

The Aurora Vs. United States

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Court : US Supreme Court

Decided On : 1813

Appeal No. : 11 U.S. 382

Appellant : The Aurora

Respondent : United States

Judgement :

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U.S. Supreme Court The Aurora v. United States, 11 U.S. 7 Cranch 382 382 (1813)

The Aurora v. United States

11 U.S. (7 Cranch) 382

APPEAL FROM THE DISTRICT COURT

FOR THE DISTRICT OF ORLEANS

SYLLABUS

The legislature may make the revival of an act depend upon a future event and direct that event to be made known by proclamation.

When an act of Congress is revived by a subsequent act, it is revived precisely in that form and with that effect which it had at the moment when it expired.

In a libel, it is not necessary to state any fact which constitutes the defense of the claimant.

The Nonintercourse Act of March 1, 1809, was, by force of the Act of May 1, 1810, and the President's proclamation of November 2, 1810, revived on 2 February, 1811.

This was an appeal from the sentence of the District Court for the District of Orleans condemning the cargo of the brig *Aurora* for having been imported from Great Britain, in violation of the 4th and 5th sections of the Nonintercourse Act of March 1, 1809, vol. 9, p. 243, which it was contended were in force against Great Britain on 20 February, 1811 (when this cargo was seized), by virtue of the Act of May 1, 1810, vol. 10, p. 186, and the President's proclamation of November 2, 1810.

By the 4th section of the Act of March 1, 1809, it is enacted

"That from and after 20 May next, it shall not be lawful to import into the United States

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or the territories thereof any goods, wares or merchandise whatever from any port or place situated in Great Britain or Ireland or in any of the colonies or dependencies of Great Britain, nor from any port or place situated in France or in any of her colonies or dependencies, nor from any port or place in the actual possession of either Great Britain or France."

By the 5th section of the same act, it is enacted

"That whenever any article or articles the importation of which is prohibited by this act shall, after 20 May, be imported into the United States or the territories thereof contrary to the true intent and meaning of this act, . . . all such articles . . . shall be

forfeited."

By the 11th section of the same act it is provided

"That the President of the United States be and he hereby is authorized, in case either France or Great Britain shall so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, to declare the same by proclamation, after which the trade suspended by this act and by the act laying an embargo . . . may be renewed with the nation so doing."

This act was to continue in force only to the end of the then next session of Congress, but the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 17th and 18th sections were, by the Act of June 28, 1809, continued to the end of the next session.

On 19 April, 1809, in consequence of the arrangement with Mr. Erskine, the President issued his proclamation declaring that Great Britain had so revoked her edicts, &c.;, whereby the law ceased to operate against her. But in consequence of the disavowal of Mr. Erskine's arrangement by the British government, that proclamation was afterwards revoked.

The Act of 1 March, 1809, expired with the session of Congress on 1 May, 1810, on which day Congress passed an act (vol. 10, p. 186) the 4th section of which enacted

"That in case either Great Britain or France shall, before the third day of March

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next, so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, which fact the President of the United States shall declare by proclamation, and if the other nation shall not within three months thereafter so revoke or modify her edicts in like manner, then the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eighteenth sections of the act, entitled 'An act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes' shall, from and after the expiration of three months from the date of the proclamation

aforesaid, be revived and have full force and effect so far as relates to the dominions, colonies, and dependencies of the nation thus refusing or neglecting to revoke or modify her edicts in manner aforesaid. And the restrictions imposed by this act shall, from the date of such proclamation, cease and be discontinued in relation to the nation revoking or modifying her decrees in manner aforesaid."

On 2 November, 1810, the President issued his proclamation declaring that France had so revoked or modified her edicts as that they ceased to violate the neutral commerce of the United States.

By the Act of March 2, 1811, vol. 10, p. 346, sec. 1, it is enacted

"That no vessel owned wholly by a citizen or citizens of the United States, which shall have departed from a British port prior to 2 February, 1811, and no merchandise owned wholly by a citizen or citizens of the United States imported in such vessel, shall be liable to seizure or forfeiture on account of any infraction or presumed infraction of the provisions of the act to which this is a supplement [the Act of May 1, 1810]."

The 2d section provides that in case Great Britain should so revoke or modify her edicts, &c.;, the President shall declare the same by proclamation.

The 3d section enacts that until the proclamation aforesaid "shall have been issued, the several provisions of the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and

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18th sections of the act entitled *An act to interdict,*" . . . [the Act of March 1, 1809] shall have full force and be immediately carried into effect against Great Britain, her colonies and dependencies.

The *Aurora* cleared out from Liverpool on 11 December, 1810, sailed on the 16th, and arrived at New Orleans, between 2 and 20 February, 1811. The President's proclamation of 2 Nov. 1810, was known in Liverpool on 13 December.

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JOHNSON, J. delivered the opinion of the Court as follows:

This is an appeal from a decision of the District Court of Orleans on a libel preferred against the goods in question under the Nonintercourse Acts of March 1, 1809, and May 1, 1810.

These goods were claimed by Robert Burnside, a citizen of Orleans, as his property, and the material questions in the cause are

1st. Is the property American, in which case it is exempted from forfeiture by a subsequent law, *viz.*, of March 2, 1811.

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2d. Was the Act of 1 March, 1809, revived by the President's proclamation at all, and if revived, did it commence its operation on 2 February, or on 20 May following, the time of issuing that proclamation.

On the question of fact, the Court is of opinion that the evidence is not sufficient to prove the property American. The national character of the property the claimant might easily have established by his correspondence and the examination of witnesses in Europe. No such evidence is resorted to. The bill of lading alone is resorted to, on which it is said to be shipped on account of a citizen of the United States and consigned to Burnside, but the name of the owner is not inserted. Here again, the defect of evidence may have been supplied by evidence who this citizen was, but no such evidence is adduced.

In the examination of the two clerks of John Rason & Co. of Liverpool, it is simply stated that these goods were shipped by John Richardson of Liverpool, but on whose account they do not state, nor does it appear that they were examined to that point.

Upon the whole, we are of opinion that the absence of proof which might so easily have been supplied will authorize a conclusion that the property was not

American.

On the second point, we can see no sufficient reason why the legislature should not exercise its discretion in reviving the Act of March 1, 1809, either expressly or conditionally, as its judgment should direct. The 19th section of that act, declaring that it should continue in force to a certain time and no longer, could not restrict its power of extending its operation without limitation upon the occurrence of any subsequent combination of events.

On the question when the operation of the 4th section of the act should commence, we are of opinion that by reviving an act, the legislature must be understood to give it, from the time of its revival, precisely that force and effect which it had at the moment when it expired.

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And that a suspended operation to 20 May would be wholly inconsistent with the words made use of in the 4th section of the Act of May, 1810, *viz.*, "shall be revived and have full force and operation," and therefore, that its operation commenced on 2 Feb., 1811.

Some objections have been made to the sufficiency of the libel because it does not negative the fact of American property. But on that subject we are of opinion that in no case can it be necessary to state in a libel any fact which constitutes the defense of the claimant or a ground of exception of the operation of the law on which the libel is founded.