

Montalet v. Murray.

action afterwards brought; and the judge who doubts respecting it, is of opinion, that, in this case, counter-security having been refused by the underwriters, the question of freight is yet suspended. It is to be certified to the circuit court of Pennsylvania, that in the case stated for the opinion of this court, the plaintiff is entitled to recover for a total loss.

MONTALET v. MURRAY. (a)

*Jurisdiction.—Costs.*

When both parties are aliens, the courts of the United States have not jurisdiction.<sup>1</sup>

If it do not appear upon the record, that a suit might have been maintained in the courts of the United States, between the original parties to a promissory note, no suit can be maintained upon it, in those courts, by any subsequent holder.<sup>2</sup>

Costs are not given, upon reversal of judgment.

ERROR to the Circuit Court for the district of Georgia. The action was brought in the court below by Murray, a citizen of the state of New York, against Montalet, an alien, and citizen of the French republic, upon sundry promissory notes, made by the defendant, at St. Domingo, \*payable to the order of Monsieur Caradeaux de la Caye, whose residence, or citizenship, or national character, did not appear in the declaration. [\*47

It was suggested, that it did not appear by the record, that a suit could have been prosecuted in that court, to recover the contents of those notes, if no assignment had been made, and therefore, the court could not take cognisance of the present case, being prohibited by the act of congress, (1 U. S. Stat. 78, § 11.)

*P. B. Key*, for the defendant in error, stated, that it appeared in the plea, that the payee of the note was also an alien, and subject of France. *Turner v. Bank of North America*, 4 Dall. 8.

THE COURT was unanimously of opinion, that the courts of the United States have no jurisdiction of cases between aliens.

*Key* then suggested, that perhaps it did not sufficiently appear upon the record, that the original parties to the notes were aliens; But—

MARSHALL, Ch. J., said, that if it did not appear upon the record, that the character of the original parties would support the jurisdiction, that objection was equally fatal, under the uniform decisions of this court.

Judgment reversed, for want of jurisdiction, and with costs, under the authority of *Winchester v. Jackson* (3 Cr. 514).

(a) Present, MARSHALL, Chief Justice, WASHINGTON, JOHNSON and LIVINGSTON, Justices.

<sup>1</sup> *Hinckley v. Byrne*, 1 Deady 224.

<sup>2</sup> *Gibson v. Chew*, 16 Pet. 315; *Drumgoole v. Farmers' and Merchants' Bank*, 2 How. 241; *Coffee v. Planters' Bank*, 13 Id. 183. The jurisdiction is determined by the citizenship of the indorser, at the time of the commencement

of the suit. *Chamberlain v. Eckert*, 2 Biss. 126. The statute applies to non-negotiable, as well as negotiable paper. *Shuford v. Cain*, 1 Abb. U. S. 302. But not to a note made payable to bearer, though indorsed by the payee. *Varner v. West*, 1 Woods 493.

United States v. Willings.

But on the last day of the term, THE COURT gave the following general directions to the clerk. That in cases of reversal, costs do not go, of course, but in all cases of affirmance, they do. And, that when a judgment is reversed, for want of jurisdiction, it must be, without costs.

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\*UNITED STATES v. WILLINGS & FRANCIS.

*Shipping.—Registry.*

An American registered vessel, in part transferred by parol, while at sea, to an American citizen, and resold to her original owners, on her return into port, before her entry, does not, by that operation, lose her privileges as an American bottom, nor become subject to foreign duties. United States v. Willings, 1 W. C. C. 125 ; s. c. 4 Dall. 374, affirmed.

THIS was an action of debt, brought originally in the District Court of the United States for the district of Pennsylvania, for the penalty of a bond, dated November 16th, 1802, conditioned to pay to the collector of the customs, "the sum of \$7720.41, or the amount of the duties to be ascertained as due and arising on certain goods," &c., "entered by the above-bounden Willings & Francis, as imported in the ship Missouri, from Canton, as *per* entry, dated 16th November 1802."

The pleadings, which ended in a general demurrer to the surrejoinder, brought into view the question, whether the ship Missouri, at the time of her arrival and entry from Canton, was entitled to the privileges of a registered ship of the United States ; for if she was, the sum mentioned in the condition of the bond (which had been calculated as if she had been a foreign bottom) was too large by the sum of \$702.05.

The facts upon which this question arose, appeared, by the record, to be as follows : The ship Missouri, when she sailed from Philadelphia for Canton, was a duly registered ship of the United States, owned wholly by Willings & Francis, citizens of the United States. While at sea, and while the register of the ship was on board, in possession of the master, she was, in part, sold by Willings & Francis, in Philadelphia, to J. C. Koch and others, citizens of the United States, on the 12th of February 1801, but was not then registered anew, by her former name, nor was there an instrument in writing, in the nature of a bill of sale, reciting at length the certificate of registry. On the 15th of November 1802, after the arrival of the ship at Philadelphia, and before any report or entry, Koch and others, the vendees, made a parol resale of their part of the ship to Willings & Francis, whereby, the whole was revested in them. Afterwards, on the same 15th of

\*49] November (it being the day of her arrival), the register was delivered up, by the master of the ship, to the collector of the port of Philadelphia, and the vessel duly reported and entered ; and T. W. Francis, one of the part-owners, resident at that port, upon the entry of the ship, offered to make oath that the register contained the names of all the persons who were then owners of the ship ; that since the granting of the register, the ship had been in part sold, by Willings & Francis, to Koch and others, who had resold the same to Willings & Francis, and that no foreigner had any share or interest in the ship. On the 22d of December 1802, Willings & Francis made a bill of sale to Koch and others, reciting the register at length, in due form of law, whereupon, the ship was registered anew by her