

**The George**

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**Court :** US Supreme Court

**Decided On :** 1817

**Appeal No. :** 15 U.S. 278

**Appellant :** The George

**Judgement :**

The George - 15 U.S. 278 (1817)

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**15 U.S. (2 Wheat.) 278**

## **SYLLABUS**

A question of collusive capture. The capture pronounced to be collusive, and the property condemned to the United States.

This is the same cause which is reported in the first volume of these Reports, p. [14 U. S. 408](#) , and which was ordered to further proof upon the points there stated.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

This is one of those cases which too often occur in courts exercising admiralty jurisdiction, in which the court is left to decide between the most positive testimony on the one hand, and the most obstinate circumstances on the other.

The privateer *Fly* had captured the schooner *George*, and carried her into the Province of Maine. But various circumstances having excited a suspicion that the capture was collusive, a claim was filed in behalf of the United States, and she was adjudged to the government in opposition to the right set up by the captor.

In all the courts through which this case has passed, the most ample opportunities have been given for the production of testimony. But unfortunately, this indulgence has only served to thicken the difficulties of the case.

We have now before us the most positive depositions of the supercargo and the shippers of the *George* (men whose veracity stands unimpeached) denying, in every point the collusion and contradicting in almost every material point the evidence upon which the adjudications took place in the courts below. On the other hand, the characters of Thomas and Rodick, who swear to positive confessions on the subject of the fraud, are amply supported

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by the most respectable testimony, whilst the veracity of Wasgate and Stanwood, who testify to the same point, stands wholly unimpeached.

It is painful to a court ever to express an opinion that results in an imputation of willful perjury, and as much as it is possible in this case, we will put out of view the clashing testimony of individuals and consider the case upon those facts concerning the truth of which the evidence leaves no doubt.

It is notorious fact, and is expressly and repeatedly sworn to in this case, that during the restrictive system and the late war, English manufactures in immense quantities were accumulated in the small ports on the west coast of Nova Scotia, and it is a melancholy truth, which this Court has had but too much cause to know,

that many unprincipled individuals were actively engaged in introducing those goods into the United States under innumerable artifices and to an immense amount. The protection of the British government was openly given to this intercourse, and there were found but too many in our country who countenanced and encouraged it. Hence this illicit intercourse was actively carried on, and naturally casts a suspicion on such shipments made in that quarter. On the other hand, although an effort has been made to show that a trade in the same articles was carried on between those provinces and the Havana, but one instance can be shown of such a shipment. All the witnesses agree that the exports from St. Johns to the Havana consisted of fish and lumber. Indeed, from the course of trade at that time, it is notorious that the Havana

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as well as other Spanish ports to the southward, were crowded with British manufactures, for the same unprincipled trade carried on at Amelia Island. The shipment, then, in the first instance, is a suspicious one, and leads to the opinion that the dry goods were intended for the United States, whilst the fish and lumber were to be used only as the cover under which they were to be introduced. But this reasoning may be consistent with the idea of a destination to any port of the United States, as well as the ports in that vicinity with which this privateer appears to have been connected. Let us, then, examine if the *George* was equipped for a voyage of any duration. And here the evidence is irresistible to show that she was not. She had no dunnage, or platform, for the purpose of preserving the goods from damage by water, and nothing was stowed or packed in such a manner as to indicate preparation for a protracted voyage. Her sails and rigging were old, worn, and deficient in quantity, and her mainsail too large both for mast and boom. Her wood and water and provisions very scanty, and her crew before the mast not more than one-half of what were necessary for a long and a winter's voyage. Add to this that her captain is proved to have been a very young man, scarcely twenty-one years of age, altogether unknown to the shippers and engaged only four days before the vessel's sailing. It cannot be believed that so valuable a cargo could have been destined for so long a voyage with such defective equipments; no

court, upon such evidence, would

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have hesitated to avoid a policy on either vessel or cargo.

We therefore think that her real destination must have been to some port in the vicinity of that at which her voyage commenced. How, then, was the cargo to be introduced?

Here I regret that it is necessary to notice a part of the testimony of Gregory Vanhorne which certainly casts a shade upon all the rest of his testimony. The *George*, it appears, had actually sailed under convoy of the *Beaver* as far as Etang Harbor. There the vessel lay in a secure port, under the protection of the *Martin* sloop of war, and at a place occasionally assigned as a place of rendezvous to vessels that were to sail under convoy. Yet Vanhorne swears that he heard the commander of the *Martin* expressly order the captain of the *George* to depart for the place where she was captured, an open road, without protection, only fifteen miles from Etang Harbor, and there to wait the indefinite arrival of some unascertained convoying vessel. This cannot be true. For independently of the fact, which appears to be satisfactorily established, that Long Island Harbor, in the Island of Grand Magnan, when this vessel was captured, had never been used as a place of rendezvous for a convoy, it is very clear that such an order would not have been obeyed by a vessel that feared exposure to capture, for it is proved to have been a place often visited by American privateers.

We therefore consider the vessel's departure from Etang Harbor to the place where she was

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captured as voluntary, and her patient stay at that place as manifesting that she did not fear exposure to American capture. Yet it does not follow necessarily that it was the *Fly* privateer that she was waiting for, nor that she expected to be captured at all. The cargo intended for the American market may by possibility

have been intended to be introduced into the United States by being transhipped into some smuggling vessel. So far everything comports perfectly with the innocence of this capture.

But the privateer *Fly* also draws suspicion upon herself in the very inception of her voyage. We find what we pronounce absolutely unprecedented, notwithstanding every effort to prove the contrary, that the captain, Dekoven, is sole owner of the privateer, and every man under him, from the lieutenant down, is engaged on wages. In the case of *The Washington* privateer, it was a circumstance of great weight with this Court that nine out of fifteen of the ship's company were joint owners, and it was thought improbable that such a transaction, if there was fraud in it, would have been confided to so many witnesses. But here no man but the captain is to participate in the prize money, and he thus presents himself as the most convenient agent possible to be entrusted with such an undertaking. Perhaps this circumstance may give a leaning to the mind of the Court in considering the effect which ought to be

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given to other evidence in the cause, but if so it is Dekoven's misfortune, and one which he has himself furnished the cause for.

It then becomes necessary to consider whether the arrival of Captain Dekoven was the object of this vessel in taking the position she did, in the island of Grand Magnan. And here it is proper to remark that Etang Harbor, lying up the bay of Passamaquoddy, N.W. and by W. of St. Johns, where this vessel took in her cargo, is off the course to Cuba, and a very convenient situation for intelligence with Machias, in the province of Maine, by means of a chain of islands extending across the bay. One of these islands is Moose Island, about five leagues distant from Grand Magnan, and something less from Etang Harbor. Now the evidence is very satisfactory to prove that the *Fly* lay, sometime in December, at Machias; that during that time, Sebor, the lieutenant and brother-in-law of Dekoven, was absent from the vessel. And Jabez Mowry, who resides on Moose Island, swears that during that time, Sebor was on Moose Island and holding communication with

certain notorious smugglers from the states, to one of whom of the name of Toler, from New York, he had a letter. Again, the pilot who was on board the *Fly* swears that from all he saw on the occasion of the capture, he concluded it was amicable, and Aaron Gale, a witness, resident upon the island of Grand Magnan, who saw the whole transaction, swears to the same fact and adds that after the capture, the captain of the privateer and his prize master came on shore to

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a neighboring house where the witness then was and got something to drink. This looks very little like a consciousness of being among enemies. To this he adds that he heard a British officer, who was at the time recruiting upon the island, threaten Vanhorne, the supercargo, who, together with all the crew except the supposed captain, were immediately put on shore, to put him in irons for the fraud in thus colluding with the enemy.

I will notice but two more pieces of testimony which the case affords and which, taken with the rest, we think too strong to be resisted. The first is that of Richard Higgins, who testifies that on the arrival of the *George* off the harbor called Frenchman's Bay, or, as he expresses himself, at Mount Desert, he, the deponent, was the first person who boarded her; that Sebor, the lieutenant of the *Fly*, who was the prize master, told him where they had captured the *George*; upon the witness' inquiring what she was loaded with, he replied fish and lumber. The witness remarked that she floated very light for such a load, upon which Sebor replied he did not know what the cargo consisted of, and that he wanted to get further to the westward. The witness then told him distinctly

"that he presumed the capture had been made by some previous understanding, and that if such were the case, he thought he would be likely to fare better and undergo a less rigorous scrutiny if he put into this district than he would if he went into any of the more western districts, upon which, after consulting with someone of his crew, he went in."

This testimony is important in

two views -- 1st, the plot here develops itself, and we find the fish and lumber actually resorted to as the means of cloaking the introduction of the British goods. And the resort of Sebor to this deception (for he must have known it to be such, had it been only from the inspection of the invoice) shows his privity to the secrets of the machinery. 2d. Going into the port after the suggestion of Higginson amounts to a passive acquiescence in the correctness of his suggestions, and an acceptance of the facilities held out to him to induce him to enter that port.

The last and only remaining piece of testimony that we shall notice is that of Joseph Grindel, of Penobscot, who swears that he was in St. Johns at the time the *George* was lading; that he was familiarly acquainted with Vanhorne, the supercargo, and that he held a conversation with him respecting a passage and the shipment of a hogshead of molasses to the states and remitting the money to his mother at Penobscot, which, if it be true (and we have no cause to doubt his veracity), puts to rest every question relative to the fraudulent design with which this adventure was undertaken. And the same witness further swears that after consenting to take his adventure on board (an adventure that never could have been intended for the Havana market), Vanhorne sailed a day or two sooner than he had intimated to the witness. That upon this he complained to Nehemiah Merrit, the shipper, and received from him this notable answer, "He suspected your politics, and was afraid you would betray him."

Upon the whole we are of opinion that it was a case of collusive capture, and that the decree below should be affirmed.

*Decree affirmed.*