The General Pinkney.

Yeaton and others, claimants of the Schooner General Pinkney and Cargo, *v.* United States.

Appeal in admiralty.—Repeal of statute.

In admiralty cases, an appeal suspends the sentence altogether; and the cause is to be heard in the appellate court, as if no sentence had been pronounced.

If the law under which the sentence of condemnation was pronounced, be repealed after sentence in the court below, and before final sentence in the appellate court, no sentence of condemnation can be pronounced; unless some special provision be made for that purpose, by statute.

This was an appeal from the sentence of the Circuit Court for the district of Maryland, which condemned the schooner General Pinkney and cargo, for breach of the act of congress prohibiting intercourse with certain ports of the island of St. Domingo; passed February 28th, 1806 (2 U. S. Stat. 351). This act was limited to one year; but by the act of February 24th, 1807, it was continued until the end of the then next session of congress, when it expired, on the 26th of April 1808.

The schooner General Pinkney, on the 23d of August 1806, was cleared from Alexandria for St. Jago de Cuba, with a cargo, but went to Cape François, in the island of St. Domingo, one of the prohibited ports. On her return, she was seized, on the 17th of November 1806, and libelled on the 5th of January 1807, and condemned in the district court on the 23d of July following, which condemnation was affirmed in the circuit court on the 7th of November, from which sentence the claimants immediately appealed, in open court, to the supreme court of the United States, then next to be holden on the first Monday of February 1808, where the cause was continued until the present term. *The only question now argued was, whether this court could now affirm the sentence of condemnation, inasmuch as the law which created the forfeiture, and authorized the condemnation, had expired?

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C. Lee, *Martin*, *Harper* and *Youngs*, for the appellants, contended, that in all cases of admiralty and maritime jurisdiction, an appeal suspends entirely the sentence appealed from; and that in the appellate court the cause stands as if no sentence had been pronounced. 1 Browne's Civil Law 495, 501; *Rochfort* v. *Nugent*, 1 Bro. P. C. 70, 590; 2 Domat 686; 2 Bro. Civil Law 436, 437; *Penhallow* v. *Doane*, 3 Dall. 87, 114, 118; *Jennings* v. *Carson*, 4 Cr. 2; *United States* v. *The Betsey & Charlotte*, Ibid. 443; Parker 72.

If then the case stands as if no sentence of condemnation has been passed, the question arises, can this court now proceed to condemn the vessel, when there is no law authorizing a condemnation? The act of congress makes no provision for the recovery (after the expiration of the act) of penalties or forfeitures which had been incurred under that act during its existence. And in such cases, the law has always been understood to be, that the penalty or forfeiture cannot be enforced, nor the punishment inflicted. The court has no longer any jurisdiction in the case. *Jones's Case*, 2 East P. C. 576; *Miller's Case*, 1 W. Bl. 451; 4 Dall. 373; 1 Hale 291. The case of the *United States* v. *The Cargo of the ship Sophia Magdalena*, before Judge Davis, at Boston; and a like case before Judge Hall, at New Orleans; *United States* v. *Schooner Peggy*, 1 Cr. 103.

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[1] S. P. The Helen, 6 Cr. 203; The Rachel, Id. 329; United States *v.* Preston, 3 Pet. 57.

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Rodney, Attorney-General, on the part of the United States, did not controvert the principles contended for on the other side, but in addition to the *authorities produced by the opposite counsel, referred the court to the opinion of Ch. J. ELLSWORTH, in the case of *Wiscart* v. *D'Auchy*, 3 Dall. 327, where he says, "an appeal is a process of civil law origin, and removes a cause entirely, subjecting the fact as well as the law to a review and re-trial;" and to the opinion of MARSHALL, Ch. J., in the case, of *Pennington* v. *Coxe*, 2 Cranch 61. [*283

March 7th, 1809. MARSHALL, Ch. J., delivered the opinion of the court, to the following effect:—The majority of the court is clearly of opinion, that in admiralty cases, an appeal suspends the sentence altogether; and that it is not *res adjudicata*, until the final sentence of the appellate court be pronounced. The cause in the appellate court is to be heard *de novo*, as if no sentence had been passed. This has been the uniform practice, not only in cases of appeal from the district to the circuit courts of the United States, but in this court also. In prize causes, the principle has never been disputed; and in the instance court, it is stated in 2 Browne's Civil Law, that in cases of appeal, it is lawful to allege what has not before been alleged, and to prove what has not before been proved.(*a*)

The court is, therefore, of opinion, that this cause is to be considered as if no sentence had been pronounced; and if no sentence had been pronounced, it has been long settled, on general principles, that after the expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force, unless some special provision be made for that purpose by statute.(*b*)

*The following sentence was then pronounced by the court: This cause came on to be heard, on the transcript of the record, and was argued by counsel; on consideration whereof, the court is of opinion, that an appeal from the sentence of a court of admiralty brings the whole case before the appellate court unaffected by the sentence of condemnation from which the appeal is made, and that a sentence of condemnation cannot be pronounced on account of a forfeiture which accrued under a law not in force at the time of pronouncing such sentence, unless, by some statutory provision, the right to enforce such forfeiture be preserved. The court is, therefore, of opinion, that the sentence pronounced in this cause by the circuit court of the district of Maryland, affirming the sentence of the judge of the district court in this cause, be reversed and annulled; and the court, proceeding to pronounce the proper sentence, doth direct that the libel be dismissed, and the property libelled be restored to the claimants, they paying the duties thereon, if the same have not been already paid. And, on the motion of the attorney-general, it is ordered to be certified, that in the opinion of this court, there was probable cause of seizure. [*284

(*a*) Clerke's Praxis, tit. 54. "*Nam in appellatione à sententia definitiva, licet non allegata allegare, et non probata probare.*"

(*b*) The cases of Wilmot *et al.*, claimants of the schooner Collector, and Lewis, claimant of the schooner Gottenburgh, *v.* United States, were reversed upon the same principle.