

**Hannay Vs. Eve**

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**Court :** US Supreme Court

**Decided On :** 1806

**Appeal No. :** 7 U.S. 242

**Appellant :** Hannay

**Respondent :** Eve

**Judgement :**

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**Hannay v. Eve**

**7 U.S. (3 Cranch) 242**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF GEORGIA*

## **SYLLABUS**

The courts of the United States will not enforce an agreement entered into in fraud of a law of the United States, although that agreement was made between persons who were then enemies of the United States, and the object of the

agreement a mere stratagem of war.

The duty of a master of a vessel to his owners will not oblige him to violate the good faith even of an enemy in order to preserve his ship, nor to employ fraud in order to effect that object.

This was a writ of error to the Circuit Court of the United States for the District of Georgia, sitting in chancery, to reverse a decree which dismissed the complainant's bill on a demurrer.

The complainant, as assignee of Cruden & Company, alleged in his bill that on 24 December, 1782, during the war between, the United States and Great Britain, the British armed ship *Dawes*, owned by Cruden & Company, who were British subjects, and commanded by Oswald Eve, the defendant, sailed with a cargo, the property of Cruden & Company, from Kingston, in Jamaica, for New York, then in possession of the British troops. That on her passage the ship met with much tempestuous weather, by which she was rendered incapable of reaching her port of destination, in consequence of which the defendant, after

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consultation with the crew and passengers, came to the determination to sail for the nearest port in the United States, thereby to save the lives of the crew and passengers, which were in imminent danger, and also to save as much as possible to the owners. That the vessel and cargo were liable to be captured by the cruisers of the United States; or if she went into any port of the United States, without being captured, she would become a *droit* of admiralty to the United States, or some of them. That the defendant stated to the crew and passengers that as Congress, by its resolve of 9 December, 1781, had enacted and declared

"That all ships and vessels, with their cargoes, which should be seized by the respective crews thereof should be deemed and adjudged as lawful prize to the captors,"

as the vessel was incapable of reaching New York, and as she would be totally lost to the owners, to himself, and the crew, if captured by the cruisers of the United States, the best mode would be to seize and capture the vessel and cargo, make the passengers, who were military men of high rank and distinction, prisoners of war, and sail for the nearest port, and there obtain a condemnation of the vessel and cargo for the benefit and compensation of the crew, who would lose their wages if she was regularly captured, and that the residue should remain in the defendant's hands, as agent and trustee, and for the sole use and benefit of the owners. That this plan was agreed to and executed, and an agreement, signed by the defendant and the crew, ascertaining what share each man was to be allowed, and which was to be the basis of the judge's decree, as to the distribution of the prize money. That the crew consented to the defendant's having a larger share than they would, if he had not declared his intention to act in the whole, as the agent and trustee, and for the benefit of the owners. That the vessel was accordingly carried into a port in North Carolina, libeled, condemned, and distribution made, according to the proportion fixed by the agreement. That the defendant afterwards purchased a number of the shares of the seamen for the benefit of his owners; that he also purchased part of the cargo, at the marshal's sales, and shipped it to Charleston, where he sold it to great profit for the benefit of the owners.

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The bill then prays a discovery, and that the defendant may account and be decreed to pay, &c.;

To this bill the defendant demurred and assigned two causes of demurrer.

1. That it appears by the complainant's own showing that the ship and cargo were regularly condemned under the resolve of Congress of 9 December, 1781, as lawful prize, and the proceeds decreed to the defendant and others as lawful captors, the legality of which decree ought not now to be called in question.

2. That the bill contains no matter of equity but what is cognizable at law.

Upon argument, the judge (Stephens) sustained the demurrer, and dismissed the bill, but without costs.

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

The essential difficulty in this cause arises from the consideration that under the resolution of Congress by which the vessel and cargo mentioned in the proceedings were condemned, a sanction is claimed to a breach of trust and a violation of moral principle. In such a case, the mind submits reluctantly to the rule of law, and laboriously searches for something which shall reconcile that rule with what would seem to be the dictate of abstract justice.

It has been correctly argued by the plaintiff in error that the captain was under obligations to the owners, from which, in a moral point of view, he could not be completely absolved. He was bound to save for them the ship and cargo by all fair means within his power, but he was no bound to employ fraud in order to effect the object. The situation of the vessel unquestionably justified her being carried into the port of an enemy, and perhaps in the courts of England the libeling of the vessel by the captain and crew might be construed to be an act which would enure solely to the benefit of the owners; but war certainly gives the right to annoy an enemy by means such as those which were employed by Congress, and courts are bound to consider them as legitimate, and to leave to them their full operation.

The agreement to save the ship and cargo, under the semblance of a condemnation, was not in itself an immoral act; it was, as has been truly said, a stratagem which the laws of war would authorize, but it was certainly a fraud upon the resolution of Congress, and no principle can be more clear than that the courts of the United States can furnish no aid in giving efficacy to it. Congress having a perfect right, in a state of open war, to tempt the navigators of enemy vessels to bring them into the American ports, by making the vessel and cargo prize to the captors, the condemnation of a vessel so brought in amounted necessarily to an absolute transfer of the property, and to a complete annihilation, in a legal point of

view, of the title of the owners, and of their

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claim upon the captain. Had no communication taken place between the captain and his crew, whereby a portion of the prize money was allotted to him in trust for the owners, which would not have been allotted to him as a captor, in virtue of his station in the vessel, it would have been a plain case of prize under the resolution of Congress, and any intention under which the capture was made, whether declared or not, would have been, like other acts of the will, controllable and alterable by the persons who had entertained it. But if, by a contract with the crew, stipulating certain advantages for the owners of the ship and cargo, the vessel has been carried in when she would not otherwise have been carried in, or a larger proportion of the prize has been allowed to the captain than would have been allowed to him for his own use, a plain fraud has been committed by him, and the question whether the trust which he assumed upon himself, and under which he obtained possession of the property, can be enforced in this Court is one of more difficulty, upon which a difference of opinion has prevailed. It has been thought by some of the judges that the contract being in itself compatible with the strictest rules of morality, and being opposed by only a temporary and war regulation, which exists no longer, may now be enforced. But upon more mature consideration, the majority of the judges accede to the opinion that the contract being clearly in fraud of the law, as existing at the time, a law to which, under the circumstances attending it, no just exceptions can be taken, its execution cannot be compelled by the courts of that country to evade whose laws it was made. The person in possession must be left in possession of that which the decree of a competent tribunal has given him.

This opinion seems completely to decide the point made under the treaty of peace. According to it, a debt never existed to which the treaty could apply. No debt was due from the captain to his owners but in virtue of the confiscation of the ship and cargo, and it has never been alleged that the treaty extended to captures made during the war, of property in the actual possession of the enemy, whatever might be the means employed in making them.

If the allegations of the bill had stated any contract subsequent to the condemnation, by which captain Eve had made himself a trustee, the previous moral obligation might have furnished a sufficient consideration for that contract. But the allegations of the bill are not sufficiently explicit on this point. They do not make out such a case. His declarations appear to have been contemporaneous with the transaction, and only to have manifested the intention under which he acted, an intention which he was at liberty to change.

*Judgment affirmed.*