

The James Wells Vs. United States

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 22

Appellant : The James Wells

Respondent : United States

Judgement :

The James Wells v. United States - 11 U.S. 22 (1812)

U.S. Supreme Court The James Wells v. United States, 11 U.S. 7 Cranch 22 22 (1812)

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11 U.S. (7 Cranch) 22

APPEAL FROM THE CIRCUIT

COURT OF CONNECTICUT

SYLLABUS

It was decided:

In cases of admiralty jurisdiction, new evidence will be admitted in this Court, and for that purpose a commission may issue.

The evidence of that necessity which will excuse a violation of the embargo laws must be very clear and positive.

This was an appeal from a sentence of the circuit court which affirmed that of the District Court of Connecticut restoring the cargo but condemning the brig *James Wells*, an American registered vessel, for a violation of the 3d section of the Embargo Act of January 9, 1808, in making a voyage to St. Bartholomews under a clearance for the port of St. Mary's, in the State of Georgia. The excuse suggested by the claimant of the vessel was stress of weather. He stated in his claim and answer that the vessel laden with 1,272 barrels of flour, sailed from New York on 26 February, 1808, cleared and bound for St. Mary's with a *bona fide* intention of going there and without any intent of going to any foreign place. But that by contrary winds and stress of weather and the leaky condition of the vessel, he was compelled against his will (he being owner and supercargo) and against the will of the captain and crew, to go to, and enter the port of Gustavia, in the Island of St. Bartholomews, in the West Indies, where he was obliged by the leaky and shattered condition of the vessel to unlade the cargo, which was greatly damaged, and he could not afterwards obtain permission to carry it away again, but was compelled to sell it there.

Page 11 U. S. 23

The evidence on the part of the claimant tended to prove that after the vessel got to sea, and the weather was rough she leaked considerably in her upper works, so that in bad weather they had to keep two pumps going at the rate of three or four hundred strokes every half hour, that after being six days at sea it was judged "best for the preservation of their lives" as well as "for the safety of vessel and cargo," to bear away for "any of the West India Islands;" that when they arrived at St. Bartholomews, part of the flour was damaged, and they were obliged to unlade the vessel to have her surveyed and repaired. That the governor of the island had

prohibited the exportation of provisions and would not permit them to take away their cargo.

New evidence which had been taken under a commission issued from this Court was offered.

Page 11 U. S. 25

WASHINGTON, J., delivered the opinion of the Court as follows:

That the law under which this prosecution is founded has been *prima facie* violated, is admitted, and it becomes absolutely necessary for the defendant, if he would excuse the breach, to bring himself within the exception made for his benefit, not by doubtful testimony but by such as shall leave no reasonable doubt of the sincerity of his exertions to proceed to some port in the United States and the danger or apparent impossibility of doing so.

That the vessel, shortly after leaving New York, leaked considerably is proved, but it is also proved that the leak was in her upper works; that she could be freed, and, by great exertions, was kept free of water.

It is clearly proved that after a sail of six days, she bore away for the West Indies, and the danger of continuing on the coast is indirectly stated, though nowhere positively affirmed.

But it is not proved by a single witness that an exertion was made to gain a port of the United States, or that the attempt, if it had been made, would in the opinion of one person on board have failed or been attended with danger. Nor are the state of the winds, or the latitude

Page 11 U. S. 26

and longitude of the vessel when she bore away given in evidence so as to enable the court to judge. In short, had the original destination been to the West Indies and this known to the crew, it would be difficult to fix perjury upon anyone of those

who have given evidence in this cause.

In such a case, where no presumption can or ought to be made in favor of the owner of the vessel, and with so strong a temptation as he had to violate the law -- her condemnation is inevitable.

Sentence affirmed with costs.

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