Otis Vs. Watkins

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Court : US Supreme Court

Decided On : 1815

Appeal No. : 13 U.S. 339

Appellant : Otis

Respondent : Watkins

Judgement :

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Otis v. Watkins

13 U.S. (9 Cranch) 339

ERROR TO THE SUPREME JUDICIAL

COURT OF MASSACHUSETTS

SYLLABUS

Decided that if the facts stated in a special plea do not amount in law to a justification, yet if issue be joined thereon and if the facts be proved as stated, it is error in the judge to instruct the jury that the facts so proved do not in law maintain

the issue on the part of the defendant.

If a collector justify the detention of a vessel under the eleventh section of the Embargo Law of 25 April, 1808, he need not show that his opinion was correct nor that he used reasonable care and diligence in ascertaining the facts upon which his opinion was formed. It is sufficient that he honestly entertained the opinion upon which he acted.

Error to the Supreme Judicial Court of the Commonwealth of Massachusetts under the 25th section of the Judiciary Law of the United States, vol. 1, p. 63, in an action of trespass by Watkins against Otis, a deputy collector for the District of Barnstable, for taking, carrying away, and destroying the plaintiff's schooner *Friendship* and her cargo of codfish.

The defendant pleaded that he was a deputy collector for the District of Barnstable; that by the 11th section of the Act of Congress of 25 April, 1808, vol. 9, p. 150, it is enacted

"That the collectors of the customs be, and they are hereby respectively authorized to detain any vessel ostensibly bound with a cargo to some other port of the United States whenever, in their opinions, the intention is to violate or evade any of the provisions of the acts laying an embargo until the decision of the President of the United States be had thereupon."

That the schooner *Friendship,* with her cargo, was lying in the harbor of Provincetown, in the District of Barnstable, ostensibly bound to some other port in the United States, in the opinion of the collector, with an intent to violate or evade the provisions of the acts aforesaid, whereupon the collector, by the defendant, his deputy, caused the said vessel and her cargo to be detained and removed from the port and harbor of Provincetown to the port and harbor of Barnstable, that she might be securely kept, and there also caused her to be detained, as it was lawful for him to do, so that the decision of the President of the United States might be had thereupon, and that the President afterwards, on 3 January, 1809, upon the report and representation of the said collector, approved and confirmed the

detention, all which is the same taking, &c.; To this plea there was a general replication and issue, upon the trial of which a bill of exceptions was taken, which stated that the defendant, in order to show that the collector had reasonable ground to believe that this vessel intended to violate or evade the embargo laws,

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offered in evidence the deposition of an inspector of the customs who testified that he went on board the schooner at Provincetown, which was wholly laden with fish in bulk, and a barrel of beef and a number of packages of small stores and three or four barrels of water. That he supposed she was bound to sea and gave information thereof, and of his suspicions, to the collector. That she had also a number of kegs of pickled oysters on board, and that he judged that the groceries were sufficient for the crew of such a vessel for thirty days, and that he had no doubt of her being bound to sea, which was the reason of his giving the information. Upon cross-examination, he said he had never lived in the county of Barnstable, and did not know the course and manner of their trade and navigation. It further appeared in evidence that on 19 December, 1808, written orders were given, by the collector, to one Andrew Garrett to detain the schooner, then lying in Provincetown harbor, and bring her to the port of Barnstable, and there secure her in the best manner possible. That the distance from Provincetown to Barnstable is about 30 miles by water. That on the voyage she accidentally ran on a point of land, and could not be got off until she was frozen up in the ice, and there remained until March following, when she was got off and brought up to the wharf and her cargo unladen and safely stored. That about 70 quintals of codfish were damaged, but the residue was in good order. That when she was so detained, she had nine barrels of water on board, but no bread. That her sails were on shore. That on 24 December, 1808, the collector wrote to the Secretary of the Treasury that he had detained the schooner *Friendship,* loaded with dry codfish and evidently intended for a foreign port, as she had an unusual quantity of small stores on board sufficient for such a voyage and fully watered, that their plea was that she was intended for a store ship, and a neighboring market, both of which it was sufficiently evident were without foundation. That on 3 January, the Secretary

answered that the detention of the schooner was approved and confirmed by the President. That the collector had used due care and diligence in the preservation of the vessel and cargo. That on the 30 January, 1809, the Secretary of the Treasury wrote to the collector, authorizing him to release all vessels detained by him under the

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said 11th section of the act aforesaid, on bond being given, in the manner and to the amount provided by the 2d section of the Act of January 9, 1809. That on 15 February, 1809, the collector sent the following written notice to the plaintiff Watkins, dated at the custom house.

"Sir, I hereby request of you as the owner of the schooner *Friendship,* of Provincetown, detained by order under the 11th section of the embargo law of 25 April, 1808, at Barnstable, to give bond here, within three days after giving this notification, agreeable to the second section of the act to enforce the embargo passed on the 9th ultimo."

"I am, sir, your humble servant,"

"JOSEPH OTIS, *Collector* "

But that Watkins wholly refused to give such bond. That on 21 March, 1808, the collector wrote to the Comptroller of the Treasury, stating that on 24 December, he had detained the schooner *Friendship* under the embargo law for loading with codfish without a permit, which detention was approved and confirmed by the President. That on the passage of the Act of 9 January, 1809, he notified the owner that if he would give bond agreeably to the second section of the same, he would give her up to him, which he utterly refused to do, or to unload his vessel, for more than a fortnight. That he wished to know whether she ought not to be libeled.

To this letter the Comptroller replied, referring the collector to the attorney for the district. That the vessel was afterwards libeled in the district court, for having

taking her cargo on board in the night, without a license, and without the inspection of the proper inspecting officers of the port. Upon trial she was acquitted.

The plaintiff also produced a laborer who stowed the fish on board the schooner who testified that the vessel "was destined to Boston for a market" and that the vessel and cargo were much injured in consequence of the detention. He also produced testimony that it was usual for vessels going from Provincetown to take water enough on board to last them to Boston and for two

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or three weeks, because the people did not like the Boston water. That it was usual to take eight or ten barrels on such a voyage. Whereupon the judge who tried the cause (Chief Justice Parsons) charged the jury

"that the several matters and things so given in evidence by the defendant Otis did not in law maintain the issue on his part, and also that it was the duty of the collector, as collector, to have used reasonable care in ascertaining the facts on which to form an opinion, and to transmit to the President a statement of those facts for his decision."

The verdict and judgment being against the defendant, he brought his writ of error.

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

This is an action of trespass brought in the Supreme Judicial Court of the Commonwealth of Massachusetts, for taking, carrying away and destroying a certain schooner called the *Friendship,* with her cargo, belonging to the plaintiff below.

The declaration is in common form. The defendant pleaded that, as deputy collector for the District of Barnstable, he detained and removed from the port and

harbor of Provincetown to the port and harbor of Barnstable the said vessel and cargo, that they might be securely kept; the said schooner and cargo, at the time of such detention, lying in the said harbor of Provincetown, within the district aforesaid, ostensibly bound to some other port of the United States, with an intent, in the opinion of the defendant, to violate or evade the provisions of the embargo laws. He further pleaded that he caused the said vessel to be detained so that the decision of the President of the United States might be had thereon, who afterwards, upon his report and representation, did approve and confirm the said detention.

The plaintiff replies that the defendant committed the trespass of his own wrong, and without any such cause, &c.;, issue being joined thereon.

On a bill of exceptions taken to the charge of the court, the following facts appear to have been given in evidence: that the schooner in question, in the month of December, 1808, was lying at Provincetown, wholly loaded with codfish. She had also a barrel of beef, a number of small stores and groceries, with three or four barrels of water, and a number of kegs of pickled lobsters. That an inspector of the customs, seeing the *Friendship* in this situation and judging that the groceries were sufficient for the crew of such a vessel for thirty days, and having no doubt of her being bound to sea, gave information of such, his suspicions, to the collector, who gave a written order to one Ganet to detain

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and to bring her into the port of Barnstable and there secure her in the best manner possible. That Ganet proceeded to Provincetown with about thirty men, and removed the said vessel to Barnstable, about ten leagues, by water, but when attempting to come up to a wharf, she accidentally ran onto a point of land which projected into the water, and there stuck fast. That she could not be got off during that tide which soon left her, and the weather was very cold, and the harbor was frozen up for a long time, so that the schooner could not be removed. That the defendant gave notice by letter to the Secretary of the Treasury of the United States of the detention of said vessel, stating at the same time his reasons for

believing that "she was evidently intended for a foreign port," which detention was approved of and confirmed by the President. That as soon as the weather would permit, which was in the month of March following, the defendant caused the said schooner to be brought to a wharf, and unloaded and secured the cargo. That about 60 or 70 quintals of fish were damaged, and the rest in good order. There was also evidence on the part of the plaintiff to prove that the *Friendship* was actually bound to Boston, and the extent of the injury which his property and sustained.

The court charged the jury that the several matters and things so given in evidence by the defendant

"did not in law maintain the issue aforesaid on his part, and also that it was the duty of the collector, as collector, to have used reasonable care in ascertaining the facts on which to form an opinion and to transmit to the President a statement of those facts for his decision."

On an exception to the charge, the cause now comes before us, it having been removed into this Court under the 25th section of the Judiciary Act, and whether it were correct or not is the question which is now to be decided.

This seizure was made under the 11th section of the Act of 25 of April, 1808, vol. 9, p. 150, which provides

"That the collectors of the customs be and they are hereby respectively authorized to detain any vessel ostensibly bound with a cargo to some other port of the United States whenever in their opinions the

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intention is to violate or evade any of the provisions of the acts laying an embargo until the decision of the President of the United States be had thereupon."

The issue tendered by the defendant and on which the parties went to trial was whether the vessel and cargo were detained because, in the opinion of the defendant, she intended, although the case of Crowell and Hawes port in the

United States, to violate or evade the provisions of the embargo laws, and whether the vessel was removed to Barnstable that she might be securely kept until the decision of the President was known.

If there were any evidence to prove this issue, it should have been left to the jury to draw its own conclusions. If the defendant had taken upon himself to say that the vessel did intend to violate the embargo laws, and that such removal was absolutely necessary for her secure detention, such charge would have been less exceptionable; but that it was the opinion of the collector that such violation was in contemplation and that such removal was for the purpose of securing the vessel, which were the facts in issue, might very well have been inferred by the jury from the evidence before it. Indeed it would have been difficult for it to have come to a different conclusion, for the collector, from the information which he received, could scarcely fail to form the opinion he did, and there was no evidence in the charge of the judge to cause it to believe that she could have been removed to Barnstable, considering the care which was taken of her during her removal and after her arrival there, for any other purpose but for that alleged in the plea. In this particular, then, it is the opinion of a majority of the Court that the charge was erroneous.

The charge is deemed incorrect in another respect. The jury was told that it was the collector's duty to have used reasonable care in ascertaining the facts on which to form an opinion.

This instruction implies that the collector is liable if he form an incorrect opinion or if, in the opinion of the jury, it shall have been made unadvisedly or without reasonable care and diligence. But the law exposes

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his conduct to no such scrutiny. If it did, no public officer would be hardy enough to act under it. If the jury believed that he honestly entertained the opinion under which he acted, although it might think it incorrect and formed hastily or without sufficient grounds, he would be entitled to their protection. Such was the opinion of

this Court in the case of *Crowell & Hawes v. McFaddon,* 12 U. S. 94 , decided at the last term. This does not preclude proof on the part of the plaintiffs showing malice or other circumstances which may impeach the integrity of the transaction. The jury, then, were misled when its attention was drawn from the fact whether the defendant really entertained such opinion and was directed to inquire into the reasonable care with which it was formed, which left it at liberty to find a verdict against the defendant however honestly and fairly he may have acted.

It is the opinion of the Court that the judgment of the Supreme Judicial Court of Massachusetts must, for the reasons assigned, be

Reversed and the cause be remanded for further proceedings.

MR. CHIEF JUSTICE MARSHALL, after stating the facts of the case, delivered his separate opinion as follows:

As the Court can notice no other error than such as may be founded on a misconstruction of the act of Congress under which the defendant justified the taking and carrying away charged in the declaration, the charge the judge can be considered so far only as it respects that act.

The section to which the plea refers is in these words: "Be it enacted," &c.;

In construing this law it, has already been decided in this Court that the collector is not liable for the detention of a vessel

"ostensibly bound, with a cargo, to some other port of the United States whenever in his opinion the intention is to violate or evade any of the provisions of the acts laying an embargo, until the decision of the President of the United States be had thereon."

For the correctness of this opinion he is not responsible. If in truth he has formed it, his duty

obliges him to act upon it, and when the law affords him no other guide than his own judgment and declares that judgment to be conclusive in the case, it must constitute his protection although it be erroneous. The legislature did not intend to expose the collector to the hazard of being obliged to show that he had probable cause for the opinion he had formed. If in reality he had formed it, the law justifies him for acting upon it. If it can be proved, either from the gross oppression of the case or from other proper testimony, that the collector did not in fact entertain the opinion under which he professed to act, some doubt may be entertained of his being justified by the law; but if the opinion avowed was real, though mistaken, a detention under that opinion is lawful.

But the act of Congress authorizes only a detention of the vessel, not its removal. The collector did remove the vessel from one harbor into another, a distance of about thirty miles by water, and in this removal the injury was sustained. As an independent act, this proceeding is not justified by the law. It was the duty of the collector to detain the vessel, and all acts which were necessary as means to the end were lawful, but unless this removal was necessary for the purpose of detention, it is not protected by the law.

The charge of the judge will now be examined.

He instructed the jury "that the several matters and things so given in evidence by the said William Otis did not in law maintain the issue on his part."

If this instruction could be understood as conveying to the jury an opinion that Otis had not justified the detention of the vessel, the Court would feel no hesitation in pronouncing it erroneous. But it was necessary for Otis be justify the removal as well as the detention, and he could only justify the removal by showing that it was necessary to a secure detention. Had he offered any testimony whatever to this point, it might have been incumbent on the judge to submit that testimony to the jury. But he has offered no testimony whatever to it. This Court therefore cannot say that the judge of the state court has erred in saying that the matters and things

given in evidence by the said William Otis did not in law support his plea. Certainly they did not make out a justification under the act of Congress.

The judge further instructed the jury

"that it was the duty of the collector, as collector, to have used reasonable care in ascertaining the facts on which to form an opinion and to transmit to the President a statement of those facts for his decision."

The act authorizes the collector to detain a vessel on his own mere suspicion, "until the decision of the President of the United States be had thereupon."

On what is the decision of the President to be had? Clearly on the further detention of the vessel and on the future proceedings of the collector respecting her. Whenever the President acts, he is expected to act upon information, and from whom in this instance is his information to be derived? Unquestionably from the collector. The law does not indeed say in terms that the collector "shall take reasonable care in ascertaining the facts," or that he shall afterwards communicate those facts correctly to the President, and if this be not a fair and necessary construction of the act, the judge has misconstrued the law and his judgment ought to be reversed. But it seems to be an inference which must be drawn from the words of the law. It follows necessarily from the duties of forming an opinion and of communicating that opinion to the President for his decision in the case that reasonable care ought to be used in collecting the facts to be stated to the President and that the statement ought to be made.

I cannot say that the court of Massachusetts has erred in its construction of the act of Congress under which the defendant justifies the trespass alleged in the declaration.