

The Convoy's Wheat

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Court : US Supreme Court

Decided On : 1865

Appeal No. : 70 U.S. 225

Appellant : The Convoy's Wheat

Judgement :

The Convoy's Wheat - 70 U.S. 225 (1865)

U.S. Supreme Court The Convoy's Wheat, 70 U.S. 3 Wall. 225 225 (1865)

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70 U.S. (3 Wall.) 225

ERROR TO THE DISTRICT COURT FOR

THE NORTHERN DISTRICT OF NEW YORK

SYLLABUS

1. Where a bill of lading, signed by a master, shows that a voyage to a particular place named on it is but part of a longer transit which it is understood is to be made by the cargo shipped, and that the cargo is to be carried forward in a continuous way on its further voyage, the master must be presumed to have contracted in reference to the course of trade connected with getting the cargo

forward.

2. In such a case, if any obstacle should intervene which by the regular course of the trade is liable to occur and for a short time retard the forwarding, the master cannot, from a mere inability to find storage at the *entrepot*, turn about, and taking the cargo to some near port, store it there, inform the consignees, and clear out. He should wait.

3. If there is easy telegraphic communication with the consignees, he should notify to them his difficulty, that they may send him, if they please, instructions.

Wolcot, as agent of certain persons, shipped on board the schooner *Convoy*, at Chicago, several thousand bushels

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of wheat. The master executed a bill of lading for it which ran thus:

"Shipped in good order &c.;, to be delivered unto consignee *as per margin*. Freight and charges to be paid as noted below, upon the *actual and complete* delivery of the said goods and freight to said *consignee* or their assigns."

On the margin below was entered:

"Acct. Carrington & Preston, *Oswego, N.Y., via Welland Railway* from Port *Colbourne* to Port Dalhousie, *thence* by sail or steam to Oswego. *Freight to Port Colbourne, 8 1/2 cents per bushel.* "

The reader will understand, of course, that the wheat was to be carried by the *Convoy* from Chicago, by the lakes, to Port Colbourne, at the eastern extremity of Lake Erie; that there it was to be unladed and carried by the Welland Railway across the Canadian isthmus to Port Dalhousie on

image:a

Lake Ontario, there to be reshipped on a second vessel and carried along Lake Ontario to Oswego on the eastern Part of the lake. The *Convoy* was too large a

vessel to pass through the Welland *Canal*.

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Parol testimony from Wolcot, the agent of the shippers, went to show specifically that the contract made by the master of the *Convoy* had been to carry the wheat to Port Colbourne only, and that he, Wolcot, had made a separate contract with the *Welland Railway Company* "to take it from there through to Oswego." The vessel agent at Chicago, one Goodenow, who filled the blanks in the *Convoy's* bills of lading and made the entries on the margin, testified to a similar effect, he swearing, moreover, that the expression, " *via Welland Railway*," entered on the margin, was construed by him as having the same meaning as " *care of the Welland Railway*."

The *Convoy* having arrived at Port Colbourne on the 29th of August, 1860, the master reported her to the Welland Railway Company and informed the agents having charge of the railway and the elevator there that he was ready to discharge his cargo. There were then thirteen vessels in the port with cargoes to discharge, which had arrived before the *Convoy*, and the agents replied that they would discharge the *Convoy's* cargo in its turn. The master made a similar application on the morning of the 30th of August, and received answer as on the morning previous. There being no elevator but the one at Port Colbourne and no warehouse or place where the wheat could be stored, the *Convoy* left Port Colbourne on the 30th of August and went to the City of *Buffalo, the nearest port to Port Colbourne*. On the 31st of August, she discharged her cargo in *that city*, and the master stored it at the Hatch elevator there, taking a receipt for its delivery to his order. On the next day, which was Sunday, *he* sailed for Chicago, and the owner of the *Convoy* telegraphed thus from Buffalo to Carrington & Preston, the consignees at Oswego:

"Obliged to store cargo *Convoy* in the Hatch elevator, in this city; shall libel cargo for freight and demurrage at Port Colbourne, and freights and charges here, unless settled immediately."

This telegram was the first and only information sent to

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the consignees relative to the cargo. *There was a telegraphic communication between Port Colbourne and Oswego.*

Carrington & Preston, feeling themselves aggrieved by proceedings which they regarded as somewhat summary, declined to settle the account so immediately as invited, and the shipowner libeled the wheat in the District Court for the Northern District of New York for freight and damages in the nature of demurrage.

It appeared that if the *Convoy* had remained at Port Colbourne, she would have been unladed on the 4th of September in her regular order, that the railway company did everything in their power to dispatch business, and discharged cargoes as fast as the capacity of their elevator and road would permit, and that at this time an unusual number of vessels had arrived and that there was an unusual amount of grain to be handled on the road and at the elevator.

The district court dismissed the libel. The circuit court affirmed its decree. Appeal here.

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MR. JUSTICE MILLER delivered the opinion of the Court.

It is not necessary to determine whether the libellant in this case, who was owner of the ship, contracted to deliver the wheat to the consignees at Oswego or whether he contracted to deliver it at Port Colbourne. The bill of lading given by the master of the vessel shows that it was understood that from Chicago to Port Colbourne was only part of the voyage which the wheat was to make, and that from Port Colbourne it was to be forwarded by the Welland Railway on its further voyage.

The testimony is clear that at Port Colbourne there is an elevator belonging to that railroad company, and that it is the only one and that there is no other warehouse or receptacle in which the wheat could be stored. The course of the trade demands that wheat shipped to Port Colbourne must go through that elevator, and if the vessels making delivery are so numerous that it cannot relieve them promptly, they must await their turn. The master of the vessel must be held to have made his contract with a full knowledge of this course of trade, and be governed by it. He had, therefore, no right, when he found there would be a delay of several days in delivering his cargo at the elevator, to carry it to Buffalo at the expense of the owner.

There is another matter in which the master failed in his duty. There was a telegraphic line in operation between Port Colbourne and Oswego, where the consignees resided, and he could, at any time during the three days he lay at Port Colbourne, have notified them of his difficulty, and received their instructions. He did nothing of the kind, but, after waiting about half the time that would have been

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required to enable him to discharge his cargo, he sailed to Buffalo, deposited the wheat there, subject to his own order, and then notified consignees by telegraph that he should libel it for freight and damage unless paid immediately.

Decree affirmed with costs.