

Del Col Vs. Arnold

Del Col Vs. Arnold

SooperKanoon Citation : sooperkanoon.com/78153

Court : US Supreme Court

Decided On : 1796

Appeal No. : 3 U.S. 333

Appellant : Del Col

Respondent : Arnold

Judgement :

Del Col v. Arnold - 3 U.S. 333 (1796)

U.S. Supreme Court Del Col v. Arnold, 3 U.S. 3 Dall. 333 333 (1796)

Del Col v. Arnold

3 U.S. (3 Dall.) 333

SYLLABUS

What is probable cause of seizure and bringing into port.

The right of a belligerent cruiser of seizing upon the high seas and bringing in a vessel for further examination does not authorize or excuse any spoliation or damage done to the property, and the captors proceed at their peril, and are liable for all the consequent injury and loss.

The owners of a privateer are responsible for the conduct of their agents, the officers and crew, to all the world, and the measure of such responsibility is the full value of the property injured or destroyed.

A libel was filed in the District Court of South Carolina by the defendant in error against Del Col and others, the owners of a French privateer called *La Montagne*, and of the ship *Industry* and her cargo, a prize to the privateer, lying in the harbor of Charleston, which the libellant had caused to be attached. The case appeared to be briefly this:

The privateer had captured as prize on the high seas an American brig called the *Grand Sachem*, commanded by Ebenezer Baldwin and owned by the defendant in error. At the time of taking possession of the brig, a sum of \$9,993 was removed from her into the privateer, a prize master and several mariners were put on board of her, and they were directed to steer for Charleston. Just, however, as they hove in sight of the lighthouse, the *Terpsichore*, a British frigate, captured the privateer and gave chase to the prize, whereupon the prize master run her into shoal water, and there she was abandoned by all on board except a sailor originally belonging to her crew, and a passenger. In a short time, she drove on shore, was scuttled and plundered. When the marshal came with process against the brig, she was in the joint possession of the custom house Officers and the privateer's men; the latter of whom prevented the execution of the process. The *Industry* and her cargo were then attached by the libellant, and an agreement was entered into between the parties that they should be sold and the proceeds paid into court to abide the issue of the suit.

On the evidence, it appeared that the *Grand Sachem* had been engaged in a smuggling trade at New Orleans, the Spanish Main, etc., and for the purpose of carrying it on, she had procured a register in the name of a Spanish subject and sailed under Spanish colors. Besides other suspicious circumstances, she had on board, at the time of her capture, a variety of accounts

describing her as Spanish property, and a trunk containing her papers (among which, it was alleged, there was a Spanish register) had been collusively delivered up to the owner, the defendant in error, by one of the sailors. The money removed from her and taken in the privateer by the British frigate had been condemned in Jamaica.

The district court pronounced a decree in favor of the libellant for the sum of \$33,329.87 (the full value of the *Grand Sachem*, and her cargo) with interest at 10 percent from 8 August, 1795, the day of capture; declared "that the proceeds of the ship *Industry* and her cargo, attached in this cause, be held answerable to that amount," and directed that the defendant in error should enter into a stipulation to account to the plaintiffs in error for the money condemned as prize to the British frigate, or any part of it that he might recover, as neutral property. This decree was affirmed in the circuit court, and thereupon the present writ of error was instituted.

The case was considered in four points of view:

1st. Whether there was sufficient probable cause for seizing and bringing the *Grand Sachem* into port for further examination, and adjudication?

2d. Whether, if there was such sufficient cause, the captors can, at all, be made liable for the consequent injury and loss?

3d. Whether if the immediate captors, who run the vessel into shoal water and scuttled her are responsible, that responsibility can be devolved on the owners of the privateer, who had not authorized or contributed to the misconduct?

And 4th. Whether the *Industry* and her cargo could, before condemnation, be attached and made liable in this suit as the property of the captors?

The Court delivered, at different times, the following opinions:

On the first point, that there was a sufficient probable cause for seizing and bringing the *Grand Sachem* into port.

On the second point, that the right of seizing and bringing in a vessel for further examination, does not authorize or excuse any spoliation or damage done to the property, but that the captors proceed at their peril, and are liable for all the consequent injury and loss.

On the third point, that the owners of the privateer are responsible for the conduct of their agents the officers and crew

Page 3 U. S. 335

to all the world, and that the measure of such responsibility is the full value of the property injured, or destroyed. *

On the fourth point, that whatever might originally have been the irregularity in attaching the *Industry* and her cargo, it is completely obviated, since the captors had a power to sell the prize, and by their own agreement they have consented that the proceeds of the sale should abide the issue of the present suit.

The decree of the circuit court affirmed.

* CHASE and IREDELL, JUSTICES, agreed that the owners were responsible, but differed as to the extent, observing that the privateer's men were justifiable in abandoning to save themselves from captivity, but that the removal of the money into the privateer and the subsequent scuttling of the brig were unlawful acts.