

Jecker Vs. Montgomery

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 54 U.S. 498

Appellant : Jecker

Respondent : Montgomery

Judgement :

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Jecker v. Montgomery

54 U.S. (13 How.) 498

APPEALS FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

During the war with Mexico, the *Admittance*, an American vessel, was seized in a port of California by the commander of a vessel of war of the United States, upon suspicion of trading with the enemy. She was condemned as a lawful prize by the

chaplain belonging to one of the vessels of war upon that station, who had been authorized by the President of the United States to exercise admiralty jurisdiction in cases of capture.

The owners of the cargo filed a libel against the captain of the vessel of war, in the Admiralty court for the District of Columbia. Being carried to the circuit court, it was decided

1. That the condemnation in California was invalid as a defense for the captors.
2. That the answer of the captors, having averred sufficient probable cause for the seizure of the cargo, and the libellants having demurred to this answer, upon the ground that the district court had no right to adjudicate, because the property had not been brought within its jurisdiction, the demurrer was overruled, and judgment was entered against the libellants.

The judgment of the circuit court upon the first point was correct, and upon the second point erroneous.

The Prize court established in California was not authorized by the laws of the United States or the laws of nations.

The grounds alleged for the seizure of the vessel and cargo in the answer, *viz.*, that the vessel sailed from New Orleans with the design of trading with the enemy and did in fact hold illegal intercourse with them, are sufficient to subject both to condemnation if they are supported by testimony.

And if they were liable to capture and condemnation, the reasons assigned in the answer for not bringing them into a port of the United States and libeling them for condemnation, *viz.*, that it was impossible do so consistently with the public interests, are sufficient, if supported by proof, to justify the captors in selling vessel and cargo in California and to exempt them from damages on that account.

The Admiralty court in the district had jurisdiction of the case, and it was the duty of the court to order the captors to institute proceedings in that court to condemn the property as prize by a day to be named in the order, and in default thereof to be proceeded against upon the libel for an unlawful seizure.

The admiralty court in the District of Columbia had jurisdiction of such a libel for condemnation although the property was not brought within its jurisdiction, and if they found it liable to condemnation, might proceed to condemn it although it was not brought within the custody or control of the court.

The necessity of proceeding to condemn as prize does not arise from any difference between the Instance court and the Prize court, as known in England. The same court here possesses the instance and prize jurisdiction. But because the property of the neutral is not divested by the capture, but by the condemnation in a prize court, and it is not divested until condemnation, although, when condemned, the condemnation relates back to the capture.

As this libel is for the restitution of the property or the proceeds, probable cause of seizure is no defense. It is a good defense against a claim for damages when the property has been restored or lost after seizure without the fault of the captor. But while the property or proceeds is withheld by the captor and claimed as prize, probable cause of seizure is no defense.

The circuit court therefore erred in deciding that probable cause of seizure was a good defense.

The facts are fully stated in the opinion of the Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case arises upon the capture of the ship *Admittance* during the late war with Mexico, by the United States sloop of war *Portsmouth*, commanded by Captain Montgomery.

The *Admittance* was an American vessel, and after war was declared, sailed from New Orleans with a valuable cargo, shipped at that place. She cleared out for Honolulu, in the Sandwich Islands, and was found by the *Portsmouth* at Saint Jose, on the coast of California, trading, as it is alleged, with the enemy.

Before this capture was made, a prize court had been established at Monterey, in California, by the military officer, exercising the functions of governor of that province, which had been taken possession of by the American forces. A chaplain, belonging to one of the ships of war on that station, was appointed alcalde of Monterey, and authorized to exercise admiralty jurisdiction in cases of capture. The court was established at the request of Commodore Biddle, the naval commander on that station, and sanctioned by the President of the United States, upon the ground that prize crews could not be spared from the squadron to bring captured vessels into a port of the United States. And the officers of the squadron were ordered to carry their prizes to Monterey, and libel them for condemnation in the court above mentioned instead of sending them to the United States.

In pursuance of this order the *Admittance* was carried to Monterey and condemned by the court as lawful prize, and the vessel and cargo sold under this sentence. The seizure at Saint

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Jose was made on 7 April, 1847, and the ship and cargo condemned on 1 June, in the same year.

The order of the President, authorizing the establishment of the court, required that the proceeds, arising from the sale of prizes, should not be distributed until a copy of the record was sent to the Navy Department, and orders in relation to the prize money received from the Secretary. No order appears to have been given in this case, and it would be presumed from the pleadings that it is still in the custody of the commander of the *Portsmouth*. It has, however, been stated in the argument, and we understand is admitted, that the money was sent to the United States, and placed in the custody of the Treasury Department, where it still

remains. But it is not material in this case to inquire whether it is still in possession of Captain Montgomery or in the custody of the Secretary of the Treasury. It could not in either case affect the decision. This is the case as it appears on the record, and admissions in the argument. It comes before the court on the following pleadings.

The claimants, on 6 June, 1848, filed a libel in the Admiralty court for the District of Columbia against the captor, stating that they were the owners of the cargo of the *Admittance*; that they were subjects of Spain, and neutrals in the war between this country and Mexico; that the *Admittance* sailed on a lawful voyage; that the vessel and cargo were seized at Saint Jose by Captain Montgomery as prize of war without any lawful or probable cause; that the vessel and cargo were not brought to the United States nor proceeded against as prize of war in any court having jurisdiction to adjudicate upon the lawfulness of the capture, but were unlawfully sold and disposed of by Captain Montgomery, who thereby had put it out of his power to proceed to any lawful adjudication upon the legality of the capture, and had thus made himself a trespasser *ab initio*, independently of any lawful or probable cause for the original seizure. They pray, therefore, that he may be compelled to bring the cargo within the jurisdiction of the court or of some other court of the United States, and institute proceedings against the property, and show that there was lawful or probable cause for the seizure and have the same adjudicated upon by some court of the United States having full jurisdiction in the matter, and that restitution of the goods or the value thereof may be awarded to the libellants, with damages for the unlawful seizure.

Captain Montgomery appeared and answered, and admitted that, as commander of the United States ship *Portsmouth*, he seized and took the *Admittance* at Saint Jose as lawful prize, and justifies the seizure upon the ground that she sailed from

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New Orleans with the design of trading with the enemy; that she did in fact hold illegal intercourse with them, and discharged a part of her cargo at Saint Jose. And

the respondent exhibits with his answer, and as a part of it, sundry papers received from Peter Peterson, the master of the *Admittance*, together with her log book and the deposition of her mate.

The respondent further states that it was impossible for him, consistently with the public interests, to send the *Admittance* to any port of the United States, and that he carried her before the prize court hereinbefore mentioned, at Monterey, where she was condemned with her cargo as lawful prize, and exhibits the proceedings of that court as a part of his answer, and relies on this condemnation as a bar to the present proceedings on behalf of the claimants.

To this answer the libellants put in two demurrers.

1. To so much of the answer as relies upon the condemnation at Monterey as a bar.

2. To so much of the answer as relies upon the acts of the captain and crew of the *Admittance* as a justification for the seizure of the ship or cargo as lawful prize of war or furnishing probable cause for seizure, and as the ground for this demurrer avers that the Admiralty court for the District of Columbia had no jurisdiction to adjudicate upon the question of prizes or probable cause of seizure, as the property was not within its control and could not be brought within it in consequence of the sale in California. The respondent joined in these demurrers.

After these issues in law had been joined, the respondent, by leave of the court, amended his answer, averring in the amendment that the libellants, at the time of the shipment at New Orleans and at the time of the seizure, were domiciled in Mexico and conducting a commercial establishment in that country, and also that the libellants were the owners of only a small portion of the cargo. But there is no replication to this amendment, nor is it embraced in the issues of law made by the demurrers. The omission to dispose of it, however, forms no objection to this appeal, as the judgment of the circuit court was final, and disposed of the whole case, independently of these new allegations.

In this state of the pleadings, a decree was entered in the district court sustaining both of the demurrers and directing the respondent to bring the cargo within the jurisdiction of some district court of the United States and institute proceedings against it as prize of war on or before the day mentioned in the decree, and that in default thereof the libellants should recover its value.

This decree was entered *pro forma* in order to bring the case

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before the circuit court, to which the respondent accordingly appealed. And upon the argument in the last-mentioned court, the first demurrer was sustained and the decree of the district court in that respect affirmed, but so much of the decree as sustained the demurrer to the answer of the respondent averring sufficient probable cause for the seizure of the cargo was reversed and a final decree upon that ground rendered against the libellants.

From this decree both parties have appealed to this Court.

In relation to the proceedings in the court at Monterey, which is the subject of the first demurrer, the decision of the circuit court is correct.

All captures *jure belli* are for the benefit of the sovereign under whose authority they are made, and the validity of the seizure and the question of prize or no prize can be determined in his own courts only, upon which he has conferred jurisdiction to try the question. And under the Constitution of the United States, the judicial power of the general government is vested in one supreme court and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States therefore must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States. And neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States or of individuals in prize cases, nor to administer the laws of nations.

The courts established or sanctioned in Mexico during the war by the commanders of the American forces were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power and their decisions under its control whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize. And the sentence of condemnation in the court at Monterey is a nullity, and can have no effect upon the rights of any party.

The second demurrer denies the authority of the district court to adjudicate, because the property had not been brought within its jurisdiction. But that proposition cannot be maintained, and a prize court, when a proper case is made for its interposition, will proceed to adjudicate and condemn the captured property or award restitution although it is not actually in the control of the court. It may always proceed *in rem* whenever the prize or proceeds of the prize can be traced to the hands of any person whatever.

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As a general rule it is the duty of the captor to bring it within the jurisdiction of a prize court of the nation to which he belongs and to institute proceedings to have it condemned. This is required by the act of Congress in cases of capture by ships of war of the United States, and this act merely enforces the performance of a duty imposed upon the captor by the law of nations, which in all civilized countries secures to the captured a trial in a court of competent jurisdiction before he can finally be deprived of his property.

But there are cases where from existing circumstances the captor may be excused from the performance of this duty, and may sell or otherwise dispose of the property before condemnation. And where the commander of a national ship cannot, without weakening inconveniently the force under his command, spare a sufficient prize crew to man the captured vessel or where the orders of his

government prohibit him from doing so, he may lawfully sell or otherwise dispose of the captured property in a foreign county, and may afterwards proceed to adjudication in a court of the United States. [8 U. S. 4](#) Cranch 293; [11 U. S. 7](#) Cranch 423; 2 Gall. 368; 2 Wheat.App. 11, 16; 1 Kent's Com. 359; 6 Rob. 138, 194, 229, 257.

But if no sufficient cause is shown to justify the sale and the conduct of the captor has been unjust and oppressive, the court may refuse to adjudicate upon the validity of the capture and award restitution and damages against the captor although the seizure as prize was originally lawful or made upon probable cause.

And the same rule prevails where the sale was justifiable and the captor has delayed for an unreasonable time to institute proceedings to condemn it. Upon a libel filed by the captured as for a marine trespass, the court will refuse to award a monition to proceed to adjudication on the question of prize or no prize, but will treat the captor as a wrongdoer from the beginning.

But in the case before us sufficient cause for capture and condemnation is stated in the answer, and the reason assigned therein is a full justification for not sending the *Admittance* and her cargo to the United States. And as to the delay, he had reasonable ground for believing that no further proceedings were necessary after the condemnation at Monterey. The court had been constituted with the sanction of the Executive Department of the government, under whose orders he was acting, and it had condemned the vessel and cargo as prize and ordered them to be sold. And if, as seems to be conceded in the argument, the proceeds were paid over to the government to await its further orders, and still remain in its hands, certainly no laches or neglect of duty in any respect can be imputed to the respondent.

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Inasmuch, therefore, as the answer alleges a sufficient cause for selling the property before condemnation and also for not proceeding against it in a court of competent jurisdiction, the respondent has forfeited none of the rights which he

acquired by the capture. And as the district court had jurisdiction, the second demurrer ought to have been overruled and an order passed directing Captain Montgomery to institute proceedings by a certain day to condemn the property, giving him reasonable time, and that, upon his failure to comply with the order, the court should proceed on the libel filed against him for a marine trespass and award such damages as the libellants might show themselves entitled to demand.

The necessity of proceeding to condemnation as prize does not arise from any distinction between the Instance court of Admiralty and the Prize Court. In England, they are different courts, and although the jurisdiction of each of them is always exercised by the same person, yet he holds the offices by different commissions. But under the Constitution of the United States, the Instance court of Admiralty and the Prize court of Admiralty are the same court, acting under one commission. Still, however, the property cannot be condemned as prize upon this libel; nor would its dismissal be equivalent to a condemnation, nor recognized as such in foreign courts. The libellants allege that the goods were neutral and not liable to capture, and their right to them cannot be divested until there is a sentence of condemnation against them as prize of war. And as that sentence cannot be pronounced in the present form of the proceeding, it becomes necessary to proceed in the prize jurisdiction of the court, where the property may be condemned or acquitted by the sentence of the court, and the whole controversy be finally settled. 8 U. S. 4 Cranch 241; *Rose v. Himely*, 2 Wheat.App. 41, 42; 1 Kent Com. 101, 102; 6 Rob. 48; 3 *id.* 192; 2 Gall. 368; 2 *id.* 240.

But the circuit court erred in giving final judgment against the libellants upon the ground that the answer showed probable grounds for the seizure. The question of probable cause is not presented in the present stage of the proceedings, and cannot arise until the validity of the capture is determined. If it turn out upon the final hearing upon the question of prize or no prize that the vessel and cargo were liable to capture and condemnation, it would necessarily follow that there was not only probable cause but good and sufficient cause for the seizure. And if, on the contrary, it should be found that they were not liable to capture as prize of war, the

libellants would be entitled to restitution or the value in damages, although the strongest probabilities appeared against them at the time of the seizure. Probable cause or not becomes material only where restitution is awarded and

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the libellants claim additional damages for the injury and expenses sustained from the seizure and detention. It applies only to these additional damages, and however strong the grounds of suspicion may have been, it is no bar to restitution if the claimant can show that the goods which he claims belonged to him were neutral and that nothing had been done that subjected them to capture and condemnation.

The judgment of the circuit court must therefore be

Reversed and a mandate awarded directing the case to be remanded to the district court to be there proceeded in according to the rules and principles stated in this opinion.

The appeal on the part of the respondent is dismissed. The decision upon the matter in controversy was in his favor, and the question of law decided against him on the first demurrer was open for argument upon the appeal of the libellants. There was no ground, therefore, for this appeal.

Order in Jecker v. Montgomery

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this Court.

Order in Montgomery v. Jecker

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this Court that this cause be and the same is hereby dismissed with costs.

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