
Statement of the case.

require, as condition for claiming this penalty, that such pilot shall have the license required by act of Congress. The act of Congress provides, that if any person shall be employed as a pilot on such vessel without such license as it prescribes, the owner shall forfeit the sum of one hundred dollars. Here is a manifest conflict. It is made a part of this case, as found by the court below, that the plaintiff did not have any such license as the act of Congress required. Defendant, notwithstanding this, has been compelled by the State court, under the State law, to pay fifty-two dollars for refusing to take this pilot. If he had accepted him, he would have forfeited to the United States the sum of one hundred dollars for violating the act of Congress. The conflict of the two statutes is too obvious for comment. I think the act of Congress ought to prevail.

THE BAIGORRY.

1. The blockade of the coast of Louisiana, as established there, as on the rest of the coast of the Southern States generally, by President Lincoln's proclamation of 19th April, 1861, was not terminated by the capture of the forts below New Orleans, in the end of April, 1862, by Commodore Farragut, and the occupation of the city by General Butler on and from the 6th of May, and the proclamation of President Lincoln of 12th May, 1862, declaring that after June 1st the blockade of the port of *New Orleans* should cease. Hence, it remained in force at Calcasieu, on the west extremity of the coast of Louisiana, as before.
2. The fact that the master and mate saw, as they swear, no blockading ships off the port where their vessel was loaded, and from which she sailed, is not enough to show that a blockade, once established and notified, had been discontinued.
3. Intent to run a blockade may be inferred in part from delay of the vessel to sail after being completely laden; and from changing the ship's course in order to escape a ship of war cruising for blockade-runners.
4. A vessel and cargo, even when perhaps owned by neutrals, may be condemned as enemy property, because of the employment of the vessel in enemy trade, and because of an attempt to violate a blockade, and to elude visitation and search.

THE schooner Baigorry, laden wholly with cotton, was captured at sea, about one hundred miles off Havana, to

Statement of the case.

which port she was sailing from Calcasieu Pass, in Louisiana, by the United States brig-of-war Bainbridge, *on the 9th of June, 1862*, and taken into Key West, where both cargo and schooner were libelled as prize of war. The ground, in fact, of the proceeding was,

1. Alleged violation of the blockade, established by President Lincoln's proclamation of 19th April, 1861.

2. That the cargo and ship were enemy's property.

The defence in turn was,

1. That no blockade had been broken; there not, as was alleged, having, in fact or in law, been any blockade at the date when the vessel sailed. And,

2. That the cargo and vessel were neutral property, and protected under a certain proclamation of General Butler's, made May 6th, 1862, hereinafter mentioned.

The cotton, according to the mate's testimony, had been laden at Calcasieu, in the State of Louisiana, *between the 27th of April and the 3d of May, 1862*. The vessel sailed from Calcasieu on the *26th of May*. [Dates in this case are important.] Calcasieu Pass is on the western portion of the coast of Louisiana, and towards the western boundary of the State. Its topographical relation to the mouths of the Mississippi, New Orleans, and the country about the two, will be indicated with sufficient nearness to give the reader not acquainted with this special region an idea of things, by an arrow in the lower and left corner of the diagram, at page 263. An extension of the line of the arrow to the coast (cut off on the diagram) would indicate the position of Calcasieu.

As mentioned in two previous cases in this volume,* and as is matter of known history, Commodore Farragut captured and took possession of the forts below New Orleans, then in possession of the Southern rebels, *in the end of April, 1862*; and General Butler, as a consequence, entered New Orleans on the 1st of May; his occupation of which by the 6th was complete. Prior to this last date, various other

* The Circassian and the Venice, *supra*, pp. 135, 258, one or both of which cases should be read before this.

Statement of the case.

forts about New Orleans were abandoned or destroyed, and the navigation of the Mississippi, from its mouth, for a considerable distance upwards, left clear. But none of the places certainly abandoned were near to Calcasieu; nor although Commodore Farragut reported to the Government that "a general stampede" was taking place as a consequence of the capture, were the rebels at that date driven out of Louisiana generally. The "stampede" was general, as described; but it was general apparently only in the regions which were the theatre of the brave Commodore's operations, the region, namely, about New Orleans. On the 6th of May, General Butler issued a proclamation, written and dated on the 1st, in which he stated, that New Orleans and its environs having surrendered, were then occupied by the United States forces; that all foreigners not naturalized and claiming allegiance to their respective governments, and not having made oath of allegiance to the government of the Confederate States, would be protected in their persons and property, as heretofore, under the laws of the United States; and that the rights of property, of whatever kind, would be held inviolate, subject only to the laws of the United States. All the inhabitants were enjoined to pursue their usual avocations.

The proclamation of blockade referred to above, as having been made by President Lincoln, April 19, 1861, was declared from the first, by the Government, to be a blockade of the whole Southern coast of the United States. After the capture and complete occupation of New Orleans, that is to say, on the 12th of May, 1862, fourteen days before the Baigorry sailed at all from Calcasieu Pass, the President issued another proclamation, in which he declared that the blockade of the *port of New Orleans* should so far cease and determine, from and after the 16th of June, 1862, as that commercial intercourse with it might be carried on after the 1st of June following, except as to persons and things contraband.

The charge of breaking the blockade was resisted, therefore, partly on the ground that the blockade had been raised

Statement of the case.

by the Executive, but more on the fact testified to by the captain of the vessel, that he saw no blockaders either when he went into Calcasieu, or when he came out of it. He swore "he knew, before going to sea, that the city of New Orleans had been taken by the United States before the vessel left Calcasieu; and had information that the United States had allowed vessels to go from Berwick's Bay* to Sabine, after being visited." He knew, also, as he swore, "that there had been an order of blockade of the ports of the *State of Louisiana*; but he thought that the ports of the State were open after the capture of New Orleans. He wished to go to New Orleans for a clearance from the United States authorities; *but was not allowed by the Confederates to pass through the country.* He had seen blockading vessels in February, 1862, when sailing from Havana towards the coast of Louisiana, *without having any fixed port of destination*, but saw none either when he entered or when he left Calcasieu, on this last voyage, though he saw a steamer passing along at a distance from the coast once, while the Baigorry was at Calcasieu."

The mate testified that he knew that on the 26th of May, when the Baigorry set sail, "the ports of Louisiana were then declared to be blockaded, but he did not see any vessel then on the coast. He saw steamships at a distance off the coast twice, while the Baigorry lay at Calcasieu Pass. He did not know what they were."

The Bainbridge was first seen the evening before the capture. "I changed the course," said the captain, "after I saw that the Bainbridge was waiting for me, in order to avoid her. There was very little wind." No spoliation of papers or concealment were alleged.

The business of the vessel was thus described by the captain:

"I first saw her in November, 1861, at Grand Caillou, a port

* The position of Berwick's Bay may be seen by reference to the diagram at page 263. It runs south from "Berwick." Sabine is on the Sabine River, the river which divides Louisiana from Texas.

Statement of the case.

on the coast of Louisiana. She made a voyage from that place to Havana, and thence to Calcasieu, last before the voyage on which she was taken. She carried cotton from Grand Caillou to Havana, and brought groceries, shoes, clothing, medicines, and wine to Calcasieu. She took cotton at Calcasieu, which was on board when she was taken. This last voyage would have ended at Havana, unless the port of New Orleans had been opened."

So far as to breaking the blockade. Next as to the character of the ownership and the character of the trade in which she was employed.

She was first the property of her builder, at Grand Caillou, Louisiana, from whom one Adolphe Mennet, of New Orleans, purchased her, in October or November, 1861. She was American built; at the time named the Three Brothers, and had before borne the name of the G. W. Goodwin. Mennet, the owner, appointed Renaud, who was now commanding her at New Orleans, to command her, in December, 1861. Both lived at New Orleans; Renaud, who was a naturalized citizen of the United States, having lived there since 1853, and having a family there. They went to Grand Caillou, where Mennet placed Renaud in possession.

Renaud, whilst at Havana, under an alleged power of attorney from Mennet, sold or pretended to sell the schooner to an Englishman named Frederick Thensted, and under a British provisional certificate of registry, issued by the British consul-general at Havana, the new title and name of the British schooner Baigorry was given to her. Renaud (whose statement was the only evidence of the sale, no bill of sale having been produced) could not remember, so he swore, what her price was; but he swore that "it was paid to Charles Caro & Co.," a house well known as the consignees, at Havana, of blockade-runners. But it appeared by an entry on the British register, made at New Orleans, March 29, 1862, by a notary, that the vessel was mortgaged and hypothecated by Thensted to Adolphe Mennet, to secure payment for the sum of \$5000, amount of two promissory notes. This practice of mortgaging, it may be here

Opinion of the court.

stated, was a frequent method, during the rebellion, of securing one man's interest in a vessel whilst she was passing under cover of another's name.

The crew, chiefly French, Italian, and Spanish, were shipped at New Orleans, by order of the master, on the 16th of April, 1862, and went on board at Calcasieu on the 20th. It may be noted that, at that time, the concentration of our forces in the operations for the capture of New Orleans, made it impossible to load for blockade-running at that port. The master swore that the cargo was owned by several French citizens residing in New Orleans, and was shipped by one Durell, also of New Orleans, for them, and was consigned to Caro & Co., of Havana, to be delivered at that place for, and on account, risk, and benefit of, the said French citizens. A claim filed by Renaud for them, and the only claim made, asserted the same facts. The manifest sworn to by Renaud, 14th of April, 1862, at New Orleans, accorded with these statements. The bill of lading represented the cargo as shipped at New Orleans, by Cassillo and Harispe. The vessel cleared for Havana, at the "Confederate" custom-house at New Orleans, on the 14th of April, 1862.

The court below condemned both vessel and cargo as enemy property. Appeal here.

Mr. Coffey, special counsel for the United States. Messrs. Reverdy Johnson and Gillet, contra.

The CHIEF JUSTICE delivered the opinion of the court.

The Baigorry and cargo were owned by residents of New Orleans, claiming to be subjects of Great Britain and France. She was employed in the trade of the enemy, plying between Havana and ports of Louisiana, and finding entrance as she could, by running the blockade. The cotton with which she was laden was shipped, according to the testimony of the mate, at Calcasieu Pass, between the 27th of April and the 3d of May; but she did not sail, if the master be credited, till the 26th of May. Calcasieu Pass, and all the neighbor-

Opinion of the court.

ing region was in possession of the rebels, and the establishment of the blockade was well known to the officers of the schooner. The master says that he saw no blockading vessels off Calcasieu when he went in or when he came out. The mate, in answer to the same interrogatory, says nothing of what he saw when the schooner entered the Pass, but asserts that he saw no blockader when he came out. But the master says also, that he saw blockading ships as he was going towards the coast of Louisiana in February, and also, saw a steamer passing along the coast, while the schooner was at Calcasieu. The mate says he saw steamships—not one, but several—off the coast during the same time. It is also in evidence, that when the master of the Baigorry saw the Bainbridge, on the afternoon before the capture, and that she was hove to and waiting for him, he changed his course to avoid her.

We have already held, that a blockade once established, and duly notified, must be presumed to continue until notice of discontinuance, in the absence of positive proof of discontinuance by other evidence; and we do not think that the testimony of the master and mate that they saw no blockaders when entering or leaving Calcasieu Pass, supplies such proof. On the contrary, we think that positive proof that the blockade was not discontinued, is made by the admissions that blockaders were seen when the Baigorry approached the coast, and that one or more steamships were seen off the coast while she lay within Calcasieu Pass.

No attempt is made to account for her delay in sailing, from the 3d to the 26th of May, after her cargo was on board; and the absence of any explanation of this circumstance, warrants the inference that she was watching her opportunity to get out without being seized. It goes to establish guilty intent. So, too, the endeavor to escape from the Bainbridge. No such attempt would have been made, had the officers of the Baigorry been unconscious of any infringement of the blockade.

The proof of violation of the blockade, and of its existence

Statement of the case.

both when the schooner entered and when she left Calcasieu Pass, is clear.

We think, also, that both ship and cargo were rightly condemned by the District Court as enemies' property. It is claimed that both belonged to neutrals resident in New Orleans, and entitled to protection under proclamation,* and the proof, to some extent, supports this claim; but both were liable to be condemned as enemies' property, because of the employment of the vessel in enemies' trade, and because of the attempt to violate the blockade, and to elude visitation and search by the Bainbridge. On this latter point, the language of Chief Justice Marshall, in *Malcy v. Shattuck*,† is express.

DECREE AFFIRMED.

THE ANDROMEDA.

1. A vessel and cargo condemned as enemy property, under circumstances of suspicion,—spoliation of papers in the moment of capture being one of them as regarded the cargo, and a former enemy owner remaining in possession as master of the vessel through a whole year, and through two alleged sales to neutrals, being another, as respected the vessel,—the alleged neutral owners, moreover, who resided near the place where the vessel and cargo were libelled, handing the whole matter of claim and defence over to such former owner as their agent, and giving themselves but slight actual pains to repel the inference raised *prima facie* by the facts.
2. A libel in prize need not allege for what cause a vessel has been seized, or has become prize of war, as *ex. gr.*, whether for an attempted breach of blockade or as enemy property. It is enough if it allege generally the capture as prize of war.
3. A blockade once regularly proclaimed and established will not be held to be ineffective by continual entries in the log-book, supported by testimony of officers of the vessel seized, that the weather being clear, no blockading vessels were to be seen off the port from which the vessels sailed.

On the 20th of May, 1862, the schooner Andromeda, with a cargo of cotton and hides, was captured off the coast of

* The Venice, *supra*, 135.

† 3 Cranch, 488.