Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Cassanova v. *Our Sovereign Lady the Queen, the 'Ricardo Schmidt,' from the Vice-Admiralty Court of Sierra Leone; delivered the 2nd November*, 1866.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

THIS is a case of a foreign vessel, an Italian merchant ship, seized in the English harbour of Sierra Leone, on the ground of having violated the provisions of the Statute 5 George IV., cap. 113. It has been assumed throughout that this Statute authorizes the seizure of a foreign ship in British waters, if its provisions have been violated. That having been admitted, and taken as the basis of the whole of the proceeding, their Lordships do not think themselves under the necessity of giving any opinion on the point whether that construction of the Statute be right or not.

It is necessary to bear in mind that this seizure can be justified only on the grounds that are furnished by that Statute. The learned Judge in the Court below has decided, and very rightly, that there was no cause for the condemnation of the vessel; but he has refused to award damages or costs under the power given to him by the 35th Section of the Statute, because in his judgment the seizure and the prosecution were, under the circumstances of the case, justifiable. Whether there was, or was not, a probable ground for seizure must depend upon the state of the law as it stood at the time of that Statute, and as it is embodied therein. By a subsequent Act of 5 William IV., which is not applicable to the seizure of foreign

vessels in British harbours, but applies to the capture of foreign vessels on the high seas, a particular rule of evidence is given, viz. that the fact of there being on board the vessel an unreasonable quantity or number of water-casks, shall be considered as furnishing such a *presumptio juris* that the vessel was intended to be employed in the slave trade, as to require the Judge, even if the vessel be not condemned, to refuse any damages or any costs to the owner of the vessel as against the captor; provided, however, that the effect of the circumstance to which I have referred shall be neutralized or annulled if the ship have a certificate stating that security has been given that the casks should be only used for the reception of palm oil, or employed in some other lawful trade. Now, the learned Judge refers to that statute as enabling him to arrive at the conclusion that the existence on board this ship, the 'Ricardo Schmidt,' of an unusual quantity of water-casks is a circumstance of such grave suspicion as to justify the seizure. The learned Judge was not at liberty to use the rule of evidence introduced by that subsequent statute as applicable to the case before him. It was perfectly competent to him to refer to that statute as an Act that recognized the fact of having an unusual number of water-casks on board as a circumstance of suspicion; but the learned Judge was not at liberty to take that circumstance *per se*, as a Judge applying the Act of 5 William IV. might have done. He was bound to take it in conjunction with all the other circumstances of the case; for the rule that he had to abide by, the law which he had to administer, provides distinctly that costs and damages shall be given when it shall appear to the Court that the capture, seizure, or prosecution shall not be justified by the circumstances of the case. All the circumstances, therefore, were to be taken into consideration, and no peculiar weight or force ought to have been borrowed from the Act of 5 William IV. and attributed to the circumstance of this unusual number of water-casks.

The *bona fides* of the employment of the ship in trade is a thing established by the Judgment; and this *bonâ fide* employment of the ship was also, we think, manifest, or might have been manifest, to any person going on board the vessel. The

vessel is a very large ship, of a registered tonnage of about 600 tons, but capable of actually carrying a cargo of 900 tons. Such vessels are not of the class commonly engaged in the slave trade. The vessel, at the time she was seized, had previously been examined, and for some time detained by the Custom House authorities at Sierra Leone. They were satisfied by the result of their examination, and they accordingly released the vessel. In that state of circumstances, Lieutenant Dunlop, being an officer apparently accidentally at the harbour of Sierra Leone, not holding any official position, or having any official employment there, takes upon himself to visit the vessel and to seize her. When he visited the vessel, what did he find on board her? He found on board the remainder of a considerable outward cargo, a cargo fit for the purpose of trading upon the African coast. He found upon and within the vessel evidences of the fact that she had been engaged in such trade. He found the actual results of a *bonâ fide* commerce in the shape of some thousand gallons of palm oil, which had been already stored on board the vessel. He found plainly that the casks which had been used for the oil on board the vessel were of the same general description and character with the casks that were empty. Of the 111 casks that he found empty, 65 appear to have been clean, new casks; the others appear to have been previously used for the purpose of carrying oil. He received from the mate of the vessel (the captain at that time being on shore) the ship's papers. He immediately after the seizure had an interview with the captain, and obtained from him satisfactory intelligence with regard to the history of the ship, the ownership of the ship, and letters were produced to him that could have left in no reasonable man's mind any doubt of the ship having been originally fitted out for, and employed in, the ordinary purposes of commerce. He afterwards received from the Custom House the other papers of the ship. He had, from the captain, information that at the time of the seizure he was engaged on shore in the sale of the residue of the outward cargo to a gentleman of the greatest respectability in the colony, Mr. Heddle, to whom the captain had brought letters of recommendation, and also in pur-

chasing from Mr. Heddle 40,000 bushels of ground nuts, which the letter of the owner shows it was his original intention, and part of his instructions to the captain, to buy for the purpose of filling up the ship with a return cargo.

In face of all these circumstances, Mr. Dunlop detained the ship; and the question is whether, as the law stands under the 5th George IV., the mere fact of these empty casks being found in the hold of the ship is sufficient to weigh down at once all the other external manifest appearances of the ship being a *bonâ fide* trader, of her having gone forth as such, and been employed as such up to the time of her arrival in the harbour of Sierra Leone.

But in addition to the water-casks, Mr. Dunlop says that there were other suspicious circumstances. One of them is that the vessel had a second deck, which, he says, might have been used for a slave deck. Now the vessel is one of very considerable depth, and the evidence shows (what no man acquainted with the subject can doubt) that a vessel of that depth, carrying 900 tons, could not be loaded without the additional deck in question. The evidence is distinct that vessels of this size are furnished with a second deck. The evidence of one of the witnesses is even more positive, that a vessel of this size, inasmuch as if loaded she would not be safe without a second deck, could not obtain insurance if she had not that second deck. The second deck, therefore, instead of tending to create suspicion, tends to give confirmation to the conclusion that the vessel was *bonâ fide* intended to be engaged in trade and to be used as an ordinary ship of burden in commerce.

Mr. Dunlop further refers to the existence of a considerable quantity of cooking utensils on board the ship beyond what, in his judgment, the crew would require; but there is evidence upon that point, that in the opinion of two or three disinterested witnesses the amount of the ship's vessels for cooking was less than the ordinary wants of the captain and crew of such a vessel rendered necessary.

We have therefore no circumstances here to which any particular weight or force is to be given by law, as under the 5th William IV. would be the case, but we have a case to be judged of under all

the circumstances, whether any person going on board a ship lying in the harbour of Sierra Leone and examining her,—going over her,—could, from the mere circumstance of the number of water-casks, be warranted in arriving at the conclusion that this ship was intended to be engaged in the slave trade.

I need not point out, what was very well commented upon by one of the Counsel for the Appellant, that there may be great necessity for laying down clear and definite rules, as they are laid down in the 5th William IV. for the purpose of guiding captors at sea, for there the transaction is of necessity a hurried one, admitting of no very minute examination; and the Legislature therefore defines certain things in that statute which, if they are not plainly accounted for, shall constitute an amount of *probabilis causa* sufficient to exempt the captor from consequences even if the vessel be not condemned. But when you come to the case of a ship quietly lying at anchor in a British harbour, and having been there for some time; not manifesting the smallest indication of anxiety to quit the harbour, but actually and plainly engaged in *bonâ fide* trade within the harbour; the obligation on a seizor to justify what he has done is a very strict obligation, and one that cannot be discharged by a reference to circumstances which *per se* have not an overpowering weight on the mind at the time when the seizure was made. It appears that on the very day on which this seizure was made, not only was the captain on shore bargaining for cargo for his vessel, but some of these very casks, being no longer required for the ordinary requisitions of the trade in palm oil, were being sold, and had been sent on shore for the purpose of sale by the captain of the vessel.

With regard to the casks there was another circumstance which ought to have been looked to before the seizor ventured upon such an act as the seizing of the vessel; we mean, an enquiry whether the casks upon which his suspicion lighted were or were not to be found in the manifest of the vessel, and whether that manifest was accompanied or not by any proof that the ship had sailed with the knowledge of the proper Italian authorities that part of her stores consisted of these empty

casks. Now, without deciding that the documents produced would, if the case had arisen under the Statute of William IV., have amounted to a certificate of security having been given, yet it is clear, and it is a proof of the *bona fides* of the master of the ship, that he had drawn the attention of the authorities of his country to the fact of part of his lading consisting of these water-casks, and that his ship had been cleared by the authorities with a knowledge that these empty casks were on board. These papers were produced to Lieutenant Dunlop at or immediately after the time when the seizure was made. There was the fullest desire to give him information. The history of the vessel's proceedings he might have read from the log. The nature of her ownership was manifested by the documents that he received; the character of her antecedent employment was evidenced by the palm oil she had on board; the desire of carrying on *bonâ fide* commerce was evidenced by the very employment in which he found her, the captain being at that time engaged in procuring cargo on shore.

Now, we would ask, how is it possible for any merchant ship to visit the coast of Africa, and a British harbour on the coast of Africa, for the purpose of legitimate commerce, if under circumstances such as these she is liable to be seized merely upon the ground of her having certain articles on board, actually required for the purposes of the trade in which she professes to be engaged, and in which it is proved that she had for some time previously been actually engaged?

Their Lordships are therefore of opinion, that as to the existence of the water-casks, that circumstance is weighed down, explained, and its force entirely taken away by the other circumstances that were manifest and apparent; and that under the statute of the 5th George IV., that simple fact, adding to it the slave deck, adding to it the cooking utensils, did not, under the circumstances, constitute a reasonable *primâ facie* case for concluding that the vessel must be condemned unless those things were explained. There was no *probabilis causa* for seizure.

Therefore, taking all the circumstances of the case, as they appeared, or might and ought to have appeared, to the seizor at the time, there was

nothing that justified the seizure, and on these grounds their Lordships will humbly advise Her Majesty to reverse so much of the sentence as holds that the seizure and prosecution were justified by the circumstances, and to declare that the vessel ought to have been restored, together with damages and costs; and they will recommend Her Majesty to make the usual reference to the Admiralty Registrar, together with merchants to be associated with him, for the purpose of ascertaining the nature and amount of damages which, under the circumstances, ought to have been awarded to the Appellant.

Their Lordships are glad to find that the officers of the Crown have been directed to attend in support of the case of the Respondent. They think, however, that the national honour requires that damages and costs in this case should be given to the owner of the ship, and to them must of course be added the costs of this appeal.