

The Slavers

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Appellant : The Slavers

Judgement :

The Slavers - 69 U.S. 375 (1864)

U.S. Supreme Court The Slavers , 69 U.S. 2 Wall. 375 375 (1864)

The Slavers (Weathergage)

69 U.S. (2 Wall.) 375

APPEAL TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The general principle declared in *The Kate* and of *The Sarah, supra*, pp. <69 U.S. 366|>366, <69 U.S. 372|>372, acted on in a case of the same general type, but where the facts were more close.

Where the size, build, equipment, and cargo of a vessel -- the nonappearance and doubtful existence of her asserted owners, the nonproduction by the claimant of important witnesses, and other circumstances -- lead to a presumption that her purpose is to engage in the slave trade and no attempt is made to repel that presumption by explaining the suspicious circumstances, the vessel may be condemned as a slaver. The fact that she is cleared for China does not of itself repel the presumption, the clearance being *vita Ambriz*, a Portuguese port on the west coast of Africa, and that port being within about one hundred miles of the slave coast.

Thus, like the two preceding cases, was a libel filed in the District Court for the Southern District of New York against

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a vessel in the port of that city, under acts of Congress [[Footnote 1](#)] prohibiting the equipment, loading, and other preparation of the vessel for the *purpose* of carrying on a trade in slaves and like fitting &c.;, and causing the vessel to sail for the *purpose* of procuring negroes, mulattoes, and persons of color to be held, sold, or otherwise disposed of as slaves &c.; The libel was served October 23, 1860. On the 30th, John Morris,

"intervening for the interest of himself as owner of the vessel and carrier of the cargo, appears before the honorable court and makes claim to the said vessel &c.;,"

and averred himself to be true and *bona fide* owner &c.; The district court condemned the vessel. On appeal, the circuit court affirmed the decree. Appeal here. The facts were thus:

On the 5th of September, 1860, one J. T. Woodbury purported to sell the vessel to *John Morris* of New York "for the sum of \$12,000."

The vessel was a bark of about 365 tons, 114 feet 8 inches long, 26 feet 6 inches wide, 13 feet 3 inches deep, with two decks and three masts.

The outward foreign manifest, sworn to by Edward Mitchell, who purported to be captain, on the 12th of September, 1860, represented her as bound for *Hong Kong* via Ambriz, with a crew of fourteen men and a cargo valued at nearly \$19,000. The captain swore that this manifest contained "a full, just, and true account of all the goods, and then actually laden on board said vessel," that he will report any additional cargo, and also, that "said cargo is truly intended to be landed in the port of Hong Kong, via Ambriz."

The shipper's manifest purported to report of cargo shipped by Anthony Tuero, embracing the same goods &c.;, contained in the manifest sworn to by the captain, and the oath, taken on the 12th of September, 1860, was that "the said merchandise is truly intended to be exported to Ambriz." Tuero himself, whose deposition was taken in the district court, though he was not examined in the circuit,

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stated the same thing -- namely that the cargo was to be discharged at Ambriz and that he was not to have anything to do with the vessel afterwards.

The bark had a between-deck made of rough boards, about 5 1/2 feet below the main deck; two surf boats, besides four other small boats, which were manifested, with oars, rudders, tillers &c.; The surf boats were covered and had hatches. A lot of lumber was stowed between decks, manifested as 100 pieces 4 by 6 timber and 762 pieces pine boards, 17 coils of rope, 3 bolts of sail duck, 8 anchors, coopers' tools, nails, and a variety of things, usual in fitting a slaver, but not *unusual* in fitting any vessel. She had 12 swivels, and quantities of muskets and powder.

The cargo included 80 barrels of bread, 85 barrels and 100 half barrels of rice, 57 barrels mess beef and pork, 10 barrels of flour, beans, meal &c.;, 3 barrels of vinegar, sixty fathoms of chain, 40 kegs of paint, 10 cans of linseed oil, 4 cans of spirits of turpentine, 96 bundles of white oak shooks, 4 hogsheads of shucks for heads of casks, 2 boxes of coopers' tools, 114 casks filled with water, 10 furnaces and boilers, and a large lot of firewood, and 375 sheets of copper. Other portions

of the cargo were blankets, coarse cotton goods, muskets, powder, rum, wine &c.; *All this cargo was perfectly suited to the slave trade.*

As respected Morris, it appeared that no man of that name was, on the 6th September, when the bill of sale was made, known to be in the shipping business of New York. No person, indeed, of the name was known by clearing clerks, some of whom were examined, or others at the custom house at all. Nor had he been ever heard of by one Machado, a man extensively engaged in the African trade. The vessel was appraised by the custom house appraisers at \$9,000, the cargo at \$11,681. The partner of Woodbury -- the alleged vendor of the vessel and confessedly a real person, one Schmidt, a ship broker -- did not know Morris, or what his business was, or whether he lived in New York, or whether he was "an owner or go-between." He had only seen him once, in the street, two months before.

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Woodbury was at the hearing in the district court in town, but was not called by the claimant, nor was the witness to the execution of the bill of sale examined or produced. When appeal was taken to the circuit court in Morris' name on the 7th of February, 1861, the petition was signed by his counsel, and the bond then given for appeal. It was executed by one Fogerty, surety for Morris, but not by Morris himself. Fogerty swore that he had never heard of such a person as Morris till that morning, and that he had signed the bond because the counsel requested him.

Ambriz is a Portuguese town on the west coast. It was testified that there is no regular trade to Hong Kong via that port and that vessels never clear from New York for China via any such place, though they do sometimes from South America. It was testified also that the ordinary size of vessels in the trade, on the west coast of Africa is from 200 to 400 tons, that of those trading to China averaging from 800 to 1,200.

On the other hand, it seemed, if the testimony of Schmidt was to be received as true, that the \$12,000 purchase money of the vessel was actually paid by Morris to

his partner Woodbury. No manacles nor any unusual supply of medicines was found on the vessel, which was unladed carefully. Her size and equipments, though fitting her for a slaver, were not unfit for a lawful voyage to the region where she purported to be going. *All articles found on the vessel were entered on the manifest.* Both vessel and cargo were consigned to one Lievas, superintendent of the English mines at Ambriz, who it was not suggested had been concerned at any time in the slave trade. Ambriz itself was a town of about 3,000 inhabitants, having a certain amount of commerce, but not any considerable amount; the same trade as the Congo River -- palm oil, ivory, hides, pepper and gum being shipped from the district. It is about 100 miles from any point where slaves are got. It has a custom house, and exacts duties. It appeared that one house in Salem, Massachusetts, testified to be "respectable," traded there, that barks of about the same size with the *Weathergage* and

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of a structure not essentially different made voyages to the place; that temporary decks were sometimes highly convenient, and were used accordingly in lawful voyages to Africa, and surf boats also, these last being useful in loading and unloading. Large quantities of water, too, is sent out in casks, "the water being pumped out and oil from the region being poured in, just as the casks stand." The cargo, generally, would be "as likely to go for legal as illegal purposes." The witness, however, who testified to this, and that \$20,000 would not be an excessive value for a cargo bound to Ambriz, had never known "just such a cargo" sent there as the one on the *Weathergage*, nor known of any vessel sent to Hong Kong via Ambriz, while neither knew he of any slave trade via China. He had been established for ten years trading to the western coast of Africa and Gulf of Guinea, and had sent from seventy eight to one hundred vessels there.

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

This was a libel of information in a cause of seizure and forfeiture, and the case is brought here by an appeal from the decree of the Circuit Court of the United States for the Southern District of New York. Substance of the charge, as

contained in the libel of information, is that the bark *Weathergage* was fitted, equipped, loaded, and otherwise prepared in the port of New York for the purpose of carrying on a trade or traffic in slaves to some foreign country or for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign country, to be transported to some other port or place, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor. [[Footnote 2](#)]

Process was served on the 23d day of October, 1860, and on the 30th of the same month, John Morris, intervening

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for the interest of himself as owner of the vessel and as the carrier of the cargo, appeared before the court and made claim to the same, and was allowed to make defense. Testimony was taken, and a decree condemning both vessel and cargo was entered in the district court. Claimant appealed to the circuit court, and the record shows that additional testimony was taken in that court, and that the decree of the district court was subsequently in all things affirmed. Appeal was then taken by the claimant to this Court, and the parties have here been again fully heard.

1. Condemnation and forfeiture were decreed both in the district and circuit courts upon the ground that the evidence shows that the vessel was fitted, equipped, and loaded, or caused to sail, for the purpose of engaging in the slave trade. Claimant denies that the finding was warranted by the evidence, and that is the principal question in the case. Undoubtedly it is the preparation of the vessel and the purpose for which she is to be employed that constitute the offense and draw after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches. [[Footnote 3](#)]

Contrary to the views of the claimant, the counsel for the United States insist that the character of the preparations for the projected voyage was such as to indicate clearly that the purpose was the same as that charged in the libel of information. They admit that the circumstances given in evidence show that the projectors of

the voyage had skillfully determined to give it the appearance of an honest and lawful enterprise, but they insist that a careful scrutiny of the evidence will show that the guilty purpose is not so successfully covered up with the garb of innocence as to conceal the true features of the transaction.

2. Looking at the evidence, it is apparent that it is, in its general characteristics, substantially the same as that exhibited

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in the other slave trade cases decided at the present term. Differences are seen in the details of the evidence, but the quality and general nature of the proofs are substantially similar. Title of the bark, on the 5th day of September, 1860, appears to have been in one J. T. Woodbury, and the record shows that he on that day made a bill of sale of the same to one John Morris, of New York, for the sum of twelve thousand dollars. Counsel of the claimant introduced the bill of sale of the vessel, but they did not examine the person who witnessed its execution.

3. Proofs show that the *Weathergale* is a bark with two decks and three masts, and that she is of the burden of three hundred and fifty five tons. Her outward foreign manifest, sworn to by the master, Edward Mitchell, on the 12th of September, 1860, represents her as bound to Hong Kong via Ambriz, with a crew of fourteen men and a cargo valued at nearly nineteen thousand dollars. Statements of the manifest are that it contains "a full, just, and true amount of all the goods then actually laden on board the vessel," and that the "cargo is truly intended to be landed in the port of Hong Kong via Ambriz," but the shipper's manifest states that the merchandise is truly intended to be exported to Ambriz, which is a place on the coast of Africa.

4. Suspicion attaches strongly to the equipment of the vessel. She had a temporary between deck, made of rough boards, about five and a half feet below the main deck, and which was not necessary to carry the cargo laden on board, and she had a large quantity of lumber stowed between decks and manifested as lumber, and eight thousand three hundred and eighty two feet of pine boards. She

had two surf boats, besides four other small boats, together with rudders and tillers and "oars for the same." In addition to the articles mentioned, she also had seventeen coils of rope, three bolts of sail duck, eight anchors, coopers' tools, nails, and almost every variety of article which is essential in the fitment of a slaver. Mention should also be made that she had as part of her fitment, though included as cargo, twelve swivels and a large quantity of muskets and powder.

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5. Portions of the cargo proper should also be noticed as affording strong grounds of presumption that the purpose of the voyage was such as is charged in the information. Among other articles, it contains eighty barrels of bread, eighty five barrels and one hundred half barrels of rice, fifty seven barrels of beef and pork, besides four barrels of flour, and six barrels of beans and meal, and three barrels of vinegar. Besides the articles mentioned, the manifest also shows that she had one hundred and fourteen casks filled with water, and shooks and headings to make ninety six more, together with forty bundles of iron for hoops such as is used on such casks. She had also ten furnaces and boilers, with a large quantity of firewood, and three hundred and seventy five sheets of copper. Argument for the claimants is that the cargo was as suitable for a lawful voyage to the supposed port of destination, as for the purpose charged in the libel of information, but it is not possible to accede to that proposition. On the contrary, it seems to us, in view of the evidence in the case, that the manifest is a "more complete one, in every respect, for engaging in the slave trade" than anyone heretofore presented to the Court.

6. Although the master testified that the cargo was intended to be landed at Hong Kong, the great weight of the evidence shows that it was destined for Ambriz or some other port on the coast of Africa. The shipper was not called as a witness in the district court, but he was examined in the circuit court. He testified that he owned and shipped the cargo and that it was to be discharged at Ambriz, and that he was not to have anything to do with the vessel after the cargo was discharged. Libellants prove that there is no trade from New York to Hong Kong or any other

port in China by the way of Ambriz or any other port on that coast, and that no vessel ever cleared from the port of New York for such a voyage.

7. None of the witnesses on the one side or the other know the alleged owner and claimant of the vessel. Satisfactory proofs were introduced, showing that there was not then and has not been since, to the time of the hearing, any

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person by that name engaged in the shipping business in the port of New York. Two or more clearance clerks were examined, and they testify that they never heard of a businessman there of that name. Persons who have for years been engaged in the China and African trades were also examined, and they testify to the same effect. Even Schmidt, the ship broker and partner of the person who sold the vessel for twelve thousand dollars, testifies that he never saw him but once, and that was in the street, and that he did not know whether he was the actual owner or merely the agent of the real purchaser of the vessel. Woodbury, the grantor of the vessel, was not called by the claimant. When the appeal was taken in the circuit court, the petition was signed by his counsel, and the bond given on the appeal, although drawn for the signature and seal of the claimant, was executed only by a surety, and the surety testifies that he never heard of such person until the morning of the day when his examination as a witness took place. Neither the master nor any of the crew were called to explain any of these inculpatory circumstances, nor is there any attempt to afford any explanation upon the subject. For these reasons, we are of the opinion that the finding in the court below was clearly correct. The decree of the circuit court is therefore,

Affirmed.

[[Footnote 1](#)]

Acts of 22d of March, 1794, and 20th of April, 1818.

[[Footnote 2](#)]

1 Stat. at Large 347; 3 *id.* 451.

[[Footnote 3](#)]

[The Emily and Caroline](#), 9 Wheat. 381; [The Plattsburg](#), 10 Wheat. 133; [United States v. Gooding](#), 12 Wheat. 460.

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