

**United States Vs. La Vengeance**

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**Court :** US Supreme Court

**Decided On :** 1796

**Appeal No. :** 3 U.S. 297

**Appellant :** United States

**Respondent :** La Vengeance

**Judgement :**

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**United States v. La Vengeance**

**3 U.S. (3 Dall.) 297**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF NEW YORK*

## **SYLLABUS**

Where muskets were carried by the passengers on board of a French armed vessel from New York to a port in the West Indies, and powder was taken from on board a French frigate in the harbor of New York and carried by this same vessel

to Port de Paix, a proceeding against the vessel, as forfeited under the Act of Congress passed 22 May, 1793, prohibiting for one year the exportation of arms and ammunition, is a cause of admiralty and maritime jurisdiction. It is a process of the nature of a libel *in rem*, and does not in any degree touch the person of the offender, and no jury was required for the trial of the same.

Where there appeared some ground for the prosecution, costs were refused.

It appeared on the return of the record that *La Vengeance*, a French privateer, had captured and carried into New York a Spanish ship, called *La Princesa de Asturias*, and that thereupon Don Diego Pintardo, the owner of the prize, filed a libel in the district court complaining of the capture, alleging that *La Vengeance* was illegally fitted out within the United States, and praying restitution and damages; but on a claim exhibited in behalf of the owners of the privateer, the district court dismissed the Libel with costs, and upon appeal to the circuit court that decree was affirmed. The fate of Pintardo's Libel determined likewise the fate of an information filed *ex officio* by the district attorney claiming the privateer as a forfeiture upon the same allegation that she had been illegally armed and equipped in the United States in violation of the act of Congress, and in both these decisions the parties acquiesced.

But a third proceeding had been instituted against the privateer in which the district attorney filed *ex officio* an information stating

"that Aquila Giles, marshal of the said district, had seized to the use of the United States, as forfeited, a certain schooner or vessel called *La Vengeance*, with her tackle, apparel, and furniture, the property of some person or persons to the said attorney unknown, for that certain cannons, muskets, and gunpowder, to-wit, 2 cannon, 20 muskets, and 50 boxes of gunpowder were, between 22

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May, 1794, and 22 May, 1795,   \* exported in the said schooner or vessel from the said United States, to-wit, from Sandy Hook in the State of New Jersey (that is to say, from the City of New York in the New York District) to a foreign country, to-wit,

to Port-de-Paix in the Island of St. Domingo in the West Indies, contrary to the prohibitions of the act in such case made and provided,"

and praying judgment of forfeiture accordingly. A claim was filed on behalf of the owners of the privateer denying the exportation of cannon or muskets and alleging that the gunpowder constituted part of the equipment of the *Semillante*, a frigate belonging to the Republic of France, and had been taken from her and put on board the privateer, to be carried to Port-de-Paix by order of the proper officer of the said Republic. It was, also, alleged, that the schooner after her arrival at Port-de-Paix was *bona fide* sold to one Jaques Rouge, a citizen of the French Republic, in whose behalf the claim was instituted.

After argument, the district judge decreed that the schooner should be forfeited, but upon appeal to the circuit court the decree was reversed and Judge Chace certified that the judgment of reversal was founded on the following facts:

"1st. That from 18 to 20 muskets, were carried in the said schooner *La Vengeance* in the month of March or April, 1795, from the United States of America to a foreign country, to-wit, to Port-de-Paix, in the West Indies, but that such muskets were the private property of French passengers on board of the said schooner, carried out for their own use and not by way of merchandise."

"2d. That upwards of 40 boxes of gunpowder were carried at the same time, from the said United States in the said schooner to Port-de-Paix aforesaid, but that such gunpowder was taken from on board the *Semillante* frigate, lying in the harbor of New York, was a part of her equipment, did not appear ever to have been landed in the said United States, was carried out for the use of the French Republic, was delivered to the commander in chief at Port-de-Paix, and was not exported by way of trade or merchandise."

From this judgment of the circuit court a writ of error was brought on behalf of the United States, the general errors were assigned, and the defendant in error pleaded *in nullo est erratum*.

By the Court. We are perfectly satisfied upon the two points that have been agitated in this cause. In the first place, we think that it is a cause of admiralty and maritime jurisdiction. The exportation of arms and ammunition is simply the offense, and exportation is entirely a water transaction. It appears indeed on the face of the libel to have commenced at Sandy Hook, which certainly must have been upon the water. In the next place, we are unanimously of opinion that it is a civil cause. It is a process of the nature of a libel *in rem*, and does not in any degree touch the person of the offender.

In this view of the subject, it follows of course that no jury was necessary, as it was a civil cause, and that the appeal to the circuit court was regular, as it was a cause of admiralty and maritime jurisdiction. Therefore let the decree of the circuit court be

*Affirmed with costs.*

But on opening the Court the next day, THE CHIEF JUSTICE directed the words "with costs" to be struck out of the entry, as there appeared to have been some cause for the prosecution. He observed, however, that in doing this the Court did not mean to be understood as at all deciding the question whether in any case it could award costs against the United States, but left it entirely open for future discussion.

\* The information was founded on the act of Congress, passed 22 May 1794, prohibiting, for one year ensuing, the exportation of arms and ammunition.

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