

No 84. ...ing his goods rescued from the sea. Upon this footing the collector could not in common justice, demand more than the value of the goods for his salvage; and *a fortiori* could not demand any other security than that value.

THE COURT accordingly unanimously refused to interpose their authority for execution upon this decree.'

Possibly after all, the judgment may be justified as being a court of common law which interpreting statutes must adhere to the letter without regarding the intention of the legislature. If so, the proprietors of the wheat chose a wrong court for their action; they ought to have applied to the Chancery, or removed their cause there by a *certiorari*. If the courts of common law in England be so confined, their constitution is extremely imperfect. But supposing the Court of King's Bench to have acted justly according to its constitution, the objection still remains good, that no court ought to give execution, upon a foreign decree which is materially unjust or contrary to equity.

An appeal entered by Wilson was heard *ex parte*, and the judgment reversed, singly upon this footing, as I am informed, that in England the decrees of sovereign courts abroad are put in execution by the courts of Westminster-hall, without admitting any objection against them.

Sel. Dec. No 95. p. 129.

1767. July 22.

JOHN LAYCOCK of Bradford, in the County of York *against* THOMAS CLARK
Leather-Case maker in Edinburgh.

No 85.
Execution ordered for costs awarded by a foreign decree in terms of a foreign statute.

THOMAS CLARK, upon the supposition that he had discovered the art of manufacturing leather into snuff-boxes and pen cases, and likewise the method of preparing it so as to make it fit for these purposes, obtained a patent in 1756, under the usual condition, 'that it should be null, if it should appear contrary to law, prejudicial to his majesty's subjects in general, or that the said invention was not a new invention as to the public use and exercise of it in England.'

Laycock having made and sold snuff-boxes and pen-cases of the same kind with those made by Clark, Clark sued him in an action of trespass upon the case before the Court of King's Bench; and the question having been remitted to a jury, Laycock produced evidence, that these articles had been manufactured prior to the period when Clark said the discovery was made by him, upon which the jury returned a verdict, finding Laycock 'noways guilty of the premises laid to his charge.'

Upon this the Court assailed Laycock, and also decreed, 'that the said John recover against the said Thomas L. 70 for his costs and charges, according to the form of the statute in the like cases made and provided.'

The statute referred to was said to be the 23d Henry VIII. cap. 15. which enacts, That if, in an action upon the case, the plaintiff be nonsuited, he shall pay costs, and if he sue *in forma pauperis*, he shall suffer such punishment as the Court shall direct.

Laycock having brought an action in this court against Clark, it was *argued* for Clark, That though, *ex comitate*, a foreign decree may be presumed just, when such decree is pronounced by the judge upon due consideration of the merits of the cause, the case is very different where the decree is pronounced in consequence of a foreign statute, which enacts, that the plaintiff shall pay costs, if non-suited, in all actions of a certain kind, and that without distinction, whether there has been a *probabilis causa litigandi* or not. Where the decree is the act of the judge himself, this Court will not award execution of it, if it shall appear to be unjust. But, in the present case, there is no room to inquire, whether the decree is just or not, and, to award execution of it, is in effect to give force to the statute *extra territorium*. Suppose Thomas Clark had brought his action in the Court of King's Bench *in forma pauperis*, and that court had ordered him to be corporally punished, either by imprisonment or otherwise, it will not be maintained that this Court would have enforced such decree. *Vide* Principles of Equity, p. 228. *in fine*; and yet there seems no difference, as to the principle, between such case and the present.

Answered for Laycock; The decision of the supreme court in one country is entitled to credit and authority with the supreme court of another country, unless it shall be proven to be unjust by him who opposes the execution of it. And it ought not to weaken the authority of the foreign decree, that it was agreeable to the statutory law of that country, but the contrary. Whatever might have been the case, had the Court of King's Bench ordered a corporal punishment to be inflicted upon Clark, no argument can be drawn from that to the present, where the question is only of costs, which cannot possibly be regarded as a penalty.

2do, Clark ought not to be heard to object against this decree, because he himself was the provoker, and must be supposed to have submitted himself to the law of that country where he brought his action.

3tio, He might have obtained redress in England, had he thought the decree unjust; he might have had a new trial; he might have brought the cause before the twelve Judges by a bill of exceptions; or, he might have appealed to the House of Lords.

'THE LORD KENNET ORDINARY repelled the defences pleaded for Clark, and decerned against him for the costs awarded by the decree of the Court of King's Bench.'

Upon a reclaiming petition and answers, the LORDS adhered.

Act. *J. Dalrymple.*

Alt. *Lockhart & Rae.*

A. R.

Fol. Dic. v. 3. p. 225. Fac. Col. No 66. p. 113.

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