DECISIONS

IN THE

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1866.

The Springbok.

1. Though invocation, in prize cases, is not regularly made on original hearing, but only after a cause has been fully heard on the ship's documents and the preparatory proofs, and where suspicious circumstances appear from these; yet where the court below, in the exercise of its discretion, has allowed it on first hearing, the decree will not necessarily be reversed; decrees of condemnation having passed in both the cases invoked, one *pro confesso* and the other by a decree of the highest appellate court.
2. Where the papers of a ship sailing under a charter-party are all genuine and regular, and show a voyage between ports neutral within the meaning of international law; where there has been no concealment nor spoliation of them; where the stipulations of the charter-party in favor of the owners are apparently in good faith; where the owners are neutrals, have no interest in the cargo, and have not previously in any way violated neutral obligations, and there is no sufficient proof that they have any knowledge of the unlawful destination of the cargo,—in such a case, its aspect being otherwise fair, the vessel will not be condemned because the neutral port to which it is sailing has been constantly and notoriously used as a port of call and transshipment by persons engaged in systematic violation of blockade and in the conveyance of contraband of war, and was meant by the owners of the cargo carried on this ship to be so used in regard to it.
3. The facts that the master declared himself ignorant as to what a part of his cargo, of which invoices were not on board (having been sent by mail to the port of destination), consisted,—such part having been contraband; and also declared himself ignorant of the cause of capture, when his mate, boatswain and steward all testified that they understood it to be the vessel's having contraband on board,—*held* not sufficient, of

themselves, to infer guilt to the owners of the vessel, in no way compromised with the cargo. But the misrepresentation of the master as to his knowledge of the ground of capture, *held* to deprive the owners of costs on restoration.

4. A cargo was here condemned for intent to run a blockade, where the vessel was sailing to a port such as that above described, the bills of lading disclosing the contents of 619 packages of 2007, which made the cargo, the contents of the remaining 1388 being not disclosed; where both they and the manifest made the cargo deliverable to order, the master being directed by his letter of instructions to report himself on arrival at the neutral port to H., who "would give him orders as to the delivery of his cargo;" where a certain fraction of the cargo whose contents were undisclosed was specially fitted for the enemy's military use, and a larger part capable of being adapted to it; where other vessels owned by the owners of the cargo, and by the charterer, and sailing ostensibly for neutral ports were, on invocation, shown to have been engaged in blockade-running, many packages on one of the vessels, and numbered in a broken series of numbers, finding many of the complemental numbers on the vessel now under adjudication; where no application was made to take further proof in explanation of these facts, and the claim of the cargo, libelled at New York, was not personally sworn to by either of the persons owning it, resident in England, but was sworn to by an agent at New York, on "information and belief."

APPEAL from a decree of the District Court of the United States for the Southern District of New York, respecting the British bark Springbok and her cargo, which had been captured at sea by the United States gunboat Sonoma during the late rebellion, and libelled in the said court for prize.

The vessel was owned by May & Co., British subjects, and was commanded by James May, son of one of the owners.

She had been chartered 12th November, 1862, by authority of May, the captain, to T. S. Begbie, of London, to take a full cargo of

"Lawful merchandise, and therewith *proceed to Nassau, or so near thereunto as she may safely get, and deliver same*, on being paid freight as follows, &c.: The freight to be paid one-half in advance on clearance from custom-house, subject to insurance, and the remainder in cash *on delivery*. Bills of lading are to be signed by master at current rate of freight, if required, without prejudice to this charter-party. It being agreed that master or owners have absolute lien on cargo for all freight, dead freight,

demurrage, or other charges. The ship is to be consigned to the *charterer's agent at port of unloading*, free of commission. Thirty running days are allowed the freighter for loading at port of loading and *discharging at Nassau.*"

This document had an indorsement on it by Speyer & Haywood, persons hereinafter described.

The letter of instructions to the master was thus:

"LONDON, December 8, 1862.

"CAPTAIN JAMES MAY.

"*Dear Sir*,—Your vessel being now loaded, you will proceed *at once to the port of Nassau, N. P., and on arrival report yourself to Mr. B. W. Hart there, who will give you orders as to the delivery of your cargo* and any further information you may require.

"We are, dear sir, &c.,

"SPEYER & HAYWOOD,

"For the Charterers."

The letter to the agent of the consignee, directed "B. W. Hart, *Nassau*," and from these same persons, Speyer & Heywood, was thus:

"*Under instructions from Messrs. Isaac, Campbell & Co.*, of Jermyn Street, we inclose you bills of lading for goods shipped per Springbok, consigned to you."

The London custom-house certificate was "from London *to Nassau;*" the certificate of clearance declared the "destination of voyage, *Nassau, N. P.;*" and the manifest was of a cargo from "London *to Nassau.*"

The log-book was headed, "Log-book of the bark Springbok, on a voyage from London *to Nassau.*"

The shipping articles, November, 1862, were of a British crew, "*on a voyage from London to Nassau, N. P.;* thence, if required, to any *other port* of the West India Islands, *American ports*, British North America, east coast of South America and back to the final port of discharge in the United Kingdom or continent of Europe, between the Elbe and Brest, and finally to a port in the United Kingdom; voyage probably under twelve months."

The cargo, valued at £66,000, was covered by three bills of lading (of which two were duplicated, the duplicates marked Captain's copies), as follows:

Bill of lading marked No. 2, showed "666 packages merchandise," shipped by Moses Brothers, to be delivered, &c., at port of Nassau, N. P., unto order —— or to —— assigns, he or they paying freight, *as per charter-party.* It was indorsed by Moses Brothers in blank. This bill of lading on its face showed 150 chests and 150 half-chests tea, 220 bags coffee, 4 cases ginger, 19 bags pimento, 10 bags cloves, and 60 bags pepper—in all, 613 packages. The remaining 53 were entered as *cases*, *kegs*, and *casks.* These 53 packages were found, when the cargo was more closely examined, to contain *medicines* and *saltpetre;* matters at that time much needed in the Southern States, then under blockade.

Bill of lading No. 3, showed one bale and one case shipped by Speyer & Haywood, to be delivered at Nassau, unto order —— or to —— assigns, &c., paying freight as per *charter-party.*

Bill of lading No. 4, showed 1339 packages shipped by Speyer & Haywood to Nassau, as above. These 1339 packages were also described as *cases*, *bales*, *boxes*, and *a trunk.* This was also indorsed in blank.

The manifest gave no more specific description of the character of the cargo. It was signed Speyer & Haywood, brokers, and showed that the whole cargo was consigned to "order."

An examination of the packages in bills Nos. 3 and 4 showed 540 pairs of "gray army blankets," like those used in the army of the United States, and 24 pairs of "white blankets;" 360 gross of brass navy buttons, marked "C. S. N.,"* 10 gross of army buttons, marked "A.,"† 397 gross of army buttons, marked "I.,"‡ and 148 gross of army buttons, marked "C.,"§ being in all 555 gross; all the buttons were stamped on the under side, "Isaac, Campbell &

* Confederate States Navy?
† Artillery?
‡ Infantry?
§ Cavalry?

Co., 71 Jermyn st., London." There were 8 cavalry sabres, having the British crown on their guards; 11 sword bayonets, 992 pairs of army boots, 97 pairs of russet brogans, and 47 pairs of cavalry boots, &c.

The vessel set sail from London, December 8th, 1862, and was captured February 3d, 1863, making for the harbor of Nassau, in the British neutral island of New Providence, and about 150 miles east of that place. The port, which lay not very far from a part of the southern coast of the United States, it was matter of common knowledge had been largely used as one for call and transshipment of cargoes intended for the ports of the insurrectionary States of the Union, then under blockade by the Federal government.* The vessel when captured made no resistance; and all her papers were given up without attempt at concealment or spoliation.

Being brought into the port of New York, and libelled there as prize, February 12, 1863, a claim was put in on the 9th of March following, by Captain May for his father and others as owners of the vessel. On the 24th of the same month a claim for the whole cargo was put in for Isaac, Campbell & Co., and also for Begbie, through one Kursheet, their "agent and attorney;" Kursheet stating in his affidavit in behalf of these owners, that "it is impossible to communicate with them *in time to allow them to make the claim and test affidavit herein.*" His affidavit stated farther,

"That, as he *is informed and believes*, it was not intended that the barque should attempt to enter any port of the United States, or that her cargo should be delivered at any such port, but that the only destination of such cargo was Nassau aforesaid, where the said cargo was *to be actually disposed of, and proceeds remitted to said claimants.*

"That, as he *is informed and believes*, the cargo was not shipped in pursuance of any understanding, either directly or indirectly, with any of the enemies of the United States, or with any person or persons in behalf of or connected with the so-called Con-

* See the Bermuda, 3 Wallace, 514.

federate States of America, but was shipped with the full, fair, and honest intent to sell and dispose of the same absolutely in the market of Nassau aforesaid.

"That *his information is derived from letters and communications very lately received by this deponent from the aforesaid claimants,* and from documents in deponent's possession, placed there by said claimants, and that *such* communications *authorize this deponent to intervene and act as agent as well as proctor and advocate for the said claimants as to the above cargo.*"

The master, mate, and steward, were examined as witnesses *in preparatorio:*

The master stated, that the goods were to be delivered at Nassau for account and risk of Begbie & Co., London, the charterers; that he did not know that the laders or consignees had any interest in the goods; that he knew nothing of the qualities, quantities, or particulars of the goods or to whom they would belong if restored and delivered at the destined port; that he was not aware that there were goods contraband of war on board; that, as he believed, *invoices* and duplicate bills of lading were sent to Nassau by mail steamer; that there were no false bills of lading, nor any passports or sea-briefs other than the usual register and ship's papers, which were entirely true and fair; that *he did not know on what pretence she was captured;* that there were no persons on board owing allegiance to the United States; that on the vessel's previous voyage, she went from London to Jamaica, carrying general merchandise, and returned direct, carrying principally logwood.

The mate, who to a greater or less extent confirmed these statements, swore that the cargo was a general cargo; casks, bales, boxes, and bags; that he had no knowledge, information, or belief as to what was contained in them, and had never heard. He knew of no goods contraband of war; no arms or munitions of war that he knew of. "The seizure," he stated, "was made on *the supposition that the cargo was contraband of war.*"

The boatswain testified to the same purpose of the voyage; that the vessel had no colors but English aboard; that the

cargo was general, in bales, cases, and bags, that he did not know their contents and never had heard them stated; and that *he* "understood the seizure was made because the bills of lading *did not show what was in some of the cases on board.*"

The steward, that he "understood the vessel was captured *because we had goods contraband of war aboard;* had heard no other reason given."

Upon the hearing in the District Court, the counsel for the captors invoked into the case the proofs taken in two other cases, on the docket of that court for trial at the same time with the present one, the cases, namely, of *United States* v. *The Steamer Gertrude*, and *United States* v. *The Schooner Stephen Hart.*

The Hart was captured on the 29th of January, 1862, between the southern coast of Florida and the Island of Cuba. The claimants of her whole cargo were the firm of Isaac, Campbell & Co., the same persons who claimed, jointly with Begbie, the cargo of the Springbok. It also appeared in the case of the Hart, that the brokers who had charge of the lading of her cargo were Speyer & Haywood, the same parties who appeared as brokers of the cargo in the present case, and as shippers of a part of it, and as agents for Begbie and for I., C. & Co. It appeared, in the case of the Hart, that I., C. & Co. were dealers in military goods, and that the entire cargo of that vessel, consisting of arms, munitions of war, and military equipments, was laden on board of her in England, under the direction of I., C. & Co., in co-operation with the agents, at London, of the "Confederate States," with the design that the cargo should run the blockade into a port of the enemy, either in the Hart, or in a vessel into which the cargo should be transshipped at some place in Cuba, and that I., C. & Co. intrusted to the agent of the "Confederate States" in Cuba, the determination of the question as to the mode in which the cargo should be transported into the enemy's port. The cargo of the Hart had been condemned by the Supreme Court, as lawful prize, at the last term.*

* 3 Wallace, 559.

Statement of the case.

The Gertrude was captured on the 16th of April, 1863, in the Atlantic Ocean, off one of the Bahama Islands, while on a voyage ostensibly from Nassau to St. John's, N. B. The libel was filed against her on the 23d of April, 1863, and she was condemned, with her cargo, as lawful prize, on the 21st of July, 1863. No claim was put in to either the Gertrude or her cargo. The testimony showed that she belonged to Begbie; that her cargo consisted, among other things, of hops, dry goods, drugs, leather, cotton cards, paper, 3960 pairs of gray army blankets, 335 pairs of white blankets, linen, woollen shirts, flannel, 750 pairs of army brogans, Congress gaiters, and 24,900 pounds of powder; that she was captured after a chase of three hours, and when making for the harbor of Charleston, her master knowing of its blockade, and having on board a Charleston pilot under an assumed name.

The marshal's report of the contents of the packages on board of the Springbok, and of the prize commissioners' report of the contents of the packages of the Gertrude, disclose the following facts:

The report in the case of the Springbok specified "18 bales of army blankets, butternut color," each marked *A*, *in a diamond*, and numbered 544 to 548, 550, 552, and 555 to 565. The report in the case of the Gertrude showed a large number of bales of "army blankets," each marked *A*, *in a diamond*, and numbered with numbers, scattered from 243 to 534, and then commencing to renumber again at 600.

In the cargo of the Springbok was found a bale marked *A*, *in a diamond*, and numbered 779; while in the cargo of the Gertrude were found bales each marked *A*, *in a diamond*, and numbered 780, 782, 784, 786, 788, 789 to 799.

In the Springbok were found 9 cases, each marked *A*, *in a diamond*, and numbered 976 to 984, and 4 bales, each marked *A*, *in a diamond*, and numbered 985 to 987 and 989, by the same marks; the 4 bales being stated to be "men's colored travelling shirts." In the Gertrude were found 5 bales, each marked *A*, *in a diamond*, and numbered 998, 990, to 992 and 998, and described as "men's colored travelling

shirts." In the Hart were 4 cases of men's white shirts, each marked *A*, *in a diamond*, and numbered 994 to 997.

So, also, in the Springbok were found packages, each marked *A*, *in a diamond*, *S. I., C. & Co.*, and numbered irregularly and with considerable *hiatûs*, from 1221 up to 1440. But there was no 1285 among them, the *hiatûs* being from 1266 to 1289, which last was the first of several having "shirts." On the Gertrude were packages marked *A*, *in a diamond*, numbered from 1170 to 1214, also one numbered 1285, and found to contain "shirts."

On board of the Springbok was found 1 bale of brown wrapping paper, marked *A*, *in a diamond*, *T. S. & Co.*, and numbered 264. On board of the Gertrude a large number of bales of wrapping paper and other paper, marked *A*, *in a diamond*, *T. S. & Co.*, and numbered with numbers scattered between 1 and 170.

In only one instance, apparently, so far as the testimony showed, was the same number found on a package in each cargo.

On the other hand, many marks were found on the one vessel not found on the other.

No application was made in the court below for leave to furnish further proofs.

The court below condemned *both vessel and cargo.*

Messrs. Carlisle and Edwards for the appellants, claimants in the case:

1. *As to the invocation.*—The papers in the cases of *The Hart* and *The Gertrude* were introduced against well-established principles of international law. For the well-settled rule of practice in prize is, that exclusively upon a ship's papers and the examinations *in preparatorio* the cause is to be heard in the first instance.* "The evidence to acquit or condemn, with or without costs or damages, must," says the highest English authority, "in the first instance, come merely from

* The Dos Hermanos, 2 Wheaton, 76; The Pizarro, Id. 227; The Amiable Isabella, 6 Id. 1.

the ship taken, viz., the papers on board and the examination on oath of the master and other principal officers."*

The English cases of invocation† are all cases *after* further proof. The cases in our own courts coupled with invocation are to the same effect: *The George*‡ was one for further proof,—"permission to make further proof." *The Experiment*§ was of the same character. "The captors," says the case, "have had full notice of the difficulties of their case, and *after an order for further proof*, which should awaken extraordinary diligence," &c., &c.

And even further proof, which is the portal through which invocation must come, is rarely allowed, unless there be something in the original evidence which lays a suggestion for prosecuting the inquiry further.‖ Where the case is not liable to any just suspicion, the disposition of the court leans strongly against the introduction of extraneous matter, and against permitting the captors to enter upon further inquiry. The most ordinary cases of further proof are where the cause appears doubtful upon the original papers and the answers to the standing interrogatories.

Aside from rules, the principle, in cases of invocation, is that the suit invoked from should be between the same parties.¶ In this case there is invocation of two *ex parte* reports of cargoes, made by United States prize commissioners, in the absence of claimants; and also a United States libel.

"It is essential," says Story, J., in *The Don Hermanos*, in this court,** "to the correct administration of prize law, that the regular modes of proceeding should be observed with the utmost strictness."

Even depositions taken on further proof in one prize case,

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* Report of Sir George Lee, Dr. Paul, Sir Dudley Ryder, and Mr. Murray (Lord Mansfield), contained in the letter of Sir William Scott and Dr. Nicoll to John Jay, Esq. Wheaton on Captures, Appendix, 310.

† The Sarah, 3 Robinson, 330; The Vrendschap, 4 Id. 166; The Romeo, 6 Id. 357; The Zulema, 1 Acton, 14.

‡ 1 Wheaton, 408.

§ 8 Id. 261.

‖ The Sarah, 3 Robinson, 330.

¶ Dearle *v.* Southwell, 2 Lee, 93.

** 2 Wheaton, 80.

cannot be invoked in another;* by parity, the documents invoked in the present case ought to be excluded.

2. *As respects cargo.*—The suit stands clear of blockade and of enemy property. The ship's papers are genuine; in perfect order.

It is not asserted that the bills of lading do not tally with the marks, &c. Invoices were to be sent forward, as is now customary, by steamer. An invoice is not a "ship's paper;" a manifest is. The former is made out by a shipper to and for his own agent and consignee, so as to show price and charges. The master has no control over an invoice. Whenever it happens to be on board, it is inclosed in a sealed letter from shipper to consignee. The captain cannot know anything of cargo which is boxed up or contained in bales, save so far as they are mentioned in bills of lading, upon which he wisely puts "Contents unknown." The charter-party in this case was made free of commissions, so there was less requirement for an invoice. And invoices carry with them little authenticity, being easily fabricated where fraud is intended.

Even where all necessary and ordinary ship's papers are not on board (an invoice is not strictly one of them), a court will look into all circumstances before condemnation, or will allow of further proof.†

It is not to be forgotten that as the Springbok was going from a British port and bound to another English port, an invoice was in no way required. No duties were payable, and, therefore, an invoice was not wanted in connection with them. And the reason why the articles of tea, coffee, ginger, pimento, cloves, and pepper are specified on bills of lading was, that these articles are foreign to England, and are, by rule and custom, to be designated, from the fact of being dutiable, and the country requires to know, through periodical returns, the quantity of goods, subject to duty, which have been transshipped.

* The Experiment, 4 Wheaton, 84.

† Pratt's Law of Contraband, Introd. xii; Story, Justice, in The Amiable Nancy, 3 Wheaton, 561.

A neutral, it must be remembered, has a right to carry any kind of merchandise from one neutral port to another neutral port. It may consist of warlike weapons and their appliances. The substance of the article does not make it contraband. It does not even get its name "contraband" until it is going, positively moving, to an enemy's port—a hostile port. In order to constitute contraband of war, two elements must concur, viz., a hostile quality and a hostile destination. If either of these elements is wanting, there can be no such thing as contraband. Hostile goods, such as munitions of war, going to a neutral port, are not contraband.

"It would be too high for any such court of justice as this," said Sir George Hay, in *The Hendric and Alida*,* "to assert that the Dutch may not carry, in their own ships, to their own colonies and settlements, everything they please, whether arms or ammunition or any other species of merchandise, provided they do it with the permission of their own laws. And if they act contrary to them, I am no Judge of the laws of Holland. I cannot enforce them."

Although contraband does not arise, still, supposing that the case could be tortured into a something which might have a color of contraband: what would the alleged contraband amount to?

Contraband, says Hautefeuille,† affects those articles only destined immediately to become in the hands of the possessors a direct means of attack and defence, that is, articles suited solely for warlike purposes, without requiring to undergo any industrial preparation or transportation to render them so; and that contraband of war is limited expressly to arms, instruments, and munitions of war, fashioned and fabricated exclusively to serve in war; and all other articles, without excepting even those substances suited for the manufacture of such prohibited articles and the instruments even

* Hay and Marriot, 127.

† Droits et Devoirs des nations neutres, t. ii, p. 83; and see Halleck s International Law p. 570, ch. 24, § 9.

which, without having a direct use in hostilities, can, however, be indirectly employed in them, continue the objects of free commerce on the part of neutrals, either with both the belligerents or with one of them.

The cloth in bale and the two small boxes of buttons are consequently not contraband. The buttons were made in England, and a court will not speculate upon their initials, and certainly not assume to condemn through any such mere assumption. There are British troops in Nassau; and the Island of New Providence, on which it is, had probably an Artillery, Infantry, Cavalry, and, perhaps, a Coast Survey. The letters C. S. N., A., I., and C., may mean many things innocent as well as one thing guilty.

The few kegs of saltpetre might reasonably be intended for ordinary sale, or for domestic use in Nassau: for instance, in the curing of provisions. At any rate, it would not be in quantity or value sufficient to affect a large cargo of dry goods, even if this particular article was standing alone in a gross prize case, connected with running a cargo direct to a belligerent. This small quantity, with all the rest of the cargo, was going to Nassau.

The dozen swords having the British crown upon their guards were evidently English cavalry swords, ordered by military men in Nassau. The twelve sword-bayonets were also in court, and were made for English Enfield rifles, and most probably for the use of British troops in Nassau: and they were only a dozen in all.

A reference to our treaties—our treaty with New Grenada,* with Guatemala,† with Peru‡—show what our nation looks upon as contraband. And while "clothes made up in the form and for military use," may become contraband, the mere cloth uncut, in the bale, is not so construed; nor buttons.

In the treaty between the United States and the Republic of Colombia, and in that with the Republics of Chili, of

* Art 17 9 Stat. at Large, 87.
† Art. 16, Id. 880.
‡ Art. 23, id. 937.

Venezuela, and of the Peru-Bolivian Confederation and Equador, it is provided that contraband articles shall not affect the rest of the cargo or the vessel.

But the question of contraband cannot arise; the cargo was destined wholly for Nassau. The invocation does not materially help the case. The proof derived from the "dovetailing" of a few parcels on the Springbok and Gertrude is of very little significance. The whole source of the evidence is interested. The marshal and prize commissioners make out their elaborated lists with the very purpose to procure condemnation. Besides, the amount of dovetailing is far too small, to infer as a necessity a guilty purpose. Condemnations cannot be made on presumptions.

3. *As to the vessel alone.* There is not a fact which connects the Springbok herself with wrong. Where a neutral vessel is going near the shore of a belligerent, it may be best, for the sake of protection, that the master know the character of the cargo he carries;* but there can be no motive or object, save so far as he has chosen to make himself liable for its safety through bills of lading, to know its character, when taking it from and having to deliver and get rid of it in another port of his own country.

In this case, its particulars were not known by the master or mate, or any one on board.

The master is the agent of the shipowner only; he has nothing to do with the cargo.†

Even where a cargo is made contraband by going to the enemy, the vessel, if not belonging to the owner of the cargo, will go free.

All the papers show that the master had no control of the cargo after getting to Nassau. He was to drop it there; his vessel was to be cleared, as to this cargo, at that place; and the charter-party ended there, at Nassau.

The owners of the ship had no interest in the cargo.

* The Oster Risoer, 4 Robinson, 199.

† Washington J., in Ross *v.* The Active, 2 Washington's Circuit Court, 226.

They were mere common carriers, to receive freight for the performance of an ordinary and honest duty.

The modern rule is that the ship shall not be condemned for carrying even contraband goods.*

The penalty is applied to the vessel and its owner only where there has been some actual co-operation in a meditated fraud upon a belligerent by covering up the voyage under false papers, and with a false destination.†

Mr. Ashton, Assistant Attorney-General, with a brief of Mr. Coffey, contra, for the United States.

1. *As to the invocation.* No case decides that a decree will be reversed because an invocation has been made on original hearing; the suits invoked being like those where judgments have gone against the captors, and in one suit was taken *pro confesso.* In such a case, even if not technically regular, the maxim of *Quod non fieri debet factum valet,* would apply.

2. *As respects cargo.* The bills, &c., of Speyer and Haywood, "as agents" for Isaac, Campbell & Co., written "under instructions," to Hart, at Nassau, show no purpose to deliver the cargo at Nassau, as the end of the voyage, and taken in connection with the fact that they are to order, were indorsed in blank, and that no invoices were found on the ship, sustain the conclusion that there was an ulterior destination, and that Nassau was but a port of transshipment.

That Begbie had an interest in the whole cargo appears by the fact that all the bills of lading call for the payment of freight as by the charter-party; and the vessel was undoubtedly chartered by him to carry the cargo, all of which was owned by him and Isaac, Campbell & Co. The numbers of the parcels on the Springbok and the Gertrude are complements, and the voyages of all the vessels were parts of a single transaction.

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* The Neutralitet, 3 Robinson, 295; and see Carrington *v.* The Merchants' Ins. Co., 8 Peters, 519; The Imina, 3 Robinson, 167; The Caroline, 6 Id. 462

† Carrington *v.* The Merchants' Ins. Co., *supra.*

In the commercial enterprise, therefore, in which ship and cargo were captured, they were proceeding with false papers to a false destination; a valuable part of the cargo was what, notwithstanding the quotation, on the other side, from Hautefeuille, was certainly contraband of war, manufactured expressly for, and proceeding directly to, enemy use; all of the ship's papers were prepared to conceal the fact that part of the cargo was contraband.

This purpose of concealment appears, too, from the absence of the invoices of cargo. The invoices and duplicate bills of lading were not carried on the vessel, but were to be sent to Nassau by mail steamer. That the whole cargo was owned in common, is also shown by the letters of Speyer & Haywood to Captain May and W. S. Hart; by their indorsement on the charter-party, and by their signature to the manifest.

Isaac, Campbell & Co., who, it is plain, by what is stamped on the buttons, are manufacturers and dealers in military goods in London, were the owners of the whole cargo of the Hart, condemned as prize of war; the proceedings in which case have been invoked into this. Speyer & Haywood were the brokers who had charge of the lading of the Hart. The cargo of that vessel consisted of arms, equipments, and munitions of war, laden in England under the direction of I., C. & Co., in co-operation with agents, at London, of the rebel authorities, for the purpose of running the blockade, the question of transshipment to be decided by a rebel agent at Cuba.

That case, with the case of the Gertrude, show that the cargoes of the Springbok, the Hart, and the Gertrude, were, in fact, parts of a single commercial venture, divided by shipments on different vessels, but having a common ownership and destination. The dates and places of capture of all three vessels must be adverted to. The Hart was captured 29th of January, 1862; the Springbok, February 3d, 1863; the Gertrude on the 16th of April, 1863, all in guilty or suspicious regions. That the want of some of the regular

ship's papers, is strong presumptive evidence against a ship in time of war is shown by many writers.*

The force of this presumption is increased when the vessel, laden with contraband of war, with some of her usual and important papers missing, and all of them concealing the fact of contraband cargo, is found, in time of war, on the usual route of such trade, proceeding towards the enemy country.

The master was the son of one owner, and the vessel was chartered for this voyage by *his* authority. He denied, on his examination, that he knew that she had any goods contraband of war on board, and stated that she carried "a cargo of general merchandise." He also stated that he did not know on what pretence the capture was made.

This testimony is obviously false. The latter part of it is contradicted by the testimony of the mate, boatswain, and steward.

The fact that the master attempted, by falsehood, to conceal the true ground of capture, well known to his subordinates, shows a design to withhold the truth as to the facts of the voyage, and justifies the inference that he knew, in fact, what he was bound in law to know, that part of his cargo was contraband.†

He signed bills of lading for 1394 packages of merchandise, the contents of only 613 of which were disclosed by the bills of lading, all of those so disclosed being innocent articles. His manifest, identifying the packages by their marks and numbers, described them only as cases, bales, boxes, chests, bags, &c. He knew of the existence of invoices, but sailed without them. These facts show that his ignorance of the character of his cargo, if real, was his own fault. But they show still more strongly that his ignorance was not real, but affected. A reason for this affectation of

* See Halleck's Int. Law, chap. 25, sec. 25, p. 622, and cases; 1 Kent's Com. 157; The Richmond, 5 Rob. 328, where Sir Wm. Scott animadverts on the concealment on the ship's papers of contraband articles.

† See the Oster Risoer, 4 Robinson, 199; Mosely on Contrabands, 97, 98

ignorance was, doubtless, that he hoped thereby to save his father's ship.

These facts implicate the vessel in the guilt of the cargo.

None of the claimants of either vessel or cargo have ventured to vindicate the innocence of the voyage by a test oath.

The master swears to the claim of the claimants of the vessel, nearly a month after the libel was filed. No reason is assigned why the claim and the facts stated therein are not verified by the oath of one of the owners.

As a trustworthy source of information to a prize court, Mr. Kursheedt's affidavit is entitled to no respect whatever; not because Mr. Kursheedt is unworthy of belief, but because he has, and can have, no personal knowledge on the subject about which he swears; and because those who have the requisite personal knowledge refuse to subject themselves to the test of an oath, even to save a cargo so valuable, and attempt to palm upon the prize court their unsupported statements at secondhand. And this insult to the court is aggravated by the excuse offered, that in six weeks it was impossible to communicate with them (at London) in time to allow them to make the claim and test affidavit.

The case rests on the following propositions of fact and law, which, it is submitted, the evidence and authorities sustain.

1. *The cargo* was prize, because the Springbok, when captured, was pursuing a voyage laden with a cargo intended to be transshipped to the enemy's blockaded port at its port of real destination.

Because the cargo was largely contraband of war, consisting of articles all of which were specially suited for enemy use, and destined to an enemy port for such enemy use, by transshipment at Nassau, but without any sale or change of ownership at Nassau.

Because, therefore, the cargo was taken on a voyage having, so far as the cargo was concerned, its *terminus a quo* at London, and its *terminus ad quem* at the blockaded and enemy port, and any existing purpose to touch and transship

the cargo at Nassau, in prosecution of that voyage, did not, as to the cargo, break the continuity of its voyage to the blockaded and enemy port.*

That part of the cargo not contraband of war was good prize, not only for the foregoing reasons, but for the further reason that it was owned by the owners of the contraband part.†

2. *The vessel was good prize*, because she was in the sole act of transporting the cargo destined for the blockaded port one stage of its route to that port. For this purpose she was chartered by the owner of the contraband and other goods, and, when captured, was sailing on the route by which trade to the blockaded and enemy port was then usually conducted, in pursuance of the charter and in furtherance of that purpose, under the exclusive orders of the charterer.‡

Because she was carrying contraband of war destined for enemy use, under a charter made for that purpose, and, of course, with the knowledge of the owner of the vessel; carrying it also with a false destination. These facts make the owner of the vessel a party to the fraud, and implicate it in the guilt of the cargo. See *The Neutralitet*,§ where the owner chartered the ship for contraband trade; *The Franklin*,‖ where the ship was carrying contraband, with a false destination, and where Sir William Scott said that the relaxation of the ancient rule, which condemned the ship with the cargo, can only be claimed by *fair* cases; *The Ranger*,¶ where he said, "If the owner (of the ship) will place his property

* The Maria, 5 Robinson, 365; The William, Id. 385; The Thomyris, Edwards, 17; The Minerva, 3 Robinson, 229; The Richmond, 5 Id. 325; The Commercen, 1 Wheaton, 382; Jecker *v.* Montgomery, 18 Howard, 110–115; The Nancy, 3 Robinson, 122; The United States, Stewart's Adm. Rep. 116.

† Halleck's Int. Law, chap. 24, § 6, p. 573, and authorities cited; 3 Phillimore, Int. Law, § 277; 2 Wildman, Int. Law, 217; The Sarah Christina, 1 Robinson, 237.

‡ See cases cited to third point; also, The Maria, 6 Robinson, 201; The Charlotte Sophia, Id. 204, note 1; Instructions of Navy Department of 18th August, 1862; Upton's Prize. 450, 3d ed.

§ 3 Robinson, 296. ‖ Id. 217. ¶ 6 Id. 126.

under the absolute management and control of persons who are *capable* of lending it to be made an instrument of fraud in the hands of the enemy, he must sustain the consequences of such misconduct on the part of his agent;" *The Baltic*,* where the ship was condemned because "the owner must have been aware of the fraud intended, if not a confidential party to it."†

The CHIEF JUSTICE delivered the opinion of the court.

We have considered the case with much care, not only upon the ship's papers and the preparatory proofs, but upon the documents invoked on the hearing in the District Court from the two causes, *United States* v. *The Steamer Gertrude*, and *United States* v. *The Schooner Stephen Hart*, then pending in that court.

The invocation of these documents appears to have been made at the original hearing, and we cannot say that this was strictly regular. It would have been more in accordance with the rules of proceeding in prize if the cause had been first fully heard on the ship's documents and the preparatory proofs, and if invocation had been allowed, especially to the captors, only in case of the disclosure of suspicious circumstances on that hearing. But there was no such irregularity as was inconsistent with the lawful exercise of the discretion of the court, and none which would justify us in reversing the decree below because of the allowance of the invocation, or in refusing to look at the documents invoked and now part of the record. Especially should we not be justified in such refusal, after being made aware by the record that the steamship Gertrude was so manifestly good prize that no claim was ever interposed for her or her cargo, and after

* 1 Acton, 25.

† The Jonge Margaretha, 1 Robinson, 189; The Mercurius, Id. 288, and note; The Jonge Tobias, Id. 329; The Neptunus, 3 Id. 108; The Eenrom, 2 Id. 1; The Edward, 4 Id. 68; The Oster Risoer, Id. 200; The Carolina, Id. 260; The Richmond, 5 Id. 325; The Charlotte, Id. 275; The Ringende Jacob, 1 Id. 89; Carrington *v.* The Merchants' Insurance Co., 8 Peters, 520

having, at the last term, condemned the Stephen Hart and her cargo by our own decree.

We have, therefore, looked into all the evidence, and will now dispose of the case.

We have already held in the case of the Bermuda, where goods, destined ultimately for a belligerent port, are being conveyed between two neutral ports by a neutral ship, under a charter made in good faith for that voyage, and without any fraudulent connection on the part of her owners with the ulterior destination of the goods, that the ship, though liable to seizure in order to the confiscation of the goods, is not liable to condemnation as prize.

We think that the Springbok fairly comes within this rule. Her papers were regular, and they all showed that the voyage on which she was captured was from London to Nassau, both neutral ports within the definitions of neutrality furnished by the international law. The papers, too, were all genuine, and there was no concealment of any of them and no spoliation. Her owners were neutrals, and do not appear to have had any interest in the cargo; and there is no sufficient proof that they had any knowledge of its alleged unlawful destination.

It is true that her shipping articles engaged the crew for the voyage, not only from London to Nassau, but also from thence, if required, to any other port of the West India Islands, American States, British North America, and other named countries, and finally to a port in the United Kingdom; and it is also true that this engagement would include, should the master undertake it, a continuance of the voyage for the conveyance of the cargo from Nassau to a blockaded port; but there is no proof that there was any engagement for such continuance of the voyage. On the contrary, the charter-party, which has the face, at least, of an honest paper, stipulated for the delivery of the cargo at Nassau, where, so far as is shown by that document, the connection of the Springbok with it was to end.

The preparatory examinations do not contradict but rather sustain the papers.

The testimony of the master was that the vessel was destined to and for Nassau to deliver her cargo and return to the United Kingdom, and that her papers were entirely true and fair. And his testimony in this regard is corroborated by that of the other witnesses.

It is said, however, that the master, upon his examination, declared himself to have been ignorant of the real ownership of the cargo, and that this indicates unlawful intent. But it must be remembered that the master of the Springbok had a clear right to convey neutral goods of all descriptions, including contraband, from London to Nassau, subject to the belligerent right of seizure in order to confiscation of contraband, if found on board and proved to be in transit to the hostile belligerent. On the hypothesis, therefore, that the cargo was to be actually delivered at Nassau, without an ulterior destination known to and promoted by the master or owners, in bad faith, we cannot say that the master's ignorance of its ownership is an important circumstance in the case.

There is more weight in the argument for condemnation derived from the misrepresentation of the master concerning his knowledge of the cause of seizure. The master testified that he did not know when examined on what pretence the capture was made, while the mate and the steward deposed that they understood that the vessel was captured under the supposition that the cargo was contraband, and the boatswain testified that it was because the bills of lading did not show the contents of some of the cases.

The master must have known as much about the cause of capture as either of the witnesses; and his misrepresentation of the truth in this instance brings his statements concerning the real destination of the ship and the intention to deliver her cargo at Nassau into some discredit. Frankness and truth are especially required of the officers of captured vessels when examined in preparation for the first hearing in prize. And the clearest good faith may very reasonably be required of those engaged in alleged neutral commerce with a port constantly and notoriously used as a port of call and

transshipment by persons engaged in systematic violation of blockade and in the conveyance of contraband of war. That Nassau was such a port is not only known from evidence before the prize courts, but from the official correspondence between the English and American governments, and the fact was distinctly stated by Earl Russell, then Foreign Secretary in the British ministry, in an answer, dated July 5th, 1862, to a communication from the shipowners of Liverpool.*

If, therefore, the case of the claimants of the ship depended wholly upon the testimony of the master, we should find it difficult to resist the argument for condemnation. But it does not depend wholly or mainly on that statement. The fairness of the papers, the apparent good faith of the stipulations of the charter-party in favor of the owners, and the testimony of the other witnesses, restrain us from harsh inferences against the owners of the vessel, who seem to be in no way compromised with the cargo, except through the misrepresentations of the master, and are not shown to have been connected with any former violation of neutral obligations.

In consideration of the master's misrepresentation, however, and of the circumstance that he signed bills of lading which did not state truly and fully the nature of the goods contained in the bales and cases mentioned in them, we shall, while directing restoration of the ship, allow no costs or damages to the claimants.

The case of the cargo is quite different from that of the ship.

The cargo was shipped at London in November and December, 1862, in part by Moses Brothers and the remainder by Speyer and Haywood.

The bills of lading, three in number, show no interest in any other person.

The charter-party was made by the master with one Begbie, and stipulated that the ship should take on board a cargo

* July 19th, 1862, Lawrence's Wheaton, 719.

of lawful merchandise goods and deliver the same at Nassau to the charterers' agent at that port.

On completion of the lading on the 8th of December, Speyer and Haywood, subscribing themselves as agents for the charterers, addressed a note to the master directing him to proceed at once to Nassau, and on arrival report himself to B. W. Hart there, who would give him orders as to the delivery of the cargo and any further information he might require.

The bills of lading disclosed the contents of six hundred and nineteen, but concealed the contents of thirteen hundred and eighty-eight, of the two thousand and seven packages which made up the cargo. Like those in the Bermuda case they named no consignee, but required the cargo to be delivered to order or assigns. The manifest of the cargo also, like that in the Bermuda case, mentioned no consignee, but described the cargo as deliverable to order. Unlike those bills and that manifest, however, these concealed the names of the real owners as well as the contents of more than two-thirds of the packages.

Why were the contents of the packages concealed? The owners knew that they were going to a port in the trade with which the utmost candor of statement might be reasonably required. The adventure was undertaken several months after the publication of the answer of Earl Russell to the Liverpool shipowners already mentioned. In that answer the British foreign secretary had spoken of the allegations by the American government that ships had been sent from England to America with fixed purpose to run the blockade, and that arms and ammunition had thus been conveyed to the Southern States to aid them in the war; and he had confessed his inability either to deny the allegations or to prosecute the offenders to conviction; and he had then distinctly informed the Liverpool memorialists that he could not be surprised that the cruisers of the United States should watch with vigilance a port which was said to be the great entrepôt of this commerce. For the concealment of the character of a cargo shipped for that entrepôt, after such a

warning, no honest reason can be assigned. The true reason must be found in the desire of the owners to hide from the scrutiny of the American cruisers the contraband character of a considerable portion of the contents of those packages.

And why were the names of those owners concealed? Can any honest reason be given for that? None has been suggested. But the real motive of concealment appears at once when we learn, from the claim, that Isaac, Campbell & Co., and Begbie were the owners of the cargo of the Springbok, and from the papers invoked, that Begbie was the owner of the steamship Gertrude, laden in Nassau in April, 1863, with a cargo corresponding in several respects with that now claimed by him and his associates, and despatched on a pretended voyage to St. John's, New Brunswick, but captured for unneutral conduct and abandoned to condemnation, without even the interposition of a claim in the prize court; and when we learn further from the same papers that Isaac, Campbell & Co., were the sole owners of the cargo of the Stephen Hart, consisting almost wholly of arms and munitions of war, and sent on a pretended destination to Cardenas, but with a real one for the States in rebellion. Clearly the true motive of this concealment must have been the apprehension of the claimants, that the disclosure of their names as owners would lead to the seizure of the ship in order to the condemnation of the cargo.

We are next to ascertain the real destination of the cargo, for these concealments do not, of themselves, warrant condemnation. If the real intention of the owners was that the cargo should be landed at Nassau and incorporated by real sale into the common stock of the island, it must be restored, notwithstanding this misconduct.

What then was this real intention? That some other destination than Nassau was intended may be inferred, from the fact that the consignment, shown by the bills of lading and the manifest, was to order or assigns. Under the circumstances of this trade, already mentioned, such a consignment must be taken as a negation that any sale had been

made to any one at Nassau. It must also be taken as a negation that any such sale was intended to be made there; for had such sale been intended, it is most likely that the goods would have been consigned for that purpose to some established house named in the bills of lading.

This inference is strengthened by the letter of Speyer & Haywood to the master, when about to sail from London. That letter directs him to report to B. W. Hart, the agent of the charterers at Nassau, and receive his instructions as to the delivery of the cargo. The property in it was to remain unchanged upon delivery. The agent was to receive it and execute the instructions of his principals.

What these instructions were may be collected, in part, from the character of the cargo.

A part of it, small in comparison with the whole, consisted of arms and munitions of war, contraband within the narrowest definition. Another and somewhat larger portion consisted of articles useful and necessary in war, and therefore contraband within the constructions of the American and English prize courts. These portions being contraband, the residue of the cargo, belonging to the same owners, must share their fate.*

But we do not now refer to the character of the cargo for the purpose of determining whether it was liable to condemnation as contraband, but for the purpose of ascertaining its real destination; for, we repeat, contraband or not, it could not be condemned, if really destined for Nassau and not beyond; and, contraband or not, it must be condemned if destined to any rebel port, for all rebel ports were under blockade.

Looking at the cargo with this view, we find that a part of it was specially fitted for use in the rebel military service, and a larger part, though not so specially fitted, was yet well adapted to such use. Under the first head we include the sixteen dozen swords, and the ten dozen rifle-bayonets, and

* The Immanuel, 2 Robinson, 196; Carrington *v.* Merchants' Insurance Co., 8 Peters, 495.

the forty-five thousand navy buttons, and the one hundred and fifty thousand army buttons; and, under the latter, the seven bales of army cloth and the twenty bales of army blankets and other similar goods. We cannot look at such a cargo as this, and doubt that a considerable portion of it was going to the rebel States, where alone it could be used; nor can we doubt that the whole cargo had one destination.

Now if this cargo was not to be carried to its ultimate destination by the Springbok (and the proof does not warrant us in saying that it was), the plan must have been to send it forward by transshipment. And we think it evident that such was the purpose. We have already referred to the bills of lading, the manifest, and the letter of Speyer & Haywood, as indicating this intention; and the same inference must be drawn from the disclosures by the invocation, that Isaac, Campbell & Co., had before supplied military goods to the rebel authorities by indirect shipments, and that Begbie was owner of the Gertrude and engaged in the business of running the blockade.

If these circumstances were insufficient grounds for a satisfactory conclusion, another might be found in the presence of the Gertrude in the harbor of Nassau with undenied intent to run the blockade, about the time when the arrival of the Springbok was expected there. It seems to us extremely probable that she had been sent to Nassau to await the arrival of the Springbok and to convey her cargo to a belligerent and blockaded port, and that she did not so convey it, only because the voyage was intercepted by the capture.

All these condemnatory circumstances must be taken in connection with the fraudulent concealment attempted in the bills of lading and the manifest, and with the very remarkable fact that not only has no application been made by the claimants for leave to take further proof in order to furnish some explanation of these circumstances, but that no claim, sworn to personally, by either of the claimants, has ever been fi'ed.

Upon the whole case we cannot doubt that the cargo was

originally shipped with intent to violate the blockade; that the owners of the cargo intended that it should be transshipped at Nassau into some vessel more likely to succeed in reaching safely a blockaded port than the Springbok; that the voyage from London to the blockaded port was, as to cargo, both in law and in the intent of the parties, one voyage; and that the liability to condemnation, if captured during any part of that voyage, attached to the cargo from the time of sailing.

The decree of the District Court must, therefore, be reversed as to the ship, but without costs or damages to the claimants, and must be affirmed as to the cargo; and the cause must be remanded for further proceedings

IN CONFORMITY WITH THIS OPINION.

THE PETERHOFF.

1. A blockade is not to be extended by construction.
2. The mouth of the Rio Grande was not included in the blockade of the ports of the rebel States, set on foot by the National government during the late rebellion; and neutral commerce with Matamoras, a neutral town on the Mexican side of the river, except in contraband destined to the enemy, was entirely free.
3. *Semble* that a belligerent cannot blockade the mouth of a river, occupied on one bank by neutrals with complete rights of navigation.
4. A vessel destined for a neutral port with no ulterior destination for the ship, or none by sea for the cargo to any blockaded place, violates no blockade.

   Hence trade, during our late rebellion, between London and Matamoras, two neutral places, the last an inland one of Mexico, and close to our Mexican boundary, even with intent to supply, from Matamoras, goods to Texas, then an enemy of the United States, was not unlawful on the ground of such violation.
5. The trade of neutrals with belligerents in articles not contraband is absolutely free unless interrupted by blockade: the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea.
6. The classification of goods as contraband or not contraband, which is best supported by American and English decisions, divides all merchandise into three classes.