

The Frances and Eliza

The Frances and Eliza

SooperKanoon Citation : sooperkanoon.com/78974

Court : US Supreme Court

Decided On : 1823

Appeal No. : 21 U.S. 398

Appellant : The Frances and Eliza

Judgement :

The Frances and Eliza - 21 U.S. 398 (1823)

U.S. Supreme Court The Frances and Eliza, 21 U.S. 398 (1823)

The Frances and Eliza

21 U.S. 398

APPEAL FROM THE DISTRICT

COURT OF LOUISIANA

SYLLABUS

If a British ship come from a foreign port (not British) to a port of the United States, the continuity of the voyage is not broken, and the vessel is not liable to forfeiture under the Act of April 18, 1818, c. 65, by touching at an intermediate British closed port from necessity and in order to procure provisions without trading there.

This was an allegation of forfeiture against the British ship *Frances and Eliza* in the court below for a breach of the Act of Congress of 18 April, 1818, c. 65. The first section of which is in these words:

"That from and after 30 September next, the ports of the United States shall be and remain closed against every vessel owned wholly or in part by a subject or subjects of his Britannic Majesty coming or arriving from any port or place in a colony or Territory of his Britannic Majesty that is or shall be, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States, and such vessel that in the course of the voyage shall have touched at or cleared out from any port or place in a colony or territory of Great Britain, which shall or may be, by the ordinary laws of navigation and trade aforesaid, open to vessels owned by citizens of the

Page 21 U. S. 399

United States shall nevertheless, be deemed to have come from the port or place in the colony or territory of Great Britain closed, as aforesaid, against vessels owned by citizens of the United States, from which such vessel cleared out and sailed before touching at and clearing out from an intermediate and open port or place as aforesaid, and every such vessel so excluded from the ports of the United States that shall enter or attempt to enter the same in violation of this act shall, with her tackle, apparel, and furniture, together with the cargo on board such vessel, be forfeited to the United States."

The libel set forth, in the words of the act, that the *Frances and Eliza* was owned, wholly or in part, by subjects of his Britannic Majesty, and had come from the port of Falmouth, in the Island of Jamaica, a colony of his Britannic Majesty, which port was closed against citizens of the United States, and that she attempted to enter the port of New Orleans, in the United States, contrary to the provisions of the act before recited. To this libel, William Coates, master of the vessel, put in an answer denying the allegations in the libel and claiming her as the property of Messrs. Herring & Richardson of London. The material facts appearing on record, are these:

The *Frances and Eliza* sailed from London in the month of February, 1819, for South America, having on board about 170 men for the service of the patriots. They arrived at Margaritta in April, where the troops were disembarked. The vessel remained on the coast of Margaritta until November,

Page 21 U. S. 400

when Captain Coates, by order of Mr. Gold, agent of the owners, took command of her. Captain Storm, who originally was the master, died on the passage and was succeeded by the first mate, who died at Margaritta. Captain Coates was directed by the agent to proceed with the *Frances and Eliza* to New Orleans, and there to procure freight to England or the continent. The death of the agent in the month of October obliged him to remain some time at Margaritta, to arrange his affairs in the best manner he could. Having a scanty supply of salt provisions, and being without fresh provisions, which were not to be had at Margaritta, he did not sail from that port until 8 November. Proceeding on the voyage, he met an American schooner off the west end of St. Domingo, the master of which supplied him with a cask of beef. He had at this time 29 souls on board, and in the prosecution of the voyage, being off the coast of Falmouth, in the Island of Jamaica, the *Frances and Eliza* hove to within four or five miles of the shore, and the master went into Falmouth in his boat for provisions, of which they were much in want, having only three days' supply on board, and to get his name endorsed on the ship's register. On the day following, he returned with a small supply, which being insufficient, he went again the next morning to endeavor to increase his stock, and succeeded in getting enough to enable him to proceed to New Orleans. That he landed one passenger at Falmouth and took two from thence to New Orleans; the passenger landed was a physician

Page 21 U. S. 401

who had sailed from London with the troops, but left the service in distress, and took his passage in the *Frances and Eliza* to New Orleans. When at Falmouth, he found his professional prospects there favorable, and determined to remain, and George Glover, a mariner, had leave of the agent of the owners to work his

passage from Margaritta to New Orleans. Upon leaving Margaritta, the master took with him a letter of recommendation from the agent of the owners, to R. D. Shepherd & Co. of New Orleans, which letter he presented on his arrival. When he had proceeded about half way up the Mississippi, the *Frances and Eliza* was hailed by an officer on board the revenue cutter, the answer was that she was from Jamaica; the captain being asked "what he was doing off Jamaica," answered, that he "went in to get his name endorsed on the register, and to obtain a freight for England," to which the officer replied that he was under the necessity of seizing his vessel for a breach of the navigation act; he then said he went in to get provisions.

Upon this testimony the district court condemned the vessel as forfeited to the United States, and the claimant appealed to this Court.

Page 21 U. S. 404

MR. JUSTICE DUVALL delivered the opinion of the Court, and after stating the facts, proceeded as follows:

In the argument of this cause, it was contended by the Attorney General, that touching at Falmouth with the intention to get freight there and coming from that port to a port in the United States brought the *Frances and Eliza* within the operation of the navigation act, it being the policy of the law to prevent all communication between vessels of the United States and British ports, which were closed against them. On behalf of the owners, it was contended that if the *Frances and Eliza* was bound to Falmouth, it was a mere alternative destination, depending on her being able to get freight there, and that as she in fact embraced the other branch of the alternative, and went to New Orleans, this must be considered as her original destination.

If the destination of the *Frances and Eliza*,

Page 21 U. S. 405

from Margaritta to New Orleans, was real, not colorable, and if the touching at Falmouth was for the purpose of procuring provisions of which the ship's crew was really in want, there was not a violation of the navigation act. The evidence in the cause seems to justify the conclusion that her real destination was to New Orleans. The order of Mr. Gold, agent of the owners, to the master, to take command of the vessel and proceed to New Orleans, and there to endeavor to procure a freight to England or the continent; the letter of recommendation from John Guya, merchant, to Messrs. R. D. Shepherd & Co. requesting their aid to the captain to accomplish that purpose, taken in connection with the circumstance of Glover's taking his passage in the vessel, with the leave of the agent, from Margaritta to New Orleans, establish the fact in a satisfactory manner. It appears to have been understood by all who had any concern with the vessel that her destination was to New Orleans.

The *Frances and Eliza* did not enter the port of Falmouth, but stood off and on four or five miles from the harbor for a few days, during which time the master went on shore to get provisions, of which he was in want. Whether he endeavored to procure freight there is a fact not ascertained by the testimony. It is certain that he did not obtain it, because it is admitted that the vessel sailed in ballast to New Orleans. His real object in going on shore at Falmouth appears to have been to procure provisions, of which the ship's crew were much in want. And there is no

Page 21 U. S. 406

evidence of any act done by him which can be construed into a breach of the act concerning navigation. The policy of that act, without doubt, was to counteract the British colonial system of navigation, to prevent British vessels from bringing British goods from the islands in exclusion of vessels of the United States, and to place the vessels of the United States on a footing of reciprocity with British vessels. The system of equality was what was aimed at. The landing a passenger there, who casually got employment, and for that reason chose to remain on the island; and the taking in two passengers there, one of which was a boy and a relative and the other taken, passage free, to New Orleans, are not deemed to be acts in contravention of the true construction of the navigation act.

The logbook was supposed to furnish some suspicious appearances, but on examination was found to contain no material fact which could govern in the decision.

It is the unanimous opinion of the Court that the sentence of the district court ought to be reversed and that the property be restored to the claimant.

Decree reversed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com