

RHODE ISLAND VICE-ADMIRALTY COURT

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APPEAL PELEG BROWN VS. SLOOP *Providence*, 1738

Failure to pay duty constitutes a valid defense in an action by owners of cargo against collector of customs, for damages alleged to have been sustained by reason of condemnation of goods for duty.

[Collector of customs at Newport seized sloop laden with certain European goods, and filed an information in vice-admiralty court for condemnation thereof. Owners of goods and sloop entered their claim. Court condemned the goods but acquitted the ship. Later, the owners sued the collector in the Inferior Court of Common Pleas in Rhode Island for damages in holding certain barrels of molasses, part of the cargo, as security for duty. Pursuant to a special verdict of a jury, the court found that the duty was due before landing, and gave judgment for the collector. Thereafter, upon appeal by the owners to the Superior Court of Judicature, the jury of said court gave a verdict against the collector, who appealed to the General Assembly of the colony, which affirmed the judgment of the Superior Court. Collector then appealed to the King in Council, which reversed the judgments of the General Assembly and of the Superior Court, and ordered the owners of the molasses to pay the duty thereon, and receive the same from the collector, but in case molasses should have been sold, that proceeds be first applied to the amount due for duty, and the balance returned to them. (Orders of the King in Council, 1734-1783)]

At the Court at Kensington the 20th of July 1738

Present

The Kings most Excellent Majesty

Arch Bish^p of Canterbury

Lord Chancellor

Lord President

Lord Privy Seal

Duke of Devonshire

Duke of Newcastle

Earl of Abercorne

Earl of Selkirk

Lord Viscount Torrington

Earl Harrington

Lord Delawarr

S^r Charles Wills

Stephen Poyntz Esq^r

S^r William Yonge

Upon reading at the Board a Report from the Right Honorable the Lord of the Committee of Council for hearing Appeales from the Plantations dated the 12th of last Month in the Words following — Viz^t

Your Majesty having pleased by Your Order in Council of the 8th of March last to referr unto this Committee the humble Petition of Appeale of Peleg Browne of Newport, Collector of Your Majestys Customs in the Colony of Rhode Island and County of Bristol in America, Setting forth that on the 11th of March 1735 he made Seizure of a Sloop called the Providence Samson Silk Master, Laden with Ninety Six Hogsheads and Six Barrells of Foreign Molasses and also with twenty five Casks of Gunpowder Cloth and other Commoditys of the Product and Manufacture of Europe, which Lading the said Sloop had taken in at Surinam a Settlement belonging to the Dutch with an Intent to run the same into New England, And that he had filed his Information in the Court of Vice Admiralty for Condemnation

of the said Vessel and of the said European Goods Whereupon James Allen and Ezekiel Chever came in and Entered their Claim to the Sloop and set up a Claim by Attorney in the name of one Green to the European Goods That on the 30th of March 1736 the said Information came to Trial when the Judge of the said Vice Admiralty Court condemned the said European Goods But acquitted the Ship upon a Distinction that the owners ought not to Suffer for the Malfeazance of the Master That in November following the said Allen and Chever brought an Action ag^t the Petitioner in the inferior Court of Common Pleas in Rhode Island on Account of the Ninety Six hogsheads and Six Barrells of Foreign Molasses which lay in Your Majestys Warehouses for Securing the Duty imposed by Act of Parliament in Great Britain, For Encouragement of the Sugar Colonys, and laid their Damages at three thousand pounds New England Money And on the 4th of January 1736 the same was tried when the Jury found the following Special Verdict, that if the Court should be of opinion that the Duty of the said Molasses was due by Act of Parliament before the Landing they found for the Petitioner, If the Court should not be of that Opinion then they found for the said James Allen and Ezekiel Chever, the Damages sued for and Costs of Court But the Court being of Opinion that the Duty of the said Molasses was due by Act of Parliament before the Landing, They gave Judgment for the Petitioner That the said James Allen and Ezekiel Chever Appealed from the said Judgment to the Superior Court of Judicature for the said Colony and the same coming on to be heard on the 29th of March 1737 the Jury gave a Verdict against the Petitioner for one thousand eight hundred and forty Eight pounds and Costs of Court and Judgment thereupon was Signed accordingly That the Petitioner Appealed therefrom to the General Assembly of Rhode Island and the same coming on to be heard on the 4th of May 1737 the said General Assembly was pleased to Affirm the said Judgment of the Superior Court with Costs That the Pet^r conceiving himself greatly Aggrieved thereby, brought this his humble Petition of Appeale to Your Majesty in Council and humbly prayed that the said Judgment of the General Assembly and also the Verdict and Judgment of the Superior Court of the 29th of March 1737 might be reverst and set aside with Costs and that the said Judgment of the Inferior Court of the 4th of January 1736 might be Affirmed The Lords of the Committee in Obedience to Your Majestys said Order of Reference this day took the said Petition of Appeale into their Consideration and heard all Partys therein concerned by their Counsel Learned in the Law And do thereupon Agree humbly to Report to Your Majesty as their Opinion that the Judgment given by the General Assembly on the 4th of May 1737 and likewise the Judgment given in the Superior Court on the 29th of March 1737 Be reverst, And their Lordship farther humbly Offer as their Opinion to Your Majesty that upon the said Allen and Chevers paying the Dutys for

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the said Molasses imposed by the said Act of Parliament of the Sixth of His Present Majesty for Encouragement of the Sugar Colonys the same be restored to them by the said Appellant Peleg Brown, But in case the said Molasses or any part thereof shall have been Sold and disposed of the Money arising thereby be applyd in the first Place to the Payment of the said Dutys and the Overplus be returned to the said Owners. His Majesty this day took the said Report into Consideration, and was pleased with the Advice of His Privy Council to Approve thereof, and to Order as it is hereby Ordered, that the said Judgment given by the General Assembly on the 4th of May 1737 and likewise the Judgment given in the Superior Court on the 29th of March 1737 Be reverst; And His Majesty is hereby further pleased to Order that upon the said Allen and Chevers paying the Dutys for the said Molasses imposed by the said Act of Parliament of the Sixth of His Present Majesty for Encouragement of the Sugar Colonys, the same be restored to them by the said Appellant Peleg Browne, But in case the said Molasses or any part thereof shall have been sold and disposed of, the Money arising thereby be Applied in the first place to the payment of the said Dutys, and the Overplus be returned to the said Owners Whereof the Gov^r and Company of His Majestys Colony of Rhode Island and Providence Plantations for the time being, and all others whom it may concern, are to take Notice, and Govern themselves accordingly.

W^m Sharpe

JAMES COLLINGWOOD, COMMANDER OF THE SLOOP *Charming Betty* vs.
SHIP *Oratava*, AND HER CARGO, 1740

A British ship, engaged in treasonable activities, is lawful prize.

[Libel in prize was filed by commander of sloop, owned by British subject living at Tenerif. Testimony conclusively established that supercargo of ship, pursuant to owner's instructions, attempted to smuggle Tenerif wines into the colonies and to purchase provisions for Spanish subjects. Further, that name of ship in its journal was other than the one in the Register; that ship, while lying off Slocum's Island, had fired upon libellant who was approaching in a canoe to go aboard. Later, libellant succeeded in going aboard and forbade breaking of bulk. Various papers were taken off the ship, which was then brought into Newport. Court adjudged ship and cargo as lawful prize, to be divided among owners and mariners of the captor-ship, respondent-owner, to pay double costs. The King's Advocate-General then moved the court for an order placing the supercargo of the libelled ship in the custody of the Marshall of the court, to be delivered over by him to the Governor of the colony for criminal prosecution. Court granted application of supercargo for appeal to the Lords Commissioners of Appeals in Prize Causes. (Admiralty Papers, I, 3, 7, 18, 19. Minute Book, 1740-1743). See also: *New England Quarterly*, VI, No. 1, 1933; Minutes of Governor and Council, July 14, 1740.]

COLONY OF RHODE ISLAND ETC. CURIA ADMIRALATATIS At a Court of Vice Admiralty held at Newport in wthin and for s^d Colony the 4th day of July A:D. 1740.

George Simpson On Oath Declares as follows Viz^t

Qⁿ Was you any officer on board the Ship Oratava, from Tenereef

Ans^w no

Qⁿ what was you on board the s^d Ship Oratava

Ans^w Assistant to John M^{re}Carrick who was Supercargo of s^d Ship

Qⁿ when did you come on board s^d Ship and where

Ans^w I came on board at S^t Santecruize sometime in April last

Qⁿ Who are Owners of the s^d Ship

Ans^w David Lockhart of Tenereef, is Sole Owner and in Comp^a wth

Alex^s Dundas of London wth the Cargo

Qⁿ What does your Cargo consist of

Ans^w Malursy and Vidonia Wines

Qⁿ Have you no other Goods on Board

Ans^w No

Qⁿ Where did you take them Wines on board

Ans^w at Santecruize upon the Island of Tenereef

Qⁿ Are they the produce of that Island

Ans^w Yes.

Qⁿ Where was you dessyn'd with those Wines

Ans^w directly for Rhode Island

Qⁿ Who was you Consigned to

Ans^w To M^r M^{re}Carrick the Supercargo

Qⁿ What time did you fall in with the New England Shore

Ans^w about the 20th June last

Qⁿ What land did you make first

Ans^w Cape Codd

Qⁿ Where did you come to an Anchor

Ans^w Off the Race Point first — and lay there two or three Tides — and then Weighed and went into Cape Codd Harbour

Qⁿ how long did you stay there at Cape Codd Harbour

Ans^w from Sunday to Wednesday

Qⁿ What Goods did you put out there

Ans^w none

Qⁿ Where did you go from Cape Codd

Ans^w Came round over the Shoals

Qⁿ how long was it from Cape Codd till you came into Tarpaulin Cove

Ans^w Two or three days

Qⁿ did you put any person or Goods on Shoar at Cape Codd or elsewhere

Ans^w Landed one M^r Hubbard in Cape Codd Harbour

Qⁿ Was you on board when M^r Hubbard went away

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Answer Yes I was on board when s^d Hubbard went away, and that there was no Goods sent away while I was on board

Qⁿ how long did you tarry at Tarpaulin Cove

Answer One Tide and then Weighed

Qⁿ whereabouts did you first se the Cruizers that brought you in

Answer I doe not know the Name of the Island

Qⁿ how came you to Fire upon the Cruizers Boat when she was coming on Board

Answer We took her for a Spanish Boat

Qⁿ Did you se Colours flying

Answer Yes, but did not distinguish what Colours they were

Qⁿ What reason had you to think there was a Spaniard on this Coast so near

Answer The Cap^t went on Shoar at Honne's Hole to buy provissions, and was told, there was a Spaniard upon the Coast

Qⁿ where had you the first intelligence of two privateers being out from here

Answer at Home's Hole

Qⁿ by whom had you the intelligence

Answer The Cap^t had it on Shoar at Home's Hole

Qⁿ how came you to leave your Ship, with your boat Arm'd to go on Shoar

Answer We thought they were Spaniards

Qⁿ did you really think they were Spaniards

Answer Yes.

Qⁿ did not some of you present Arms against the boats Crew when they came on Shore

Answer not to My knowledge

Qⁿ did you come directly away with out any Parly when you se they were Englishmen

Answer Yes

Qⁿ As you are to Assist M^r M^{re} Carrick was there any, Bills of Lading

Answer I never se any

Qⁿ Is there any more Registers then One belonging to s^d Ship

Answer not to My knowledge

Qⁿ Do you know of any other papers belonging to s^d Ship then what is now in Court

Answer I do not know of any other papers relating to the Ship or Cargo

Qⁿ Where was you intended wth this Ship after your Arrival at Newport

Answer we were bound as our Instruction directed

George Simpson

Robert Williamson On Oath Declares as follows Viz^t

Qⁿ where was you Shipt Commander of the s^d Ship Oratava

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- Answer* in Boston
Qⁿ by whom
Answer by James Bowdoin
Qⁿ where was you to proceed
Answer to Tenereef
Qⁿ when was you Shipt
Answer in July 1739
Qⁿ where did you proceed from Tenereef
Answer Took in a Cargo of Wines at Tenereef and proceeded to Philad^a
Qⁿ what time did you Sail from Tenereef
Answer Ab^t the latter end of September last
Qⁿ when did you Arrive in Philad^a
Answer about the last of October
Qⁿ how long did you stay there
Answer left the Capes of Delaware the 10th of Dec^r
Qⁿ Where did you go from there
Answer I Arrived in forty two days after, at Tenereef
Qⁿ to Whom did your Vessel and Cargo belong to at that time
Answer Wholly to David Lockhart to the best of my knowledge
Qⁿ how long did you stay in Tenereef
Answer about Ten Weeks
Qⁿ what did you take on board there
Answer Wines, of the produce of that Island
Qⁿ by whom were them Wines Shipt
Answer by M^r David Lockhart
Qⁿ Were they his own Wines
Answer They were all Shipt by M^r Lockhart on his own proper Acco^t
 and Risque to the best of my knowledge
Qⁿ how many Pipes of Wine did you take on board in all
Answer about Two hundred and forty
Qⁿ Did you sign Bills of Lading for Two Hundred and forty
Answer Yes
Qⁿ Who was your Bills of Lading given to
Answer to M^r John M^{re} Carrick
Qⁿ Whose risque was the Cargo upon by the Bills of Lading
Answer Upon the risque of David Lockhart
Qⁿ What time did you Sail from Tenereef
Answer About the 26th day of April last
Qⁿ Where was you to proceed from thence
Answer to Rhode Island
Qⁿ had you any other Clearance then what is produced here
Answer no not any
Qⁿ when did you make the New England Shore

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Answ^r about the 23^d of June last

Qⁿ what Land did you make first

Answ^r Cape Codd

Qⁿ where did you first Anchor

Answ^r Off the Cape

Qⁿ how long did you stay there before you first went into a Harbour

Answ^r Two Tides, and then went into Cape Cod Harbour

Qⁿ how long was you in Cape Cod Harbour

Answ^r went in on Sunday and came out on Wednesday

Qⁿ did you land any Goods or people there

Answ^r One passenger

Qⁿ what was his Name

Answ^r Michael Hubbard Inhabitant of Tenereef

Qⁿ What Goods did you put out when you was at Cape Codd Harbour

Answ^r none to my knowledge

Qⁿ did you put out any Goods since you come to the New England shore

Answ^r not any to my knowledge or by my Order

Qⁿ where did you proceed from Cape Codd

Answ^r directly for Rhode Island where I was bound to

Qⁿ where did you Anchor when you saw the Privateer

Answ^r off from Slocumss Island

Qⁿ how come you to Fire upon the Privateers Boat

Answ^r I took her to be a Spanish Lanch or Canoe

Qⁿ did you not se English Colours on board the Privateer when they Fired at you

Answ^r no — but se Colours but could not distinguish what they were

Qⁿ had you not an Account of Two Privateers being out of Newport

Answ^r yes at Home's Hole — we heard of two privateers being out of

Rhode Island in search of a Spanish privateer

Qⁿ by whom had you that Intelligence

Answ^r by one of the pilots at Homes Hole

Qⁿ had you not some Account sent you from this place or Boston of privateers being out in search of you

Answ^r no

Qⁿ by what privateer was you taken

Answ^r Cap^t Collingwood took possession of s^d Ship

Qⁿ doo you know of any other Papers relating to s^d Ship and Cargo then what are now in Court

Answ^r I know of no other, save the Bills of Lading

Qⁿ who was them Bills of Lading delivered to when you signed them

Answ^r I delivered them to M^r David Lockhart, who I believe delivered them to M^r M^c Carrick

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Qⁿ what was the reason the Ship is called in the Register by the Name of the Oratava and in the Journal's kept for this Voyage the Fortune

Ans^w because the Ship was formerly known here and they did not care she should be exposed

Qⁿ what was the reason that they was afraid the Ship shou'd be exposed

Ans^w because of the difficult times, and did not know whether the Ship might be admitted to an entry.

Qⁿ what port was you designed for from Rhode Island

Ans^w I can't tell, I was to follow M^r M^e Carricks Instructions

Qⁿ Where is your Orders

Ans^w I left them in my Chest on board

Qⁿ how long was you under Seizure at Tenereef

Ans^w Not at all

Qⁿ whether M^r David Lockhart is an Inhabitant at Tenereef etc. Married there

Ans^w Yes.

Qⁿ how cou'd you pretend to enter that Ship here by the Name of the Fortune, when She is not Nominated so in the Register

Ans^w Could not I enter my Vessel by any other Name

Qⁿ Why was it that the two Journals say you came from Madera, when in fact you came from Tenereef

Ans^w It was with a design to prevent the Wine being Seized and to come to a better Market

Robert Williamson

James Adamson Mate of the s^d Ship Oratava on Oath Declares as follows
Viz^t

Qⁿ When and where was you Shipt on board of s^d Ship

Ans^w Shipt in May 1739, at Boston

Qⁿ by whom was you Shipt

Ans^w Robert Williamson to proceed for Tenereef and from thence to Boston or Philadelphia wth Voyage to Philad^a we proceeded wth a Cargo of Wines

Qⁿ what time was you in Philadelphia

Ans^w We left Philad^a the beginning of December with a Cargo of provisions chiefly and a few Staves.

Qⁿ where did you go from thence

Ans^w The Cap^t told us we were bound for Madera but went to Tenereef in the Canaries and there unloaded our Cargo

Qⁿ who was your Owner

Ans^w I understood M^r David Lockhart of Tenereef

Qⁿ how long did you stay at Tenereef

Ans^w about Ten Weeks

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Qⁿ what did you Load with there

Answ^r with Wines which I believe to be the growth of that Island

Qⁿ where was you to proceed with these Wines

Answ^r For Rhode Island

Qⁿ where did you fall in with the Land of New England

Answ^r Off Cape Codd

Qⁿ what Harbour was the first you went into

Answ^r Cape Codd

Qⁿ how long did you stay there

Answ^r Two days.

Qⁿ What Goods and people did you put on Shoar there

Answ^r One passenger Named Hubbard and also Two Hogsheads of Wine w^{ch} was put on board of a Sloop for Boston

Qⁿ by whose Orders

Answ^r by M^r M^c Carricks, who was then On board

Qⁿ what other Goods did you Land since you made the Coast of New England

Answ^r none

Qⁿ where was you Shipt to from Rhode Island

Answ^r I was to be discharged here, as likewise was all the rest of the people

Qⁿ what is the reason for your calling the Ships Name Fortune Galley, George Simpson Master from Madera to Rhode Island in your Journal, when She is called the Oratava and Robert Williamson Master from Tenereef in Several other Papers.

Answ^r I was Ordered to do so by Cap^t Robert Williamson who with Cap^t Hubbard made up the difference of Latitude and Longitude betwixt Madera and the Latitude we were then in, which was then about 20 Leagues Sth South West from Tenereef and Ordered me to Continue my Journal as from Madera

Qⁿ do you know the reason why they Ordered you to alter your Journal and the Ship and Capⁿ Name

Answ^r I know nothing of their design for it

Qⁿ was the Ship under any Seizure or difficulty that you cou'd discover by the Government or any other persons there at Tenereef

Answ^r no

Qⁿ had you any force or Arms sent on board of you to protect you from a Spanish Privateer that lay there

Answ^r Yes. there was Nine or Ten Carriage Guns and some Men sent on board from the Shore for to defend us against s^d Privateer

Qⁿ who were they sent by

Answ^r I suppose by the Merchant

Qⁿ what Countrymen did they appear to be

Answ^r I took them to be Bayucainers

Qⁿ how far did they go with you

Answ^r about Twenty Leagues

Qⁿ how did they leave you

Answ^r A Brigantine came out with us under Portugues Colours and carried them back.

James Adamson

George Ropes on Oath saith as follows Viz^t

Qⁿ Where was you Shipt on board the Ship Oratava

Answ^r at Tenereef the 20th day of April last

Qⁿ by whom

Answ^r by Cap^t Robert Williamson

Qⁿ how long was you on board before the Ship's Sail'd

Answ^r ab^t Nine or Ten days

Qⁿ Was the s^d Ship Loaded when you went on board of her

Answ^r She was almost Loaded

Qⁿ Where was you Shipt for

Answ^r for some part of New England

Qⁿ was there any Seizure upon Ship or Goods or any Stoppage

Answ^r None as I know of

Qⁿ had not you some Men and Guns put on board of you

Answ^r Yes, Nine Carriage Guns and about 20 Men Spanish and Irish

Qⁿ by whose Order were they put on board

Answ^r As I understood they were put on board by the Merchants Order with the Governours leave

Qⁿ for what reason were they put on board

Answ^r to guard us against a Spanish Privateer that lay off

Qⁿ How far did they go off with you

Answ^r About 30 or 40 Leagues

Qⁿ What became of the Men and Guns

Answ^r A Brigantine under Portugues Colours went with us and took them on board

Qⁿ what part of New England did you fall in with first

Answ^r Cape Codd

Qⁿ where did you Anchor

Answ^r in Cape Codd Harbour

Qⁿ how long did you stay in Cape Codd Harb^r

Answ^r About two days

Qⁿ did you Land any people on Shore there

Answ^r Yes, One Man Named Hubbard

Qⁿ what was he

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Answ^r An Irish Cap^t an Inhabitant of Tenereef that came to look after a Ship

Qⁿ What Goods did you unload there

Answ^r Only Two Hogsheads of Wine and One Cask of Fruit

Qⁿ did you put out any other Goods since you have been upon the Coast

Answ^r None other to my knowledge

Qⁿ where was you to proceed from Rhode Island

Answ^r we were to be discharged here

Qⁿ did you touch at Madera

Answ^r No, but came directly from Tenereef here

George Repes

Thomas Potts likewise swore to the Truth of the above evidence.

Thomas Potts

Cap^t James Collingwood Commander of the Privateer Charming Betty On Oath Declares as follows Viz^t

Qⁿ When did you Sail out of this Port

Answ^r On Monday, June the 30th about Nine of the Clock P.M

Qⁿ had you Intelligence of any foreigne Vessel upon the Coast before you went out

Answ^r Yes — I had Intelligence of a Ship from the Canary Islands

Loaded wth Wines

Qⁿ Where did you hear that she was

Answ^r In or near the Vineyard Sounds

Qⁿ When did you come up with her

Answ^r About 10 aClock A: M the 1st July

Qⁿ Did you put Men on board of her as soon as you came up wth her

Answ^r I sent my Lieu^t Mast^r Carp^r and 12 More of my hands

Qⁿ Which of your officers searched for the papers on Board

Answ^r My Lieu^t

Qⁿ Are these all the papers now produced in Court relating to the s^d Ship and Cargo that came to your hands without any fraud Addition Subduction or Embezelment

Answ^r they are all

Qⁿ had she any Colours on Board besides English, when you boarded her

Answ^r Not that I know of then, but afterwards one of my people Inform'd me that she had other Colours on board of her

Qⁿ Did you not enquire for Bills of Lading.

Answ^r I did of the Master, and he told me that he left them on board in his Chests or were left, if not there

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Qⁿ You have not suffered any of your people to break bulk

Ans^w I did not, but gave strict Orders to the Contrary

James Collingwood

John Robinson Lieu^t of the s^d privateer Charming Betty
James Collingwood Commander On Oath Declares as follows Viz^t

Qⁿ When did you come up with the Ship Oratava now brought in

Ans^w I attempted to go on board of her in a Canoe, with five hands between Eight and Nine of the Clock on Tuesday Morning the 1st July, but they fired several Shots and We retired to the Sloop which was about a Mile and a half distant from said Ship and then went on board of the privateer Which was Rowing at the same time to come up with said Ship — And upon our coming on board, about a Quarter of an Hour after we fired a Shot from the Privateer, and continued Rowing untill we came near her, And then I was sent on board with three hands, and found no body on board, the people being gone with their boat on Shore

Qⁿ Did you Search the Ship for papers when you first Entered on board

Ans^w Cap^t Collingwood called to me and Ordered me to search and Secure all papers that I could find on board, Which I Accordingly did and bound them up in a Pillow Case and handed them into our Canoe in Sight of Cap^t Collingwood and the rest of our officers who were nigh s^d Ship

Qⁿ Do you know, the particular papers you sent on board

Ans^w No. but as I am on Oath I put every paper that I could find in to the s^d Pillow Case as they came to hand, Without any fraud addition Subduction or Embezelment and sent them immediately on board afores^d

Qⁿ Did you, while on board s^d Ship suffer Bulk to be broken or any Embezelment of any thing belonging to s^d Ship

Ans^w No to the Contrary I sent on board of the privateer for our Own provisions and Liquor and other Necessarys we wanted.

John Robinson

John Gale Master of the Sloop Charming Betty James Collingwood Commander On Oath Declares Viz^t That he was on board of s^d privateer, and upon Deck, on the 1st day of July About Nine or ten a Clock A: M. When they came alongside of the Ship Oratava at a little distance, where I se the afores^d John Robinson hand a Bag or Pillow Case with papers over the Ships side into s^d Canoe the which Canoe started off from s^d Ship along side of the privateer and handed the s^d Bag or pillow Case up to Cap^t Collingwood in my presence. Upon which Cap^t Collingwood opened s^d papers in presence of me, James Clark, the Cap^t Quarter Master and several of the Company on board.

Qⁿ What did he do with them afterwards

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Answer I left them in Custody with the Cap^t for I was Ordered on board of the Ship to bring her in to Rhode Island.

Qⁿ Did you find or know of any papers kept on board of s^d Ship besides what was sent on board in the pillow Case or Bag

Answer No.

John Gale

James Clarke Cap^{tn} Quarter Master On board of the Sloop Charming Betty, James Collingwood Commander on Oath Declares as follows Viz^t

Qⁿ Did you go out with Cap^t Collingwood in s^d Sloop in his last Cruize

Answer Yes

Qⁿ When did you Sail

Answer The 30th of June last, ab^t 9 a Clock P: M

Qⁿ When did you come up with the Ship that is now brought in

Answer On Tuesday the 1st July at 10 a Clock A. M

Qⁿ Are you knowing to what papers was found on board s^d Ship

Answer I know thus far that I saw John Robinson our Lieu^t hand a Bag or pillow Case with Papers over the Ship Oraravo's Side into our Canoe the which Canoe sheared off onboard of in the privateer, and there I saw said Bag or pillow Case handed up to Cap^t Collingwood, upon w^{ch} Cap^t Collingwood turn'd said papers upon the Table and Examined some of them and then Cap^t Collingwood and I tyed them up in parcells and put them into the pillow Case safe and bound them up

Qⁿ Do you know of any other papers Relating to that Ship or Cargo than what was delivered to Cap^t Collingwood Without any fraud addition Subduction or Embezelment

Answer No — not any

James Clarke

All the before Named persons Personally appeared in Court before me and made Oath to the truth of the beforewritten Evidence by each of them Signed

Present Jos. Fox Reg^r

Geo: Dunbar, D J. Admty

[Admiralty Papers, I, 7]

JAMES COLLINGWOOD COM^{rs} OF THE SLOOP *Charming Betty* vs
SHIP ORATAVA AND HER CARGO

July 9th 1740 N^o 2

The Court being opened According to Adjournment and the Information was filed and allowed and Proclamation was made for a Claimer to Appear in Court and Defend the Ship Oratava and her Cargo. Informed

against — Upon Proclamation being duly made for a Claimer John M^c Carrick Comes into Court and as Factor to David Lockhart of Tenereif Merch^t Alexander Dundass of London Merch^t and Blake and Linch Merchants in London and Claims the Ship and Cargo informed against in their behalf and on Oath Declares that the property of the Ship is M^r Lockharts and the property of the Cargo is his M^r Lockhart, Alexander Dundass and Blake and Lynch, as M^r Lockhart informed him And then Samuel Holmes and John Bennet to give Security wth sd John M^c Carrick for the prosecuting his Claim after wth M^r Ordring Advocate for the Claimer moved the Court that he might have Copys or the Inspection of the Papers taken in the Ship when Seized Which was denyed him by the Court — And then the Court was adjourned Until to Morrow 8 a Clock A: M

[Minute Book, 1740-1743]

JAMES COLLINGWOOD COM^R OF THE SLOOP *Charming Betty* vs
SHIP *Oratava* AND HER CARGO

July 10th 1740.

The Court being Opened According to Adjournm^t M^r Overing adv^o for the Def^t entered his Plea and It's agreed by the Advocates on both sides that upon the Plea now given the Defend^t may give in any special matter in Evidence — Cap^t Collingwoods Commission was produced in Court with Several other Papers relating to said Ship and Cargo which were read and then Robert Williamson Master, and James Adamson Mate, of s^d Ship were Sworn likewise George Simpson and George Ropes and Thomas Potts were also Sworn And then the Court was adjourned to 4 aClock P: M

[Minute Book, 1740-1743]

No 3. the s^d John M^c Carrick sailor etc. who claims the ship and Cargoe as minuted. etc by James Ovdring his Advocates appears and pleads that the owners etc. are not Guilty in manner and forme as the s^d Libel suggests and that the s^d Vessel Cargoe is not liable to Confiscation as Demanded

J Ovding Advocate
J. Dester

[Admiralty Papers, I, 3]

[EVIDENCES TAKEN BEFORE JUDGE DUNBAR N^o 9]

Rob^t Williamson Mast^r of the Ship *Oratava* Sworn in Court

Qⁿ Do you know of the Sale of this Ship or any Pt thereof at any time within Twelve Months preceeding the Capture of the same by Cap^t Collingwood

Ans^w No I know of none

Qⁿ Is the Pap^r N^o 17 taken by Cap^t Collingwood on board the Ship

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Oratava (with other papers) mentioning an Agreem^t between the Dep^t and Mes^{rs} Stephen Delaney and John Moore for the Securing the paym^t of a Sum therein mentioned and Dated the 3^d of Dec^r 1739, a Copy of an Original Contract Executed between you and the s^d Delaney and Moore

Answ^r Yes.

Qⁿ did you proceed wth the Cargo of provisions you took on board the s^d Ship at Philadelphia in Dec^r 1739. directly to Tenereef

Answ^r Yes

Qⁿ Did you unlode s^d Cargo at Tenereef

Answ^r Yes

Qⁿ to whom did you deliver the same

Answ^r to M^r David Lockhart

The Deponant declares the Ans^w by him made to the Questions put to him in his Examination before George Dunbar Esq. Deputy Judge are true

James Adamson Mate of said Ship, Sworn in Court

The Deponant declares the answers by him made to the Questions put to him in his Examination before George Dunbar Esq^r Deputy Judge are true.

George Simpson Sworn in Court

The Deponant declares the Answers by him made to the Questions put to him in his Examination before George Dunbar Esq^r Deputy Judge are true.

Qⁿ Whether M^r Lockhart met with any difficulty in getting in the Wines from the Inhabitants of Tenereef Which are on board of said Ship Oratava

Answ^r none that we know of

George Ropes and Thomas Potts Sworn in Court

The Deponants declare the Answers by them made to the Questions put to them in their Examinations before George Dunbar Esq^r Deputy Judge are true (Then the Court was adjnd)

George Simpson further Declares

Qⁿ What knowledge had you of M^r Lockhart and as to his being a Protestant and how long he resided at Tenereef and when

Qⁿ What knowledge had you of the dealing and Outstanding Debts of M^r Lockhart at Tenereef

Answ^r he was Bookkeeper to s^d Lockhart and he knew he had Several large outstanding Debts at the time of the Delation of Warr and upon this Deponant coming away he had near 30 000 Dollars due to him the s^d Lockhart and Comp^s

Qⁿ Who was in Comp^s wth s^d Lockhart

Answ^r M^r Crosse late British Consul at Tenereef

Qⁿ did you ever in Conversation with M^r Lockhart hear him express himself or say he was desirous to move with his Effects from that place, into the Dominions of the King of Great Britain and when

Ans^w Yes, Upwards of two years ago and at several times since and that he Wrote Several Lett^{rs} to M^r Potts and M^r Dundass of London to procure a plantation in North Carolina in Order there to Settle with his Family etc. he was always reported and treated there as a Subject to the King of Great Britain

Qⁿ When was s^d Lett^{rs} wrote to s^d Dundass.

Ans^w The last about one y^r and half ago, and several before that time — The Coll^r and the Gov^r of the Castle on the third of Decemb^r last took an Inventory of the Household Goods of s^d Lockhart and M^r Cross but removed none then nor at any time after to his knowledge, they having no Merchandize there at the time of the Inventory being taken

Qⁿ what was the Motive of taking the afores^d Inventory

Ans^w by way of Reprisal

John Bennet Sworn in Court

Qⁿ What part of the Ship Oratava did you buy for M^r Lockhart

Ans^w One Quarter part from M^r James Bowdoin for the life of David Lockhart and paid the Money for it to M^r Daniel Ayrault about two years ago

Robert Williamson on oath further Declares that ab^t the Month of April last and at several times before he heard David Lockhart express his desire to remove to North Carolina where this Dep^t understood he had a Brother, as soon as he could get in his Effects — and for the space of 3 or 4 y^{rs} he was acquainted wth the s^d Lockhart at Tenereef where he was treated as a Subject to the King of Great Britain, and so reputed

(The Court adjourned)

[Admiralty Papers, I, 18]

JAMES COLLINGWOOD COMM^R OF THE SLOOP *Charming Betty* vs
SHIP *Oratava* AND HER CARGO

July 10th 1740.

The Court being Opened According to Adjournm^t George Simpson was further Interrogated Declares upon Oath — and also John Bennet was Sworn — Likewise Robert Williamson was further Sworn — And then the Court was Adjourned until to Morrow 7 a Clock A: M

JAMES COLLINGWOOD COMMANDER OF THE SLOOP *Charming Betty* vs
SHIP *Oratava* AND HER CARGO

July 11th 1740.

The Court being Opened According to Adjournm^t and after several Court Pleas on both sides The Court was adjourned Untill to Morrow at 10 a Clock A. M

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JAMES COLLINGWOOD COMM^R OF THE SLOOP *Charming Betty* vs
SHIP *Oratava* AND HER CARGO

July 12th 1740.

The Court being Opened According to Adjournm^t his Hon^r the Judge
Past his Decree

[Minute Book, 1740-1743]

JAMES CALLINGWOOD COMMAND^R OF THE SLOOP *Charming Betty* vs.
SHIP *Oratava* AND HER CARGO

This Case, If only Considered as to the Value of the Ship and Goods Libelled against is of Consequence: But when Strictly viewed in all Its Appearances Attended with such Variety of Circumstances It will Appear in its Determination to be of as high Importance as can Come in Judgment and therefore not to be wondered the Auditory was so great, and the Tryal [—] though the Question before me on this Libel appears very Short: namely whether the Capture therein mentioned is a Lawful Prize or not: And in Order to form a Right Judgment herein, I have maturely considered, the preparatory Examinations produced on Tryal, and also the Writings taken in and with said Capture, — as well as the Evidences given in Open Court, and Arguments of the Advocates on the Part of the Captor as on the part of the Claimants. and am of oppinion the Captor has fully Supported all the material and Necessary parts of his Libel: that the Ship *Oratava* was at first the property of One or More of his Majesty's Liege Subjects, that She was Chartered in April last at Tenerief there Loaded with Wines of the Island but who had the Property of her then does not fully appear, that She and her Cargo came first into Cape Cod puting Hubbard aShore and Secretly Some Wine and some fruit and after hovering on the Coast were taken as in the Libel set forth: the Cargo was to be Sold or Runned here or in some other part of his Majestys' Plantations, Returns to be made back to Tenerief, in provisions to be purchased in said Plantations, with the Produce of said Cargo, pursuant to Instructions Signed by the said Lockhart one of the Claimants, and on Tryal owned to be his Instructions given M^cCarrick the Super Cargo; Instructions that Open a most Shocking Scene of Disloyalty Treachery, and Corruption: therein I behold Persons Shaking of their Natural and Just Allegiance to our Sovereign Lord the King; weakening, if not Sapping, our Constitution deeply laying a Scheme for Supplying his Majesty's Enemies and from his own Plantations with all Sorts of Provisions, for many Voyages, chartering Vessels projecting false Clearances, and for luring his Majesty's Subjects to Navigate such Vessels first decoying them from his Majesty's Dominions, the Consequence of which is that Such unhappy Subjects So Imposed upon Must on their Arrival at Tenerief Either be Imprisoned So Long as their Loyalty or Integrity Continues or on the Forfeiture of Both Enter into the Service of Our Enimies: and what Still

more Shocks me is that in this Treasonable Commerce A Gentleman that once had the Honour and Trust of being, his Majesty Consul in Tenerief, Shou'd be Engaged a Partner with this Lockhart that he Should make a State of that Power to Certify as in the Case writing to his Majesty's Subjects in these parts to favour these pernicious Proceedings and to Corrupt and Bribe them from their Duty and finally to Engage and Tempt them in the like Practices. Assuring them he *will retaliate upon the like or any other Occasion* and that this is not a Hasty and Sudden transaction of the said Lockhart and his Concerned but herein he is acting a part w^{ch} by the papers Appears he Acted before and that Since the Declaration of Warr tho' in this he Seems to Spread more Canvas: And Notwithstanding all these things in open Court appears most flagrant and Glaring to the Just abhorrence and Detestation of the whole Auditory the Claimants by their Advocates Either Justify or Excuse themselves by Insinuating that the said Lockhart and Company are good Loyal Subjects here only Endeavouring to get off their Effects from an Enemies Country or that if the projection was Illegal the same was not carried into Action and therefore the capture ought to be discharged or acquitted The falsity of the first will fully appear from the Instructions and other Evidences in the Case And as to the Second in part they carried their Evil Concerted Measures into Action is plain: for to Purchase Provisions for the Kings Enemies they fitted out and Loaded Sayd Ship sent her to New England where some of her Cargo Such as Wine and Fruit was Conveyed a Shore that they were hovering on the Coast waiting a favourable opportunity to put the rest of the Instructions into Exon when happily they were taken happily Indeed, as thereby preventing Succour and Comfort to our Enemies, Happily as preventing Sundry of his Majesty's good Subjects from being decoyed from their Loyalty or tricked out of their Lives and Liberties Surely if a projection should by Hellish Minded Subjects be carried on against his Majesty's most Sacred Person to take away his Royal Life (which God long preserve) would any Lawyer say the fitting out a Vessel manning of her giving the Master Instructions how to Commit this High Treson are not So many Overt Acts which render the Concerned Traytors or that on Tryal because their Hellish projection was most happily prevented from being Executed therefore the Contrivers are not to be hanged such Doctrine would appear very Odd and Strange in Westminster Hall And though this Case appears Short of that yet upon a Close observation it will not appear Vastly So Therefore as this Colony has distinguished itself Shewn how Much they have at Heart the Good Success of his Majestys Arm Engaged in So just a Warr by fitting out a Vessel of Warr at their own Expence and Several Merchants belonging to it have With the like Spirit fitted out at their Particular Charge Vessels of force to Annoy and destroy the Enemy Providence also seems to distinguish their Loyalty with Success and the present

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Capture is an Instance thereof. tho not so beneficial to the Captors as other Seizures yet much more to the Publick in its Consequences then all of them put together and I hope none that Loves their Prince their Country, Constitution and themselves will discourage this Laudable Undertaking, I never shall, and upon the whole I Adjudge and Condemn the Vessel and Cargo Libelled against as a Lawful Prize and Entirely to belong to and be divided between and among the Owners of the said Sloop that Seized and took the same and the Several Persons which were on Board the Same in such Shares and proportions as were Agreed on with the Owners afores^d and the Persons thus Entitled thereto by Virtue of such Agreement among themselves I Decree the Def^t to pay double^d Costs of this Court. And as to the Persons taken in this Capture I leave them to be treated by this Government according to Justice Appertains.

Rob^t Auchmuty Judge Ad^r
July 12th 1740

[Admiralty Papers, I, 19]

No. 24. William Shirley the Kings Advocate General moved the Court That inasmuch as it appears by the Evidence produced in this Trial that John M^cCarrick the Supercargo of the Ship Oratava in the Decree mentioned has contrary to his Natural Allegiance to his Majesty combin'd and Confederated with Sundry other Persons inhabiting within the King of Spains Dominions to Succour, aid and assist the Subjects of the King of Spain his Majesty's Enemies, with Stores and Provisions from his Majestys Colony's in America: the said John M^cCarrick may be taken into Custody by the Marshall of this Court, and delivered over by him to the Governour of this Colony together with a Copy of the Decree or some other due Notice of his afores^d Crime, that he may be proceeded with According to due Course of Law

No. 25 And M^r John M^cCarrick the Claim^t in Court Moves for An Appeal from the s^d Court of Admiralty to the Commissioners appointed or to be Appointed under the Great Seal of Great Britain for receiving hearing and determining Appeals in Causes of Prizes, Which was granted and Allowed, the Appell^t Conforming himself to the Direction of the Law in that Case provided.

[Minute Book, 1740-1743]

CHARLES DAVIDSON VS. SLOOP *Amiable Theresa*, 1741

[Libel in prize. Evidence held insufficient to sustain answer that master of sloop libelled was neither in service of Spanish king nor had received instructions to attack British men-of-war. Appeal permitted to the Lords Commissioners of Appeals in Prize Causes. (Admiralty Papers, I, 26; Minute Book, 1740-1743)]