Locke Vs. United States

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Court : US Supreme Court

Decided On : 1813

Appeal No. : 11 U.S. 339

Appellant : Locke

Respondent : United States

Judgement :

Locke v. United States - 11 U.S. 339 (1813)
U.S. Supreme Court Locke v. United States, 11 U.S. 7 Cranch 339 339 (1813)

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11 U.S. (7 Cranch) 339

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND

SYLLABUS

In a count in a libel upon the fiftieth section of the Collection Law of March 2, 1799, for unlading goods without a permit, it is not necessary to state the time and place of importation, nor the vessel in which it was made, but it is sufficient to allege that

they were unknown to the attorney.

"Probable cause" means less than evidence which would justify condemnation. It imports a seizure made under circumstances which warrant suspicion.

Error to the sentence of the Circuit Court for the District of Maryland, which condemned the cargo of the schooner *Wendell* belonging to Locke, the claimant, as forfeited to the United States.

The libel contained 11 counts.

The 1st count charged that the goods between 1 June, 1808, and the day of filing the libel, at Boston, with intent to transport them to Baltimore, without a permit from the collector and naval officer of the port of Boston, were clandestinely laden on board the schooner *Wendell* a vessel enrolled and licensed according to statute, whose employment was not then confined to the navigation of bays, sounds, rivers and lakes within the jurisdiction of the United States, nor exempted from the obligation of giving bond according to the provisions of the statute (the embargo law).

The 2d count charged that the goods being of foreign growth and manufacture and subject to the payment of duties, between 1 May, 1808, and the day of filing the libel were unladed without the authority of the proper officers of the customs, from on board some vessel to the attorney unknown, after she had arrived within four leagues of the coast of the United States, the said vessel being then bound from some foreign port or place (to the attorney unknown) to the United States.

The 3d count charged that the goods being of foreign growth and manufacture and subject to duties, were, without any unavoidable accident, necessity, or distress of weather, unladen without the authority of the proper officers of the customs.

The 4th count charged that the goods, being of foreign growth and manufacture and subject to the payment of duties imposed by the laws of the United States

between 1 May, 1804, and the day of filing the libel, were imported from some foreign port or place to the attorney unknown into some port of the United States to the said attorney unknown in a certain vessel to the said attorney unknown, and were afterwards and before filing the libel unladed at the said last mentioned port from the said vessel without a permit from the proper officers of the customs of the last mentioned port.

The 5th count charged that the goods were imported into Boston and were falsely and by a false name and denomination entered at the custom house of the port of Boston.

The 6th count charged that they were imported into a port of the United States to the attorney unknown, and were falsely and by a false name and denomination entered at the custom house of such port.

The 7th count stated that the goods were of the manufacture of Great Britain, and were imported into New York, between 1 March, 1808, and the day of filing the libel, from some foreign port or place to the attorney unknown.

The 8th count stated that they were so imported into Boston.

The 9th count stated them to have been so imported into Philadelphia.

The 10th count averred them to have been so imported into Baltimore.

The 11th count stated them to have been so imported into some port of the United States, to the attorney unknown.

The 1st count was under the embargo law.

The 2d, 3d, 4th, 5th and 6th counts were under the collection law.

The other counts were under the nonimportation acts

of 18 April, 1806, Vol. 8, p. 80, and 19 Dec. 1806, Vol. 8, p. 219.

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

This is a writ of error to a judgment of the Circuit Court for the District of Maryland affirming a judgment of the district court, which condemned the cargo of the *Wendell* as being forfeited to the United States.

The first point made by the plaintiff in error is that the information filed in the cause is totally insufficient to sustain a judgment of condemnation.

The information consists of several counts, to all of which exceptions are taken. The Court, however, is of opinion that the 4th count is good, and this renders it unnecessary to decide on the others.

That count is founded on the 50th section of the collection law, and alleges every fact material to the offense.

It is, however, objected to this count that the time and place of importation, and the vessel in which it was made, are not alleged in the information, but are stated to be unknown to the attorney.

These circumstances are not essential to the offense, nor can they, from the nature of the case, be presumed to be known to the prosecuting officer.

The offense is charged in such a manner as to come fully within the law, and is alleged to have been committed after the passage of the act, and before the exhibition of the information. This allegation in such a case is all that can be required.

The 4th count of the information being sufficient in law, the Court will proceed to examine the testimony adduced to support it.

It is proved incontestably that the goods are of foreign manufacture and consequently have been imported into the United States.

The circumstances, on which the suspicion is founded that they have been landed without a permit, are

1st. That the whole cargo in fact belongs to the claimant, and yet was shipped from Boston in the names of thirteen different persons, no one of whom had any interest in it, or was consulted respecting it, and several of whom have no real existence.

2d. That no evidence exists of a legal importation into Boston, the port from which they were shipped, to Baltimore, where they were seized.

3d. That the original marks are removed, and others substituted in their place.

The counsel for the claimant has reviewed these circumstances separately, and has contended that no one of them furnishes that solid ground of suspicion which can create a presumption of guilt and put his client on the proof of his innocence. That they are either indifferent in themselves -- mere casualties -- or are reasonably accounted for.

To the employment of fictitious names as shippers, he says that if the circumstance be not totally immaterial, it is sufficiently accounted for by the deposition of William

French, who says

"he understood that the claimant in the cause, was in embarrassed circumstances some time before the shipment of these goods, and that he has understood and believes from general report that, for the purpose of preventing his property from being attached, he was in the habit of shipping his property in the names of other persons."

The Court is of opinion that the circumstance is far from being immaterial. It is certainly unusual for a merchant to cover his transactions with a veil of mystery and to trade under fictitious names. The manner in which this mysterious conduct is accounted for is not satisfactory. It does not appear that his creditors were in Baltimore, or would be more disposed to attach his property in that place than in Boston, and it does not appear that in Boston the names of others were borrowed to protect his property from his creditors. The fact itself, if true, might be proved by other and better testimony. This habit might have been proved by his clerks.

An attempt is made to account for the circumstance that the goods were not regularly entered at the custom house of Boston, by the testimony of the same William French, who deposes that goods to a large amount are transported by land to Boston, and if intended for domestic consumption, are generally unaccompanied by certificates of having paid the duties. The inference is therefore considered as a fair one, that these goods may have paid the duties at some other port where they were purchased by Mr. Locke, and transported by land to Boston.

The Court is not satisfied with this inference. Goods in packages, unaccompanied by certificates of having paid the duties, are always liable to be questioned on that account. Large purchasers therefore, even where reexportation is not intended, would choose to be furnished with this protection. It is a precaution which costs nothing, and which a prudent merchant will use. The presumption, therefore, is always against the person who is in possession of goods in the original packages without these documents. This presumption ought to be removed, and may be removed, not by proving

that cases have existed where a purchaser of goods, that have been regularly entered, has omitted to furnish himself with certificates, but that the particular case may reasonably be supposed to be of that description. The actual importation or the actual purchase of the very goods or of goods of the same description may be proved and ought to be proved by a person who has been so negligent as not to obtain certificates that would exempt them from forfeiture.

The alteration of the original marks has been treated as an immaterial circumstance because no criminal motive can be assigned for it. This alteration, it is said, was not calculated to impress the revenue officers with the opinion that the duties had been paid, and is therefore not to be considered as made with that motive.

Certainly the alteration was not made without a motive. Men do not usually employ so much labor for nothing. If they use mystery without an object, they must expect to excite suspicion.

To do away that suspicion, they ought to show an object.

In the present case, it is not improbable that the motive was to relieve the goods from the suspicion of being imported in violation of the then existing prohibitory laws. One witness, who deposes that the goods were of British manufacture, also deposes that he never saw goods imported from Great Britain with such marks as those which were found on the goods of Mr. Locke. In the absence of other motives, the mind unavoidably suggests this.

If these circumstances were even light, taken separately they derive considerable weight from being united in the same case. If these goods have really paid a duty, it is peculiarly unfortunate that they should have been shipped without certificates of that fact, under fictitious names, from a port where they were not entered, and that the marks of the packages should have been changed. It is peculiarly unfortunate that these circumstances cannot be explained away by showing that the goods have been entered elsewhere, or even

that the claimant has purchased such goods from any person whatever.

These combined circumstances furnish, in the opinion of the Court, just cause to suspect that the goods, wares, and merchandise against which the information in this case was filed have incurred the penalties of the law.

But the counsel for the claimant contends that this is not enough to justify the court in requiring exculpatory evidence from his client. Guilt, he says, must be proved before the presumption of innocence can be removed.

The Court does not so understand the act of Congress. The words of the 71st section of the collection law, which apply to the case, are these:

"And in actions, suits, or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall be upon such claimant. . . . But the *onus probandi* shall be on the claimant, only where probable cause is shown for such prosecution, to be judged of by the court before whom the prosecution is had."

It is contended that probable cause means *prima facie* evidence, or in other words such evidence as, in the absence of exculpatory proof, would justify condemnation.

This argument has been very satisfactorily answered on the part of the United States by the observation that this would render the provision totally inoperative. It may be added that the term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation, and in all cases of seizure has a fixed and well known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the Court must understand the term to have been used by Congress.

The Court is of opinion that there is no error and that the judgment be affirmed with costs.