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ADMIRALTY-FOREIGN ATTACHMENT-JURISDICTION OF COURT DEFEATED BY FRAUDULENT TRANSFER

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RECENT DECISIONS

ADMIRALTY—FOREIGN ATTACHMENT—JURISDICTION OF COURT DEFEATED BY FRAUDULENT TRANSFER—Respondent, a Colombian corporation, contracted with libelant to transport a cargo of rice in its vessel, the *Cali*. On January 17, 1948, the *Cali* was wrecked and most of the rice lost. During the month of February the corporation, *Compania Colombiana del Caribe*, was formed under Colombian law, and on February 25, 1948, respondent's only other vessel, the *Alacran* (re-named the *Caribe*) was transferred to it. On March 7, 1948, libelants brought a libel in personam against respondent in the Canal Zone district court and had the court issue a foreign attachment on the *Caribe*, then steaming through the Panama Canal. After seizure of the *Caribe*, libelants amended their libel to charge that the transfer of the *Caribe* to *Compania del Caribe* was in fraud of libelants' rights. The proctors for *Compania del Caribe* moved to vacate the attachment. The district court allowed the motion on the grounds that libelants did not have a direct claim against *Compania del Caribe* and that any claim against it germinating from the alleged fraudulent transfer was a claim in equity, not a maritime claim. On appeal to the court of appeals, *held*, affirmed. On rehearing, affirmed. Before judgment, a court of admiralty does not have power to reach equitable interests belonging to a respondent.¹ *Swift & Co. Packers v. Compania Colombiana del Caribe S.A.*, (5th Cir. 1949) 175 F. (2d) 513.

Foreign attachment is a process employed in a libel in personam to compel the appearance of a respondent who "shall not be found within the district. . . ." If respondent makes an appearance, he may dissolve the attachment by posting bond.³ Thus it is clear that the attachment is not a proceeding against the seized property.⁴ Nor can the property be subjected to execution and sale until a final judgment has been obtained against respondent.⁵ But because bond is required to dissolve the attachment, the process is very useful to ensure the collectibility of a judgment against respondent. Admiralty Rule 2 provides that a libelant may attach respondent's "goods and chattels, or credits and effects in the hands of a

¹ The district court rested its decision upon an alternative ground that "since [the organization of the new corporation and the acquisition of the *Alacran*] all depended upon the laws of Colombia and all witnesses were there, and since all but one libelant are foreigners, as are both the respondents, he would exercise his discretion to decline the enquiry." Principal case at 516. The Court of Appeals seized upon this point to approve the decision as well as upon its theory as to the power of a court of admiralty to seize equitable assets. Despite the fact that the latter may be but gratuitous dicta, the reasoning of the court ought to be analyzed in order to determine the worth of the case as precedent.

² Admiralty Rule 2, 28 U.S.C.A., fol. §723: "In suits in personam the mesne process shall be by a simple monition in the nature of a summons to appear and answer to the suit, or by a simple warrant of arrest of the person of the respondent in the nature of a *capias*, as the libelant may, in his libel or information pray for or elect; in either case with a clause therein to attach his goods and chattels, or credits and effects in the hands of the garnishees named in the libel to the amount sued for, if said respondent shall not be found within the district. . . ."

³ Admiralty Rule 5, 28 U.S.C.A. fol. §723.

⁴ *Manro v. Almeida*, 10 Wheat. (23 U.S.) 473 (1825); *The Bremena v. Card*, (D.C.S.C. 1889) 38 F. 144; *Seminole Lumber & Export Co. v. Bronx Barge Corp.*, (D.C. Fla. 1926) 11 F. (2d) 982.

⁵ Admiralty Rule 20, 28 U.S.C.A. fol. §723.

garnishee. . . ."⁶ A third party who claims title adversely to that of respondent may intervene and dissolve an attachment of such goods and chattels upon proof of his title.⁷ If the court will permit a third party to assert title in himself in a foreign attachment proceeding, reciprocally it ought to permit libellant to show the defects in the third party's title. Where the transfer to the third party was made by respondent after respondent's liability had accrued, libellant's footing to attack that transfer is particularly strong. In a case involving a foreign attachment brought after judgment the court examined such a transfer by respondent, and finding it fraudulent, decreed execution upon the vessel. The court argued that it could not permit its jurisdiction to be defeated "by fraudulent and simulated transfers."⁸ The same policy ought well to apply to a fraudulent and simulated transfer made by respondent, even though the issue be presented to the court before judgment. Contrary to the assumption of the majority of the court, equitable interests, *per se*, are not immune to an interlocutory foreign attachment. An admiralty court has permitted the attachment of the equitable interest of a conditional vendee in a vessel.⁹ In admiralty proceedings other than foreign attachment the court will inquire into the merits of an allegedly fraudulent transfer. In petitory and possessory suits involving title to a vessel, admiralty will enforce the equitable claim of a libellant to title against the formal conveyance asserted by a fraudulent transferee.¹⁰ Admiralty will also scrutinize a transfer

⁶ *Supra*, note 2.

⁷ *International Grain Ceiling Co. v. Dill*, (D.C. N.Y. 1878) F. Cas. No. 7053. It must be noted that the district court did not require *Compania del Caribe* to prove its title, but accepted its allegations coupled with affidavits that title had been transferred to it.

⁸ *Lee v. Thompson*, (C.C. La. 1878) F. Cas. No. 8202. Judge Bradley stated further, at p. 235, "As incidental to [a court of admiralty's] general jurisdiction, and for maintaining the same, it has plenary power to decide, and frequently does decide, conflicting claims to property. Without such power its jurisdiction would often be defeated. . . . Without power to try the validity of conflicting claims, the court could not enforce its judgments for the payment of money. They could always be defeated by fraudulent and simulated transfers." The majority declared this case was not controlling because the foreign attachment involved was after judgment.

⁹ *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.*, (C.C.A. 2d, 1929) 31 F. (2d) 265. Judge Learned Hand in applying the words of admiralty rule 2 declared at p. 266, "'Effects' covers chattels . . . and we are to say whether 'goods and chattels' covers 'equitable interests' in chattels in possession of a respondent. While a conditional buyer has no title, . . . it would be curious if possession, coupled with a conditional right to title, should now be thought insufficient to support a seizure. . . ." In *McGahern v. Koppers Coal Co.*, (C.C.A. 3d, 1940) 108 F. (2d) 652, it was held that a foreign attachment would not reach the interest of a charterer in a vessel under a demise charter. This decision was made on appeal from an order denying the attachment.

¹⁰ A court of admiralty will take jurisdiction in a suit for possession of a vessel which had been transferred without the owner's authority: *The Tilton*, (C.C. Mass. 1830) F. Cas. No. 14054, or under fraud or mistake: *The Daisy*, (D.C. Mass. 1886) 29 F. 300, or involving a wrongful taking by a conditional vendor: *Thurber v. The Fannie*, (D.C. N.Y. 1876) F. Cas. No. 14014. In a petitory suit, a transfer without the owner's authority will be nullified: *Ward v. Peck*, 18 How. (59 U.S.) 267 (1855). In a possessory suit, admiralty will permit respondent to show that the bill of sale to libellant was fraudulent: *Chirurg v. Knickerbocker Steam Towing Co.*, (D.C. Me. 1909) 174 F. 188. The rationale of these decisions is not that admiralty is enforcing the equitable title of the defrauded transferor, but that he still has legal title because the defective transfer was absolutely void, not voidable in equity.

between two corporations having substantially identical shareholders or officers¹¹ and will take jurisdiction to invalidate the transfer if fraudulent.¹² Furthermore, if a transfer be made by respondent to escape liability accruing to an owner of a vessel, *qua* owner, admiralty will declare the transfer void.¹³ To summarize, the present decision illustrates the dangers of following too literally the injunction that "a court of admiralty is not a court of equity."¹⁴

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¹¹ In the principal case libelant alleged that the two companies were "one and the same" as an additional ground for denying the motion to vacate.

¹² *Luckenbach S. S. Co. v. W. R. Grace & Co.*, (C.C.A. 4th, 1920) 267 F. 676; *The J. B. Austin, Jr.*, (D.C. N.Y. 1924) 1 F. (2d) 451; *The Willem Van Driel, Sr.*, (C.C.A. 4th, 1918) 252 F. 35; *The Centaurus*, (C.C.A. 4th, 1923) 291 F. 751.

¹³ *Gardener v. Dantzer Lumber & Export Co.*, (C.C.A. 5th, 1938) 98 F. (2d) 478 involved a transfer by respondent of title to a vessel to his insolvent brother to avoid liability. The court stated, at p. 479, "Courts of admiralty administer the broadest equity and may look through such transactions to ascertain the truth." The majority distinguished this case on the ground that it did not require the adjudication of title to the vessel but merely determined which of the two brothers was liable for loss of cargo.

¹⁴ *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207, 47 S.Ct. 357 (1927); *The Eclipse*, 135 U.S. 599, 10 S.Ct. 873 (1890); *Eagle Star & British Dominions v. Tadlock*, (D.C. Cal. 1936) 14 F. Supp. 933; *Meyer v. Pacific Mail S.S. Co.*, (D.C. Cal. 1893) 58 F. 923; 1 *BENEDICT, THE LAW OF AMERICAN ADMIRALTY*, 6th ed., 148 (1940).