

The Experiment

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Appeal No. : 21 U.S. 261

Appellant : The Experiment

Judgement :

The Experiment - 21 U.S. 261 (1823)

U.S. Supreme Court The Experiment, 21 U.S. 8 Wheat. 261 261 (1823)

The Experiment

21 U.S. (8 Wheat.) 261

APPEAL FROM THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

In cases of collusive capture, papers found on board one captured vessel may be invoked into the case of another captured on the same cruise.

A commission- obtained by fraudulent misrepresentations, will not vest the interests of prize.

But a collusive capture made under a commission is not *per se* evidence that the commission was fraudulently obtained.

A collusive capture vests no title in the captors, not because the commission is thereby made void, but because the captors thereby forfeit all title to the prize property.

Page 21 U. S. 262

Appeal from the decree of the Circuit Court of Massachusetts affirming the decree of the District Court of Maine by which the sloop *Experiment* and cargo were condemned to the United States as having been collusively captured by

Page 21 U. S. 262

the private armed schooner *Fly*. The facts (so far as necessary) are stated in the opinion of this Court.

Page 21 U. S. 263

MR. JUSTICE STORY delivered the opinion of the Court.

This is a prize cause, brought by appeal from the Circuit Court of Massachusetts, affirming *pro forma* the decree of the District Court of Maine. The sloop *Experiment* and cargo are confessedly British property, and were captured by the privateer *Fly* during the late war and brought in port and proceeded against by the captors in the proper court for the purpose of being adjudged lawful prize. No claim was filed in behalf of the captured, but the United States interposed a claim upon the ground that the capture was fraudulent and collusive, and the cargo was introduced into the country in violation of the non-importation acts then in force which prohibited the importation of goods of British manufacture,

Page 21 U. S. 264

as the goods comprising this cargo certainly were. Upon the trial in the court below, the claim of the United States was sustained and the capture being adjudged collusive, a condemnation was decreed to the government. From that decree the captors have appealed to this Court, and the cause now stands for judgment as well upon the original evidence as the further proofs which have been produced by the parties in this Court.

The privateer is the same whose conduct came under consideration in the case of the *George*, reported in [14 U. S. 1](#) Wheat. 408 and [15 U. S. 2](#) Wheat. 278, and was there adjudged to have been collusive. The present capture was made during the same cruise by the same crew and about six days only before the capture of the *George*. Under an order of the court, the original papers and proceedings in the case of the *George* have been invoked into this cause, and after a long interval, during which the parties have had the most ample opportunities to clear the case of any unfounded suspicions, the decision of the Court upon the arguments at the bar is finally to be pronounced.

At the threshold of the cause we are met by the question whether a party claiming under a commission which he has obtained from the government by fraud, or has used in a fraudulent manner, can acquire any right to captures made in virtue of such commission. Undoubtedly a commission may be forfeited by grossly illegal conduct, and a commission fraudulently obtained is, as to vesting the interests of prize, utterly void. But a commission may be lawfully obtained although

Page 21 U. S. 265

the parties intend to use it as a cover for illegal purposes. It is one thing to procure a commission by fraud, and another to abuse it for bad purposes. And if a commission is fairly obtained, without imposition or fraud upon the officers of government, it is not void merely because the parties privately intend to violate, under its protection, the laws of their country. The abuse, therefore, of the commission is not *per se* evidence that it was originally obtained by fraud and imposition. The illegal acts of the parties are sufficiently punished by depriving them of the fruits of their unlawful enterprises. A collusive capture conveys no title

to the captors not because the commission is thereby made void, but because the captors thereby forfeit all title to the prize property.

And after all, while the commission is unrevoked it must still remain a question upon each distinct capture, upon the evidence regularly before the prize court, whether there be any fraud in the original concoction or in the conduct of the cruise. We cannot draw in aid the evidence which exclusively belongs to another cause to fix fraud upon the transaction unless so far as, upon the general principles of prize proceedings, it may be properly invoked. The present case, then, must depend upon its own circumstances.

It cannot, however, escape the attention of the Court that this privateer has already been detected in a gross case of collusive capture on the same cruise and under the same commission. This is a fact of which, sitting as a court of admiralty,

Page 21 U. S. 266

we are bound to take notice, and it certainly raises a presumption of ill faith in other transactions of the same parties which can be removed only by clear evidence of honest conduct. If the circumstances of other captures during the same cruise are such as lead to serious doubts of the fairness of their character, every presumption against them is greatly strengthened, and suspicions once justly excited in this way ought not to be easily satisfied. The captors have had full notice of the difficulties of their case, and after an order for further proof, which should awaken extraordinary diligence, they cannot complain that the Court does not yield implicit belief to new testimony when it comes laden with grave contradictions or is opposed by other unsuspected proofs.

Many of the circumstances which were thought by the court to be entitled to great weight in the decision of the *George* have also occurred in the present case. The original equipment, ownership, shipping articles, and conduct of the cruiser are of course the same. The stay at Machias, the absence of Lieut. Sebor, the very suspicious nature of his journey, the apparent connection of that journey with persons and objects in the immediate vicinity of the place where the voyage of the

prize commenced, are distinctly in proof. The bad equipment of the prize, her indifferent condition and small crew for the voyage, the nature of her cargo, and the flimsy pretenses set up for the enterprise, in the letters on board, are circumstances of suspicion quite as strongly made

Page 21 U. S. 267

out as in the *George*. The conduct of the prize during her ostensible voyage was still more striking. She was far out of the ordinary course of the voyage, without any necessity or even plausible excuse. She chose voluntarily to sail along the American coast, out of the tract of her voyage, even at the moment when she affected to have notice that the *Fly* was on a cruise, and she exposed herself to capture in a manner that can scarcely be accounted for except upon the supposition of collusion. The pretense set up for this conduct is exceedingly slight and unsatisfactory. The circumstances of the capture, too, as they come from the testimony of some of the captors as well as from a disinterested witness, are not calculated to allay any doubt. Here, as in the *George*, all of the prize crew excepting one were dismissed without any effort to hold them as prisoners and without any apparent reason for the dismissal. And if the testimony of one of the captors is to be believed, there is entire proof that the prize was long expected, and came as a known friend under preconcerted signals. It may be added that the testimony of the captors is in some material respects inconsistent, and if the testimony of two disinterested and respectable witnesses is to be credited, the master of the prize, in opposition to his present testimony, admitted in the most explicit manner that the capture was collusive.

We do not think that it would conduce to any useful purpose to review the evidence at large. It appears to us to be a case, where the circumstances

Page 21 U. S. 268

of collusion are quite as strong, if not stronger, than in the *George*. And we are therefore of opinion that the decree of condemnation of the prize and her cargo to the United States ought to be

Affirmed with costs.

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