

**The Sir William Peel**

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**Court :** US Supreme Court

**Decided On :** 1866

**Appeal No. :** 72 U.S. 517

**Appellant :** The Sir William Peel

**Judgement :**

The Sir William Peel - 72 U.S. 517 (1866)

U.S. Supreme Court The Sir William Peel, 72 U.S. 5 Wall. 517 517 (1866)

**The Sir William Peel**

**72 U.S. (5 Wall.) 517**

*APPEAL FROM THE DECREE OF THE DISTRICT*

*COURT FOR THE EASTERN DISTRICT OF LOUISIANA*

## **SYLLABUS**

1. Regularly, in cases of prize, no evidence is admissible on the first hearing except that which comes from the ship, either in the papers or the testimony of persons found on board.

2. If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.

3. If, preparatory to the first hearing, testimony was taken of persons not in any way connected with the ship, such evidence is properly excluded, and the hearing takes place on the proper proofs.

4. If a ship or cargo is enemy property or either is otherwise liable to condemnation, the circumstance that the vessel at the time of capture was in neutral waters would not, by itself, avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territories had suffered trespass, for apology or indemnity. But neither an enemy nor a neutral acting the part of an enemy can demand restitution of captured property on the sole ground of capture in neutral waters.

5. Where several witnesses stated facts which tended to prove that a vessel was in the employment of an enemy government, and that part, at least, of her return cargo was in fact enemy property, while the statements of others made it probable that the vessel was in truth what she professed to be, a merchant steamer belonging to neutrals and nothing

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more, that her outward cargo was consigned in good faith by neutral owners for lawful sale, that the return cargo was purchased by neutrals and on neutral account with the proceeds of the cargo or other money, the Court directed restitution, without costs or expenses to either party as against the other.

Appeal from the decree of the District Court for the Eastern District of Louisiana respecting the steamship *Sir William Peel* and cargo, which had been captured September 11, 1863, at the mouth of the Rio Grande, on the Mexican side, as it seemed, thereof by the United States war vessel *Seminole* during the late rebellion and libeled in the said court for prize of war.

A claim to the vessel was put in by Corry & Laycock, of Manchester, England, and for the cargo by Henry & Co. of the same place.

On the examination *in preparatorio*, the only persons on board the ship who were examined were the master, mate, and one seaman. From these, the charter party on board, and a survey of the vessel, it appeared that the vessel had been sold 24 April, 1863, by certain persons, British subjects, who had bought her a week before, to Corry & Laycock; that the vessel (one of 1,500 tons burden) had been built in 1855 as a war vessel for the Portuguese government, and at the time of the sale had been employed in the British transport service; that her marine engines were six feet below the water line; that three days after the sale, *i.e.*, on the 27th April, the new purchasers chartered her to Duranty & Co.

"for the conveyance of lawful merchandise between Liverpool and Mexico and any other lawful ports, *the vessel not to attempt to break any blockade. No injurious cargoes to be shipped* as ordered by the charterers;"

that Henry & Co. had shipped upon her a general cargo -- gambier, sumac, boots in cases, bar, wrought, and hoop iron, baled goods, and a number of axes; that the vessel began to unlade and relade at the same time. When captured, she had on board her a keg (25 lbs) and a flask of gunpowder, 72 cannon cartridges, 48 rifle cartridges, 24 blue lights, 16 rockets, 47 muskets ready for action, 4 boarding pistols, 11 tomahawks

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for boarding, 46 boarding cutlasses, and several other military accoutrements placed in the companionway or in a room amidships; also among the dunnage, partly hidden, a lot of solid round shot, and a quantity of grape-shot loose, and between decks two casks of iron rings used for artillery harness. These articles, it was testified by one or more of the persons above mentioned, had been on the ship when in the transport service, and had followed her as she passed to the new owners. The captain testified that there was

"no other warlike material aboard; that when the vessel was loaded at Liverpool everything like contraband had been excluded; and that Corry & Laycock owned the ship, and Henry & Co. the cargo; that all the owners were Englishmen, and had always lived at home; that the voyage was from Liverpool to Matamoras and back; that the outward cargo was to be delivered to Milmo & Co., a firm of Matamoras, for the benefit of Henry & Co."

It appeared also from the testimonies just mentioned that the vessel cleared from Liverpool direct to Matamoras, but had stopped, as the mate testified (the captain saying nothing about this), at Jamaica to take in coal; and that she arrived at the mouth of the Rio Grande, the dividing river between Mexico and the United States, June 24, 1863, and anchored well on the Mexican side; that she began to unlade her outward cargo and to take a return cargo cotton at the same time, the outward cargo being discharged in lighters and taken by steam from thence to Matamoras, about thirty miles from the mouth of the river; the return cargo of cotton being brought down in lighters and so put on the *Sir William Peel* and that, about 950 bales being on board, the vessel was captured. That the ship's papers had been given to her consignees at Matamoras, and were therefore not on board, the vessel not being yet fully laden or ready to return.

In addition to this testimony of the captain, mate, and seaman, the testimony of two other persons, loyal citizens of the United States, one resident in Brownsville, a place in the State of Texas, and then in possession of the Confederacy,

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the other a mate of a merchant vessel of New York, then at anchor near the *Peel*, was taken *in preparatorio*, along with that of the witnesses from the ship. The testimony of these witnesses went to prove that the rebel authorities or rebel citizens were interested in the vessel and the cargo both outward and return.

On the case coming to hearing, the court, on motion of counsel of the captors, excluded the testimony of such of the witnesses as were not found on board the captured vessel, but subsequently gave leave to both parties to take further

proofs. Further testimony, including that of one of the persons whose evidence had been excluded, as taken *in preparatorio*, was accordingly taken on both sides. It was contradictory.

On the one hand it was testified that the consignees, Milmo & Co., of Matamoras, had the general reputation of being agents of the Rebel Confederacy, that they had a branch house in Brownsville, nearly opposite, in Texas, and were engaged in receiving cargoes from Europe which they disposed of to the military authorities of the Confederacy, receiving and lading, in return, cotton which the Confederacy had seized and over which it exercised the right of property.

One witness of the captors said:

"I crossed over [from Texas to Mexico] between five and six hundred bales Confederate cotton that was to go on to the *Sir W. Peel*, but I cannot swear that it went on board her. . . . This cotton had been turned over by a Confederate States agent to Milmo & Co. for account of the Confederate government. . . . Milmo & Co. hurried me up, as they were anxious to ship it on the *Sir W. Peel*. . . . I shipped the cotton even during nights and on Sundays. . . . I was fully confident at the time that this cotton was shipped for the *Peel*, and had no doubt of it whatever."

Another witness of the captors, resident for many years in Brownsville and its vicinity, testified:

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"It was generally known in Matamoras that the *Peel* was at the mouth of the Rio Grande. This public notoriety was as to her size; second, as to the cargo she had; and third, as to the disposition to be made of that vessel after having the port of Matamoras. Her size was unusual for a vessel in those waters, her cargo comprising arms and munitions of war. It was the general rumor that she was to receive her cargo of cotton, go to Havana and Nassau, and there discharge her cargo, and then become a privateer. I very often met with Texan and rebel officers. I remember two with whom I had conversations with regard to the *Peel*. The

adjutant, Dr. Riley, at the time of the seizure of cotton by the Confederacy, told me, when I inquired of him the cause of this impressment of cotton, that certain vessels had arrived from England belonging to parties with whom he had contracts, and they found it necessary to impress cotton if they were to receive these cargoes; accordingly the cotton was impressed in order that they could receive these cargoes."

"The *Sir William Peel* was spoken of in connection with these cargoes in a conversation with J. K. Spear, quartermaster's clerk in Brownsville, in reference to the amount of arms the people of Western Texas had. He stated that they received all the arms they desired from vessels at the mouth of the Rio Grande, and that for a week previous he had been engaged in crossing arms for the quartermaster. I inquired of him where he had the arms from, whether from the Mexican shore or direct from the Gulf. He answered he got them in both ways, direct from vessels and from the other side, the Mexican shore. At the same time he stated that a particular friend of his was interested in the *Sir William Peel*, and that he had been receiving goods from the *Sir William Peel*. "

On the other hand, the testimony of one of the partners of the firm of Milmo & Co. was as follows:

"The vessel belonged and still belongs to Messrs. Corry & Laycock, merchants, living in Manchester, England, and British subjects."

"The cargo on board the vessel when captured, was and is the *bona fide* property of Henry & Co., residing in Manchester, British subjects, purchased by us in this port for them; the cargo landed here belonged to the same parties. I derive this knowledge

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from the consignment, and correspondence relative to the consignment of the said cargo to us, by the said Henry & Co. Their ownership was absolute and exclusive of all other interest."

"We had full instructions to invest the entire proceeds of the inward cargo in cotton and to fill up the *Sir William Peel* for Liverpool. If the proceeds did not furnish cotton enough, then to take any freight offering for that port sufficient to load the vessel at the ruling rate of freight. We accordingly had ready for the *Sir William Peel* three thousand bales of cotton, the quantity thought to be necessary to fill her. Our instructions also directed us to give her as quick dispatch as possible for Liverpool, and her cargo was engaged for, and the nine hundred and four bales on board were destined for that port."

The instructions referred to by this witness were not produced.

The further proofs showed that there was machinery aboard, apparently not on the manifest, which had been landed; bales of blankets &c.;, and also tended to show that the vessel when first anchored, was in American water, but that she had shifted her position to the spot at which she was captured.

The testimony as a whole, satisfied the mind of the court below that the vessel was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters. On that ground, it decreed her restitution, but entertaining grave doubts as to the object of her voyage,

"so grave, indeed, that but for this consideration that she was captured in neutral waters, the court should have decreed her condemnation, it ordered that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused."

Both parties appealed.

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THE CHIEF JUSTICE delivered the opinion of the Court.

Regularly in cases of prize no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons

found on board.

If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.

In the case now before us some testimony was taken, preparatory to the first hearing, of persons not found on board

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the ship, nor, indeed, in any way connected with her. This evidence was properly excluded by the district judge, and the hearing took place on the proper proofs.

Upon that hearing an order for further proof was made, allowing the libellants and captors, on the one side, and the claimants, on the other, to put in additional evidence; and such evidence was put in accordingly on both sides.

The preparatory evidence on the first hearing consisted of the depositions of the master of the ship, the mate, and one seaman. No papers were produced, for none were found on board; a circumstance explained by the statement of the master, that all the papers belonging to the vessel, except the lightermen's receipts for the cargo, were with the English consul and the consignees of the ship at Matamoras.

The depositions established the neutral ownership of the ship and cargo. They proved that the Sir William Peel was a British merchantman; that she had brought a general cargo, no part of which was contraband, from Liverpool to Matamoras; that this cargo, except an inconsiderable portion, had been delivered to the consignee at the latter port; that the cotton found on board was part of her return cargo; that it was owned by neutrals, and had a neutral destination; and that the ship, when captured, was in Mexican waters, well south of the boundary between Mexico and Texas.

This proof clearly required restitution. The order for further proof was, probably, made upon the rejected depositions, which, though inadmissible as evidence for condemnation, may have been allowed to be used as affidavits on the motion for the order.

The further proof, when taken, was conflicting.

The weight of evidence, we think, put the vessel, at the time of capture, in Mexican waters; but if the ship or cargo was enemy property, or either was otherwise liable to condemnation, that circumstance, by itself, would not avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territory had suffered

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trespass, for apology or indemnity. But neither an enemy, nor a neutral, acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.

We must therefore look further into the case.

There is some evidence which justifies suspicion. Several witnesses state facts which tend to prove that the *Peel* was in the employment of the rebel government, and that part, at least, of the cotton laden upon her, as return cargo, was in fact rebel property.

There are statements, on the other hand, which make it probable that the *Peel* was in truth what she professed to be, a merchant steamer, belonging to neutral merchants, and nothing more; that her cargo was consigned in good faith by neutral owners for sale at Matamoras, or to be conveyed across the river and sold in Texas, as it might lawfully be, not being contraband; that the cotton was purchased by neutrals, and on neutral account, with the proceeds of the cargo or other money.

In this conflict of evidence we do not think ourselves warranted in condemning, or in quite excusing the vessel or her cargo. We shall therefore affirm the decree by

the district court, and direct restitution, without costs or expenses to either party as against the other.

*Affirmance and direction accordingly.*

\* For the suspicious character of all the trade between neutrals and Matamoras, see the statement of the case in *The Peterhoff, supra*, p. [72 U. S. 30](#) , and the chart, *supra*, p. <72 U.S. 173|>173.

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