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Statement of the case.

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crowding sail and running in toward the blockaded port. The excuse set up of a desire to save his vessel and cargo without subjecting her to salvage, would not be sufficient if the case stood alone on the facts connected with her voyage from Port Royal. In the language of Sir William Scott, in *The Charlotte Christine*,\* although "it is a possible thing that his intention was innocent, the court is under the necessity of acting on the presumption which arises from such conduct, and of inferring a criminal intention." But when these are considered in connection with the facts already stated, tending to show an intention to run the blockade from the inception of the adventure, we entertain no reasonable doubt of the guilty purpose which carried her into Bull's Bay at the time of capture. Of course the attempt to violate the blockade was made in the interest of the cargo.

DECREE AFFIRMED.

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## THE CONVOY'S WHEAT.

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 *entrepôt*, 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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\* 6 Robinson, 101.

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

"Shipped in good order, &c., &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,  $8\frac{1}{2}$  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



Lake Ontario; there to be *re-shipped* 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*.

## Argument for the appellants.

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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Argument for the appellants.

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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 ship-owner libelled 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 despatch 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.

*Mr. Hibbard, for the appellants, owners of the Convoy:* By the entries on the *margin* of the bill of lading, taken in connection with Goodenow's explanation of the word *via*, with the circumstances of the case, and especially the size of the vessel, which could not pass through the Welland Canal, it appears that the contract was to carry to Port Colbourne, and that there the ship-owner should be entitled to receive freight. The freight was to be paid when the *vessel's* delivery was "actual and complete" at Port Colbourne.

The ship-owner did all he could to perform his contract. It was the duty of the owner of the cargo to provide means at the port of delivery for unlading the cargo. The owner of the cargo not providing these means, the ship-owner was right in delivering his cargo at the nearest practical commercial point, which was Buffalo. He was not bound to wait for days, to his great detriment, and look to the possibility of recovering his damages of the shipper, or ultimate consignee, while that owner or consignee was continually

guilty of breaking his contract by not providing means for unloading the vessel.

In *Clendaniel v. Tuckerman*,\* a New York case, it was held that it is the duty of a consignee to receive; that he must do this within a reasonable time; that his duty and responsibility in this respect is the same, after a reasonable time has elapsed, as in the case where lay days and demurrage are stipulated for in the bill of lading, and that after that reasonable time has elapsed the ship-owner may store the cargo elsewhere and recover his freight and damages.

Our conduct here was quite according to this case, which holds, further, that it is the duty of the carrier, under such circumstances, to store the goods in some place of safety, retaining his lien for his freight, &c.

Suppose it had appeared that the property could have been delivered at another dock? Would not the ship-owner have had a right to deliver there and to claim freight? Beyond question. The different ports around the Western lakes are really, in principle, other docks, as to Western produce seeking its market on the seaboard.

Nor was it necessary that the master should have telegraphed to Oswego. There is no proof of any custom to do so. The carrier's business was to perform his contract according to law. He did so perform it here. He was not bound to address the owners of the cargo, for the purpose of ascertaining whether they would make a new contract. Why require notice to a man whose business it was to be at the port, and there absolve himself from his responsibilities to receive the cargo? Besides, the case shows, in effect, that nothing could be done with the property at Port Colbourne. There was but one elevator there, and that was full. The law will not require a futile notice. The doctrine in relation to notice only applies where the owner or consignee is at the port, and can in some way take possession of the property.

To say that the master knew about the place, and should

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\* 17 Barbour's Supreme Court, 184.

## Opinion of the court.

have provided against delay by special contract, begs the question. The shipper also knew about the place. It was his duty to see that the property was received, and if he desired to qualify that duty, he should have provided for it in the contract.

*Mr. Ganson, contra, for the consignees.*

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.

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THE CHESHIRE.

1. The property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize though some of the partners may have a neutral domicile.
2. The approach of a vessel to the mouth of a blockaded port for inquiry—the blockade having been generally known—is itself a breach of the blockade, and subjects both vessel and cargo to condemnation.

DURING the Southern rebellion, and our proclamation of a blockade of Savannah and other parts of the Southern coast being then notorious to the world, the ship *Cheshire*, with a miscellaneous and assorted cargo, was captured by a war steamer of the United States, on the 6th of December, 1861, off Savannah bar, eight or nine miles eastward of Tybee Light. She was taken to the port of New York and there libelled in the District Court as prize of war.

The evidence showed that the ship had been built in the State of Maine in 1848, her American name having been the *Monterey*; that she was owned by a house residing and doing business in Savannah, and was employed in the cotton trade to Liverpool; that in May, 1861, after the port of Savannah had been closed by the blockade set on foot under the President's proclamation of April 19, 1861, that house made a sale of her to Joseph Battersby, of *Manchester*, England; that her name was then changed, and in June, 1861, that she broke the blockade of Savannah, carrying a cargo of cotton to Liverpool.

Joseph Battersby, the purchaser, and who claimed her