SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The Merritt

The Merritt

SooperKanoon Citation : sooperkanoon.com/82402

Court : US Supreme Court

Decided On : 1873

Appeal No. : 84 U.S. 582

Appellant : The Merritt

Judgement :

The Merritt - 84 U.S. 582 (1873)
U.S. Supreme Court The Merritt, 84 U.S. 17 Wall. 582 582 (1873)

The Merritt

84 U.S. (17 Wall.) 582

APPEAL FROM THE CIRCUIT COURT FOR

THE EASTERN DISTRICT OF WISCONSIN

SYLLABUS

1. A vessel built in the British Province of Canada, but owned wholly by citizens of the United States, cannot under the Registry Act of 1793, 1 Stat. at Large 287, be a vessel of the United States, nor can she be a foreign vessel truly and wholly belonging to citizens of Canada or of Great Britain. If, therefore, such a vessel be engaged in transporting the products of Canada into ports of the United States,

she may be forfeited under the Act of March 1, 1817 13 Stat. at Large 351, which enacts, under penalty of forfeiture, that

"No goods, wares, or merchandise shall be imported into the United States from any foreign port or place except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture."

2. Nor, assuming that neither Great Britain nor the Dominion of Canada have adopted "a similar regulation," could the vessel, in the absence of all documents such as establish nationality, be taken to be a British or Canadian vessel, and so held to fall within the proviso to the above quoted enactment, which provides "that this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt, a similar regulation."

By a statute of 1792 [Footnote 1] it is enacted that no ships but those which have been registered in the manner therein prescribed shall be denominated or deemed vessels of the United States entitled to the benefits or privileges appertaining to such ships. Great Britain has a similar regulation fixing what are to be regarded as British vessels.

By an Act of March 1, 1817, [Footnote 2] it is enacted,

"SECTION 1. That after the 30th day of September next, no goods, wares, or merchandise shall be imported into the United States from any foreign port or place except in vessels of the United States or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. "

Page 84 U. S. 583

" *Provided, nevertheless,* that this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt, a similar regulation."

A subsequent section of the latter act enacts that the vessel and cargo coming into the United States in violation of those provisions shall be forfeited.

In this condition of things -- as appeared by the libel, information, and answer hereafter mentioned -- the bark *Merritt,* built in the province of Canada and within the dominion of Great Britain but wholly owned by citizens of the United States, was employed in transporting coal and iron, products of the said province of Canada, from the port of Kingston, in the province named, into the port of Milwaukee, Wisconsin, in the United States.

Hereupon, a libel and information was filed in behalf of the United States alleging the facts above stated. One Murray, owner of the vessel, interposed as claimant, and not denying the allegations, answered that at the time of the importations on account of which the proceedings were taken, neither the imperial government of Great Britain nor the Dominion of Canada [Footnote 3] had adopted any "similar regulation" to that contained in the above-quoted act of 1817, and that therefore the case was taken out of the statute by the proviso to it. This answer was excepted to as irrelevant -- that is to say was, in effect, demurred to, and the exception or demurrer being sustained by the court below, on an appeal from the district court, the case was now brought here by Murray for review. The vessel had exhibited no papers.

Page 84 U. S. 585

MR. JUSTICE HUNT delivered the opinion of the Court.

The first section of the Act of 1817 prohibits the importation of any goods or wares from any foreign port into the United States, except in two cases:

1st. They may be imported in vessels of the United States or

2d. In such foreign vessels as truly and wholly belong to the citizens or subjects of the country of which the goods are the production, or from which they are most usually first shipped for transportation.

The claimant's answer does not bring him within either of these classes.

1. The *Merritt* is not a vessel of the United States. The information alleged -- it was not denied, and that is all that the case contains upon the subject -- that the *Merritt* was the property of citizens of the United States, and that she was a foreign-built vessel. That she was owned by citizens of the United States did not make her a vessel of the United States. By the statute of 1792, only ships which have been registered in the manner therein prescribed shall be denominated or deemed vessels of the United States, entitled to the benefits or privileges appertaining to such ships. There is no allegation that the *Merritt* had been so registered. Indeed, she could not have been under the provisions of the act last referred to.

2. The cargo of the *Merritt* was iron and lumber, the production of the British provinces of Canada, while her owners were citizens of the United States. She did not, therefore, come within the second description of the statute of 1817

Page 84 U. S. 586

as a foreign vessel truly and wholly belonging to citizens of the country of which the cargo was the growth or production. On the contrary, it is conceded by the pleadings that her owners were American citizens. The *Merritt* therefore falls within the prohibition of the act, and is liable to forfeiture. She was neither a vessel of the United States nor a foreign vessel wholly belonging to citizens of the country of which her cargo was the production.

But the claimant seeks the benefit of the proviso of the act, *viz.,* "That this regulation shall not extend to the vessels of any foreign nation which has not adopted, and shall not adopt, a similar regulation." He alleges that neither the Kingdom of Great Britain nor the province of Canada has adopted similar regulations.

The case does not show that the *Merritt* has any of the evidence of being a British ship. She produces no register, or certificate, or document of any kind to entitle her to make that claim. The fact that she is foreign-built does not prove it.

Proof even that she was built in Great Britain would not establish it. Pirates and rovers may issue from the most peaceful and most friendly ports. The documents a vessel carries furnish the only evidence of her nationality. [Footnote 4] Of these the *Merritt* is entirely destitute so far as the case shows. There is nothing, therefore, to bring her within the terms of the proviso.

Decree affirmed.

[Footnote 1]

1 Stat. at Large 287.

[Footnote 2]

3 *id.* 351.

[Footnote 3]

This averment as to the Dominion of Canada was made, of course, under the supposition that the Act of 30 Victoria, chapter 3, 2 Law Reports Statutes, § 91, p. 21, which, it was said, gives to the Parliament of Canada (subject to a power of veto in the Crown) exclusive regulation in "the regulation of trade and commerce," and "in navigation and shipping," might have made it a "country" within the meaning of the enacting clause of the Act of 1817. As the vessel showed no papers from any source, the point was unimportant.

[Footnote 4]

See 1 Parsons on Shipping and Admiralty 26-27.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com