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United States Vs. Weed

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Decided On : 1866

Appeal No. : 72 U.S. 62

Appellant : United States

Respondent : Weed

Judgement :

United States v. Weed - 72 U.S. 62 (1866)
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United States v. Weed

72 U.S. (5 Wall.) 62

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

1. When the record presents a case in this Court which has been prosecuted exclusively as prize, the property cannot be here condemned as for a statutory forfeiture.

2. When the record presents a case prosecuted below on the instance side of the court, for forfeiture under a statute, it cannot here be condemned as prize.

3. In either of these cases, if the facts disclosed in the record justify it, the case will be remanded to the court below for a new libel, and proper proceedings according to the true nature of the case.

4. In the present case, which was prosecuted as prize of war exclusively, the facts did not prove a case of prize, nor did they show a probable case of violation of any statutes. A decree of the court below dismissing the libel and restoring the property was therefore affirmed.

5. Permits granted during the late rebellion by the proper licensing agents to purchase goods in a certain locality, are *prima facie* evidence that the locality is properly within the trade regulations of that department.

On the 15th of April, 1864, the steamer *A. G. Brown* was boarded in the Atchafalaya River while on her way to Brashear City, by the United States gunboat *Wyanza,* Captain

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Washburne, and after some investigation the cargo of the Brown was pronounced prize of war. She followed the gunboat into Brashear City, her cargo was landed there, and put on the railroad which connects that place with New Orleans, and sent to the latter city in charge of a person calling himself a prize master. No attempt was made to detain the *A. G. Brown.* About a week afterwards she landed at Brashear City, on her return from another expedition, and as soon as she touched the shore, Captain Washburne came on board of her, declared her cargo prize of war, and sent that also to New Orleans by railroad. These cargoes consisted of sugar and molasses.

At New Orleans the first cargo arrived in two installments. On the arrival of the first, a libel was filed against it, in prize, in the District Court for the Eastern District of Louisiana by the attorney of the United States for that district. Shortly after this

the second installment of the first capture, and all of the second capture, arrived at New Orleans, whereupon an amended or supplemental libel, *equally in prize,* was filed against all the goods of both seizures.

The property, on its arrival, was placed in the hands of prize commissioners, depositions *in preparatorio* were taken, and the litigation pursued and ended as if it were a single capture. It was only by the most diligent search of the record that one was enabled to discover what goods were taken in the first capture and what in the second.

As soon as the case was fairly begun in the district court, C. A. Weed filed his claim for the sugar and molasses of the first capture, alleging that he was the owner of it; that he was a loyal citizen of New Orleans; that he had purchased the property in the Parish of *St. Mary,* Louisiana, under a license from the proper Treasury agents, and was transmitting it to New Orleans, when it was seized. F. Blydenburgh filed a claim, with similar statements, for the sugar of the second capture, stating, however, that he had bought it under a license which authorized him to "transport the same from the Parish of *St. Martin's.* " Both claims, which were sworn to, were quite full in stating the circumstances connected

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with the purchases and loyalty of the region where made and through which the property passed.

During the progress of the case, the claimant made a motion to dismiss the proceedings in prize, and transfer the case to the instance side of the court. This motion was disregarded, but, on final hearing, the district court dismissed the libel and ordered restitution of the property. From that decree the United States appealed to this Court.

The vessel on which the goods were seized was the property of the government of the United States, in the employment and control of the quartermaster's department of General Banks' army at the time of the seizure -- the government receiving $3,000 for the use of the vessel. An officer of this department

accompanied the expedition, which went from Brashear City for the goods, and was on board when she was overhauled by the gunboat. The vessel was manned by officers and men in the service of the government. There was also on board a file of United States soldiers, under the command of a captain of the army, who were detailed for the expedition by order of the colonel in command. The only person known to be on board not in the service of the government was the person who acted as agent for the claimant of the goods. Brashear City was in possession of our forces, and had been for several months, and the vessel was only returning to her proper place when she was captured in the first instance, and was lying there when boarded in the second. Her voyage did not in either case extend beyond the region of country which was under the control of the military authorities of the government at that time.

As to the cargoes.

Weed's had been brought from the Parish of St. Mary. Blydenburgh's came from the Parish of St. Martin on the shore of the Grand River, a little below a place called Butte la Rose. The Grand River was apparently the boundary between the two parishes. The district is on the Gulf of Mexico, and is indented on the Gulf side by several bays, with numerous islands, creeks &c.;, divided by two or three

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navigable rivers, broken by swamps and lakes and traversed in every direction by numberless bayous and watercourses, facts which rendered the absence of a public enemy a fact not so easy to be ascertained.

It appeared, however, in this case that the district was in the control of the United States; that the President had designated by proclamation, on the 1st of January previous, the Parish of St. Mary and apparently the whole region through which that cargo was to pass as not in rebellion. Various places in the Parish of St. Mary had been named by the commanding general as the places where delegates from the state were to assemble on the 22d February, 1864, to appoint state officers, and on the first Monday of April following, to make a state constitution.

The licenses, which were produced in court and had all usual *indicia* of regularity, were to purchase within "the country known as the Parish of St. Mary, Louisiana," and both had at the top of them the words, "This permit will accompany the shipment, and be surrendered at the customhouse." No papers were found with the goods.

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MR. JUSTICE MILLER delivered the opinion of the Court.

If this case is to be disposed of here upon the answer to be given to the question of prize or no prize, there can be no doubt that the decree of the district court must be affirmed.

There can on the facts be no pretense that there was any attempt to break a blockade, nor can it be held that the cargoes were enemy property. No person hostile to the United States is mentioned in argument or otherwise as probable owner of any part of them. Can the places from

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which the goods were brought impress upon them the character of enemy property? They were the products of those islands of Louisiana found in the bayous of that region, and were undoubtedly taken by the vessel from near the places of their production. These places, as we have seen, were under the military control of our authorities, and the Parishes of St. Mary and St. Martin were then represented in a convention of loyal citizens, called to frame a constitution under which a government was organized for the state hostile to the rebellion and acceptable to the military commander of that department.

The regularly authorized agents of the Treasury Department were also issuing licenses to trade in these parishes under the act of July 13, 1861, and the regulations of the Treasury Department made under that act and other acts of Congress. It is not possible to hold, therefore, that property arriving from these parishes was for that reason alone to be treated as enemy property in the sense of

a prize court.

Whether it is liable to forfeiture for an illegal traffic, as being in violation of those regulations and acts of Congress, will be considered hereafter, but the question must be determined upon other considerations than those which govern a prize court.

The question of prize or no prize must therefore be answered in the negative.

But it is said in behalf of the government that if the property in controversy is not subject to condemnation as prize of war, it is liable to confiscation as having been purchased in violation of the acts of Congress and the trade regulations established in pursuance of those acts.

Before entering upon this inquiry a preliminary question of some importance presents itself which must be first disposed of.

The pleadings, the testimony, and the conduct of the case have been governed exclusively, from its commencement, upon the idea of prize proceedings. The libel is a very general allegation of property captured as prize. Not a word is found in the pleadings of the case which alleges any

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fact rendering the property liable to confiscation under the acts of Congress. A large part of the testimony consists of depositions taken *in preparatorio,* where the claimants had no opportunity of cross-examination. If, under these circumstances, there is found in the testimony sufficient evidence to convince us that the property is liable to statutory confiscation, can we condemn it in this proceeding? Or, if we cannot condemn, must we, on the other hand, restore it to the claimants?

It would seem to violate all rules of pleading as well as all the rules of evidence applicable to penal forfeitures to hold that in such circumstances we can proceed to condemnation. The right of the claimant to be informed by the libel of the specific act by which he or his property has violated the law, and to have an

opportunity to produce witnesses and to cross-examine those produced against him, are as fully recognized in the admiralty courts in all except prize cases as they are in the courts of common law.

In the case of *The Schooner Heppet,* [Footnote 1] the vessel was proceeded against for a forfeiture under the act to interdict commercial intercourse with France, and this Court, by C.J. Marshall, said that the first question made for its consideration was whether the information would support a sentence of condemnation. After stating the substance of the pleading and the rule which governs the common law courts, he proceeded:

"Does this rule apply to informations in a court of admiralty? It is not contended that all those technical niceties, which are unimportant in themselves, and standing only on precedents of which the reason cannot be discerned, should be transplanted from the courts of common law in a court of admiralty. But a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offense upon which the prosecution is founded must be the rule of every court where justice is its object, and cannot be satisfied by a general reference to the provisions of the statute."

He then asked if this defect of the

pleading could be cured by any evidence showing that in point of fact the vessel and cargo were liable to forfeiture, and held that it could not.

In the case of *The Brig Caroline,* [Footnote 2] this case is affirmed and the principle applied to a libel filed against a vessel for violating the act of Congress concerning the slave trade. [Footnote 3]

The claimants, on the other hand, insist that as the evidence does not sustain a case within the prize jurisdiction of the court, the libel must be dismissed and the property restored.

This might be true if the prize court of this country was a court sitting under a special commission, as it is in England, for that commission must then be the limit of its power. But such is not the case here. The district court holds both its prize jurisdiction and its jurisdiction as an instance court of admiralty from the Constitution and the act of Congress, and it is but one court, with these different branches of admiralty jurisdiction as well as cognizance of other and distinct subjects.

The case of *Jecker v. Montgomery,* [Footnote 4] in this Court, is instructive, if not conclusive, on the point we are now considering.

In that case, Captain Montgomery had, during the Mexican war, taken as prize the *Admittance,* an American vessel, and her cargo for illegal trade with the enemy on the coast of California. He had carried his capture before a court claiming prize jurisdiction in that region, organized by the authority of the commanding general, and she was by that court condemned and sold. After this, the owners of the vessel and cargo filed a libel in admiralty, in the instance side of the court, in the District of Columbia, against the captor, alleging that the capture was wrongful and the condemnation illegal, and they prayed for restitution of their property or that Captain Montgomery might be compelled

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to bring the captured property into that court, or some other court of competent jurisdiction, and institute there the proper proceeding for its condemnation. Captain Montgomery answered and insisted that his capture was lawful prize and that the proceedings in the prize court in California were valid. Demurrers to the answer were filed, and on these pleadings the libel was dismissed.

On appeal to the Supreme Court it was held that the prize court of California was without authority and its decree void. But although the parties were before the court, and sufficient cause for the capture was stated in the answer and sufficient excuse shown for not proceeding to a valid adjudication -- all of which was admitted by the demurrer of the claimants -- this Court reversed the decree

dismissing the libel, and remanded the case, with directions that the captor should institute proceedings in prize for the condemnation of his capture, and if he did not do so within a reasonable time, the court should proceed against him on the libel of claimants for a marine trespass.

The court said that

"the necessity of proceeding to condemnation in prize does not arise from any distinction between the instance court of admiralty and the prize court. 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 under this libel, nor would its dismissal be equivalent to a condemnation, nor recognized as such by 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 against them 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 finally settled."

In that case it was determined that the case must be remitted to the court in prize because, under the libel and

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mode of proceeding in the instance side of the court, the question of prize or no prize could not be definitely settled. The case before us is the converse of that. We have here a case where all the proceedings are in prize, and according to the mode of proceeding in prize courts, but the case for the government, if it can be sustained at all, is not a case of prize, but of forfeiture under municipal law. We think the reasons are quite as strong why this Court should not condemn the property in this proceeding, even if liable to forfeiture on the facts, as they are for refusing to condemn a prize on a libel filed on the instance side of the court. What,

then, shall be done with the property if the facts in the record prove a liability to forfeiture under the statute?

In the case of *The Schooner Adelaide,* [Footnote 5] where this precise question was raised, it was not found necessary to decide it, because, the proceeding being in prize, this Court held that the facts proved it to be a prize case. But Mr. Justice Story, in delivering the opinion of the Court, responding to the argument that the case was salvage and not prize, and therefore the libel should be dismissed, said:

"If indeed there were anything in this objection, it cannot in any beneficial manner avail the defendants. The most that could result would be that the case would be remanded to the circuit court with direction to allow an amendment of the libel. Where merits clearly appear on the record, it is the settled practice in admiralty proceedings not to dismiss the libel, but to allow the party to assert his rights in a new allegation."

This practice was also followed in the case of *Mrs. Alexander's Cotton.* [Footnote 6] In that case, the cotton had been libeled as prize of war. This Court was of opinion that it was not a case of prize, but that it came within the statute covering captured and abandoned property. The Court did not, for that reason, affirm the decree of the district court, which had restored the property or its proceeds to Mrs. Alexander, but reversed that decree and remanded the case to the district

court that it might dispose of the proceeds of the sale of the property, then in the registry, according to the opinion of the court.

Our inquiries into this subject, guided and supported by the decisions of this Court, lead to the establishment of two propositions:

1. That when a case has been prosecuted as prize in the modes in use in the prize courts which the facts in the record show not to be prize, but a case of forfeiture

under statute, this Court will remand the case for further proceedings in the court below.

2. That where a case has been in like manner prosecuted in the instance court which, on the facts presented, this Court is of opinion is a case for a prize court, it will be remanded for proceedings in prize.

We have already seen that the present is not, on the facts, a case of prize. The first of the above propositions establishes the rule that we cannot, under this proceeding, condemn the property for a forfeiture under the statute. It remains to be determined whether we shall affirm the decree of the district court restoring the property or remand the case for further proceedings on the question of municipal forfeiture. For this purpose we must examine for a moment the testimony before us.

We have already seen that the goods were purchased in those parishes of Louisiana which were occupied by our military forces and which were under their control, and which were also represented in the effort to establish a loyal state government. It also appears that the legally appointed agents of the Treasury Department were in the habit of issuing permits to trade in those parishes.

The claimants allege that they made the purchases under licenses obtained from these agents, that they were fair and honest transactions, and that they themselves are loyal citizens of New Orleans. The facts of the purchase are stated with particularity and under oath. The permits or licenses are produced and filed in court, and seem to us to be regular

in form and properly issued. It cannot be supposed that this Court can take judicial notice of the varying lines of the federal army of occupation in those remote regions, but the fact that the proper officers issued these permits for certain parishes must be taken as evidence that they were properly issued until the contrary is established. The facts also that the goods were brought in by a government vessel, for the use of which government received $3000, commanded

by government officers and guarded by government troops, ordered for the purpose by the post commander, are circumstances not to be disregarded in a matter of this kind.

It is objected that the permits were not found with the goods, as the regulations direct. This was merely directory, and would not of itself work a forfeiture of the goods. But they probably were on board with the goods when the latter were seized, and the holder of them may have felt justified in not delivering this evidence of his good faith to a gentleman who seemed willing to let the vessel do all she could in this traffic, so long as he could stand on the shore when she landed her goods and seize them as prize of war.

It is said there is no proof identifying these goods as those purchased under the permits, but the affidavits of claimants are full to this point and are uncontradicted by any testimony in the record. Other witnesses also prove the purchase and payment of these goods by Weed about the time mentioned in the first of two permits issued to him.

It is said that Blydenburgh's permit was to purchase in the Parish of St. Mary, and that his purchase was made in the Parish of St. Martin. It is not shown precisely where the purchase was made. The sugar was taken from the shore of Grand River, a little below Butte la Rose. This Grand River seems to be the boundary between the Parishes of St. Mary and St. Martin. However there seems no reason to suppose that Blydenburgh intended to violate the terms of his permit, nor sufficient proof that he did so, in making his purchase. There is much contradictory testimony as to the existence of guerrillas near where the sugar was obtained about the time of its transportation, but this would seem

to show the necessity for its speedy removal if the purchase had been honestly made.

On the whole, we see no reason to suppose that a case of forfeiture would be made out by the testimony on another trial, as much of that taken *ex parte* by the

captors would probably be modified favorably for the claimants on cross-examination.

The decree of the district court is therefore.

Affirmed.

[Footnote 1]

11 U. S. 7 Cranch 389.

[Footnote 2]

11 U. S. 7 Cranch 496.

[Footnote 3]

See also *The Samuel,* 1 Wheat. 9; *The Mary Anne,* 8 Wheat. 380.

[Footnote 4]

54 U. S. 13 How. 498.

[Footnote 5]

13 U. S. 9 Cranch 244.

[Footnote 6]

69 U. S. 2 Wall. 404.

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