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United States Vs. Lawrence

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Court : US Supreme Court

Decided On : 1795

Appeal No. : 3 U.S. 42

Appellant : United States

Respondent : Lawrence

Judgement :

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MOTION TO SHOW CAUSE

SYLLABUS

Where a judge of the district court, acting in his judicial capacity, determined that evidence was not sufficient to authorize him to proceed in a case before him, this Court has no power to compel him to decide according to the dictates of any judgment but his own, whatever might be the difference of sentiment entertained by the court.

A motion was made by the Attorney General of the United States (Bradford) for a rule to show cause why a mandamus should not be directed to John Lawrence, Judge of the District of New York, in order to compel him to issue a warrant, for apprehending Captain Barre, commander of the frigate *Le Perdrix,* belonging to the French Republic.

The case was this:

Captain Barre, soon after the dispersion of a French convoy on the American coast, voluntarily abandoned his ship and became a resident in New York. The Vice-Consul of the French Republic thereupon, made a demand in writing that Judge Lawrence would issue a warrant to apprehend Captain Barre as a deserter from *Le Perdrix* by virtue

of the 9th Article of the Consular Convention between the United States and France, which is expressed in these words:

"Art. 9. The consuls and vice-consuls may cause to be arrested the captains, officers, mariners, sailors, and all other persons being part of the crews of the vessels of their respective nations who shall have deserted from the said vessels in order to send them back and transport them out of the country. For which purpose, the said consuls and vice-consuls shall address themselves to the courts, judges, and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the register of the vessel or ship's roll that those men were part of the said crews, and on this demand, so proved (saving, however, where the contrary is proved), the delivery shall not be refused; and there shall be given all aid and assistance to the said consuls and vice-consuls for the search, seizure, and arrest of the said deserters, who shall even be detained and kept in the prisons of the country at their request and expense until they shall have found an opportunity of sending them back; but if they be not sent back within three months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause."

To the vice-consul's demand the judge answered

"That it was in his opinion necessary, before a warrant could issue, that the applicant should prove by the register of the ship, or role d'equipage, that Captain Barre was in fact one of the crew of *Le Perdrix.* "

The vice-consul replied

"That the ship's register was not in his possession, but at the same time stated various reasons why he should be admitted to produce collateral proof of the fact in question, instead of being obliged to exhibit the ship's register itself, and declared that in such case he would give the judge all the proof that could be desired."

The judge persevering in his original opinion on the subject that "the mode of proof mentioned in the 9th article of the Convention was the only legitimate one, and that he could not dispense with it," the vice-consul obtained a copy of the role d'equipage, certified by the French vice-consul at Boston, under the consular seal and transmitted it to the judge, with another demand for a warrant to arrest Capt. Barre, contending that this copy was entitled to the same respect as the original instrument by virtue of the 5th article of the convention, which is in these words:

"Art. 5. The Consuls and vice-consuls respectively shall have the exclusive right of receiving in their chancery or on board of vessels the declarations and all the other acts which the captains, masters, crews, passengers, and merchants of their nation may choose to make there, even their testaments and her disposals by last will. And the copies of the said acts, duly

authenticated by the said Consuls or vice-consuls, under the seal of their consulate, shall receive faith in law, equally as their originals would, in all the tribunals of the dominions of the Most Christian King and of the United States. They shall also have, and exclusively, in case of the absence of the testamentary executor, administrator, or legal heir, the right to inventory, liquidate, and proceed

to the sale of the personal estate left by subjects or citizens of their nation who shall die within the extent of their consulate; they shall proceed therein with the assistance of two merchants of their said nation, or for want of them of any other at their choice, and shall cause to be deposited in their chancery the effects and papers of the said estates, and no officer, military, judiciary, or of the police of the country shall disturb them or interfere therein in any manner whatsoever, but the said consuls and vice-consuls shall not deliver up the said effects nor the proceeds thereof to the lawful heirs or to their order till they shall have caused to be paid all debts which the deceased shall have contracted in the country, for which purpose the creditors shall have a right to attach the said effects in their hands, as they might in those of any other individual whatever, and proceed to obtain sale of them till payment of what shall be lawfully due to them. When the debts shall not have been contracted by judgment, deed, or note the signature whereof shall be known, payment shall not be ordered but on the creditor's giving sufficient surety, resident in the country, to refund the sums he shall have unduly received, principal, interest and costs, which surety nevertheless shall stand duly discharged, after the term of one year in time of peace and of two in time of war, if the demand in discharge cannot be formed before the end of this term against the heirs who shall present themselves. And in order that the heirs may not be unjustly kept out of the effects of the deceased, the consuls and vice-consuls shall notify his death in some one of the gazettes published within their consulate, and they shall retain the said effects in their hands four months to answer all demands which shall be presented, and they shall be bound after this delay to deliver to the persons succeeding thereto, what shall be more than sufficient for the demands which shall have been formed."

The judge, however, declared that

"he did not consider the copy of the register to be the kind of proof designated by the 9th article of the convention, and that till the proof specified by the express words of the article was exhibited, he could not deem himself authorized to issue a warrant for apprehending Captain Barre."

Under these circumstances, the minister of the French Republic applied to the Executive of the United States, complaining

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of the judge's refusal to issue a warrant against Captain Barre as a manifest departure from the positive provisions of the consular convention, and the present motion was made in order to obtain the opinion of the Supreme Court upon the subject for the satisfaction of the minister.

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By the Court: We are clearly and unanimously of opinion, that a mandamus ought not to issue. It is evident that the district judge was acting in a judicial capacity when he determined that the evidence was not sufficient to authorize his issuing a warrant for apprehending Captain Barre, and (whatever might be the difference of sentiment entertained by this Court) we have no power to compel a judge to decide according to the dictates of any judgment but his own. It is

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unnecessary, however, to declare or to form at this time any conclusive opinion on the question which has been so much agitated respecting the evidence required by the 9th article of the consular convention.

The Rule discharged.

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