisting debts; that the remedy shall not be perplexed by instalment laws, pine-barren laws, bull laws, paper-money laws, &c.; but it does not decide what are subsisting debts, which can only, indeed, be decided on the general principle of the law of nations. Laws of sequestration and confiscation are not, however, the object of the 4th article of the treaty of peace; but of a subsequent article, in which congress only promise (all, indeed, that they could do) to recommend to the states, revision and restitution. Debts discharged by law, where they originated, are everywhere discharged. Such is not only the doctrine of Georgia, but of the British statesmen and judges, wherever the question has arisen. The federal constitution does
*3] not affect the right of the state: for though *it gives effect to the treaty of peace, it furnishes no rule for construing the meaning of the parties to that instrument. In relation to these arguments, the following authorities were cited: State papers, *Jefferson* to *Hammond*; Hinde Ch. 127; 1 Bro. Ch. 376; 3 Bac. Abr. 310; *Caermarthen's Memorial*, American Museum, May 1787; 1 Hen. Bl. 123, 135; 3 T. R. 732; 1 H. Bl. 149; 2 Bro. Ch. 11; 1 H. Bl. 146.

For the defendants, *Bradford* (the attorney-general), *E. Tilghman* and *Lewis* made the following points: 1st. That the debts due to Powell & Hopton, had not been confiscated by the law of South Carolina, and therefore, were not confiscated by the words of reference in the law of Georgia; nor had Georgia a right to confiscate the property of the citizens of other states. 2d. That even if the law of Georgia had confiscated Brailsford's interest in the debt, the right to recover the two-thirds belonging to Powell & Hopton was unimpaired. 3d. That the debt, as it respects Brailsford himself, is not confiscated, but sequestered; and that the sequestration had not been enforced by any inquest of office, seizure or other act tantamount to an office or seizure. 4th. That the peace alone, without any posittve compact, restored the right of action to the original creditors. 5th. That without recourse to the general principle of the law of nations, the treaty expressly revives the right of action, by removing all legal impediments to the recovery of *bonâ fide* debts, and the treaty is the supreme law of the land, by virtue of the federal constitution. In support of these propositions, the following authorities were cited: 3 Bac. 203; 2 Co. 67; 1 P. Wms. 307; Curs. Canc. 89; 1 Dom. Civ. L. 138, 147; Magna Carta; Sir T. Park. 267; 3 T. R. 734; Vatt. lib. 4, c. 1, § 8; Ibid. c. 2, § 20, 22; Burn. Ecc. L. 157; Carth. 148; Grot. lib. 3, c. 20, § 16, p. 700; 1 Dall. 233; 1 H. Bl. 123, 136; 2 Bro. Ch. 11; 1 Bl. Com. 409, 240; Sir T. Raym.; Saund. 45; Plowd. 259; 3 Inst. 55; 1 Hawk. 68; State papers; Bynk. lib. 1, c. 7; 1 Vern. 58; Circular letter of Congress.

The argument having continued for four days, the Chief Justice delivered the following charge, on the 7th of February.

Jay, Chief Justice.—This cause has been regarded as of great importance; and doubtless it is so. It has accordingly been treated by the counsel with great learning, diligence and ability; and on your part, it has been heard with particular attention. It is, therefore, unnecessary for me to follow the investigation over the extensive field into which it has been carried: you are now, if ever you can be, completely possessed of the merits of the cause.

*The facts comprehended in the case are agreed; the only point that remains, is to settle what is the law of the land arising from [*4 those facts; and on that point, it is proper, that the opinion of the court should be given. It is fortunate, on the present, as it must be on every occasion, to find the opinion of the court unanimous: we entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver.

We are then, gentlemen, of opinion, that the debts due to Hopton & Powell (who were citizens of South Carolina) were not confiscated by the statute of South Carolina; the same being therein expressly excepted: that those debts were not confiscated by the statute of Georgia, for that statute enacts, with respect to Powell & Hopton, precisely the like, and no other, degree and extent of confiscation and forfeiture, with that of South Carolina. Wherefore, it cannot now be necessary to decide, how far one state may, of right, legislate relative to the personal rights of citizens of another state, not residing within their jurisdiction.

We are also of opinion, that the debts due to Brailsford, a British

subject, residing in Great Britain, were by the statute of Georgia subjected not to confiscation, but only to sequestration; and therefore, that his right, to recover them, revived at the peace, both by the law of nations and the treaty of peace.

The question of forfeiture, in the case of joint obligees, being at present immaterial, need not now be decided.

It may not be amiss, here, gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court, to decide.[1] But it must be observed, that by the same law, which recognises this reasonable distribution of jurisdiction, you have, nevertheless, a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.[2] On this, and on every other occasion, however, we have no doubt, you will pay that respect which is due to the opinion of the court: for as, on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still, both objects are lawfully within your power of decision.

Some stress has been laid on a consideration of the different situations of the parties to the cause. The State of Georgia sues three private persons. But what is it to justice, how many or how few, how high or how low, how rich or how poor, the contending parties may chance to be? Justice is indiscriminately due to all, without regard to numbers, wealth or rank.

*5] Because, to the State of Georgia, composed of many *thousands of people, the litigated sum cannot be of great moment, you will not for this reason be justified in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favorable verdict, if in justice they are entitled to it.

Go then, gentlemen, from the bar, without any impression of favor or prejudice for the one party or the other; weigh well the merits of the case, and do on this, as you ought to do on every occasion, equal and impartial justice.

The jury having been absent some time, returned to the bar, and proposed the following questions to the court.

---

[1] Roberts *v.* Cooper, 20 How. 467; United States *v.* Battiste, 2 Sumn. 240; United States *v.* Morris, 1 Curt. 23; United States *v.* Wilson, Bald. 79; United States *v.* Riley, 5 Bl. C. C. 204; Stettinius *v.* United States, 5 Cr. C. C. 573.

[2] United States *v.* Poillon, 1 Car. L. Rep. 60; United States *v.* Smith, Trials of Smith and Ogden, 236–7; United States *v.* Lynch, 2 N. Y. Leg. Obs. 51; United States *v.* Wilson, Bald. 79; United States *v.* Hodges, 3 Wheeler C. C. 477; Stettinius *v.* United States, 5 Cr. C. C. 573. In a criminal case, the jury have not only the power, but the *right*, to determine the law as well as the facts, by a verdict of "not guilty." Kane *v.* Commonwealth, 89 Penn. St. 522. It is, nevertheless, proper for the judge to instruct them as to the law, to inform them that their only safe course is to take the law from the court, and to warn them of the consequences of disregarding it. Nicholson *v.* Commonwealth, 91 Penn. St. 390. And see United States *v.* Greathouse, 2 Abb. U. S. 364; United States *v.* O'Sullivan, 3 Whart. Cr. L. § 2802 n. The only way in which the jury can decide the law of a case is, by finding a general verdict. United States *v.* Watkins, 3 Cr. C. C. 443; United States *v.* Stockwell, 4 Id. 671; Stettinius *v.* United States, 5 Id. 573.

The Betsey.

1. Did the act of the State of Georgia completely vest the debts of Brailsford, Powell & Hopton, in the state, at the time of passing the same?

2. If so, did the treaty of peace, or any other matter, revive the right of the defendants to the debt in controversy?

In answer to these questions the CHIEF JUSTICE stated, that it was intended, in the general charge of the court, to comprise their sentiments upon the points now suggested; but as the jury entertained a doubt, the inquiry was perfectly right. On the 1st question, he said, it was the unanimous opinion of the judges, that the act of the state of Georgia did not vest the debts of Brailsford, Powell & Hopton, in the state, at the time of passing it. On the 2d question, he said, that no sequestration divests the property in the thing sequestered; and consequently, Brailsford, at the peace, and indeed, throughout the war, was the real owner of the debt. That it is true, the state of Georgia interposed with her legislative authority, to prevent Brailsford's recovering the debt, while the war continued, but that the mere restoration of peace, as well as the very terms of the treaty, revived the right of action to recover the debt, the property of which had never, in fact or law, been taken from the defendants; and that if it were otherwise, the sequestration would certainly remain a lawful impediment to the recovering of a *bonâ fide* debt, due to a British creditor, in direct opposition to the 4th article of the treaty.

After this explanation, the jury, without going again from the bar, returned a—

Verdict for the defendants.

---

*The BETSEY. [*6

GLASS *et al.*, appellants, *v.* The Sloop BETSEY *et al.*

Consular jurisdiction.—Admiralty.

The admiralty jurisdiction exercised by the consuls of France, in the United States, was not of right; such jurisdiction could only be exercised by virtue of a treaty.

The district courts possess all the powers of courts of admiralty, both instance and prize; and may award restitution of property claimed as prize of war, by a foreign captor.

CAPTAIN Pierre Arcade Johannene, the commander of a French privateer called the Citizen Genet, having captured as prize, on the high seas, the sloop Betsey, sent the vessel into Baltimore; but upon her arrival there, the owners of the sloop and her cargo filed a libel in the district court of Maryland, claiming restitution, because the vessel belonged to subjects of the king of Sweden, a neutral power, and the cargo was owned jointly by Swedes and Americans. The captor filed a plea to the jurisdiction of the court, which, after argument, was allowed; the circuit court affirmed the decree; and thereupon, the present appeal was instituted.

The general question was—whether, under the circumstances of this case, an American court of admiralty had jurisdiction to entertain the complaint or libel of the owners, and to decree restitution of the property? It was argued by *E. Tilghman* and *Lewis*, for the appellants; and by *Winchester* (of Maryland) and *Du Ponceau*, for the appellee.