

Little Vs. Barreme

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Court : US Supreme Court

Decided On : 1804

Appeal No. : 6 U.S. 170

Appellant : Little

Respondent : Barreme

Judgement :

Little v. Barreme - 6 U.S. 170 (1804)

U.S. Supreme Court Little v. Barreme, 6 U.S. 2 Cranch 170 170 (1804)

Little v. Barreme

6 U.S. (2 Cranch) 170

APPEAL FROM THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

The Act of Congress of 9 February, 1799, authorized the seizure on the high seas of vessels of the United States bound or sailing to any port or place of the French Republic. This act did not authorize the capture of a vessel sailing from a French

port, and the orders of the President of the United States to the commanders of the armed vessels of the United States enjoining the seizure of American vessels sailing from French ports will not protect them from a claim for damages for the capture of a vessel coming from a port of France.

On 9 February, 1799, an act was passed by Congress entitled "An act further to suspend the commercial intercourse between the United States and France and the dependencies thereof." 1 Story's L.U.S. 558.

The first section proceeds:

"That from and after the first day of March next, no ship or vessel owned, hired, or employed, wholly or in part by any person resident within the United States and which shall depart therefrom shall be allowed to proceed directly or from any intermediate port or place to any port or place within the territory of the French Republic or the dependencies thereof or to any place in the West Indies or elsewhere under the acknowledged government of France or shall be employed in any traffic or commerce with or for any person resident within the jurisdiction or under the authority of the French Republic. And if any ship or vessel in any voyage thereafter commencing and before her return within the United States shall be voluntarily carried or suffered to proceed to any French port or place as aforesaid or shall be employed as aforesaid contrary to the intent hereof, every such ship or vessel, together with her cargo, shall be forfeited and shall accrue the one-half to the use of the United States and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same, and shall be liable to be seized, and may be prosecuted and condemned in any circuit or district court of the United States which shall be holden within or for the district where the seizure shall be made. "

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The fifth section enacts:

"That it shall be lawful for the President of the United States to give instructions to the commanders of the public armed ships of the United States to stop and

examine any ship or vessel of the United States on the high sea which there may be reason to suspect to be engaged in any traffic or commerce contrary to the true tenor hereof, and if upon examination it shall appear that such ship or vessel is bound or sailing to any port or place within the territory of the French Republic or her dependencies contrary to the intent of this act, it shall be the duty of the commander of such public armed vessel to seize every such ship or vessel engaged in such illicit commerce and send the same to the nearest port in the United States, and every such ship or vessel thus bound or sailing to any such port or place shall, upon due proof thereof, be liable to the like penalties and forfeitures as are provided in and by the first section of this act."

Under the provisions of this act, the President of the United States gave the following instructions to the commanders of the armed vessels of the United States.

"Sir: Herewith you will receive an act of Congress further to suspend the commercial intercourse between the United States and France and the dependencies thereof, the whole of which requires your attention. But it is the command of the President that you consider particularly the fifth section as part of your instructions and govern yourself accordingly."

"A proper discharge of the important duties enjoined on you arising out of this act will require the exercise of a sound and impartial judgment. You are not only to do all that in you lies to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France and her dependencies in cases where the vessels or cargoes are apparently, as well as really, American and protected by American papers only, but you are to be vigilant that vessels or cargoes really American, but covered by Danish or other foreign papers, and bound to or from French ports do not escape you. "

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"Whenever, on just suspicion, you send a vessel into port to be dealt with according to the aforementioned law, besides sending with her all her papers,

send all the evidence you can obtain to support your suspicions and effect her condemnation."

"At the same time that you are thus attentive to fulfill the objects of the law, you are to be extremely careful not to harass or injure the trade of foreign nations with whom we are at peace nor the fair trade of our own citizens."

On 2 December, 1779, the brigantine *Flying Fish* was captured near the Island of Hispaniola bound to Jeremie by the United States frigates *Boston* and *General Greene* and sent into Boston as liable to seizure under the act of Congress.

The *Flying Fish* and her cargo were owned by Samuel Goodman, a Prussian by birth but at the time of the capture an inhabitant of the Danish Island of St. Thomas. The master was born in and was at the same time an inhabitant of that island, but had for several years been employed in vessels of citizens of the United States, speaking the English language perfectly in the accent of an American and having the appearance of being one. The crew were Englishmen, Portuguese, and Negroes, and the supercargo was a Frenchman. The vessel had carried a cargo of dry goods from Thomas to Jeremie, and was, when captured, returning with a cargo of coffee.

The district court adjudged the vessel to be restored to the original owners and refused damages to the claimants for the capture and detention.

From this decree the claimants appealed to the circuit court, where it was reversed, and \$8,504 damages were given. The damages being assessed by assessors appointed by the court, a final sentence was pronounced, from which the captors appealed to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The *Flying, Fish*, a Danish vessel, having on board Danish and neutral property, was captured on 2 December, 1799, on a voyage from Jeremie to St. Thomas, by

the United States frigate *Boston*, commanded by Captain Little and brought into the port of Boston, where she was libeled as an American vessel that had violated the nonintercourse law.

The judge before whom the cause was tried directed a restoration of the vessel and cargo as neutral property, but refused to award damages for the capture and detention because, in his opinion, there was probable cause to suspect the vessel to be American.

On an appeal to the circuit court, this sentence was reversed because the *Flying Fish* was on a voyage from, not to, a French port, and was therefore, had she even been an American vessel, not liable to capture on the high seas.

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During the hostilities between the United States and France, an act for the suspension of all intercourse between the two nations was annually passed. That under which the *Flying Fish* was condemned declared every vessel owned, hired, or employed wholly or in part by an American which should be employed in any traffic or commerce with or for any person resident within the jurisdiction or under the authority of the French Republic, to be forfeited together with her cargo, the one-half to accrue to the United States and the other to any person or persons, citizens of the United States, who will inform and prosecute for the same.

The fifth section of this act authorizes the President of the United States to instruct the commanders of armed vessels

"to stop and examine any ship or vessel of the United States on the high sea which there may be reason to suspect to be engaged in any traffic or commerce contrary to the true tenor of the act, and if upon examination it should appear that such ship or vessel is bound or sailing to any or place within the territory of the French Republic or her dependencies, it is rendered lawful to seize such vessel and send her into the United States for adjudication."

It is by no means clear that the President of the United States, whose high duty it is to "take care that the laws be faithfully executed," and who is commander in chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States to seize and send into port for adjudication American vessels which were forfeited by being engaged in this illicit commerce. But when it is observed that the general clause of the first section of the

"act, which declares that such vessels may be seized, and may be prosecuted in any district or circuit court, which shall be holden within or for the district where the seizure shall be made,"

obviously contemplates a seizure within the United States, and that the fifth section gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound or sailing to a French port, the legislature seem to have prescribed

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that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port. Of consequence, however, strong the circumstances might be which induced Captain Little to suspect the *Flying Fish* to be an American vessel, they could not excuse the detention of her, since he would not have been authorized to detain her had she been really American.

It was so obvious that if only vessels sailing to a French port could be seized on the high seas, that the law would be very often evaded that this act of Congress appears to have received a different construction from the executive of the United States -- a construction much better calculated to give it effect.

A copy of this act was transmitted by the Secretary of the Navy to the captains of the armed vessels, who were ordered to consider the fifth section as a part of their instructions. The same letter contained the following clause:

"A proper discharge of the important duties enjoined on you arising out of this act will require the exercise of a sound and an impartial judgment. You are not only to do all that in you lies to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France or her dependencies, where the vessels are apparently as well as really American and protected by American papers only, but you are to be vigilant that vessels or cargoes really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you."

These orders, given by the executive under the construction of the act of Congress made by the department to which its execution was assigned, enjoin the seizure of American vessels sailing from a French port. Is the officer who obeys them liable for damages sustained by this misconstruction of the act, or will his orders excuse him? If his instructions afford him no protection, then the law must take its course, and he must pay such damages as are legally awarded against him; if they excuse an act not otherwise excusable, it would then be necessary to inquire whether this is a case in which the probable cause

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which existed to induce a suspicion that the vessel was American, would excuse the captor from damages when the vessel appeared in fact to be neutral.

I confess the first bias of my mind was very strong in favor of the opinion that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers, and between proceedings within the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which indeed is indispensably necessary to every military system, appeared to me strongly to imply the principle that those orders, if not to perform a prohibited act, ought to justify the person whose general duty it is to obey them, and who is placed by the laws of his country in a situation which in general requires that he should obey them. I was strongly inclined to think that where, in consequence of orders from

the legitimate authority, a vessel is seized with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is that the instructions cannot change the nature of the transaction or legalize an act which without those instructions would have been a plain trespass.

It becomes therefore unnecessary to inquire whether the probable cause afforded by the conduct of the *Flying Fish* to suspect her of being an American, would excuse Captain Little from damages for having seized and sent her into port, since had she actually been an American, the seizure would have been unlawful.

Captain Little, then, must be answerable in damages to the owner of this neutral vessel, and as the account taken by order of the circuit court is not objectionable on its face, and has not been excepted to by counsel before the proper tribunal, this Court can receive no objection to it.

There appears then to be no error in the judgment of the circuit court, and it must be

Affirmed with costs.