

**United States Vs. Sheldon**

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**Court :** US Supreme Court

**Decided On :** 1817

**Appeal No. :** 15 U.S. 119

**Appellant :** United States

**Respondent :** Sheldon

**Judgement :**

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**United States v. Sheldon**

**15 U.S. (2 Wheat.) 119**

*ON CERTIFICATE OF DIVISION OF OPINION AMONG THE JUDGES*

*OF THE CIRCUIT COURT FOR THE DISTRICT OF VERMONT*

## **SYLLABUS**

Under the Act of 6 July, 1812, "to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes," *held* that *living fat oxen, &c.*, are articles of provision and munitions of war within the true

intent and meaning of the act.

Also held that driving living fat oxen, &c.;, *on foot* is not a *transportation* thereof within the true intent and meaning of the same act.

It maybe admitted that the mischief is the same whether the enemy be supplied with provisions in the one way or the other, but this affords no good reason for construing a penal law by equity so as to extend it to cases not within the correct and ordinary meaning of the expressions of the law, particularly, when it is confirmed by the same interpretation which the legislature has given to the expressions in the same law.

MR. JUSTICE WASHINGTON delivered the opinion of the Court.

The defendant, George Sheldon, was indicted in the Circuit Court for the District of Vermont for transporting, over land, in November, 1813, a certain number of fat oxen, cows, steers, and heifers from a place in the United States to the province of Lower Canada. A special verdict was found which submitted to the court the questions whether living fat oxen, cows, steers, and heifers, are articles of provision and munitions of war, and whether driving living fat oxen, cows, steers, and heifers on foot is a transportation thereof within the true intent and meaning of the act of Congress then in force. The judges being opposed in opinion upon both these questions, the cause comes before this Court upon a certificate of such disagreement.

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This indictment was founded on the Act of 6 July, 1812, the second section of which declares

"That if any citizen of the United States, or person inhabiting the same, shall transport, or attempt to transport, over land or otherwise, in any wagon, cart, sleigh, boat, *or otherwise*, naval or military stores, arms or munitions of war, or any articles of provision from the United States to Canada, &c.;, the wagon, cart, sleigh, boat, or the thing by which the said articles are transported, or attempted to

be transported, together with the articles themselves, shall be forfeited, and the person aiding, or privy to the same, shall forfeit to the United States a sum equal in value to the wagon, &c.;, or thing by which the said articles were transported, and shall moreover be considered as guilty of a misdemeanor and liable to fine and imprisonment."

In answer to the first question submitted to this Court, we are unanimously of opinion that living fat oxen, &c.;, are articles of provision and munitions of war within the true intent and meaning of the above-recited act.

The second question is attended with much more difficulty: is the *driving* of living fat oxen, &c.;, a *transportation* of them within the true intent and meaning of the law?

There is no doubt but that the word "transport," correctly interpreted as well as in its ordinary acceptance, means *to carry, to convey*, and in this sense it seems to a majority of the Court the legislature intended to use it. The offense is made to consist in transporting in any wagon, cart, sleigh, boat, or

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otherwise, the prohibited articles. Had the words "or otherwise" been omitted, it would scarcely admit of a doubt that unless the prohibited articles had been conveyed on some one of the enumerated vehicles, no offense would have been committed within the words or the meaning of the law. What then is the correct interpretation of these expressions, taken in connection with the other parts of the section? To transport an article in a wagon or otherwise would seem necessarily to mean to carry or convey it in that or in some other vehicle by whatever name it might be distinguished. If these words are construed to mean a removal of the article from one place to another otherwise than in a vehicle, it might well admit of a doubt whether a removal in a vehicle other than one of those which are enumerated would be a case within the law.

But so far from this matter's being left a doubt by the law, we find, that when the punishment by way of forfeiture is prescribed, the words "or otherwise" are very

plainly construed to mean *the thing by which the articles are transported*, thus distinguishing between the thing which transports and the thing which is transported.

It may be admitted that the mischief is the same whether the enemy be supplied with provisions in the one way or the other, but this affords no good reason for construing a penal law by equity, so as to extend it to cases not within the correct and ordinary meaning of the expressions of the law, particularly when it is confirmed by the interpretation which the legislature has given to the same expressions in the

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same law. If it were impossible to satisfy the words "or otherwise" except in the way contended for on the part of the United States, there would be some reason for giving that interpretation to them. But it has been shown that this is not the case.

It was contended by the Attorney General that these questions were in effect settled in the case of [\*United States v. Barber\*](#), 9 Cranch 243. But this is clearly a mistake. The only question in that case which was referred to this Court was "whether fat cattle are provisions or munitions of war?" The decision of this Court was in the affirmative. But whether the fat cattle were dead or alive, and if the latter was to be intended, whether they were driven or transported in some vehicle did not appear, and, of course, the law arising out of that state of facts was not and could not be decided.

Upon the whole, it is the opinion of a majority of this Court that driving living fat oxen, &c.;, on foot, is not a transportation thereof within the true intent and meaning of the above-recited act of Congress.

*Judgment for the defendant.*