Subject: Fwd: Federal Land grab and "The Bounty"
Date: Mon, 10 Dec 2007 05:14:00 -0600
From: "Lewis Mohr" <lewismohr@gmail.com>

Dear Chet: Tom makes and interesting point that got me to thinking about my second favorite case of all time behind the Kemper case and so I have attached the 443 Cans Of Frozen Egg Product case that I guarantee will blow off your socks. I have hi lited the case for the pertinent parts. L -o-

---------- Forwarded message ----------

From: Thomas D. Gipson <tex_red_rider@hotmail.com>
Date: Dec 9, 2007 8:03 AM
Subject: Federal Land grab and "The Bounty"

(See article below)

This article gave me cause to stop and actually think. CAVEAT-- This is merely my opinion AT THIS POINT IN TIME, and I may be way off base, but-----

There must be a secret or implied maritime lien on the land in question.

If there is a maritime lien, then there property must be, or must have been, involved in "commerce" or a "maritime transaction" at some point in time that runs against the land. I wonder if the feds will arrest the land. Arrest of the "vessel" or "other property" is a necessary and indispensable requisite for an admiralty court to obtain jurisdiction over the res.

Property tax cases must be in admiralty, but I do not know of a case where the real property was arrested, so the court could never have jurisdiction over the res, BUT if the property "owner" "voluntarily" and "generally" appeared the court would have "personam" jurisdiction over the owner (who probably thinks he is in a court of law) and the court would be able to screw the owner through personam jurisdiction for "the greater good." As I understand it, in rem seizures are used to obtain personam jurisdiction by enticing the owner to appear and defend the property. But, if the "owner" specially appeared and challenged the jurisdiction over the res, because the res was never arrested and if the owner counterclaimed, he possible could force the plaintiff party to follow admiralty procedures required for jurisdiction and prove up the secret maritime lien, or else go away. AND since the federal courts have "original" jurisdiction in admiralty, what the hell is a property tax forfeiture case doing in state court?

Definitions from 9 USC 1, federal arbitration act, which implies all arbitration is in admiralty:

> Section 1. ``Maritime transactions'' and ``commerce'' defined; exceptions to operation of title ``Maritime transaction'', as herein

> defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; ``commerce'', as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Therefore, depending on the terms of the "maritime or commercial transaction," there is no need for constitutional "eminent domain" and "just compensation." The lienholder can just seize the property "in rem" because it is for "the greater good."

Are penal cases in admiralty? Is there a pre-existing maritime transaction in which the "owner" agreed or voluntarily submitted to servitude? Could this theory be applicable to penal (quasi-criminal) cases? Could the ALL CAP NAME be the res or "vessel" and the real man be the owner? Arrests are made and the owner is compelled to appear because he previously agreed to appear through the terms of some previous "maritime" or "commercial" transaction?" The arrest usually comes first, the information or indictment (if the is one) comes later; this would be consistent with admiralty practice. If the res is arrested and the owner generally appears arguing Law, the court takes personam jurisdiction of the owner. In such a case, should the "owner" at the time of arraignment, demand proof of the agreement or maritime transaction before he enters a plea, or allows one to be entered for him? In the U.S. Government Style Manual, at p. 162, Ch. 11.7, "The names of vessels are quoted in matter printed in other than lower case roman."

I have been thinking of "The Mutiny on the Bounty" where the crew was impressed, but voluntarily signed the Articles of War, the terms of the contract for service on the Bounty. Bligh could not force them to sign, he could only induce, bluff or coerce them to sign. The men signed and agreed to the terms. The men were punished accordingly for infractions or breaches of the contract. Capt. Bligh was always in the right according to the contract. Capt. Bligh was strict and enforced the contract to the letter and to the point of insanity, but was ALWAYS in the right and always stood on the Articles of War as his justification. No trial was needed and no jury. The crew agreed to the abuse. BUT the crew knew what they signed and agreed to; they were experienced seamen and so if could be presumed that they knew what they were signing. Are we serving on "The Bounty?"

Dec. 6, 2007, 5:08PM

Chertoff to deliver Texas landowners ultimatum on border fence

By SUZANNE GAMBOA Associated Press Writer



WASHINGTON — Homeland Security Secretary Michael Chertoff is giving Texas landowners opposed to a border fence one last chance to allow access to their land before he takes court action against them, a Texas senator said Thursday. Sen. John Cornyn said letters from the Department of Homeland Security are expected to go out Friday. But for those who refuse to provide the temporary access, the department would likely seek a court order to enter the property, he said. "He assured me that negotiations would continue and his hope is the vast majority of these cases could be resolved without litigation, maybe in handful of cases litigation would be required," he said. Some residents in the Rio Grande Valley, where opposition to the fence is most fervent, have refused to let federal officials on their land. Earlier this year, Brownsville Mayor Pat Ahumada refused to sign documents allowing workers access to city property. A Homeland Security Department spokesman was not immediately available for comment. President Bush last year approved 700 miles of fencing and barriers on the U.S.-Mexico border to stop illegal immigration and smuggling. Unlike other states, most land in Texas is in private hands. "All that will do is fire people up more down here," John McClung, president of the Texas Produce Association, said of the impending letters. "Nothing makes a landowner more unhappy than the idea of condemnation of land, the idea of being forced to turn land over to government," McClung said. Some landowners have complained that they could lose access to the Rio Grande, the only freshwater source in the region, which they rely on for irrigating crops and livestock. Others would have their land behind the fence, cut off from the rest of the United States in a border no-man's land. Opponents have said federal officials have failed to keep them fully informed on fence plans and refused to listen to residents' proposals for alternatives. Others say the fence is a waste of taxpayers' money and will hurt border economies. "It's just a continuation of a battle with our government. We are for security. However the way they

are approaching solving security problems, we just disagree with," said McAllen Mayor Richard Cortez. "We just don't see how a non-continuous fence, when you have 6,000 miles of land borders, is going to stop terrorism and illegal immigration. We continue to believe it is a waste of taxpayers' money." Federal officials say the fence is necessary to secure the border, especially in light of a failure to pass an immigration reform bill earlier this year. They say they need access to the land to assess possible sites for the fence, which will be built along with "virtual fence" and more patrols. Cornyn, who voted for the fence, said Chertoff told him about 40 landowners have refused to provide access to their land. Of the total, 110 have not responded or can't be located and 258 have given the government the access, a congressional official familiar with the statistics said on condition of anonymity because the Homeland Security Department had not released them. About 127 miles of land are being considered for the fencing and about 15 miles of that is on property where the government cannot get access, the aide said.

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On the Net: Homeland Security Department: http://www.dhs.gov

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**Four Hundred Forty-three Cans of Egg Product v. United States**
No. 590
Argued October 24, 25, 1912
Decided December 2, 1912
226 U.S. 172
APPEAL FROM AND IN ERROR TO THE CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT

Syllabus

The provision in § 10 of the Pure Food Act of June 30, 1906, 34 Stat. 768, c. 3915, that proceedings for seizure of goods shall be by libel and conform as near as may be to proceedings in admiralty, does not include appellate proceedings; the action of the district court on the libel can only be reviewed as at common law by writ of error, and not by appeal.

When Congress enacted the Pure Food Act, it was known that, as to seizures on land, the district court proceeded as in actions at common law.

The provision for jury trial in § 10 of the Pure Food Act was probably inserted by Congress with a view to removing any question of constitutionality of the act.

While proceedings for seizure and condemnation under § 10 of the Pure Food Act are intended to be summary, the owner, as this Court construes the statute, has a right to a hearing in a court of record, with a right of review upon questions of law by writ of error in the circuit court of appeals, and where more than $1,000 is involved finally in this Court under § 6 of the Circuit Court of Appeals Act.

As the circuit court of appeals had no jurisdiction to review the action of the district court on a libel filed under the Pure Food Act, neither its own action thereon nor the consent of the parties could give such jurisdiction.

Where the circuit court of appeals proceeds without jurisdiction, this Court should, on acquiring jurisdiction of the cause, remand it to the circuit court of appeals with instructions to dismiss the appeal for want of jurisdiction.

193 F. 589 reversed.

The facts are stated in the opinion. [226 U.S. 177]

DAY, J., lead opinion

MR. JUSTICE DAY delivered the opinion of the Court.

This case is here on both writ of error to and appeal from a decree of the Circuit Court of Appeals for the Third Circuit, reversing the judgment of the United States District Court for the District of New Jersey dismissing a libel brought by the United States which had for its object the condemnation of four hundred and forty-three [226 U.S. 178] cans of frozen egg product seized under the Pure Food Act of June 30, 1906 (34 Stat. 768, c. 3915).

The United States filed its libel alleging that four hundred and forty-three cans of frozen egg product, in the possession of the Merchants' Refrigerating Company at Jersey City, New Jersey, consisted in whole or in part of a "filthy, decomposed, and putrid animal, to-wit, egg substance," and praying for their condemnation. At the trial, the issues were narrowed so as to exclude filthy and putrid substances, leaving the charge to stand as to decomposed substance. Three hundred and forty-two cans were seized. The H. J. Keith Company appeared and claimed the goods, denying the charges concerning them. The case was tried without a jury, to the district judge, who entered a decree dismissing the libel. The United States took an appeal to the circuit court of appeals, and, after consideration in that court, the decree dismissing the libel was reversed, and, upon the facts, a decree of condemnation in favor of the government was entered. 193 F. 589. The claimant, the H. J. Keith Company, thereupon appealed to this Court, and also sued out this writ of error to the same decree.

We are met at the outset with a question of jurisdiction. Section 10 of the Pure Food Act provides:

That any article of food . . . that is adulterated or misbranded within the meaning of this act, and is being transported from one state . . . to another for sale, . . . shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. . . . The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. [226 U.S. 179]

It will be observed that the last sentence of the section provides that the proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. The contention of the government upon this question of jurisdiction is that the words "conform, as near as may be, to the proceedings in admiralty" mean, except in cases where jury trial is demanded, to include appellate proceedings, as well as original proceedings in the district court, and therefore the review of the judgments of the district court would be by appeal to the circuit court of appeals, as in admiralty cases under the Circuit Court of Appeals Act (26 Stat. 826, c. 517), and under the Judicial Code (36 Stat. 1087, 1133, c. 231). If that is a proper construction of the statute, then the circuit court of appeals had the right to review the case upon the facts and enter a final decree, which, under the Circuit Court of Appeals Act and Judicial Code, would be reviewable here only upon writ of certiorari.

The appellant, also plaintiff in error, contends that, the seizure being upon land, the proceeding was at law, and reviewable only upon writ of error in the circuit court of appeals; that the attempted appeal did not give the circuit court of appeals jurisdiction, and that, upon the writ of error here, this Court should reverse the judgment and remand the case to that court, with directions to dismiss the appeal.

The determination of this controversy requires some examination of previous legislation, and of the decisions of this Court, interpreting such legislation, as to the nature and extent of the jurisdiction of the district courts of the United States in seizure cases.

The judiciary Act of 1789 (1 Stat. 76, § 9, c. 20) gave to the district courts: [226 U.S. 180]

Exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by

vessels of ten or more tons burthen, within in their respective districts as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it, and . . . also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States.

In the case of The Sarah, 8 Wheat. 391, a libel was filled against 422 casks of wine, alleging a forfeiture by false entry. It appearing in the course of the trial that the seizure was made on land, it was held that this Court could not review the case save upon writ of error. Chief Justice Marshall, delivering the opinion of the Court, said (p. 394):

By the act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction. In the trial of all cases of seizure on land, the court sits as a court of common law. In cases of seizure made on waters navigable by vessels of ten tons burthen and upwards, the court sits as a court of admiralty. In all cases at common law, the trial must be by jury. In cases of admiralty and maritime jurisdiction, it has been settled, in the cases of The Vengeance, 3 Dall. 297, The Sally, 2 Cranch 406), and The Betsy, 4 Cranch 443, that the trial is to be by the court.

Although the two jurisdictions are vested in the same tribunal, they are as distinct from each other as if they were vested in different tribunals, and can no more be blended than a court of chancery with a court of common law. [Now folks, if this don't blow off your socks, then I don't know what ever will!!!!! These comments, in purple within brackets are from LTM. Those of you with a social security number better understand that the court is not blended for you....YOU are firmly in the admiralty venue and have voluntarily submitted to a military tribunal and even if you get 12 stupid residents for an advisory jury who

has the combined intelligence of possibly one dairy cow, you are still in admiralty. However, if you plead your status and capacity as a man lawfully domiciled on the land within the outer borders of Texas, all cases such as stealing your private land and improvements for failure to pay rent (taxes) in Federal Reserve Notes (FRNs) to the artificial "COUNTY" must be by common law trial by jury. The artificial COUNTY is a federal agency with an EIN. Commercial communitarian welfare trust enforcement thugs with guns have got no delegation of authority for leaving the air with satan and stepping onto the land with us Christians. And guess what? The de facto administrative government cannot seat a common law jury because they probably cannot find 12 intelligent men who do not have social security numbers and they do not have a judge who has a lawful bond payable in gold and silver in compliance with the Constitution for The United States of America at Article 1, Section 10, clause 1. And, since November 5, 1985, neither the corporate state called "the State of Texas" nor the communitarian legal subdivision called "this state" "THE STATE OF TEXAS" has any authority for running writs and process…. All writs and process since Nov. 5, 1985 have been absolutely without authority: if you do not believe me then check for yourself when the words "All writs and process shall run in the name of "the State of Texas" was taken out of the Texas Constitution Article 5, Section 12. Now if this revelation don't blow you out of your panties AND into the land of OZ, then I dadgum for certain will never know what will!!! But if you got a ssn and you traverse and do not first raise the de facto officer doctrine AND the federal guard working for a federal agency with EIN leaving his de facto "this state" "THE STATE OF TEXAS" in the air with satan and coming onto your land within the outer borders of the de jure "the state" "the state of Texas" and seizing your assets without any delegation of authority, then your traverse cures all error and you are exactly what the spawn of satan presumed you were and they will steal your assets every time, and it will all be legal. Justice Day is telling you that if you know how to plead, you get the law and venue that you deserve. Look folks, since 2005 the de jure corporate government in bankruptcy, and the Title 5 Sec 559 in the footnotes that the bankruptcy trustees will abide by the constitution in a blended format, is his-toe-ree and the only thing remaining is the common law dirt land, and the public policy in the communitarian artificial venue in the air with satan. The offices of the de jure government are vacant. It is time for the gathering so that all can choose with which sovereign he wants to put his survival: Jesus the Christ, the son/sun; or Lucifer, the artificial LIGHT GIVER?]

A statute, practically the same, with some slight changes, was embodied in § 563 of the Revised Statutes, [226 U.S. 181] subdivision 8, giving the district courts jurisdiction "of all civil causes of admiralty and maritime jurisdiction . . . and of all

seizures on land and on waters not within admiralty and maritime jurisdiction," the subdivision mentioned omitting the provision found in the section of the Judiciary Act of 1789, to which we have referred, as to seizures "within their respective districts," and including cases of "seizures on land and on waters not within the admiralty and maritime jurisdiction." Under this statute, it has been uniformly held that the district court, as to seizures on land, proceeds as a court of common law, with trial by jury, and not as a court of admiralty. GO>United States v. Winchester, 99 U.S. 372.

Questions analogous to the one here came before this Court in construing the Confiscation Acts enacted in 1861 and 1862. This Court, in Union Insurance Company v. United States, 6 Wall. 759, construed the Act of Congress of August 6, 1861, entitled, "An Act to Confiscate Property Used for Insurrectionary Purposes." That act provided for the seizure of such property and its condemnation in the district or circuit court having jurisdiction of the amount, or in admiralty in any district in which the property might be seized, and authorized the Attorney General to institute proceedings of condemnation. In that case, it was held that, in the condemnation of real estate or property on land, the proceedings were to be shaped in general conformity to the practice in admiralty, but in respect to trial by jury and exceptions to evidence, the proceedings should conform to the course of proceeding by information on the common law side of the court. It was held that, where proceedings for the forfeiture of real estate were had in conformity with the practice in courts of admiralty, they could not be reviewed in this Court by appeal, and that the case could come here only for the purpose of reversing the decree and directing a new trial.

In the case of Morris' Cotton, 8 Wall. 507, this Court [226 U.S. 182] had under consideration the Acts of 1861 and of July 17, 1862, which act provided (12 Stat. 589, 591, § 7) for the institution of proceedings in the name of the United States in any district court, etc., where the property might be found, etc., "which proceedings shall conform as nearly as may be to proceedings in admiralty or revenue cases." In the Morris case, it was said (p. 511):

Where the seizure is made on navigable waters, within the ninth section of the Judiciary Act, the case belongs to the instance side of the district court; but where the

seizure was made on land, the suit, though in the form of a libel of information, is an action at common law, and the claimants are entitled to trial by jury.

Seizures, when made on waters which are navigable from the sea by vessels of ten or more tons burden, are exclusively cognizable in the district courts, subject to appeal, as provided by law; but all seizures on land or on waters not navigable, and all suits instituted to recover penalties and forfeitures incurred, except for seizures on navigable waters, must be prosecuted as other common law suits, and can only be removed into this Court by writ of error.

This jurisdiction of the district court was known to Congress at the time it passed the Pure Food Act, as were the decisions of this Court construing the former acts of Congress, and it declared that such proceedings shall conform to those in admiralty, as near as may be, giving to either party, however, the right to demand a trial by jury in case of issues of fact joined. We think this act must be held to have been passed not to confer a new jurisdiction upon the district court, but in recognition of the jurisdiction already created in seizures upon land and water. The act makes no reference, in conforming the proceedings as near as may be to those in admiralty, to appellate procedure. It leaves that to be determined by the nature of the case and the statutes already in force. It is true that the right of trial by jury is preserved, where demanded [226 U.S. 183] by either party. We think Congress inserted this provision with a view to removing any question as to the constitutionality of the act. It was held under the Confiscation Acts, although no such specific provision is contained, that the action provided was one at common law, with a right to trial by jury. The Seventh Amendment to the Constitution preserves the right of trial by jury in suits at common law involving more than $20, and provides that no fact tried by a jury shall be reviewed otherwise than according to the rules of the common law. Having in mind these provisions, and, as well, the construction of the previous acts, we think it was the purpose of Congress to leave no doubt as to the right of trial by jury in the law proceeding for condemnation which the act intended to provide.

These proceedings for the seizure and condemnation of property which is impure or adulterated are intended to be, in a sense, summary, and yet the statute, as we have construed it, gives the owner a right to a hearing in a court of record, with a right of

review upon questions of law by writ of error in the circuit court of appeals; and, where more than one thousand dollars is involved, finally in this Court (§ 6 of the Circuit Court of Appeals Act). It is to be noted in this connection that, where the examination of specimens of food or drugs, made by the Department of Agriculture, shows that the articles are adulterated or misbranded, the parties from whom the specimens were obtained are (§ 4 of the Pure Food Act) given a hearing before the matter is certified to the district attorney by the Secretary of Agriculture.

We do not think it was intended to liken the proceedings to those in admiralty beyond the seizure of the property by process in rem, then giving the case the character of a law action, with trial by jury if demanded, and with the review already obtaining in actions at law. It is true that, if the action is tried in the district court without a [226 U.S. 184] jury, the circuit court of appeals is limited to a consideration of such questions of law as may have been presented by the record proper, independently of the special finding. GO>Campbell v. United States, 224 U.S. 99. But the party on jury trial may reserve his exceptions, take a bill of exceptions, and have a review upon writ of error in the manner we have pointed out.

It is insisted for the government that, inasmuch as the hearing in the circuit court of appeals upon appeal was without objection by the claimant, the jurisdictional objection was waived. We cannot take that view. As we construe the statute, the circuit court of appeals had no jurisdiction upon the appeal, and neither the action of the court nor the consent of the parties could give it. Leo Lung On v. United States, 159 F. 125; Jones v. La Vallette, 5 Wall. 579; GO>United States v. Emholt, 105 U.S. 414; GO>Perez v. Fernandez, 202 U.S. 80, GO>100. [Comments by LTM: Simply NEVER EVER consent to a military tribunal. You must demand your law venue, and vehemently reject the public policy, and challenge the delegation of authority of the writs and process and the oath and bond of the judge. You will run a permanent error on the case for writ of error.]

As the circuit court of appeals, in our opinion, proceeded without jurisdiction by reason of the appeal, this Court, having acquired jurisdiction, should reverse the judgment of the circuit court of appeals and remand the case to that court, with instructions to dismiss the appeal for want of jurisdiction. Union & Planters' Bank v. Memphis, 189 U.S. 71.

Judgment accordingly.

Cases citing this case . . .

The following 5 case(s) in the USSC+ database cite this case:

C. J. Hendry Co. v. Moore, 318 U.S. 133 (1943)

United States v. Corrick, 298 U.S. 435 (1936)

Stratton v. St. Louis Southwestern Ry. Co., 282 U.S. 11 (1930)

New York v. Consolidated Gas Co., 253 U.S. 219 (1920)

United States v. Coca Cola Co. of Atlanta, 241 U.S. 265 (1916)