

**The Josephine**

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**Court :** US Supreme Court

**Decided On :** 1865

**Appeal No. :** 70 U.S. 83

**Appellant :** The Josephine

**Judgement :**

The Josephine - 70 U.S. 83 (1865)

U.S. Supreme Court The Josephine, 70 U.S. 3 Wall. 83 83 (1865)

**The Josephine**

**70 U.S. (3 Wall.) 83**

*ERROR TO THE CIRCUIT*

*COURT OF LOUISIANA*

## **SYLLABUS**

1. The case of the [Baigorry](#), 2 Wall. 474, deciding that the blockade of the coast of Louisiana, having no direct communication with the port of New Orleans by navigation, was not terminated by the proclamation of May 12, 1862, discontinuing the blockade of that port -- affirmed.

2. If a vessel is found without a proper license near a blockading squadron

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under circumstances indicating intent to run the blockade, and in such a position as that if not prevented, she might pass the blockading force, she cannot thus, *flagrante facto*, set up as an excuse that she was seeking the squadron with a view of getting an authority to go on her desired voyage.

By proclamation of President Lincoln in April, 1861, a blockade was established along our whole Southern coast, then in possession of rebels against the authority of the government. In the beginning of May, 1862, New Orleans and certain forts, Fort Jackson, Fort St. Philip, Fort Wood, Fort Pike, Fort Livingston &c., passed, in consequence of the successes of Flag Officer Farragut, into the possession of the government, and from the 6th of May at latest the possession of New Orleans became complete. On the 12th of May, 1862, the President issued his proclamation declaring that the blockade of the *port of New Orleans* should so far cease after the 1st of June, 1862, as that commercial intercourse with it might be carried on.

On the 28th July, 1862, nearly two months after the date last named, the *Josephine* was captured by the United States steamer *Hatteras* on the high seas and brought into Philadelphia, where she was libeled as prize. A certain Queyrouze intervened, claiming the cargo as the property of a French neutral, one Laplante, resident in France. He gave this history of the vessel: that she was loaded in New Orleans in February, 1862, with intention to proceed to Havana "as soon as the port of New Orleans should be captured and opened by the forces of the United States;" that Laplante intended to ship the cargo at Havana in another vessel for Bordeaux; that he had written from Bordeaux to Queyrouze, at New Orleans, instructing him to load a vessel and keep vessel and cargo there until the port was opened by the United States authorities; that it had been expected that an attack would be made on the city by the government forces, and, anticipating its capture, Laplante had deemed it expedient to have a vessel loaded ready to leave immediately upon the opening of the port; that Queyrouze obeyed the

instruction, and the vessel, having been loaded,

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remained at the wharf of New Orleans until the investment of the forts below the city in April, 1862; that it then becoming evident the federal forces would capture the city, the rebel commander issued a proclamation commanding the destruction of all vessels lying at New Orleans, with the cotton &c., on board or in store for shipment; to avoid which destruction the master of the *Josephine* caused her to be towed into Bayou Chene to a point in the interior and distant from New Orleans, where she lay concealed for a long time; that the master meantime endeavored to communicate the true character of vessel and cargo and destined voyage to the federal authorities, that he might be brought within their protection and licensed to proceed to Havana, but was unable to do so because the rebel governor had prohibited it by his proclamation; that about the 25th July, 1862, it having been reported that the rebel commander of the district where she lay concealed designed to destroy the vessel, the master managed to escape with his vessel and cargo to the Gulf by some of the secret passages from the body of the country to the Gulf with which that region abounds; that he then sailed towards the mouth of the Mississippi, expecting to fall in with some of the United States blockading squadron and obtain the license to proceed on the intended voyage, but that on the 28th of July, 1862, while hauling round Ship Shoal, in full view of the lighthouse, she was captured.

The master of the vessel, a resident of New Orleans, gave a different account and swore in effect that the cargo belonged to other persons than Laplante, to-wit: to certain Frenchmen, including one Sixe, resident and doing business in New Orleans; that he signed three bills of lading; that the cargo was deliverable to one Cabuzac, of Havana, to whom he was to go for orders if he arrived there; that there were no papers of the kind inquired of on board -- that is, no contract, agreement, license, protection, passport, or sea brief from any government or officer thereof, but that he had a mail, containing letters, on board at the time of sailing, which he was instructed by Mr. Sixe to destroy in case

of capture, and which he threw overboard in pursuance of his instructions, and that he gave up no papers to the captors, having none; that he sailed from New Orleans four days before the capture of that city by the United States forces, and took his vessel to Bayou Chene; that he got to sea on the 27th of July, 1862, *and was bound to some port in Cuba or wherever he could get his vessel*; and that he was captured on the 28th of July, 1862, off Ship Shoal lighthouse, bearing east-northeast, *about ten miles* from the lighthouse, sailing under the English flag, without having cleared at any custom house.

image:a

The mate, also a resident of Louisiana, corroborated the master so far as his knowledge extended, stating that they sailed from Bayou Botey, Louisiana, and *were bound for Havana*, that they sailed under the English flag, and that a

little before the capture the captain threw overboard a bundle of papers. He presumed that the cause of the capture was the supposition that they had run the blockade.

Seacolor, a hand on board, said that the capture must have been because they had run the blockade.

The ship's papers found on board consisted only of some receipts for cotton, dated on the brig *Josephine*, from the 15th to the 19th of February, but without signature.

The map will show the peculiar character of the region in which the vessel was -- a region which presents a reticulation of *bayous* interlacing with each other, in and through which it is possible to run from one portion of the country to another in a manner rendering it almost impossible to follow a course, which may be made devious to almost any extent.

Cargo and vessel were both condemned (no claimant appearing for the latter), and the case was now here for review, the main question considered by the court being whether the vessel had violated the blockade, though the condemnation was justified also on the ground of enemy's property. A motion had been allowed also in this Court, owing to certain special facts, to allow some further proofs.

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THE CHIEF JUSTICE delivered the opinion of the Court.

It was held at the last term by this Court that the blockade of the coast of Louisiana, having no direct connection with New Orleans by navigation, was not terminated by the discontinuance of the blockade of that port. In the cause now before us, it is not very clearly shown by the evidence from what part of the coast the *Josephine* was coming when she was captured by the blockading steamer, but she must have been coming from some point west of Ship Shoal light, which is laid down on the Coast Survey charts as more than a hundred miles west of the mouths of the Mississippi. In this part, it seems, the coast may be reached from New Orleans, in some seasons at least, through the creeks and bayous which form a sort of network of water communication in lower Louisiana, and allow more or less egress and ingress by small craft to and from the Gulf. There does not appear to be any regular or usual communication with New Orleans from the Gulf by these ways. The *Josephine* succeeded in getting through, but the whole country through which she passed, and the coast where she came out, was in possession of the enemy, and she was captured by a blockader soon after she entered the Gulf.

It is impossible, under these circumstances, to hold that the blockade of that part of the coast was discontinued. That it was not discontinued in fact is clearly shown by the evidence, and there was nothing in the occupation of the city or in the proclamation revoking the blockade of the port

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of New Orleans which could work the legal termination of blockade of the coast which remained under hostile control.

We think that the blockade was in full force, and that the *Josephine* and her cargo were properly captured for violation of it. The appellant has filed an affidavit that the master of the *Josephine* was seeking the blockading fleet with the purpose of procuring a license to proceed on his voyage, but the statement of the master not only does not support the affidavit but goes far to discredit it. Nor, indeed, could the alleged intent, if proved, avail the appellant, for it would not excuse the violation of the blockade.

This view makes it unnecessary to consider the questions made in the cause respecting the ownership of the vessel and cargo, or the motion for further proof.

*The decree of the district court must be affirmed.*

[ See *infra*, p. <70 U.S. 231|>231, *The Cheshire*, 2 -- REP.]