

The Active Vs. United States

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 100

Appellant : The Active

Respondent : United States

Judgement :

The Active v. United States - 11 U.S. 100 (1812)

U.S. Supreme Court The Active v. United States, 11 U.S. 7 Cranch 100 100 (1812)

The Active v. United States

11 U.S. (7 Cranch) 100

APPEAL FROM THE CIRCUIT COURT

OF THE DISTRICT OF CONNECTICUT

SYLLABUS

The departure of a vessel from the wharf of a port and proceeding a mile and a half therefrom with intent to go to sea is not a departure from the port within the

meaning of the third section of the Supplementary Embargo Act of January 9, 1808, if the vessel had not actually gone out of the port before seizure.

A licensed fishing vessel is liable to forfeiture under the thirty-second section of the Act of the 18 February, 1793, for enrolling and licensing vessels; for sailing, laden with goods, with intent to carry them to another place without a license therefor, although the goods are wholly of domestic growth and manufacture, and not liable to any duty. But such cargo is not liable to forfeiture unless it belong to the master, owner, or a mariner of the vessel

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This was an appeal from the sentence of the Circuit Court of the District of Connecticut which affirmed that of the district court condemning the sloop *Active* and cargo.

The libel stated that the sloop *Active* was an American vessel duly enrolled and licensed for the cod fishery on 5 July, 1808, and had given the bond required to be given by such vessels under the several acts of Congress laying and enforcing the embargo, and had a permit to depart and be employed in the cod fishery.

That in the night between 4 and 5 July, 1808, at the port of New London, there was secretly and unlawfully laden on board her a cargo consisting of barrels of beef, fish, butter, &c.;, without the knowledge and not under the inspection of a revenue officer, with intent unlawfully to proceed with the vessel and cargo to some place without the port, harbor, and district of New London. That the vessel, so laden, left her place at the wharf in the port of New London in the night without the knowledge of any custom house officer, without a license or permit, and without any custom house papers, and departed therefrom and out of the said port, and proceeded on her said intended unlawful voyage to some place to the custom house officers unknown. That the cargo was worth more than \$600. That the vessel was unlawfully employed in trade other than that for which she was licensed.

The facts of the case appeared to be as stated in the libel, except that the vessel was seized in the act of leaving the port, but before she had gone out of the port, and that Gates, the owner of the greater part of the cargo, was neither master, owner, nor mariner of the vessel.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

The sloop *Active*, a vessel licensed for the fishing trade, was laden, in the night of 4 July in the year 1808 in the port of New London, and was seized by the revenue officer after having left the wharf without a clearance under circumstances which justify a belief that she was about to proceed on a foreign voyage in violation of the acts laying an embargo. The vessel and cargo were libeled as having been forfeited under the laws of the United States, and were both condemned in the district court, which sentence was affirmed in the circuit court.

This sentence is supported on the part of the United States under the 3d section of the supplementary act to the act laying an embargo and the 32d section of the act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries.

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This Court is of opinion that however criminal the intentions of those on board the *Active* might have been, neither the vessel nor cargo were forfeited under the 3d section of the "act supplementary to the act, entitled an act laying an embargo on all ships and vessels in the ports and harbors of the United States," because she appears to have been seized in port, and a departure from port without a clearance was necessary to consummate the offense.

The case is undoubtedly within the words of the 32d section of the enrolling and licensing act. The *Active* was a licensed vessel employed in a trade other than that for which she was licensed.

The argument that this act was intended merely to secure the revenue, and that its provisions do not contemplate a vessel laden with domestic produce not subject to duty, has been urged with great force and certainly derives much strength from the various sections of the act which have been quoted. But the words of the 32d section are explicit, and although other preceding sections furnish much reason for believing that a forfeiture in a case where the revenue could not be defrauded might not be contemplated by the legislature, yet they are not so expressed as to control the 32d section. The *Active* and her cargo therefore must be considered as forfeited except so far as they come within the 33d section.

That section is in these words:

"Provided nevertheless, and be it further enacted, that in all cases where the whole or any part of the lading, or cargo on board, any ship or vessel, shall belong *bona fide* to any person or persons other than the master, owner, or mariners of such ship or vessel and upon which the duties shall have been previously paid or secured according to law, shall be exempted from any forfeiture under this act, anything therein contained to the contrary notwithstanding."

In this case, the libel states that _____ Billings and _____ Morgan were owners of the vessel, and a certain _____ Cates owner of the cargo. A claim is filed by Billings and Morgan for the vessel and part of

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the cargo, and by Gates for the residue of the cargo. It appears, then, both from the libel and claim that a part of the cargo did "belong, *bona fide*, to a person other than the master, owner, or mariners of the ship or vessel." This part of the cargo comes completely within that part of the description which relates to the ownership of the property. But the goods on board being liable to no duty, the duties could not have been previously paid or secured.

The Court considers this section as manifesting a clear intention in the legislature to exempt from forfeiture a cargo not belonging to the owner, master, or mariners, provided that cargo was not liable to duties. Whether this condition was produced

by a previous payment of duties or by a perfect exemption from duties must be immaterial. Duties cannot be paid or secured according to law on goods not liable by law to duty. The legislature must be understood, when saying "upon which the duties have been previously paid or secured according to law" to mean "upon which the duties, if any, have been previously paid," &c.;

It is the opinion of the Court that the sentence of the circuit court be

Reversed as to so much of the cargo of the sloop Active as is claimed as the property of Gates, and be affirmed as to the vessel and the residue of the cargo.

And it is directed to be certified that there was probable cause of seizure.

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