

## Statement of the case.

## THE HERALD.

Knowledge of a recently established blockade inferred against a neutral from facts stated in the case.

APPEAL from a decree of the Circuit Court at Philadelphia condemning the Herald and cargo as prize of war, for breach of blockade in an attempted exit from Beaufort, North Carolina; in part as enemy's property, &c. The case was thus:

On the 27th April, 1861, President Lincoln, reciting the insurrectionary action which had been for some time going on in the South,\* and the blockade which he had, on the 19th previous, announced of ports of South Carolina, &c.; reciting also insurrection in *North Carolina* and Virginia, proclaimed that

"An efficient blockade of the ports of those States WILL also be established."

And on the 30th of the same month Commodore Pendergrast, commanding the Home Squadron, issued the following manifesto from his flag-ship:

UNITED STATES FLAG-SHIP CUMBERLAND,  
OFF FORTRESS MONROE, VA., April 30, 1861.

*To all whom it may concern:*

I hereby call attention to the proclamation of his Excellency, Abraham Lincoln, President of the United States, under date of April 27, 1861, for an efficient "blockade" of the ports of Virginia and North Carolina, and warn all persons interested that I have a sufficient naval force **HERE** for the purpose of carrying out that proclamation.

All vessels passing the capes of Virginia, coming from a distance, and ignorant of the proclamation, will be warned off; and those passing Fortress Monroe will be required to anchor under the guns of the fort, and subject themselves to an examination.

G. J. PENDERGRAST,  
Commanding the Home Squadron.

\* The firing on Sumter was on the 12th of April, 1861.

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In this state of public announcements, emanating as mentioned, the "Herald," a British built, and originally a wholly British owned vessel, arrived at Boston on the 20th May, 1861. She carried a British register and a British flag. A portion of her was owned, however, by De Wolf, a merchant of New York. This interest, acquired in 1854, was never registered, nor was it evidenced by any proprietary document.

On May 24, 1861, while lying in Boston harbor, the vessel was, as alleged, chartered, through the master, to a Mr. Williams, a citizen of the United States and a resident merchant of New York, for a voyage from Boston to *Beaufort*, and thence to *Liverpool*. Three copies of the charter appear to have been executed by the master.

Having effected this charter with Williams at New York, the master returned to Boston, and cleared his vessel at the custom-house there for Turk's Island. "The reasons why I cleared for Turk's Island," said the master after capture, "were, that I did not wish my crew to know that I intended to go to a Southern port; and I also designed, *in case I found Beaufort blockaded*, to go next to Turk's Island for a cargo."

With this clearance on board, the "Herald," on the 25th of May, set sail from Boston, without cargo, and arrived at Beaufort very early on the morning of the 9th of June. The master did not go in on arriving. He gave this account:

"The wind being then off shore, I hauled the brig up by the wind and fetched in close to the land, about twenty miles to the southward of Beaufort harbor, and then I tacked and stood off and on all that, the ninth day of June, till about seven or eight o'clock P.M., when and because the wind was ahead, *and the lights at the entrance of the harbor being out*, I anchored about seven miles to the southward of the entrance to Beaufort harbor, where I remained till about half-past one o'clock on the next morning, when, the wind being more favorable, I got under way and stood up towards Beaufort harbor; and on my way up, *the morning being dark*, I ran aground. I got off again, and proceeded up towards the harbor till daylight. Soon after I hove

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to, and set the English ensign at the fore as the signal for a pilot, who, in about half an hour, came alongside, and of whom I then asked if the port was or had been blockaded; and he answered me *that it had not been and was not*, and that no vessel of war had been seen off that port."

He immediately reported his arrival to a Mr. Charles Parmlee, of Goldsboro, North Carolina, and delivered to him a sealed letter which he had received in New York from Mr. Williams, the charterer. Its contents could only be inferred by the court. Under the direction of Mr. Parmlee and his brother a cargo consisting wholly of the staples of North Carolina—turpentine, tar, rosin, tobacco, &c.—was shipped; a portion of it consigned by Parmlee, as "*agent*," to the consignees of the vessel at Liverpool, and the rest by various shippers of Newbern, Wilmington, Beaufort, and Petersburg, places in North Carolina then in war against the United States, to Fraser, Trenholm & Co., and W. A. and G. Maxwell & Co., of Liverpool; firms, the former by distinction, in close and active complicity with the rebel enemies of the United States.\*

The vessel remained at Beaufort about a month, taking in a cargo there, and at Morehead City, and meeting some opposition, as the captain testified, from the civil and military persons then in control, and who, he stated, supposed that the cargo might belong to merchants in the North, and contemplated a seizure of it. He sailed for Liverpool July 14th, got fairly out to sea—a hundred and forty-five miles from Beaufort—testifying that it was not till then that "he saw or heard of any blockade or blockading vessel." He then heard of it; being captured. *He had no copy of the charter aboard.* On his examination *in preparatorio*, while saying that he "had seen no blockade yet," he added:

"About three weeks before I came out of Beaufort I saw what I supposed to be a man-of-war, from the tops of the buildings. I saw two spars, but no hull, with a glass, and saw she was standing to the northward, almost a week before sailing. The

\* See *The Bermuda, supra*, 517.

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British ship *Gladiator* came near the bar. These are all the men-of-war I saw before the capture."

A ship-hand, Homer, said that he knew no cause why the vessel had been captured, other than that she came out of a Southern port. Interrogated as to what vessels he had seen, and what notice was given, he added :

" During the time we were lying at Beaufort, I saw three different men-of-war off the harbor; and during the last two weeks we were there I saw a man-of-war as often as once in three days. No notice or warning, as far as I know, was given to the captured vessel."

The mate of the vessel testified—

" I suppose we were captured because we sailed from a Southern port; but we saw no blockading force off Beaufort. *It was reported three times* from Fort Macon that a man-of-war was off the harbor, but I *only saw one* while we were lying there."

A letter, from which what follows are extracts, found on the Herald, gave some information on the same matter :

BEAUFORT, July 11, 1861.

MESSRS. FRASER, TRENHOLM & Co., Liverpool:

GENTLEMEN: We take the liberty of addressing you these lines, as our country has become divided into North and South, and we, as *full-blooded Southerners*, shall carry this matter out.

Formerly our business has been done principally by New York merchants. We have dealt with them and owned vessels together, and have no fault to find with them directly, *only* they are North and we are South. Circumstances have changed, and we, as well as a great many of our Southern friends, intend to change our business.

We are carrying on the distillery business, and buying spirits, and hope soon to have the chance of making you a good shipment from this place. T. Thomas and ourselves have on board the Herald ninety casks of spirits shipped to you.

There is a great chance here for any English vessel that comes and *can get in to this place clear of the Federal men-of-war*. When they fall in with an English vessel bound to a Southern port

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they *only* order them off, and not let them enter. There is no blockade at this place that can be considered *as such* up to this time. There has been but one steamer, off this place, near enough to see the hull, and no time near enough to tell what she was by her colors. *There has been a smoke seen off in the offing at one time, and it was thought to be one of the blockading squadron;* can't say whether it was one or not. I see no difficulty for your vessels; if they should be ordered off, they could go elsewhere, *and if they get in they can get a splendid freight.*

Very respectfully, yours, &c.,

THOMAS DUNCAN & Co.

The libel demanded the forfeiture of the brig and cargo as prize of war. The master prayed restoration of the vessel in behalf of six alleged owners, all British subjects, of whom five were domiciled in Nova Scotia, and one in New York. He also prayed restitution of a part of the cargo, which consisted wholly of turpentine, tar, rosin, and tobacco, products of North Carolina or Virginia, in behalf of owners living in North Carolina; and of another part, in behalf of persons believed to have an interest, residing in New York, South Carolina, and in England. Restitution of the rest of the cargo was claimed by Williams, already mentioned as a merchant, native and resident of New York. *No proof of ownership of cargo was made*, except in behalf of Williams and the parties living in North Carolina.

Condemned, as already mentioned, by Grier, J., the case was now here for review.

*Mr. Assistant Attorney-General Ashton, for the United States;*  
*Mr. Donnouue, contra.*

The CHIEF JUSTICE delivered the opinion of the court.

The principal question in this case is, was the brig lawful prize? She was a neutral vessel, and the answer to the question must depend on her employment at the time of capture.

The actual establishment of the effective blockade of the

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ports of North Carolina, in pursuance of the President's proclamation of the 27th of April, 1861, was notified by Commodore Prendergast on the 30th April; and it is a matter of history that the notification, as well as the proclamation, became at once well known throughout the country. It is impossible to believe that the master of the *Herald*, at Boston, on the 22d May, could have been ignorant of facts so notorious. His conduct on arrival near Beaufort strongly indicates his apprehension of capture. The lights at the entrance of the harbor had been destroyed by the insurgents, and yet, though arriving in the morning of the 9th, he lay off and on, some twenty miles south, all that day, and went in during the succeeding night.

We know of no case of prize in which a captured vessel has been restored under such circumstances; but we need not rest the decision of this case upon this evidence of attempt to enter a blockaded port.

The vessel, when once within the harbor, proceeded to take in a cargo. Some difficulties were encountered from the action of the rebel military authorities, and from the disturbed condition of the country; but the lading was at length completed, and the vessel sailed, as already stated.

During the month which elapsed from arrival till departure, the effectiveness and stringency of the blockade were materially increased. The master, it is true, asserts that he still remained ignorant of its existence; but the evidence shows that it was the common topic of conversation in Beaufort and Morehead City; and he says himself that, while he was taking in cargo, about three weeks before sailing, he saw from the tops of the buildings, with a glass, a man-of-war off the harbor. It remained there, for he saw the same vessel about one week before sailing. Another witness, a hand on the brig, says, during the time the vessel was lying at Beaufort, he saw three different men-of-war off the harbor; and during the last two weeks he saw a man-of-war as often as once in three days. A letter from one of the shippers of the cargo, found on the brig, informs his correspondent that "a smoke had been seen off in the

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offing at one time, and it was thought to be one of the blockading squadron."

It would be difficult to make more conclusive proof of the existence of the blockade, or of notice of the fact to the master of the captured vessel.

The cargo was shipped to be conveyed from the port by this brig, and was in the same offence.

The facts of the case supply other grounds of condemnation. The shares of the vessel owned in New York, and the portions of the cargo belonging to Williams, of New York, might be condemned for trading with the enemy; and other portions of the cargo might be condemned as enemy's property; but it is enough that vessel and cargo were equally involved in the attempt to violate the blockade. Both were rightfully captured.

DECREE AFFIRMED.

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DEHON *v.* BERNAL.

1. When the United States and the claimant to whom a Mexican grant has been confirmed are both satisfied with its location, any other person who seeks to contest such a location must show some title, legal or equitable, to some part of the land covered by the survey, before the court will disturb it at his instance, or in his alleged interest.
2. When all the elements of location prescribed by a decree of the District Court cannot possibly be complied with, and a survey conforms as much with the decree confirming the grant as it can well be made to do, this court will not disturb it.

APPEAL from a decree of the District Court of the United States for the Northern District of California, confirming a survey of a Mexican grant.

The appeal was not taken by the United States, nor by the claimant whose grant was confirmed, but by one Dehon, who was permitted to intervene in the District Court, on the ground that the survey covered land in which he was in-