

The Thompson

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Court : US Supreme Court

Decided On : 1865

Appeal No. : 70 U.S. 155

Appellant : The Thompson

Judgement :

The Thompson - 70 U.S. 155 (1865)

U.S. Supreme Court The Thompson, 70 U.S. 3 Wall. 155 155 (1865)

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70 U.S. (3 Wall.) 155

SYLLABUS

1. Prize courts properly deny damages or costs where there has been "probable cause" for seizure.
2. Probable cause exists where there are circumstances sufficient to warrant suspicion, even though not sufficient to warrant condemnation.
3. These principles applied to a case before the court where a captured vessel was restored, but without costs or damages.

The brig *Thompson*, on her return voyage to Halifax from Nassau, was captured at sea with a cargo of 486 casks of turpentine and 81 bales of cotton on the 16th of June, 1863, by the government steamer the *United States* and sent into the port of New York for adjudication. The capture was made on suspicion that the vessel had broken the blockade of our Southern coast established by our government

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during the rebellion or had on board a cargo brought from a blockaded port and transferred to her under circumstances justifying condemnation. One Clements, of Nova Scotia, in behalf of himself and of a certain Martin & Co., of Nassau, all parties being British subjects, put in a claim for the cargo, another British subject claiming as owner the vessel.

In favor of the claimants were the facts that the vessel when hailed had surrendered without opposition and submitted freely to search; that her papers were unspoiled, regular, and apparently fair; that the master and ship's company were British subjects, without any interest in either the vessel or cargo; that, so far as the face of things showed, the voyage commenced at Halifax and was to have ended there; that the vessel made no port between Halifax and Nassau on her outward voyage, nor any between the same places on her return, and that she was not near any port when captured; neither were any proofs given that the cargo was procured from a blockaded port by any person or persons on board of or interested in the prize vessel, or that it was the property of such person.

On the other hand was the fact well known that, during the rebellion, the subjects of Great Britain, actively engaged in attempts to break our blockade, made the British island of Nassau an entrepot, thus dividing their operations into two parts, first running vessels from the blockaded port to this "neutral" island and then transshipping their cargoes at it to other vessels, on which they were carried as if on a new voyage to some other, the originally real port of destination, and so *vice versa*.

In the specific case before the court, it was shown that a schooner, named the *Argyle*, from Wilmington, North Carolina, with a valuable cargo of cotton and spirits of turpentine, having escaped the vigilance of our fleet, had reached the harbor of Nassau; that she did not discharge her cargo at the wharf, but hauled alongside the *Thompson*, which was at anchor, and that she transferred enough of her cargo to the latter vessel to load it. "I was told," said the cook of

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the *Thompson*, one witness who proved these facts, "that the captain of the *Argyle* owned part of the vessel. He was a Southern man, from Wilmington."

In addition to this, it was obvious that Martin & Co., claimants of the cargo, were more or less in sympathy with the rebel cause and with the interests of blockade runners. They write to their correspondents at New York and Halifax as follows:

"NASSAU, N.P., June 5, 1863"

"MESSRS. WIER & CO., HALIFAX, N.S."

"DEAR SIR: We are in receipt of yours of 8th May, contents noted; your craft has not yet arrived. Will care for her when she does."

"We have sent by this brig a cargo consisting of 486 casks spirits of turpentine and 81 bales of cotton. We desire it disposed of most to our advantage, either by shipping to England or America, as may appear. We shall write Messrs. Dollner, Potter & Co., of New York, immediately on arrival of the brig. You will telegraph to them and request their instructions. *We are happy to announce the arrival of the schooner Argyle with a full and valuable cargo, about \$42,000.* The old thing is about being used up, her bottom being badly wormed. You will, of course, upon consultation with Captain Clements and Dollner, Potter & Co., if they so decide it most to the interests of all concerned, sell at Halifax. *We do not like to have our property shipped on our account to the United States.* Captain Clements is the owner of one-half the cargo, being that brought out by *Argyle*. "

" We are largely into steamers; one leaves about the 10th for Dixie with valuable cargo; will bring back 1,200 bales cotton. Don't you want to invest three to five dollars in a good company. One company's stock is already worth 1,200 percent in cost in gold."

"We are doing quite well. Write often."

"Yours respectfully,"

"MARTIN & CO."

"NASSAU, N.P., June 5, 1863"

"MESSRS. DOLLNER, POTTER & CO., NEW YORK."

"DEAR SIR: We enclose herewith invoice and bill of lading of cargo on board brig *Thompson*, consigned to Messrs. B. Wier

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& Co. We have instructed them to confer with you in regard to its disposition, as under our present situation we cannot ship our stuff to you direct. You will order it wherever you may, on consultation with them, agree is most to our interests. We have instructed them of this fact. The cargo is jointly owned by the owners of the A 1 boat."

"We are happy to tell you the famous boat arrived ten days ago with 460 casks spirits, 90 bales cotton, and 50 to 60 barrels No. 2 rosin in bulk, which we shall send to you as soon as a chance offers. We've also 28 bales on hand. We will write you by steamer at once so as to go on Monday."

"Yours truly,"

"MARTIN & CO."

The District Court for New York, where the libel was filed, considering that there was sufficient cause to bring the vessel and cargo in for adjudication but not

enough to condemn them, restored them both, but restored them *without damages or costs*. From this last part of the decree the claimants, who insisted on recompense in damages, severally appealed.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

The district courts of the United States have original exclusive jurisdiction in questions of prize, and are authorized to decree restitution in whole or in part when the capture is wrongful, and if it is made without probable cause, may order and decree damages and costs against the captors. [[Footnote 1](#)]

In time of war, the party who makes a seizure does not always act at his peril, and is not always liable to damages and costs if he fails to establish the forfeiture of the vessel. In fact, prize courts deny damages in case of restitution when there was probable cause for the seizure, and are often justified in awarding to the captors their costs and expenses. [[Footnote 2](#)]

The question recurs what, in the sense of the prize law, is meant by the terms "probable cause." Chief Justice Marshall, in *Locke v. United States*, [[Footnote 3](#)] held that the terms "probable cause," according to their usual acceptation, meant less than evidence which would justify condemnation, and in all cases of seizure had a fixed and well known meaning -- that they import a seizure made under circumstances which warrant suspicion. The Court in that case were construing the 71st section of the collection law of 1799, which provided that the *onus probandi* should be on the claimant only where probable cause was shown for the prosecution. It was contended that in order to justify seizure, the evidence must be such as, if unanswered, would justify condemnation. But the Court held that such a construction would render totally inoperative the provision of the act of Congress. Judge Story, in *The George*, [[Footnote 4](#)] which was a libel for damages for an alleged illegal capture, gave the same exposition of the terms "probable cause" in matters of prize, and held that the capture of a ship was justifiable where the circumstances were

such as would warrant a reasonable ground of suspicion that she was engaged in an illegal traffic. And such is the view held by all writers on maritime warfare and prize. [[Footnote 5](#)] To adopt a harsher rule and hold that the captors must decide for themselves the merits of each case would involve perils which few would be willing to encounter.

Testing this case by these principles, was the district court justified in decreeing restitution without costs and damages against the captors?

Does not the fact that the schooner *Argyle* did not discharge her cargo at Nassau, but hauled alongside of the *Thompson*, then at anchor, and transferred enough of her cargo to load the latter vessel, afford a reasonable ground of suspicion that there was concert between the vessels and that the *Thompson* was purposely at Nassau to receive the cargo of the *Argyle*? And if further evidence was wanted to fix the character of the transaction, it is furnished in the letters of Martin & Co., who claim, in conjunction with Captain Clements, the ownership of the cargo, to Wier & Co., of Halifax, and Dollner, Potter & Co., of New York. These letters are written in a strain of high exultation. The *Argyle* has arrived with a cargo worth \$42,000, in which Clements is interested, and Martin & Co. are sending steamers to Southern ports for return cargoes of cotton, in which ventures they want the participation of Wier & Co. "The famous boat" with cotton, rosin, and casks of spirit has also reached port, and would be sent forward as soon as an opportunity offered. And withal, Martin & Co., as if fearing evil, dread to have their property shipped on their account to the United States. Could any foreign merchant interested in lawful commerce wish to avoid the markets of this country?

It is too plain for controversy that all these parties were extensively engaged in illegal traffic with the states in rebellion, and that the business was profitable. And the whole evidence tends strongly to show that the voyage from Wilmington

to Halifax was a continuous one, that there was no intention to terminate it at Nassau, and that the cargo of the *Argyle* was to be reshipped with unbroken ownership and control, so that it could be taken to a port which furnished a better market. If such was the intention when the cargo left Wilmington, then its status is fixed and the original guilt continued to the time of the capture notwithstanding the stoppage at an intermediate port, and transshipment. [[Footnote 6](#)]

A case of "probable cause" is clearly made out, and it is unnecessary to discuss the evidence with a view of showing whether the cargo or vessel should have been condemned, as the captors do not complain of the judgment of the court below.

The district court committed no error in refusing to give the claimants damages and costs as against the United States or the captors.

Decree affirmed with costs.

[[Footnote 1](#)]

Glass v. Sloop Betsy, 3 Dall. 16; Act of June 26, 1812, 6; 2 Stat. at Large 161.

[[Footnote 2](#)]

[*The Apollon*](#), 9 Wheat. 372.

[[Footnote 3](#)]

[11 U. S. 7](#) Cranch 339.

[[Footnote 4](#)]

1 Mason 24.

[[Footnote 5](#)]

Story's Notes, by Pratt; *The St. Antonius*, 1 Acton, 113.

[[Footnote 6](#)]

The Thomyris, Edwards 17; *The Maria*, 5 Robinson 365; *The Maria*, 6 *id.* 201;
The Charlotte Sophia, *id.*, 204, note; *The William*, 5 *id.* 385.

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