

The Mary

The Mary

SooperKanoon Citation : sooperkanoon.com/78746

Court : US Supreme Court

Decided On : 1817

Appeal No. : 15 U.S. 123

Appellant : The Mary

Judgement :

The Mary - 15 U.S. 123 (1817)

U.S. Supreme Court The Mary, 15 U.S. 2 Wheat. 123 123 (1817)

The Mary

15 U.S. (2 Wheat.) 123

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Decided that where an enemy's vessel was captured by, a private armed vessel of the United States and subsequently dispossessed by, the force or terror of another, the prize was, under the circumstances of the case, adjudged to the first captor, with costs and damages.

The British schooner *Mary*, whereof Charles Thomas, Jr., a British subject, domiciled at St. Johns, New Brunswick, was late owner and master, sailed under convoy from St. Johns, New Brunswick, bound to Castine, then in the military occupation of the British, laden with a cargo, the growth, produce, and manufacture of British possessions, shipped by British merchants domiciled in St. Johns, N.B., to merchants resident in Castine.

The schooner *Mary* was captured by the private armed schooner *Cadet* between Duck Island and Mount Desert on the night of 25 December, 1814, between the hours of 11 and 12; the convoy under which the *Mary* sailed, was in sight of the *Mary* at the time of her capture, but no other vessel was in sight at that time. The *Cadet* came up with the *Mary* so suddenly that she had no opportunity to make resistance or give notice to the convoy of her danger.

After the capture of the *Mary*, the principal part

Page 15 U. S. 124

of her cargo was taken on board the *Cadet*, carried into the District of Massachusetts, and, in the district court of said district condemned to the *Cadet* as prize of war.

On the morning of 26 December, after sunrise, the *Cadet* and *Mary* being then in company, and armed brig *Paul Jones* was discovered by them, under such suspicious circumstances as to induce them to believe her to be a British cruiser, and in consequence to part and steer different courses. The sails of the *Paul Jones* were of English canvas. She pursued the *Mary*, firing at her, until between 4 and 5 o'clock P.M. of 26 December; the *Mary* had then arrived in a bay of the United States, to-wit, Wheeler's Bay, a bay frequented by American vessels. The *Mary* being within half a mile of the shore and within the same distance of the *Paul Jones*, and being in such a situation as rendered it certain that she must be intercepted by the *Paul Jones*, the prize master and crew, considering it certain from her appearance and actions, that the *Paul Jones* was an English cruiser, left the *Mary* for the shore, after having thrown over her anchor, and ordered the

British captain, and his son of twelve years of age, who were left on board, to pay away the cable.

After the prize crew left the *Mary*, the British master hoisted English colors, and steered the schooner towards the *Paul Jones*.

Ten minutes after the prize crew left the *Mary*, she was boarded by a boat from the *Paul Jones*, when the English captain informed them that the

Page 15 U. S. 125

Mary was an English vessel, prize to the *Cadet*, when the *Paul Jones* immediately stood off from the land with the *Mary* in company, with English colors still flying.

A boat, then out to the windward of the *Mary*, and within musket shot, or a quarter of a mile distant from her (the crew then lying on their oars, the sea smooth, and the wind light), repeatedly hailed the *Mary*, both before and after she was boarded by the *Paul Jones*, and received no answer.

The prize master of the *Mary*, immediately on his getting on shore, dispatched a boat on board her to ascertain the national character of the vessel by whom she was boarded and claim her if the boarding vessel should prove American, but before the boat could get off, the *Paul Jones* had sailed with the *Mary* in company.

Libels against the *Mary* and cargo were filed in the District Court for the District of Maine by David Elwell in behalf of himself and the owners, officers, and crew of the private armed schooner *Cadet*, and by John Thomson Hilton, in behalf of himself and the owners, officers, and crew, of the private armed brigantine *Paul Jones*. The *Mary* and cargo were condemned in the District Court for the District of Maine to John Thomson Hilton and the owners, officers, and crew, of the *Paul Jones*. An appeal was entered from said decree by David Elwell, and the owners, officers, and crew, of the *Cadet* in the Circuit Court of Massachusetts. In consequence of the affinity of the judges to the parties, the decree of the District

Court of Maine was,

Page 15 U. S. 126

by consent of parties, affirmed *pro forma* and the cause brought by appeal, to this Court.

Page 15 U. S. 130

MR. JUSTICE JOHNSON delivered the opinion of the Court.

We are of opinion that the facts stated in this appeal make a clear case of tortious dispossession on the part of the *Paul Jones*. The privateer *Cadet* had, with great gallantry, captured the *Mary* and been in possession of her part of a night and day. The prize was close in upon the American coast, and making for a port which was open before her. It was not until the superior sailing of the *Paul Jones* made it manifest that the prize must be cut off from this port and until she had been repeatedly fired upon that the prize crew abandoned her. There exists not a pretext in the case that this abandonment was voluntary or would have taken place but for the hostile approach of the *Paul Jones*. Whether the *vis major* acted upon the force or the fears of the prize crew is immaterial, since actual dispossession ensued.

But it is argued that the *Paul Jones* showed American colors; the *Mary* ought not therefore to have feared her; the *Mary* showed no colors, she therefore invited pursuit; and finally that the *Paul Jones* found her in the actual possession of her

Page 15 U. S. 131

original master, and therefore could not have done otherwise than detain her.

We think otherwise. It was more probable that an enemy would show false than true colors. The circumstance of the *Mary's* standing in for a friendly shore was less equivocal evidence of her character than the exhibition of colors, and after

boarding the *Mary* and learning that she was a prize to the *Cadet*, it was the duty of the captor to have repaired the injury he had done, and, either by making signals, sending a boat on shore, or a message by the boat that did come off, to have recalled the prize crew of the *Cadet*. But instead of this, she instantly mans the prize, bears away from the harbor, which was close under their lee, and, by carrying English colors until out of sight, completes the conviction of the prize crew that the recapture was by an enemy.

We are of opinion that the decision of the circuit and district courts should be reversed, that the prize should be adjudged to the *Cadet*, and the case remanded for the assessment of reasonable damages in favor of the *Cadet*. But considering that the prize arrived in safety and probably in a more secure harbor than that for which she was sailing when seized by the *Paul Jones* (although it is certainly a case for damages), we are of opinion the damages should be moderate.

Sentence reversed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com