

The Fortuna

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Court : US Supreme Court

Decided On : 1818

Appeal No. : 16 U.S. 236

Appellant : The Fortuna

Judgement :

The Fortuna - 16 U.S. 236 (1818)

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16 U.S. (3 Wheat.) 236

SYLLABUS

A question of proprietary interest and concealment of papers. Further proof ordered, open to both parties. On the production of further proof by the claimant, condemnation pronounced.

Where a neutral ship owner lends his name to cover a fraud with regard to the cargo, this circumstance will subject the ship to condemnation.

It is a relaxation of the rules of the prize court to allow time for further proof in a case where there has been concealment of material papers.

This is the same cause which is reported *ante*, p. [15 U. S. 161](#) . and which was ordered to further proof at the last term. It was submitted without argument, upon the further proof, at the present term.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

Both vessel and cargo in this case are claimed in behalf of M. & J. Krause, Russian merchants, resident at Riga. The documents and evidence exhibited Martin Krause as the proprietor of the ship, but the captain swears that he considered her as the property of the house of M. & J. Krause, from their having exercised the ordinary acts of ownership over her, and in this belief he is supported by the fact that his contract is made with John Krause, by whom he appears to have been put in command of the ship. Martin

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Krause, who appears in the grand bill of sale, is the same Martin Krause who is a member of the firm of M. & J. Krause.

In all its prominent features, this case bears a striking resemblance to the case of [*The St. Nicholas*](#), 1 Wheat. 417. A vessel, documented as Russian, is placed under the absolute control of a British house, is dispatched under the orders of that house to the Havana, where she is loaded under the directions of an individual of the name of Muhlenbruck, who assumes the character of agent of the Russian owners; she is then ostensibly cleared out for Riga, but with express orders to call at a British port and terminate her voyage under the orders of the same house under the auspices of which the adventure had originated and been so far conducted.

Under these circumstances, it was certainly incumbent upon the claimant to show the previous correspondence of the British with the Russian house, and the immediate dependence of the agent at the Havana, upon the Russian house for authority, instructions, and resources. When we come to compare the

correspondence of Muhlenbruck with that of Smith, the agent in the St. Nicholas, we find here also a striking similitude. In that case, the supposed correspondence with the Russian principal is enclosed

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under cover to the British house, with a request that they would forward it. In this case, the letters covering the invoice and bill of lading and directed to M. & J. Krause is confided to the captain, but with express instructions to forward it to the British house and await its orders.

The material facts on which the Court relies in making up its judgment on the claim of the cargo are the following:

In the first place, there is a general shade of suspicion cast over the whole case by the fact that all the material papers relating to the transaction were mysteriously concealed in a billet of wood. Had there been nothing fraudulent intended, these papers ought to have been delivered along with the documentary evidence. But they were not discovered until betrayed by one of the crew. It is upon the investigation of these papers principally that the circumstances occur which discover the true character of this voyage.

Secondly. There is no evidence that this adventure was ever undertaken under instructions from M. & J. Krause. But there is evidence that everything is set in motion at the touch of Bennet & Co. of London. And although they affect to act in the capacity of agents of the Russian house, even the rules of the common law would constitute them principals in a case in which they cannot exhibit the authority under which they assume the character of agents. Again, there is no evidence that any funds were furnished by the Russian house for the purchase of this cargo. But there is evidence and

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we think conclusive evidence, to show that it was purchased on funds of the British house, remitted through the medium of the cargo of the *Robert Bruce*, a ship

loaded by Bennet & Co., and dispatched about the same time for the Havana. In the letter of instructions of 18 March, 1813,

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captain is told to proceed to the Havana and await the arrival of Muhlenbruck in the *Robert Bruce* for orders, and in case of any accidents befalling that vessel, to apply to the Spanish house of Ychazo & Carricabura at the Havana for further instructions. And in a letter to the house of Lorent & Steinwitz, of Charleston, Bennet & Co. inform them that the *Fortuna* is dispatched to the Havana to the address of Ychazo & Carricabura to obtain a freight for the Baltic, and request Lorent & Steinwitz to advise that house if they could obtain a freight for her to any port in Europe. This correspondence is explained thus: the cargo of the *Robert Bruce* would probably be sufficient to load this ship with colonial produce; if she arrives in safety, the original adventure can then proceed, but should she be captured or lost, some return freight must then be found for the *Fortuna*. And accordingly we find in the letter to Bennet & Co. of 24 March, Muhlenbruck solicits

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a credit on Jamaica or Cadiz as he expresses it, "to be able to settle the surplus of the amount already shipped which may be left out of the proceeds of the outward bound shipment of the *Robert Bruce*." Now the only shipment he had then made was by the *Fortuna*, and this letter gives advice of that

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shipment, as also of the arrival of the *Robert Bruce* and the progress he had made in disposing of her cargo. The passage quoted means, therefore (although somewhat obscurely expressed),

"It is possible that the outward cargo of the *Robert Bruce* may not be sufficient to pay for the shipment already

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made by the *Fortuna*, and you must therefore furnish me with a credit to make up the deficiency."

Ychazo & Carricabura no doubt advanced for the purchase of the cargo of sugars upon the credit of the cargo of the *Robert Bruce*, and accordingly we find that house charging a commission for advancing. On these facts, we are satisfied that the cargo was purchased with British funds.

Lastly, there is no evidence that Muhlenbruck was the agent of M. & J. Krause, and there is abundant evidence of his being the avowed and confidential agent of the British house. We see in the midst of the greatest anxiety to keep up the character of agent to the Russian house, this gentleman, without being aware of it, does an act which at once shows to whom he holds himself accountable. In his letter to Bennet & Co. of 24 March, he requests them to inform the Russian house that he has made certain advances on account of the ship. But why request Bennet & Co. to do this if he was himself in immediate connection and correspondence with the Russian house? The fact is his correspondence with the Russian house was fictitious and his object was to inform Bennet and Co. in reality, whilst he feigned to address himself to M. & J. Krause, and thus the letters to the latter house, covering the invoice and bill of lading, although of the same date with that to Bennet & Co., omits this piece of information, which, in a real correspondence, would be groundwork of a credit to himself, and contains nothing but the most general information -- just enough in fact,

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to gloss over the transaction, and give it the aspect of reality.

With regard to the vessel it would be enough to observe that if a neutral shipowner will lend his name to cover a fraud with regard to the cargo, this circumstance alone will subject him to condemnation. But in this case there are also many circumstances to maintain a suspicion that the vessel was British property, or at least not owned as claimed. Although this Court, from extreme anxiety to avoid subjecting a neutral to condemnation, has relaxed its ruled in allowing time for

further proof in a case where there was concealment of papers, yet nothing has been brought forward to support the neutral character

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of the ship. No charter party, no original correspondence, nothing, in fact, but those formal papers which never fail to accompany a fictitious, as well as a real, transaction. On the contrary, we find the captain, without any instructions from his supposed owners, submitting implicitly to the orders of Bennet & Co. in everything, and the latter assuming even a control over the contract which he exhibits with his supposed owner in Riga, and expressing a solicitude about his expenses, which could only have been suggested by a consciousness that the house of B. & Co. would have to pay those expenses.

Upon the whole, we are satisfied that it is a case for condemnation both of ship and cargo.

Decree affirmed.