

Case No. 4,822.

[2 Int. Rev. Rec. 109.]

FISHER V. THE PLYMOUTH.

District Court, S. D. New York.

1805.

ADMIRALTY PRACTICE—JURISDICTION—STATE COURT  
ATTACHMENT—PRIORITY.

- [1. A vessel under arrest by attachment from a state court is entirely withdrawn from the cognizance of the federal courts, whether sitting in the same or a different state.]
- [2. A vessel attached by a sheriff on process from a state court in suits by several creditors was subsequently seized by the marshal, without opposition from the sheriff, under libels filed in a federal court by other creditors. One creditor, who had attached in the state court, subsequently filed a libel for part of the same claim in the federal court The vessel was sold by the marshal subject to the attachments levied by the sheriff. *Held*, that the creditor had no right to proceed in both courts, and that, so long as the vessel remained subject to his attachment in the state court, she was within the jurisdiction thereof, and beyond the cognizance of the federal court; but that, if it were shown that his attachment in the state court had been discharged or abandoned, he would then have a right to share, according to the order of his priority, in the proceeds in the registry of the federal court]

In admiralty.

In this case the facts were as follows: Several libels were filed against the brig for pilotage, supplies, &c. The first one was filed on the 20th of July last The vessel was seized by the marshal, who returned that he had so arrested her, and on the return of the processes, on August 15, defaults were entered against the vessel upon all the libels. On the 16th August a libel against the vessel was filed by the petitioner [Francis Fisher], but no steps were taken to open the defaults already entered. An order of sale was issued in one of the cases, and the vessel was sold under it on the 19th day of August On the 19th day of July an attachment had been issued out of the supreme court of the state against one Mullen as owner of the vessel. The attachment was given to the sheriff of New York, who, on the same day, attached the vessel. On the 9th day of August, before filing his libel, the petitioner also procured an attachment from the supreme court against the property of Mullen to recover a part of the same claim for which he afterward filed his libel, and placed it in the hands of the sheriff with directions to attach the brig as his property. The sheriff made no opposition to the seizure of the vessel by the marshal, and when the vessel was sold by him the sheriff attended the sale, and by direction of Fisher and of the other attaching creditor, gave notice that the vessel was “sold subject to” those attachments. The vessel having been sold and the proceeds paid into the registry of the court, Fisher now applied by this petition to the court for an order that his claim should be

FISHER v. The PLYMOUTH.

first paid out of the proceeds, alleging that his claim was for a foremast which he had supplied to the vessel while she was in the custody of the marshal, and that as the value of the vessel had been thus enhanced by him, his claim should be first paid. The proceeds of the sale were not sufficient to pay the decrees rendered in the other case.

Mr. Goodrich and Mr. Parsons, for petitioner.

Mr. Benedict and Mr. Donohue, for opposing creditors.

HELD BY THE COURT: That it appearing to the court that on the day of the hearing, the vessel still remained in custody of the sheriff by virtue of the attachment in favor of the petitioner, that fact determines irrefragably that jurisdiction over the subject so situated cannot be exercised in this forum. The vessel when under arrest by judicial process of the state of New York, is as effectually withdrawn from the cognisance of the United States courts in this city, as from that of like tribunals in Ohio or Massachusetts. This doctrine is too emphatically settled under the United States law to be longer open to discussion in its courts. [Ex parte Ransom v. City of New York] 20. How. [01 U. S.] 582; [Freeman v. Howe] 24 How. [65 U. S.] 450. That the petitioner having instituted proceedings in the state court by his attachment, his present application would seem to be strikingly incongruous and inapt practice, as he asks a United States court to assume to force a case out of the possession of a state court possessing rightful cognizance of it, with a view to furnish a party litigant in it with a more acceptable or rapid determination of it, or with some other purpose not in consonance with her arrest in the state court It matters not if the value of the vessel may have been augmented by labor or materials supplied to her by the petitioner, subsequent to her attachment in the state court Other parties possessing claims against the vessel would be entitled to prevent the petitioner from collecting in the state court, to their prejudice, any debt not collectible upon the vessel at the time she was arrested on the petitioner's process. New debts accruing to him after her attachment on his warrant, could not be annexed to the one on which that proceeding was founded, without an express judgment of the state court authorizing that act to be done. This court assumes no power to restrain the state tribunal in granting such privilege at its discretion. It interferes in no way directly with the proceedings before the state tribunal. Any direct application by petition to this court to that effect is clearly void and utterly beyond the judicial cognizance, whether made directly or by way of a libel like the one filed by the petitioner. That process can have no legal efficiency otherwise than as against remnants and surplus remaining in the registry here after the satisfaction of the judgment charges in this court upon her ratified by decree herein. That the proceeds would be subject to such judgment charges only in the order of their legal priority. That could only be ascertained in this court in respect to the petitioner's claim, by comparing the times at which the competing creditors respectively arrested the property in satisfaction of their several debts. The Angelique v. The Triumph, Noss. Dec. That the petitioner therefore

### YesWeScan: The FEDERAL CASES

has no right of relief that can be afforded to him as to the vessel, so long as she remains in the custody or jurisdiction of the supreme court of the state at the suit of the petitioner. But if it be shown that such attachment of the vessel by the petitioner in the state court has been lawfully discharged and abandoned by him, then it is ordered that he may have leave to enter his claim to a share in the distribution of the funds in the registry according to the right of priority attaching to him by law. The petition is therefore dismissed with costs.