

RAYMOND ET AL. CASE

BAINBRIDGE, *Commissioner* (for the Commission):

It appears from the evidence that on May 1, 1867, one Charles M. Burns, a subject of Great Britain, being indebted to Ovide de Sonnevile, a French subject, in the sum of \$35,000, executed and delivered to the latter at New Orleans a mortgage or bottomry bond upon a certain steam vessel owned by Burns, called the *Irene*. At the same time Burns gave De Sonnevile power of attorney to sell the vessel or to make contracts for the affreightment or charter party thereof, and to collect all sums that may be due said steamship.

De Sonnevile took possession of the vessel and made a voyage first to Barbados, and thence to the island of Trinidad. Near Barbados the *Irene* collided with another steamer, and in order to pay for the repairs rendered necessary by the accident, De Sonnevile, on October 9, 1868, borrowed from Charles Raymond, a citizen of the United States, the sum of \$2,500.

At Trinidad, on September 12, 1869, De Sonnevile, as attorney in fact of Charles M. Burns, entered into a contract with one George Fitt, as representative of the Venezuelan Government, for the charter of the *Irene* for a period of not less than sixty days at the stipulated rate of \$100 per day. The contract provided that the Government should be responsible for all expenses and risks of the steamer, and that in case she were lost or suffer any very severe damage that might render her useless, then her value, fixed at \$30,000, should be paid to De Sonnevile. Fitt paid De Sonnevile the sum of \$5,000 at the time of the contract in order to free the vessel from obligations which caused her detention at Port of Spain, and this sum De Sonnevile agreed to credit upon the amount the ship might earn under the charter. The contract also stipulated that the *Irene*, "being of English nationality," could not be engaged in a naval combat or be used for any operations from which the law of nations prohibits a foreign vessel.

On November 20, 1869, the Government of Venezuela notified De Sonnevile that the charter having expired he might take possession of the *Irene*, and that his account for the charter would be liquidated. De Sonnevile, however, refused to receive the steamer because of serious injury suffered by the vessel in one of her boilers on October 17 previous, and insisted that the Government of Venezuela either repair the injury or pay the price stipulated in the contract for the vessel. On November 27, 1869, De Sonnevile, "in the name and representation of Charles M. Burns, subject of Her Britannic Majesty," made a protest before the register at Puerto Cabello, and on December 1, 1869, "as attorney of Mr. Charles Burns, a subject of Her Britannic Majesty," he made protest before the British vice-consul at Puerto Cabello in regard to the action of the Venezuelan authorities and the injuries sustained by the steamer *Irene*, "the exclusive property of said Charles M. Burns."

On December 15, 1869, De Sonnevile addressed a communication to Venezuelan minister of war and navy, stating that he was obliged to leave the *Irene* in the possession of the Government until the contract was complied with, and considering it in the service of the Republic, but suggesting that a commission be appointed to examine it, and if found in the same state in which it was delivered he would receive it back, and that if, on the contrary, the commission should find that repairs were needed they should be made at the cost of the Government.

De Sonnevile eventually abandoned the ship, and for many years continued to urge his claim upon the Government. In 1873 he instituted proceedings in the high Federal court, but the suit was subsequently withdrawn. All of his efforts to obtain an adjustment of his claim proved fruitless.

In 1878, De Sonnevile made a holographic will, in which he declared himself indebted to Charles Raymond in the sum of \$2,500, with interest, and desired that after his death his property should be used to satisfy said indebtedness, and particularly setting forth that if the other property left by him should not be sufficient for that purpose, the necessary sum should be appropriated out of any recovery made on his claim against Venezuela occasioned by the loss of the *Irene*. He left to Florence Raymond, daughter of Charles Raymond, the sum of \$5,000, and the surplus to his brother and sister in France.

In April, 1890, De Sonnevile executed an assignment to Raymond of all his "present and future properties" in order to pay the indebtedness due the latter. The assignment states that "the properties which I give him in payment are the following:" — enumerating some fourteen different pieces of property, but not including the claim against the Government of Venezuela. De Sonnevile died on June 15, 1893.

A claim is now presented here on behalf of the heirs of Charles Raymond as follows:

Value of vessel, as stipulated in contract	\$30,000
127 days' hire of vessel, from September 15, 1869, to January 20, 1870, when abandoned	12,700
130 tons of coal, at \$12 per ton	1,566
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	44,260
Credit payment on account, September 12, 1869	5,000
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Balance due January 20, 1870	39,260
Interest at 3 per cent from January 20, 1870	39,260
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Total	78,520

Notwithstanding the fact that De Sonnevile made the contract with the representative of Venezuela for the charter of the *Irene* as attorney in fact of Charles M. Burns, and subsequently made his protests in the name and representation of Burns as the owner of the steamer, it is quite evident that Burns' interest in the boat was merely nominal. The debt of Burns to De Sonnevile secured by the bottomry bond was \$35,000. The valuation placed upon the boat in the contract with Fitt was \$30,000. The obvious intention of the parties to the bond was to cancel Burns's obligation, and the explanation given of the transaction is that Burns's nominal ownership would entitle the *Irene* to fly the English flag, under which it was desired she should sail. De Sonnevile was at any rate in lawful possession, duly empowered by Burns to make out of the sale or use of the vessel the amount of the debt; and the question at the base of De Sonnevile's claim is his beneficial interest in the contract with the Government of Venezuela and the rights accruing to him from its breach. Apparently that interest did not exceed the amount which, under the bond and power given by Burns, he was entitled to receive from the use or sale of the vessel, leaving Burns no equitable interest whatever in any claim arising out of the contract.

De Sonnevile was a French subject, and the Commission has no jurisdiction of his claim against Venezuela, except in so far as by proper assignment or transfer it may have become the property of citizens of the United States. The contention made here on behalf of the claimants is that they are owners of De Sonnevile's claim, either —

First, as a whole under the assignment of 1890; or,

Second, under the will of 1878, of so much of the claim as the amount of De Sonnevile's indebtedness to Raymond, with interest, and the amount of the bequest to Florence Raymond.

The assignment of April 29, 1890, recites the indebtedness due to Raymond, and states: "In order to pay that debt I hand over to him all my present and future properties, as I have no heirs," and that "the properties which I give him in payment are the following:" enumerating fourteen different pieces of property.

These properties are represented in the assignment to be worth 25,000 bolivars, free from all incumbrances, annuity, or mortgage. It is alleged that frequent attempts were made after De Sonnevile's death to realize on the properties specifically enumerated in the assignment, but without success, and that although at one time the said properties may have had some value, it consisted principally in the coffee groves, which have since become ruined, and that these properties are at present absolutely worthless.

Among the properties which De Sonnevile "gave in payment" by the assignment, the claim against Venezuela does not appear. There is certainly no reason to infer that De Sonnevile intended to include it, inasmuch as the

estimated value of the property enumerated exceeded the amount of the debt. The general terms are controlled by the specific enumeration, which evidently expresses the definite intention of the assignor, and to which in construction the conveyance must be limited. *Expressio unius exclusio alterius*. The position that the Raymond heirs are owners of the De Sonnevile claim as a whole under the assignment is clearly untenable.

The alleged holographic will of De Sonnevile bears date November 15, 1878. Substantially it states that, desiring as far as possible to repair the losses he has occasioned to his excellent friend, Mr. Charles Raymond, of New Orleans, by the want of punctuality on the part of the Republic of Venezuela toward himself, he declares himself indebted to Raymond or to his legitimate heirs in the sum of \$2,500, which Raymond had delivered to him at the English island of Barbados, in October 1868, to cover the expenses of repairs which had been occasioned by the collision of another steamer with his own; that if the debt should not be paid before his death he desired that his property should be used for its payment, and that the surplus should then become the property of his goddaughter, Florence Raymond, and that, being a creditor of the Republic of Venezuela of a debt occasioned by the charter of a steamer, the said credit, after its recovery, he wished to be distributed as follows: If the properties left by him were not sufficient to pay the debt, with interest, of Charles Raymond, the necessary sum should be employed for that purpose out of the money, and to his goddaughter, Florence Raymond, the sum of \$5,000 should be paid, the surplus to go to his brother and sister in France.

Two witnesses certify to the foregoing instrument and that De Sonnevile had declared to them that in case of his death he desired the disposition made therein to be put into effect by the French consular authorities.

There is no evidence presented that this instrument was ever legally proved as the last will and testament of De Sonnevile, or that there has ever been an administration of his estate. A will must be proved before a title can be set up under it, and, so far as the adequacy of its execution is concerned the probate must be according to the law of the testator's last domicile. In the absence of such proof, the document in question must be held inoperative to pass any rights whatsoever. The probate jurisdiction of this Commission is believed to be extremely limited.

The evidence shows that, in order to make the repairs rendered necessary by the collision of the *Irene* with another steamer near Barbados, De Sonnevile borrowed from Raymond on October 9, 1868, the sum of \$2,500. The expenditure of this money in necessary repairs in a foreign port created a lien in Raymond's favor upon the vessel. The presumption of law is that when advances are made to the captain in a foreign port upon his request for the necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage, or like services rendered to the vessel, they are made upon the credit of the vessel as well as upon that of her owners. It is not necessary to the hypothecation that there should be any express pledge of the vessel, or any stipulation that the credit should be given on her account. (*The Emily B. Souder v. Pritchard*, 17 Wall., 666. *Hazlehurst v. The Lulu*, 10 Wall., 192. *Merchants' Mut. Ins. Co. v. Baring*, 20 Wall., 159.)

It is notorious (*The Ship Virgin*, 8 Pet., 538) that in foreign countries supplies and advances for repairs and necessary expenditures of the ship constitute, by the general maritime law, a valid lien on the ship. * * *

In *Wilson v. Bell*, 20 Wall., 201, the Supreme Court of the United States say:

The ordering, by the master, of supplies and repairs on the credit of the ship is sufficient proof of such necessity to support an implied hypothecation in favor of the material man or the lender of money, who acts in good faith.

Under the foregoing principles of maritime law it is clear that Raymond held a lien upon the *Irene* for the advances made by him at De Sonnevillè's request, and expended by the latter in the necessary repairs. Raymond's lien followed the ship when the Venezuelan Government took possession of her under the charter party of September 12, 1869.

It is the very nature and essence of a lien that, no matter into whose hands the property goes, it passes "cum onere." (*Burton v. Smith*, 13 Pet., 464.)

In *Myer v. Tupper*, 1 Black, 522, it was held that where respondents purchased without notices of a lien for repairs or supplies in a foreign port their want of caution in this respect could not deprive the libellants of a legal right they had done nothing to forfeit.

Mr. Raymond, therefore, might have pressed his remedy against the Government of Venezuela in virtue of his lien upon the vessel to the extent of his interest in case of the violation of the contract under which the Government obtained possession, or he could rely upon the personal responsibility of De Sonnevillè for the debt. It is quite evident that Raymond chose the latter of these alternatives. His claim against De Sonnevillè appears to have been in the hands of Venezuelan lawyers for a number of years. Finally, on April 29, 1890, De Sonnevillè, in order to discharge the debt to Raymond, executed the assignment transferring thereby specified pieces of property "which represent 25,000 bolivars value, free from all incumbrances, annuity, or mortgages." And one Ascanio Negretti, lawyer, "with power of attorney from Charles Raymond," accepted this transfer. In accordance with law, this assignment was registered in the registry of Altigracia de Orituco on May 16, 1890, and also in the French legation at Caracas on October 21, 1891. The valuation of 25,000 bolivars placed upon the property thus transferred in satisfaction of the debt is included in the instrument signed by both De Sonnevillè and the representative of Raymond, and must be regarded as a part of the agreement. It equals, if it does not excel, the amount due at the time.

The acceptance of this transfer discharged the debt of De Sonnevillè to Raymond and canceled any claim which Raymond might have had against the Government of Venezuela in virtue of his lien upon the steamer. The lien could not exist after the debt was paid. As the assignment of the property specified was received in discharge of a money debt due from De Sonnevillè, it is in judgment of law to be considered as the same thing as if De Sonnevillè had actually paid money to the amount agreed upon in the assignment as being the value of the property transferred. The subsequent depreciation in value can not operate to revive the debt.

The claim must, therefore, be disallowed.

GRISANTI, *Commissioner* :

Elizabeth Wild Raymond, widow of Charles Raymond, deceased, Anna J. Raymond, Elizabeth E. Raymond, Letitia J. Raymond, Florence A. Raymond, Edwin J. Raymond, Charles J. Raymond, and Victoria R. Gauce (née Raymond), children of said Charles Raymond, deceased, claim of the Government of Venezuela payment for \$ 78,520 as capital and interests of a credit which they, sole heirs at law of the mentioned Charles Raymond, deceased, pretend holding against Venezuela.

The history of the claim is as follows:

On September 12, 1869, a contract was signed at Port of Spain between George Fitt, acting on behalf of the citizen Gen. José Ruperto Monagas, at that time President of Venezuela, and Ovide De Sonnevillè, acting as proxy for Mr. Charles M. Burns, owner of the British vessel *Irene*, in virtue of which

contract Fitt chartered said vessel *Irene*, having on board 130 tons of coal for the service of carrying troops on account of the Government of Venezuela. (Art. 1.)

Ovide De Sonnevile received from George Fitt \$5,000 with which he paid the debts of the vessel in Port of Spain, and for which debts she was there detained. (Art. 2.)

Both contracting parties agreed that if the Government of Venezuela decided to buy the vessel the price should be \$30,000; if not, the vessel would continue chartered at the rate of \$100 per day, for a term of not less than sixty days, it being a formal condition of said contract that the Government of Venezuela on the expiration of said term, or other term which the parties might agree to extend, should, on returning Sonnevile the vessel, pay him for the 130 tons of coal above referred to, at the price the same should happen to have at the port of the Republic where the return takes place; also that he should be paid such amount as both parties might consider necessary for conducting said vessel to the harbor of Port of Spain, and also the extra pieces lost or worn out. (Art. 3.)

In the \$100 per day stipulated as the rent for the *Irene* none of her expenses were included therein, all of which were on account of the Government of Venezuela, and if the vessel, during the time of her leaving Port of Spain up to that on which she was returned to Sonnevile, should be lost or suffered very serious injuries, such as to make her useless, Sonnevile should be paid her value, which beforehand was fixed at \$30,000, and would forthwith be the property of the Republic. If the injury sustained by the vessel were of easy repair, the Government of Venezuela had the option of returning her, previously making the necessary repairs at their own expense. (Art. 4.)

On November 23, 1869, a note was addressed to Sonnevile by the Jefe de estado mayor general in Puerto Cabello to the following effect:

The term of the contract for chartering the vessel *Irene* having expired, and the war being over, the citizen general president in campaign orders me to notify you thereof, so that you may this day take charge of the mentioned vessel under formal inventory, and afterwards call at the general headquarters to settle your charter account, balance of coal missing to make up the 120 tons and agree as to the amount required for your sailing to Port of Spain.

On November 24, Sonnevile answered, denying to receive the vessel if the very serious injury suffered by the vessel in one of her boilers on October 17 were not repaired, unless the Government should choose to pay the price fixed on the vessel.

Afterwards a discussion followed between the Government of Venezuela and Sonnevile in reference to the case, and steps were taken by the latter to apply to the French Government, and pretending to apply to the British Government also, for them to second his motion in the claim against Venezuela. On April 29, 1890, Sonnevile issued a document wherein he declares to be a debtor to Charles Raymond for the amount of 12,500 bolivars, which he acknowledged to have received from him to settle his (Sonneville's) account with the consignee of the British vessel *Irene*, and in payment for that amount he assigned to him the sole possession of several properties perfectly specified in the aforementioned document.

The principal grounds whereon Messrs. Raymond lay their claim are the following:

In the year 1890, as above stated, Mr. De Sonnevile assigned all his property to Mr. Charles Raymond, predecessor in interest of the present claimants. Neither Mr. Charles Raymond nor Mr. Sonnevile were paid any sum of money on account of the claim.

To the judge of the lawfulness or unlawfulness of this claim the following point must, above all, be examined:

Is, or is not, the mentioned claim included in the dedition which Sonnevile made in payment to Charles Raymond, contained in the document drawn at Caracas on April 29, 1890, and registered in the subaltern registry office of the Monagas district on the 16th of May of the same year? In other words, did Sonnevile transfer to Raymond the referred-to credit against Venezuela by virtue of said dedition in payment?

The Venezuelan Commissioner is of opinion that the question put must be answered negatively without the least vacillation. Consequently the claim not being expressly included in the dedition in payment, it is excluded from the same because in all contracts, such as this, which have the object of alienation of property, it is an essential requisite that the goods alienated be perfectly determined.

I must not let the fact go by, that some Venezuelan lawyers of undeniable knowledge argued that on the strength of the foregoing contract Charles Raymond was the owner of the claim; but such is an error, and errors have no authority, however respectable the persons who fell into them.

This erroneous opinion is undoubtedly derived from the generality of the terms with which the dedition of payment commences. Sonnevile says:

* * * And to pay that amount (the 12,500 bolivars) I deliver him all my present and future property, as I have no heirs, and have on the other hand my gratitude bound to Mr. Charles Raymond, to whom I am attached not only by the ties of friendship but also by those of spiritual relationship.

But the amplitude and vagueness of this clause are perfectly determined and limited by the phrase following forthwith: "The goods which I give him in payment for my debt are the following," then said goods are specified. The former generality must be interpreted in the light of this limitation, without which it would be deprived of judicial and even rational value. If there existed only the clause, "I deliver him my present and future goods," the contract would completely lack legal value. The fact is, that when the dedition in payment has the object, as in the present case, of extinguishing a pecuniary debt, no difference exists between the former and an ordinary sale; both contracts are identical. Therefore the consent of the contracting parties is an essential requisite for the existence of every contract, which must be in regard to the thing or price when it refers to buying or selling, and in regard to the debt and thing transferred for payment if it refers to a dedition in payment, and without determining these two elements consent is impossible because it lacks matter, and consequently the existence of the contract would also be impossible. Wherefore, if the dedition in payment refers to "present and future goods," with no other explanation, it would never have attained judicial existence. Neither Sonnevile would have known what he gave, nor Raymond what he received; and consent requires knowledge — consent can not be given to what is not known.

If the principles and reasons stated were laid aside and it were attempted to hold that the claim being the property of Sonnevile he had the will to transfer it to Raymond, such assignment could have no effect against the Government of Venezuela, owing to its lack of visible existence.

Another question:

Was or was not the credit of 12,500 bolivars extinguished in virtue of the assignment, which, according to the public document above, refers to Charles Raymond, held against Sonnevile?

It most certainly was. That is the natural, judicial effect of an assignment, and as the one in question is pure and simple — that is to say, that it is not subject to any conditions, either suspensive or resolatory — the mentioned extinguishing effect took place definitively and perpetually from the very moment of signing the contract.

It is alleged that no price was able to be got for the sale of the property assigned in payment, and that it fell to ruin. This fact is very unlikely, as the transaction was carried out in 1890, at a time when Venezuela reached its greatest material prosperity. The property assigned in payment consisted of coffee plantations, and at that time the hundredweight of this grain was worth —¹ But even admitting such allegation to be a fact, it could not revive the credit, as its extinction was complete and forever.

Before closing, the writer begs to state a few more remarks which he considers unnecessary but not irrelevant.

In the charter party of the vessel *Irene*, Sonnevile appears acting as proxy for Charles M. Burns, British subject; the latter then is the real charterer and the only owner of the rights acquired as such.

When Sonnevile thought that France might tender him some protection he addressed the French consul at Caracas (December 12, 1888); then the Venezuelan-French Mixed Commission, which at that time was sitting here (April 6, 1890); then the minister for foreign affairs of the French Republic (May 8, 1890), requesting his help and advising the latter besides that if the intervention of his Government be considered unlawful he should forward the documents to the minister of foreign affairs of Great Britain with the view already mentioned. The request having purely and simply been denied by the French Government and the documents returned to Sonnevile, the claim arises out of the hands of the present solicitors, not out of its own dust, as the Phœnix of the fable, but out of nothing — that is to say, out of a dedition in payment which is not contained in it.

In virtue of the reasons explained, it is the opinion of the Venezuelan Commissioner that the referred-to claim must be entirely disallowed. nt

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