

The London Packet

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Decided On : 1820

Appeal No. : 18 U.S. 132

Appellant : The London Packet

Judgement :

The London Packet - 18 U.S. 132 (1820)

U.S. Supreme Court The London Packet, 18 U.S. 5 Wheat. 132 132 (1820)

The London Packet

18 U.S. (5 Wheat.) 132

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF MASSACHUSETTS

SYLLABUS

A question of proprietary interest on further proof. Restitution decreed, with costs and expenses to be paid by the claimant.

In general, the circumstance of goods being found on board an enemy's ship raises a legal presumption that they are an enemy's property.

This was the claim of a Spanish subject to a parcel of hides laden on board of the *London Packet*, a British ship, at the port of Buenos Ayres in South America in the month of June, 1813. The *London Packet*, on her voyage to London, was captured by the private armed brig the *Argus*, and carried

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into Boston for adjudication. On being libeled in the district court as prize of war, the consul of his Catholic Majesty filed a claim for the property in question in favor of Don Jeronimo Merino, a Spanish subject. The district court condemned the vessel and the whole of the cargo, except these hides, which were restored to the claimant, the court being satisfied there was not such proof of enemy's property therein as to authorize a decree of condemnation. For the ship and residue of the cargo no claim was interposed. From this decree, as to the hides, there was an appeal by the captors to the circuit court, where the same was reversed. The court, although it reversed the sentence which had been pronounced below, expressed its entire satisfaction as to the national character and domicile of the claimant and that the hides had been originally shipped by him, but condemned the property because, on the order for further proof, no affidavit had been offered either of the claimant or his confidential agent or clerk of his interest in the cargo at the time of the shipment. It was considered that the absence of such a document, so universally expected and required by prize tribunals, unavoidably threw a suspicion over the cause, and being wholly unaccounted for, it authorized a belief that there had been a voluntary if not a studied omission on the claimant's part. At the same term in which the sentence of reversal was pronounced, but not until after such sentence was known, the affidavit of the claimant, which had been received since the last adjournment of the court, was produced by the Spanish Consul, with a petition

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that the decree might be rescinded for the purpose of admitting it into the case, or that the same might be so far opened for the consideration of the court as to make the affidavit of Merino a part of the evidence therein, so as to accompany the other

testimony in the appeal to this Court. Upon this application the circuit court ordered that the affidavit should be received by the clerk and sent up with the other papers *de bene esse*, subject to the directions of this Court. The affidavit had been taken on an order below for further proof, but had not been received, as has been stated, when the decree of condemnation was pronounced.

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MR. JUSTICE LIVINGSTON delivered the opinion of the Court.

In the argument of this cause, the counsel have not confined themselves to the effect which the affidavit of the claimant ought of itself to have upon the decision of it, but have animadverted on all the testimony below. The Court has therefore also extended its examination to all the proofs in the cause, and will now pronounce its judgment on them.

The captured vessel was confessedly British property, as well as a great part of its cargo, and its destination was to a port in the enemy's country, which raises a legal presumption that the property claimed was not neutral. It is not denied that a neutral may use the vessel of a belligerent for the transportation of his goods, and whatever presumption may arise from the circumstance, that it is not of itself a cause of condemnation. In this case, it does not appear, nor was it probably the fact, that any neutral vessel

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bound to London was then at Buenos Ayres, and therefore this presumption ought to have but little influence on the present decision. If the proprietary interest be satisfactorily made out, the claimant is entitled to restitution.

There was no letter found on board from Merino to his correspondent in London, nor any invoice of this property. The only document relating to it was a bill of lading in Spanish, dated 19 June, 1813, purporting that 6,276 hides had been shipped on board the *London Packet* by Jeronimo Merino on his account and risk, to be delivered to Antonio Daubana, or in his absence to William Heiland, they paying

the freight therein stipulated. This bill of lading was not signed by the master. To the omission of a signature to this bill of lading much importance cannot be attached. It was found in possession of the master, and serving only as a memorandum for him of the cargo on board, and not being intended to pass into the hands of any other persons, it was a matter of indifference whether the put his name to it or not. Of seven bills of lading which were found on board, no less than three were without his signature. Those which were delivered to the shippers were no doubt signed, which was all that was necessary for their security. If this bill of lading be compared with the one produced and proved by Daubana, it is impossible not to be struck with the exact similarity between them. They correspond in all respects excepting only that one has not the signature of the captain, and appears most manifestly to have been filled up with the same ink, and in the

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same handwriting and at the same time, which is no small proof of their being cotemporaneous acts, and of the authenticity of the one which is now produced by the consignee. But no letter from Merino to his correspondent, nor any invoice, nor any bill of lading for the consignee being found on board, it is urged that the proof of proprietary interest is defective, and that the sentence of condemnation ought therefore to be affirmed. Had no further proof been introduced relieving the case from this difficulty, the argument would be entitled to great consideration. But the absence of those papers is now accounted for. It appears by the testimony of Stephenson, a passenger on board the *London Packet*, who was examined by the captors, that a large bag containing a great number of private letters and other papers was sunk by order of the master of the *London Packet*, about half an hour before his vessel was taken. It is then but a fair presumption that the letter, invoice, and bill of lading transmitted by Merino to his correspondent in London were among the papers thus destroyed. The loss of these papers being thus accounted for, and the master of the captured ship not being brought in as he ought to have been, there was a propriety, under the peculiar circumstances of this case, in affording, as the court below did, an opportunity to the Spanish owner

of offering subsidiary proof respecting the property mentioned in the bill of lading found on board and which was claimed by him. This further proof, which consists of documents from the custom house at Buenos Ayres, of the positive testimony

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of Mr. Daubana, the consignee in London, and of the test affidavit of Mr. Merino himself, is satisfactory that the proprietary interest of these hides was, at the time of shipment and of capture, in the claimant. That they belonged to Smith notwithstanding the mark of S. on some of them, as has been suggested, cannot be believed. On that supposition, his conduct is utterly inexplicable. If the adventure was on his account, the disguise of the shipment could have been intended for no other purpose than to impose, as to them, on the courts of the United States, for this contrivance or cover could not protect his vessel from capture and condemnation. Yet if we believe some of the witnesses, Smith declared that the whole of the cargo belonged to himself and some merchants in London. These declarations of Smith, as he was set at liberty by the captain of the *Argus*, and of course not examined on the standing interrogatories, ought not to militate against the integrity of the present claim; but if they were really made, they afford strong evidence that if this bill of lading were designed as a cover for belligerent property, some other person, and not Smith, was to be benefited by it. For if he were the real owner, why, it may be asked, did he voluntarily abandon the property (for he was put on board of another vessel at his own request) at the very moment when this fraud, if he ever intended to avail himself of it, was to be consummated? Why did he not remain in his vessel until her arrival in the United States, and apply to a Spanish Consul or some other gentleman to prefer a claim in favor of

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the pretended Spanish owner? Why did he not support this claim with his own oath, as he must have intended to do if he ever intended to derive any advantage from a contrivance which must have had its inception at Buenos Ayres, at his instigation, and for his emolument? There is no accounting for his conduct on any

other hypothesis than that he had no interest in this property, and was therefore willing to leave it to its fate.

The counsel for the captors, aware of the full and conclusive nature of the proof so far as it establishes Merino's interest in the merchandise claimed by him, have endeavored to show that Merino was not at Buenos Ayres when this shipment took place, and if he was that it is impossible that his letter, which bears date 10 July, 1813, could have been put on board of the *London Packet*, which had sailed on 24 June, fourteen days before. If this be so, a gross attempt has been made to impose on the court which ought to be followed with consequences fatal to the present claim. But the Court is not of opinion that either of these suppositions is supported by the evidence. Not a single witness whose testimony is relied on to establish the fact of Merino's not being at Buenos Ayres at the time of the shipment speaks with any certainty or tells us affirmatively where he then was. This negative testimony, which, if it stood alone and uncontradicted, might excite a strong suspicion, is rendered of very little consequence by much proof of a contrary character. The custom house document which has already been referred to establishes the residence of

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Merino at Buenos Ayres at the date of the shipment; so does the affidavit of Merino himself, who is proved to be a gentleman of character, of property, and respectability. Daubana also swears to the same fact, with as much certainty as one correspondent can establish the domicile of another residing at so great a distance from each other. He proves that Merino remained there until 15 August following, at least that he received a letter from him dated at Buenos Ayres on that day. Another witness, who saw him at Rio Janeiro in the year 1814, says that he did not leave Buenos Ayres until after the middle of the year 1813. The weight of testimony therefore may be considered as in favor of the claimant being at Buenos Ayres when this shipment was made. Nor is it so certain, as seemed to be taken for granted at the bar, that the *London Packet* sailed on her voyage for Europe on 24 June, 1813. It is true that the cook and some others who were examined *in preparatorio* fix the time of her departure to that day, but the second mate and

only officer of the captured vessel who was examined and who was most likely to know, says that she sailed in the month of July. Under this uncertainty respecting a fact which is deemed so material and to which the claimant's attention has never been called, it cannot be expected that the court should not only act upon it as positively proved, but follow it up with the condemnation of property so clearly proved to belong to a neutral. It would be more charitable, and not unreasonable, even if the fact were proved, to presume that witnesses were speaking of the time

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of the *London Packet's* first weighing anchor at Buenos Ayres and that she may for some reason or other have been detained in the river until 10 July, which is the date of Merino's first letter to his correspondent in London. It may be added that it is not easy to believe that if a fraud were intended, care would not have been taken to make the letter of advice and all the other papers correspond with the time of the departure of the vessel.

Upon the whole, a majority of the judges are of opinion that upon the further proof, the sentence of the circuit court should be reversed and the property restored to the claimant. But as the captors have been put to great expense in consequence of the imperfect documents found on board and the great delay which has attended the production of the further proof, they are of opinion that their costs and expenses must be paid by the claimant.

Decree reversed.

DECREE. This cause came on to be heard on the transcript of the record of the Circuit Court of the United States for the District of Massachusetts and the further proof exhibited on this cause and was argued by counsel. On consideration whereof it is DECREED and ORDERED that the Decree of the Circuit Court for the District of Massachusetts in this case condemning six thousand two hundred and seventy-six ox hides, as good and lawful prize to the libellants be and the same is hereby reversed and annulled. And this Court, proceeding to pass such

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Decree as the said circuit court should have passed, it is further DECREED and ORDERED that the said six thousand two hundred and seventy-six ox hides be restored to the claimant, and it is further DECREED that the said Claimant pay to the Libellants the costs and expenses incurred in the prosecution of this suit.

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