

The Samuel

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Appeal No. : 14 U.S. 9

Appellant : The Samuel

Judgement :

The Samuel - 14 U.S. 9 (1816)

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14 U.S. (1 Wheat.) 9

APPEAL FROM THE CIRCUIT COURT

FOR THE RHODE ISLAND DISTRICT

SYLLABUS

Where, in an admiralty cause, on a seizure, the evidence is so Contradictory or ambiguous that the Supreme Court finds a decision difficult, it will order the cause to further proof.

A libel on a seizure in the admiralty in its terms and in its essence, is an information, and the word "information" is not exclusively applicable to common law proceedings.

That the deponent is a seaman on board a gunboat in a certain harbor, and liable to be ordered to some other place and not to be able to attend the court at the time of its sitting, is not a sufficient reason for taking his deposition *de bene esse* under the Judiciary Act of 1789, c. 20, s. 30.

In such a case, the proper course is to apply to the court for a commission.

And even if the deposition might lawfully be taken in such a case without applying to the court for its aid, still the deposition is taken *de bene esse*, not in chief, and a deposition so taken can be read only when the witness himself is unattainable.

If such a deposition be offered before or at the time of trial and used in the court below without objection, this Court may infer that the requisites of the law in respect to proof of the absence of the witness were complied with or waived.

But its being filed after the trial by order of the court below will not justify such an inference. The party is not necessarily in court after his cause is decided, and is not bound to know the fact that a deposition is thus ordered to be filed.

The brig *Samuel* sailed from St. Bartholomews, an island belonging to his Majesty the King of Sweden, in the month of November, 1811, with a cargo consisting of rum, molasses, and some other articles, and arrived in Newport, Rhode Island, on the 8th of the following December, where the vessel and cargo were seized and libeled in the district court as being forfeited to the United States under the act of Congress prohibiting the importation

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of articles the growth, produce, or manufacture of Great Britain or France, their colonies or dependencies. The vessel and cargo were claimed by John Pierce and George Beach, both citizens of the United States. The district court condemned both vessel and cargo. The circuit court condemned the vessel and the rum, but

restored the residue of the cargo. From the sentence of the circuit court both the libellants and the claimants appealed to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

On the part of the claimants it is contended 1st, that the proceedings ought to have been at common law, and not in the admiralty; 2d, that the information, if it be one, is insufficient; 3d, that the testimony is wholly insufficient to warrant a condemnation.

In arguing the first point, the counsel for the claimants endeavored to take this case out of the

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principle laid down in the *Vengeance* and in other cases resting on the authority of that decision by urging a difference of phraseology in the acts of Congress. In that part of the act on which this prosecution is founded which gives the remedy, it is enacted

"That all penalties and forfeitures arising under or incurred by virtue of this act may be sued for, prosecuted, and recovered, with costs of suit, by action of debt in the name of the United States of America or by indictment or information in any court having competent jurisdiction to try the same."

Debt, indictment, and information are said to be technical terms designating common law remedies, and consequently marking out the courts of common law as the tribunals in which alone prosecutions under this act can be sustained. There would be much force in this argument if the term "information" were exclusively applicable to a proceeding at common law. But the Court is of opinion that it has no such exclusive application. A libel on a seizure, in its terms and in its essence, is an information. Consequently, where the cause is of admiralty jurisdiction and the proceeding is by information, the suit is not withdrawn by the

nature of the remedy from the jurisdiction to which it otherwise belongs.

2d. The second objection made by the claimants to these proceedings is that though the words of the act may be satisfied by a libel in the nature of an information, yet the same strictness which is required in an information at common law will be necessary to sustain a libel in the nature of an information in the court of admiralty, and that, testing the libel by this rule, it is totally insufficient. The Court

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is not of opinion that all those technical niceties which the astuteness of ancient judges and lawyers has introduced into criminal proceedings at common law, and which time and long usage have sanctioned, are to be engrafted into proceedings in the courts of admiralty. These niceties are not already established, and the principles of justice do not require their establishment. It is deemed sufficient that the offense be described in the words of the law and be so described that if the allegation be true, the case must be within the statute. This libel does so describe the offense, and is therefore deemed sufficient.

3d. The third and material inquiry respects the evidence. Is this cargo of British origin?

In the examination of this question, the first point to be decided is the admissibility of the deposition of Thomas Oldham. That deposition is found in the record of the circuit court, with a certificate annexed to it, in these words: "N.B. The deposition of Thomas Oldham was filed after the trial of the case by order of the court." Some of the judges are of opinion that this certificate of the clerk is to be disregarded, and that the deposition, being inserted in the record, must be considered as a part of it and must be supposed to have formed a part of the evidence when the decree was made; but the majority of the Court is of a different opinion. The certificate of the clerk to the deposition is thought of equal validity as if forming a part of his general certificate. It shows that this deposition formed no part of the cause in the circuit court, and is therefore liable to

every exception which could be made to it, if it was not found in the record and was now offered for the first time to this Court. On inspection, it appears to be a deposition taken before a single magistrate, not on order of court on a commission, with notice to the attorney of the claimant, who did not attend. It must be sustained by the act of Congress or it is inadmissible. The reason assigned for taking it is

"that the deponent is a seaman on board a gunboat of the United States, in the harbor of Newport, and liable to be ordered to some other place, and not to be able to attend the court at the time of its sitting."

The 30th section of the Judiciary Act directs that "the mode of proof by oral testimony, and the examination of witnesses in open court, shall be the same in all the courts of the United States." The act then proceeds to enumerate cases in which depositions may be taken *de bene esse*. The liability of the witness to be ordered out of the reach of the court is not one of the causes deemed sufficient by the law for taking a deposition *de bene esse*. In such case, there would seem to be a propriety in applying to the court for its aid. But supposing this objection not to be so fatal as some of the judges think it, still the deposition is taken *de bene esse*, not in chief, and a deposition so taken can be read only when the witness himself is unattainable. It does not appear in this case that the witness was not within the reach of the court, and might not have given his testimony in open court, as is required by law. Had this deposition been offered in court before or at the time of the trial and used without objection, the inference

that the requisites of the law were complied with or waived might have been justifiably drawn. But the party is not necessarily in court after his cause is decided, and is not bound to know the fact that this deposition was ordered to be filed. For these reasons it is the opinion of a majority of the Court that the deposition of Thomas Oldham ought not to be considered as forming any part of

the testimony in this cause.

The deposition of Oldham being excluded, the prosecution rests chiefly on the depositions of Benjamin Fry and William S. Allen. These witnesses are both experienced dealers in rum, have both tasted and examined the rum of this cargo, and are both of the opinion that it is of British origin. In the opinion of all the judges, this testimony is entitled to great respect. The witnesses say that there is a clear difference between the flavor of rum of the British and the Spanish islands, though they do not attempt to describe that difference, and that their opinion is positive that this is British rum.

To weaken the force of this testimony, the claimants have produced the depositions of several witnesses, also dealers in rum, who declare, that the difference in the flavor of the best Spanish rum and that of the British islands is inconsiderable, and that they cannot distinguish the one from the other; that they believe the best judges find great difficulty in making the discrimination. This testimony would perhaps have been entitled to more influence had the persons giving it tasted the rum imported in the *Samuel* and declared themselves incapable of deciding

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on its origin, for although in some cases the difference may be nearly imperceptible, in others it may be considerable. The testimony, however, on which the claimants most rely is found in the deposition of Samuel Marshall and of Andrew Furntrad. Samuel Marshall, the brother of John and Joseph Marshall, merchants of St. Bartholomews, from whom the rum in question was purchased, deposes that he has lived with them for two years and had, at the time of giving his deposition, they being absent from the island, the care of their business. That the rum and molasses constituting the cargo of the *Samuel* were imported into St. Bartholomews from La Guira in vessels which he names, and are of the growth and produce of that place. Andrew Furntrad is the collector of the port of Gustavia in St. Bartholomews, and deposes that the quantity of rum and molasses which were laden on board the *Samuel*, and which cleared out regularly for New

London, were regularly imported from La Guira in two vessels, which he names, whose masters he also names. They are the same that are mentioned by Samuel Marshall.

On this conflicting testimony much contrariety of opinion has taken place. The omission of the claimants to furnish other testimony supposed to have been within their reach, and of which the necessity would seem to have been suggested by the nature of the prosecution, impairs, in the opinion of several of the judges, the weight to which their positive testimony might otherwise be entitled. The Court finds it very difficult to form an opinion satisfactory to itself.

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So situated, and under the peculiar circumstances attending Oldham's deposition, the majority of the Court is of opinion that the cause be continued to the next term for further proof, which each party is at liberty to produce.

Farther proof ordered.