

The Fortuna

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Court : US Supreme Court

Decided On : 1817

Appeal No. : 15 U.S. 161

Appellant : The Fortuna

Judgement :

The Fortuna - 15 U.S. 161 (1817)

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The Fortuna

15 U.S. (2 Wheat.) 161

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF NORTH CAROLINA

SYLLABUS

A question of proprietary interest and concealment of papers. Further proof ordered, open to both parties.

This ship, sailing under Russian colors, left Riga on 2 September, 1813, for London, where she arrived, and from thence sailed on 18 November, 1813, in

ballast, on a voyage to the West Indies; took a British convoy at Portsmouth, in England, and proceeded with it to Barbadoes, and thence to Jamaica. From thence she sailed to the Havana, where she arrived on 12 February, 1814; took in a cargo of the produce of Cuba and left the port of the Havana on 25 March, 1814, under protection of a British convoy bound to Bermuda. After parting with the convoy, she was captured on 19 April, 1814, in N. lat. 38, W. long. 60, by the private armed schooner *Roger*, and brought into Wilmington, N.C., for adjudication. The master and all the crew, except the mate and two seamen, were taken out and kept on board the privateer until 14 August, when they were sent in to be examined.

A claim was interposed by the master for the ship as the property of Martin Krause, of Riga, one of the house of trade of M. & I. Krause of that place

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for 1,520 boxes of sugar and 144 quintals of Campeachy wood, as the property of M. & I. Krause. For 160 boxes of sugar, as the property of J. F. Muhlenbruck, as the master understood, "a native of Germany, and of late usual abode at Hamburg," and who went out in the vessel, and purchased and shipped the whole of the cargo. And for small portions of the cargo, as the property of the master and of a Swedish captain, Steinmeitz.

There were found on board a certificate of the built of the ship in Finland; a passport or sea brief to proceed to London, granted at Riga by the harbor master and commander of that place; a bill of sale of the ship from P. A. Severnon & Son, of Riga, to Martin Krause; and certificates of naturalization of the crew. The cargo was documented in the usual formal manner.

The prize master, in his affidavit on delivering up the ship's papers, sworn to on 7 July, 1814, states

"That the said papers were found in said ship at three different periods, and that on coming into his possession or on discovery thereof, he proceeded with them forthwith and without delay to the admiralty office, &c.;, and that the last parcel of

papers were, on 8 June last, being a considerable time after the arrival of the said ship, found concealed in a tin box, carefully let into an old piece of timber, to-wit, part of the frame or belfry of a vessel, by means of a mortice hole, which said mortice hole was covered with a piece of wood in a way calculated to elude observation, and which said piece of timber was stowed away among the ship's firewood,

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&c.; Certain papers were also found in the master's trunk after the ship's arrival."

In his examination on the standing interrogatories, the master swore that he was employed and appointed by a Mr. Hoffengartner, who gave him possession of the vessel in London in 1812; that the said Hoffengartner was then traveling; and died about March, 1813, but his place of abode, birth, and country, the master did not know. That Messrs. Bennet & Co., of London, gave him his instructions and informed him that Martin Krause had directed them to fit out the ship and order her to the Havana. That the ship had before gone by some other name, which he did not recollect. That a bill of sale of the ship was made to Martin Krause by the person from whom the said Krause purchased, but whose name he did not recollect, nor the time when it was made, nor in the presence of what witnesses, and there was no engagement different from, or in addition to, the bill of sale. He assigned as his reasons for placing the papers in the piece of wood, that they were partly papers not belonging to the vessel, and partly private letters, and he did not wish to have them mixed with the ship's papers, as it might possibly create confusion, and that they might be put aside when boarded by any private armed vessels, and if there should be a necessity, produced when called for.

The ship and cargo were condemned in the courts below, and the cause was brought by appeal to this Court.

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MR. JUSTICE JOHNSON delivered the opinion of the Court, ordering this cause to further proof, open to both parties.

ORDER. It is ordered, in this cause, that both

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parties have liberty to produce further proof; that all examinations of witnesses be taken under commission according to the rule of this Court; that original letters and documents be in all cases produced, or a sufficient reason assigned for not producing such originals. And that the captors have leave to inspect letter books and books of account relative to this adventure wherever they require it.

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