The Sally

The Sally

SooperKanoon Citation : sooperkanoon.com/78638

Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 382

Appellant : The Sally

Judgement :

The Sally - 12 U.S. 382 (1814)
U.S. Supreme Court The Sally, 12 U.S. 8 Cranch 382 382 (1814)

The Sally

12 U.S. (8 Cranch) 382

APPEAL FROM THE DECREE OF THE CIRCUIT

COURT FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Property engaged in an illicit intercourse with the enemy must be condemned to the captors, not to the United States.

A municipal forfeiture under the laws of the United States is absorbed in the more general operation of the law of war.

The Prize Act of 26 June, 1812, operates as a grant from the United States to the captors of all property rightfully captured by commissioned privateers as prize of war.

The facts of the case were as follow:

The brig *Sally,* John Porter master, was captured by the privateer *Jefferson,* John Kehew, commander, July 7, 1812, as prize, and sent into the port of Salem in the District of Massachusetts for adjudication. The *Sally,* at the time of her capture, had on board a coaster's manifest and a permission from the collector of the port of Passamaquoddy dated July 7, 1812, to proceed to Boston. From the manifest, her cargo purported to be one box of hones and one box of furs. She had on board also about four thousand bushels of salt.

The *Sally* was licensed and enrolled for the coasting trade at New London, June 6, 1812, upon the oath of John Patterson, of the City of New York, who swore that he was the agent of James Mavor of New York, the owner.

Patterson was on board at the time of capture. Upon the return of the monition in the district court, Patterson claimed the brig for Mavor, and Edward Monroe claimed the salt for himself and Lemuel P. Grosvenor, of Boston.

The affidavit of claim of Monroe did not state where the salt was taken on board nor for what reason it was not mentioned in the manifest.

Patterson, Porter the master, and the crew, upon the preparatory examinations, swore that the salt was put on board the brig at Robinstown and Eastport, in the District of Maine.

Among the papers found on board the *Sally* was a permission to land her cargo of 60 tons of cordage and 50 bolts of duck, from the deputy collector of the port of Passamaquoddy, dated June 20, 1812.

There was also found on board a letter to Messrs. Monroe and Grosvenor, Boston, dated Eastport, July 7, 1812, signed "L.P.G." covering a bill of lading of the salt. In this letter it is said

"I am sorry to say that no clearance of the salt can be obtained on board the brig; I have, however, dispatched her with a clearance of two small packages of John Brewer, consigned to us, and leave you to manage; it will at least be as well as the other goods sent -- and I am hourly expecting a seizure to pay for sundry prizes taken from St. Andrews."

Again -- "A protection can be had, for any vessel bound here with provisions, from the English admiral, &c.;" St. Andrews is a small town in New Brunswick, a province belonging to Great Britain.

In the manifest of the *Sally,* the two small packages above mentioned are consigned to Monroe and Grosvenor, Boston.

The captors produced witnesses in the district court who proved that the *Sally* discharged at St. Andrews her cargo of cordage after 1 July, 1812, and took in there the salt.

The vessel and cargo were condemned in the district court to the captors, and an appeal entered by the claimants. In the circuit court the decree was affirmed, and Monroe and Grosvenor appealed to this Court.

A claim was interposed by the United States as for a forfeiture under the nonintercourse act.

On the above statement (and upon the argument in the case of the *Rapid, ante,* 25 U. S. 155), the case was submitted.

STORY, J. delivered the opinion of the Court.

This case cannot be distinguished from that of the *Rapid.* It was there decided that property engaged in an illicit intercourse with the enemy is liable to confiscation

as prize of war, and the only remaining question now before us is to whom it shall be condemned -- to the captors or to the United States.

By the general law of prize, property engaged in an illegal intercourse with the enemy is deemed enemy property. It is of no consequence whether it belong to an ally or to a citizen; the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences of enemy ownership. In conformity with this rule, it has been solemnly adjudged by the same course of decisions which has established the illegality of the intercourse that the property engaged therein must be condemned as prize to the captors, and not to the Crown. This principle has been fully recognized by Sir William Scott in *The Nelly,* 1 Rob. 219, and indeed seems never to have admitted a serious doubt.

But a claim is interposed by the United States, claiming a priority of right to the property in question, upon the ground of an antecedent forfeiture to the United States by a violation of the Nonintercourse Act of March 1, 1809, vol. 9, 246, 5, the goods having been put on board at a British port with an intent to import the same into the United States.

We are all of opinion that this claim ought not to prevail. The municipal forfeiture under the nonintercourse act was absorbed in the more general operation of the law of war. The property of an enemy seems hardly to be within the purview of mere municipal regulations, but is confiscable under the *jus gentium.*

But even if the doctrine were otherwise, which we do not admit, we are all satisfied that the Prize Act of 26 June, 1812, ch. 107, operates as a grant from the United States of all property rightfully captured by commissioned privateers as prize of war. The language of the 4th, 6th and 14th sections is decisive.

The decree of the circuit court condemning the vessel and cargo to the captors is affirmed.