

Otis Vs. Walter

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Court : US Supreme Court

Decided On : 1826

Appeal No. : 24 U.S. 192

Appellant : Otis

Respondent : Walter

Judgement :

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ERROR TO THE SUPREME JUDICIAL

COURT OF MASSACHUSETTS

SYLLABUS

Under the Embargo Act of 25 April, 1808, ch. 170, s. 11, the collector is protected in the honest exercise of his discretion in detaining the vessel, and securing both vessel and cargo until an actual termination of the voyage.

Whether the voyage has terminated is a question of fact, and if the voyage be colorably but not really terminated, the collector may detain the vessel if he has honest suspicions.

MR. JUSTICE JOHNSON delivered the opinion of the Court.

This cause is brought up, by writ of error, from the Supreme Judicial Court of Massachusetts for the purpose of reviewing a judgment of that court, given in favor of the defendant here, upon an action of trover instituted in that state,

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to recover damages for the alleged conversion of sundry articles composing the cargo of the sloop *Ten Sisters*. Otis, in the capacity of collector of the District of Barnstable, had, in the year 1808, seized and detained the vessel and cargo under the provisions of the Embargo Act of 25 April in that year.

This is the third time that this cause has been brought to the notice of this Court. In the two former instances it came up upon bills of exceptions, and in both the decisions of that court were reversed, and a *venire facias de novo* awarded. In the present instance, a special verdict has been taken, and, as the law was settled in the two former decisions, that until the termination of the voyage the collector was protected in the honest exercise of an unlimited discretion in detaining the vessel, and, by necessary consequence, in resorting to the ordinary and necessary means of securing and preserving both vessel and cargo, this verdict seems to be drawn up with a view to bring up the single question whether, in the sense of the laws of Congress and of the decisions of this Court, this voyage was not, in effect, terminated before the seizure.

The special verdict finds that the vessel cleared out "for the port of Yarmouth." It is true the captain, in the oath attached to his manifest, makes use of the mere indefinite expression "bound for Yarmouth." But when we come to examine the sense in which he made this oath by referring to his instructions, which are also

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found by the verdict, we find it restricted to a voyage to Bass River, where it was to terminate by landing his cargo, and storing it in a particular warehouse. This, then, was the point of his destination, call it "port, harbor, place," or what we will. And, as the collector uses the definite, instead of the indefinite article, before port, in the clearance, the fair inference is that the clearance was for Bass River, under the designation of "the port of Yarmouth."

We are far, however, from intending to intimate that if the captain's oath as to his destination could not be modified and explained by reference to his instructions, it might be permitted to enlarge the meaning of the word "port" as used in the clearance, so as to embrace the Township of Yarmouth. In those times, when it behooved every public officer to be on the alert against the multiplied evasions of the system of that day, it is not to be supposed, that the definite language of the clearance was adopted without an object. The captain appears to have acted as if he had received a clearance on a general voyage to Yarmouth, whereas, it is obvious that the Collector of Ipswich acted under a sense of the impropriety of giving a clearance that would leave the terminus of the voyage so void of precision. We consider the definite article as having been used for a definite purpose, and to preclude the general privilege of sailing to any point in the town or Township of Yarmouth, at which a landing might have been effected.

It is obvious, indeed, from the whole tenor of

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the verdict, that the mouth of Bass River is understood more emphatically to be the port of Yarmouth than any other place in the Township of Yarmouth. In one place it finds, "that the harbor or port of Barnstable is about three miles from the harbor of Yarmouth;" in another, that a long point of land intervenes between "Yarmouth Harbor or Bass River Harbor, and Hyanis or Barnstable Harbor," in both instances drawing an express discrimination between Yarmouth Harbor, to which the vessel was bound (taking the term to be the synonyme of "port") and Hyanis, or Barnstable Harbor, in which she was seized.

Everything proves that Bass River Harbor was the original destination of the vessel. In this sense it cannot be denied that Bass River Harbor was the port to which, in the language of the law, she was "ostensibly bound." No one contends that when at her anchorage in Hyanis Bay, where she was seized, she could be considered as arrived at Bass River Harbor. It was ten miles from this harbor -- a peninsula intervening -- and, as the verdict finds, the vessel had gone to Hyanis Bay after being compelled by headwinds to pass Bass River.

But it is contended that as her clearance was not specified to Bass River Harbor, but to the port of Yarmouth, an arrival at Gage's Wharf would as well have satisfied the exigencies of her case; that in fact she had arrived there when anchored where she was seized, and that, having then a right to demand her permit to land, and

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having demanded it, the circumstances make out a termination of the voyage as effectually as if she had put in to Bass River.

We have already stated, we think, sufficient reasons for not admitting that the clearance could be satisfied by a destination to Gage's Wharf. Yet it cannot be denied that there is one part of the special verdict that does throw some obscurity over this part of the case. It is that in which the jury finds in these words:

"That in the practice of the custom house for Barnstable and of the owners and masters of vessels belonging to Barnstable District, Yarmouth and Barnstable are considered one and the same port, and that Gage's Wharf, at the head of Lewis' bay, is a place in Yarmouth, at which vessels bound to that port frequently unload, and that no difference is made in the custom house between Yarmouth and Barnstable, or Hyanis, as to the entry of vessels that have arrived at either place."

If in this passage of the verdict the jury meant to find that a vessel arriving in Hyanis Roads, an open roadstead not locked in by any headlands that could make a port of it, had, in fact, arrived at Gage's Wharf or Bass River, they should have been explicit, and absurd and repugnant to the geography of the country and the

common sense of mankind, as the fact would have been, we must have submitted to it or refused to act upon it. As it is, we can only draw such inferences as the finding will sanction. And we are free to confess that we cannot understand what is meant by a practice of the custom house

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and shipmasters of Barnstable, which confounds the open roadstead of Hyanis with the harbor of Bass River, or even the landing place at Gage's Wharf, the one ten, the other three miles off. We can very readily conceive why the landing place at Gage's Wharf should be indifferently called Falmouth or Barnstable, since it is in the town by the one name, and the landing place for the port or bay of the other name, the line crossing the bay but a few feet from the wharf. To arrive, therefore, at Barnstable Harbor, or Lewis' bay or Hyanis Roads, which seem to be somehow confounded in this verdict, and to arrive at the Township of Yarmouth, at Gage's Wharf, may be considered as one and the same thing. And yet the inference from that fact may be directly the reverse of that insisted on for the defendant in error. For the finding is clear and positive which distinguishes between Barnstable Harbor and Yarmouth Harbor, and if, then, Barnstable Harbor be identified with the landing place as Gage's Wharf, the conclusion is unavoidable that the port of Yarmouth cannot mean the landing place at Gage's Wharf. Indeed it is impossible to arrive at the conclusion that the destination of this vessel was indifferently to Gage's Wharf or Bass River without permitting a mere inference, and that too from equivocal terms, to conflict with a positive finding of the jury couched in the most explicit terms. And even when advanced that far, it would still remain for the defendant here to maintain that a vessel at anchor in Hyanis Road had completed her

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voyage to Gage's Wharf -- a proposition as wide of the fact with reference to the topography of the country as it is of the intendment of law or the finding of the jury. For the words of the special verdict are

"That the vessel when seized lay at anchor in the harbor or port of Barnstable, above half a mile from the shore or beach and about three miles from the harbor of Yarmouth."

That the jury did not intend to confound Gage's Wharf with the harbor of Yarmouth is distinctly shown by the words that follow the above, declaring Gage's Wharf to be six miles and a half from where the vessel was seized. Whether the jury were right or wrong in fixing these distances, the inference we deduce from it is still the same, to-wit, that the harbor of Yarmouth and Gage's Wharf could not be one, no more that the port of Barnstable and the harbor of Yarmouth. The vessel lay in the former, three miles distant from the latter, and six and a half from Gage's Wharf.

Upon the whole, we can discover nothing in this case to induce us to alter the opinion entertained in the two former, that the vessel had not reached the terminus of her voyage, that she was *in itinere*, and therefore liable to seizure. On the subject of the argument deduced from the demand of the permit to land, we think this also was fully answered and disposed of in the former decisions of this Court in the same suit. We are therefore of opinion that the act on which the collector relies justified the seizure; that there is error in the judgment of the court of Massachusetts; that

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it must be reversed, and a judgment entered for the plaintiff here, the defendant in the original suit.

Judgment accordingly.