CARROLL v. UNITED STATES.

In a claim by an administrator of a deceased person, against the United States, under the Abandoned and Captured Property Act of March 12th, 1863, which makes proof that the owner never gave aid or comfort to the rebellion, a condition precedent to recovery, it is no bar that the *decedent* gave such aid or comfort, the property having been taken after the decedent's death and from the administrator, and not from *him*. The owner, within the sense of the statute, was the administratrix.

APPEAL from the Court of Claims; the case being thus:

The act of March 12th, 1863, "to provide for the collection of abandoned property in insurrectionary districts within the United States," enacts that:

"Any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claims to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, *and that he has never given any aid or comfort to the present rebellion*, receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

Under this act, Mrs. Lucy Carroll, administratrix of her husband, George Carroll, presented a claim for the proceeds in the treasury of certain cotton. The husband, as appeared from the findings of the court, resided in Arkansas during the first years of the late civil war, and had raised and was owner of certain cotton. He died in September, 1863. During his life he had given aid to the rebellion.

The cotton, upon his death, came into the possession of the claimant as administratrix, and was in her possession at the time it was captured by the army of the United States. She offered evidence to establish her own loyalty, and that she never gave aid or comfort to the rebellion, which seems to have been rejected by the court. The estate was insolvent;

the creditors numerous, and there was no proof in respect to their loyalty.

The Court of Claims decided as a conclusion of law from these facts that the claimant's right as administratrix depended upon proof of the loyalty of the decedent, and, it being shown that he voluntarily gave aid and comfort to the rebellion, dismissed the petition.

Mr. B. H. Bristow, Solicitor-General, in support of the ruling below:

1. It is only in her representative capacity that Mrs. Carroll is entitled to demand the proceeds of the cotton, and her petition is framed exclusively upon this idea. Whether the cotton was seized before or after the husband's death, or whether his "claim" to the proceeds existed only after his death, the fact nevertheless remains that the only claim now presented is by his legal representative, and the relief sought is in virtue of his right. It is therefore clear that *his* loyalty alone is the proper subject of inquiry.

2. But if it be true, that the loyalty of the husband need not be proved, the requirement of the statute still exists, and can only be met by proof of the loyalty of some party beneficially interested in the property. And hence the loyalty of the heirs at law, or of the creditors, in case of an insolvent estate (as is the case here), must be proved.

If proof of the loyalty of a mere trustee or administrator be held to be a sufficient compliance with the requirement of the statute, then in all cases of the death of disloyal owners of captured and abandoned property, the interposition of a loyal representative is all that would be necessary to secure to disloyal parties the benefits of an act passed in the interest of persons who had adhered to the Union during the rebellion. Such could not have been the intention of Congress.

Mr. R. M. Corwine, contra, for the claimant.

The CHIEF JUSTICE delivered the opinion of the court.

We think that the Court of Claims erred in the decision given by it. The statute of March 12th, 1863, makes the

right to recover depend on proof of ownership of the abandoned or captured property, of right to the proceeds, and of the fact that the owner gave no aid or comfort to the rebellion. It is plain to us that the ownership to be proved was that which existed at the time of capture or abandonment, and that the right to the proceeds was that which existed at the time of the petition filed in the Court of Claims. These titles, in their nature, capable of separation, coexisted in the petitioner. True, her ownership was not absolute, nor was her right to the proceeds absolute. She could claim only in a representative capacity—first, in right of the intestate, and, secondly, as trustee for creditors and distributees. At the time of the death of the intestate the cotton was in his possession, unaffected by any proceeding in confiscation. After his death, and upon appointment of his widow as administratrix, the title vested in her unforfeited. It was a title upon which she could maintain trespass or trover.* And it was the only title to the property subsisting at the time of the capture and sale and payment of the proceeds into the treasury. The statute does not make it the duty of the court to inquire whether the intestate who had been the owner gave aid and comfort to the rebellion, but whether such aid or comfort was given by the actual owner at the time of capture. This owner, within the sense of the statute, was the administratrix. It would be much more reasonable to institute such inquiries in respect to the creditors and distributees than in respect to the intestate. But such an investigation might be endless, and could not, we think, have been contemplated by the legislature.

We think, therefore, that the Court of Claims erred in not admitting the proof offered by the petitioner, and for this cause the decree must be

REVERSED.

* Redfield on Wills, 114, 116; 1 Williams on Executors and Administrators, 596; McVaughters *v.* Elder, 2 Brevard, 313; Lawrence *v.* Wright, 23 Pickering, 129.