
Statement of the case.

£7000 of the said gentleman." These letters were found on board the brig.

Caldwell was a passenger on the brig, but was allowed to leave before any question of his character was made. What was that character in fact? Was he a rebel enemy or a neutral?

The tenor of his letter to Lizardi & Co., his proposal that the specie should be shipped as their property, when seven-twelfths of it belonged to himself; and especially the circumstance that he has never made claim in this suit to any part of it, except through Lizardi & Co., indicates that he was not a neutral, but an enemy.

On the other hand, there is no positive proof of his enemy character, though further proof was allowed to the captors.

This evidence, in our judgment, does not warrant condemnation of the specie, but it does, as we think, justify the capture.

We shall therefore affirm the decree of the District Court, restoring the vessel and cargo, but direct that costs and expenses consequent upon the capture, be ratably apportioned between the brig and the shipment of coin, and that the residue of the cargo be exempted from contribution.

DECREE AND DIRECTIONS ACCORDINGLY.

NOTE.

At the same time with the preceding appeal and cross-appeal, and by the same counsel, were argued two cases; one an appeal and cross-appeal, as the preceding, from the District Court of the United States for the Eastern District of Louisiana; the other, an appeal from the same court.

The first case was that of

THE SCIENCE.

The Science had been captured by the American war steamer Virginia, on the same day as the Dashing Wave, and the same decrees were entered in the District Court in respect to vessel and cargo, and similar appeals were taken.

Statement of the case.

Mr. Ashton, Assistant Attorney-General, for the captors; Mr. Marvin contra, for the claimants.

The CHIEF JUSTICE delivered the opinion of the court.

The evidence is clear that the vessel and her outward cargo were neutral property, destined to neutral consignees at Matamoras, and that the cargo had been actually delivered as consigned.

Some of the proof tended to show that a portion of this cargo consisted of confederate uniform cloth; but there was none showing destination to enemy territory or immediate enemy use.

There was, therefore, nothing in the character of the vessel or of the outward cargo which warrants condemnation.

At the time of capture, the bark had the whole or a great part of her homeward cargo on board. It consisted of cotton and a small quantity of copper. The captain had not signed bills of lading, and, upon his preparatory examination, assigned this circumstance as a reason for not being able to give the names of the shippers at Matamoras or of the consignees at Liverpool. The presumption, arising upon the facts proved, is that it was neutral property, which must be restored.

The position of the *Science*, when her cargo was put on board, and when she was captured, is left in doubt by the depositions of the master and mate; but the testimony of two officers of the *Virginia*, read as further proof, is explicit that she was in Texan waters,* and no excuse is offered for being there.

The principles just declared in the case of the *Dashing Wave* require, therefore, the affirmation of both decrees of the District Court.

AND THIS IS ORDERED.

The second case was that of

THE VOLANT.

THE brig *Volant* had been captured, near the mouth of the Rio Grande, on the 5th of November, 1863, by the United States

* See chart, *supra*, p. 173.—REP.