L'invincible

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Appeal No. : 14 U.S. 238

Appellant : L'invincible

Judgement :

L'Invincible - 14 U.S. 238 (1816)
U.S. Supreme Court L'Invincible, 14 U.S. 1 Wheat. 238 238 (1816)

L'Invincible

14 U.S. (1 Wheat.) 238

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

During the late war between the United States and Great Britain, a French privateer duly commissioned, was captured by a British cruiser, afterwards recaptured by a privateer of the United States, again captured by a squadron of British frigates, and recaptured by another United States privateer and brought into a port of the United States for adjudication. Restitution, on payment of salvage,

was, claimed by the French consul. A claim was also interposed by citizens of the United States, who alleged that their property had been unlawfully taken by the French vessel before her first capture on the high seas, and prayed an indemnification from the proceeds. Restitution to the original French owner was decreed, and it was held that the courts of this country have no jurisdiction to redress any supposed torts committed on the high seas upon the property of our citizens by a cruiser regularly commissioned by a foreign and friendly power except when such cruiser has been fitted out in violation of our neutrality.

The French private armed ship *L'Invincible,* duly commissioned as a cruiser, was, in March, 1813, captured by the British brig of war *La Mutine.* In the same month she was recaptured by the American privateer *Alexander,* was again captured on or about 10 May, 1813, by a British squadron consisting of the frigates *Shannon* and *Tenedos,* and afterwards, in the same month, again recaptured by the American privateer *Young*

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Teazer, carried into Portland, and libeled in the district Court of Maine for adjudication as prize of war. The proceedings, so far as material to be stated, were as follows:

At a special term of the district court held in June, 1813, a claim was interposed by the French consul on behalf of the French owners, alleging the special facts above mentioned and claiming restitution of the ship and cargo on payment of salvage. A special claim was also interposed by Mark L. Hill and Thomas McCobb, citizens of the United States and owners of the ship *Mount Hope,* alleging, among other things, that the said ship, having on board a cargo on freight belonging to citizens of the United States and bound on a voyage from Charleston, S.C., to Cadiz, was, on the high seas, in the latter part of March, 1813, in violation of the law of nations and of treaties, captured by *L'Invincible* before her capture by *La Mutine* and carried to places unknown to the claimants, whereby the said ship *Mount Hope* and cargo became wholly lost to the owners, and thereupon praying, among other things, that after payment of salvage, the residue of said ship *L'Invincible* and

cargo might be condemned and sold for the payment of the damages sustained by the claimants. At the same term, by consent, an interlocutory decree of condemnation to the captors passed against said ship *L'Invincible,* and she was ordered to be sold and one moiety of the proceeds, after deducting expenses, was ordered to be paid to the captors, as salvage, and the other moiety to be brought into court to abide the final decision of the respective claims of

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the French consul and Messrs. Hill & McCobb. The cause was then continued for a further hearing unto September term, 1813, when Messrs. Maisonarra & Devouet, of Bayonne, owners of *L'Invincible,* appeared under protest and in answer to the libel and claim of Messrs. Hill & McCobb alleged, among other things, that the ship *Mount Hope* was lawfully captured by *L'Invincible* on account of having a British license on board and of other suspicious circumstances, inducing a belief of British interests, and ordered to Bayonne for adjudication; that (as the protestants believed) on the voyage to Bayonne, the *Mount Hope* was recaptured by a British cruiser, sent into some port of Great Britain, and there finally restored by the court of admiralty to the owners, after which she pursued her voyage and safely arrived with her cargo, at Cadiz, and the protestants thereupon prayed that the claim of Messrs. Hill & McCobb might be dismissed. The replication of Messrs. Hill & McCobb denied the legality of the capture, and the having a British license on board the *Mount Hope,* and alleged embezzlement and spoliation by the crew of *L'Invincible,* upon the capture; admitted the recapture by a British cruiser and the restitution by the admiralty upon payment of expenses, and prayed that the protestants might be directed to appear absolutely and without protest. Upon these allegations the district court overruled the objections to the jurisdiction of the court and compelled the owners of *L'Invincible* to appear absolutely and without protest, and thereupon the

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owners appeared absolutely and alleged the same matters in defense which were stated in their answer under protest, and prayed the court to assign Messrs. Hill &

McCobb to answer interrogatories touching the premises, which was ordered by the court. Accordingly, Messrs. Hill & McCobb made answer to the interrogatories proposed, except an interrogatory which required a disclosure of the fact whether there was a British license on board, which McCobb (who was master of the *Mount Hope* at the time of the capture) declined answering upon the ground that he was not compelled to answer any question the answer to which would subject him to a penalty, forfeiture, or punishment, and this refusal, the district court, on application, allowed. Hill, in answer to the same interrogatory, denied any knowledge of the existence of a British license. The cause was thereupon heard on the allegations and evidence of the parties, and the district court decreed that Messrs. Hill & McCobb should recover against the owners of *L'Invincible* the sum of $9,000 damages and the costs of suit. From this decree the owners appealed to the circuit court, and in that court their plea to the jurisdiction was sustained, and the claim of Messrs. Hill & McCobb dismissed, with costs. An appeal was thereupon entered by them to this Court.

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JOHNSON, J., delivered the opinion of the Court.

It would be difficult to distinguish this case in principle from those of the *Cassius* and the *Exchange,* decided in this Court. The only circumstance, in fact, in which they differ is that in those cases, the vessels were the property of the nation; in this, it belongs to private adventurers. But the commission under which they acted was the same, the same sovereign power which could claim immunities in those cases equally demands them in this, and although the privateer may be considered a volunteer in the war, it is not less a part of the efficient national force set in action for the purpose of subduing an enemy. There may be, indeed, one shade of difference between them and it --

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that which is suggested by Rutherforth in the passage quoted in the argument. The hull, or the owners of the privateer, may perhaps, under some circumstances,

be subject to damages in a neutral court after the courts of the captor have decided that the capture was not sanctioned by his sovereign. But until such a decision, the seizure by a private armed vessel is as much the act of the sovereign, and entitled to the same exemption from scrutiny, as the seizure by a national vessel. In the case of the *Cassius,* which belonged to the French republic, the vessel was finally prosecuted and condemned on an information *qui tam* under the act of Congress for an illegal outfit, and thus had applied to her, under the statute, the principle which dictated the decision in the case of *Talbot v. Jansen* with relation to a private armed vessel. As to the restitution of prizes made in violation of neutrality, there could be no reason suggested for creating a distinction between the national and the private armed vessels of a belligerent. Whilst a neutral yields to other nations the unobstructed exercise of their sovereign or belligerent rights, her own dignity and security require of her the vindication of her own neutrality and of her sovereign right to remain the peaceable and impartial spectator of the war. As to her it is immaterial in whom the property of the offending vessel is vested. The commission under which the captors act is the same, and that alone communicates the right of capture even to a vessel which is national property.

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But it is contended that, admitting the general principle that the exclusive cognizance of prize questions belongs to the capturing power, still the peculiar circumstances of this case constitute an exception inasmuch as the recapture of the *Mount Hope* puts it out of the power of the French courts to exercise jurisdiction over the case. This leads us to inquire into the real ground upon which the exclusive cognizance of prize questions is yielded to the courts of the capturing power. For the appellants it is contended that it rests upon the possession of the subject matter of that jurisdiction, and as the loss of possession carries with it the loss of capacity to sit in judgment on the question of prize or no prize, it follows that the rights of judging reverts to the state whose citizen has been divested of his property. On the other hand, I presume, by the reference to Rutherforth, we are to understand it to be contended that it is a right conceded by

the customary law of nations, because the captor is responsible to his sovereign and the sovereign to other nations.

But we are of opinion that it rests upon other grounds, and that the views of Vattel on the subject are the most reconcilable to reason, and the nature of things, and furnish the easiest solution of all the questions which arise under this head. That it is a consequence of the equality and absolute independence of sovereign states, on the one hand, and of the duty to observe uniform impartial neutrality, on the other.

Under the former, every sovereign becomes the acknowledged arbiter of his own justice, and cannot,

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consistently with his dignity, stoop to appear at the bar of other nations to defend the acts of his commissioned agents, much less the justice and legality of those rules of conduct which he prescribes to them. Under the latter, neutrals are bound to withhold their interference between the captor and the captured; to consider the fact of possession as conclusive evidence of the right. Under this it is also that it becomes unlawful to divest a captor of possession even of the ship of a citizen, when seized under a charge of having trespassed upon belligerent rights.

In this case, the capture is not made as of a vessel of the neutral power, but as of one who, quitting his neutrality, voluntarily arranges himself under the banners of the enemy. On this subject there appears to be a tacit convention between the neutral and belligerent that, on the one hand, the neutral state shall not be implicated in the misconduct of the individual, and on the other that the offender shall be subjected to the exercise of belligerent right. In this view, the situation of a captured ship of a citizen is precisely the same as that of any other captured neutral -- or rather the obligation to abstain from interference between the captor and captured becomes greater, inasmuch as it is purchased by a concession from the belligerent, of no little importance to the peace of the world and particularly of the nation of the offending individual. The belligerent contents himself with cutting

up the unneutral commerce, and makes no complaint to the neutral power, not even

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where the individual rescues his vessel and escapes into his own port after capture.

Testing this case by these principles, it will be found that to have sustained the claim of the appellants, the court below would have violated the hospitality which nations have a right to claim from each other and the immunity which a sovereign commission confers on the vessel which acts under it, that it would have detracted from the dignity and equality of sovereign states by reducing one to the condition of a suitor in the courts of another, and from the acknowledged right of every belligerent to judge for himself when his own rights on the ocean have been violated or evaded, and finally that it would have been a deviation from that strict line of neutrality which it is the universal duty of neutrals to observe -- a duty of the most delicate nature with regard to her own citizens, inasmuch as through their misconduct she may draw upon herself the imputation of secretly supporting one of the contending parties. Under this view of the law of nations on this subject, it is evident that it becomes immaterial whether the *corpus* continue *sub potestate* of the capturing power or not. Yet if the recapture of the prize necessarily draws after it consequences so fatal to the rights of an unoffending individual as have been supposed in the argument, it may well be asked shall he be referred for redress to courts which, by the state of facts, are rendered incompetent to afford redress?

The answer is that this consequence does not follow from the recapture. The courts of the captor

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are still open for redress. The injured neutral, it is to be presumed, will there receive indemnity for a wanton or illicit capture, and if justice be refused him, his own nation is bound to vindicate or indemnify him.

Some confusion of idea appears to hang over this doctrine, resulting chiefly from a doubt as to the mode in which the principle of exclusive cognizance is to be applied in neutral courts to cases as they arise, and this obscurity is increased by the apparent bearing of certain cases decided in this Court in the years 1794 and 1795.

The material questions necessary to be considered in order to dissipate these doubts are 1st, does this principle properly furnish a plea to the jurisdiction of the admiralty courts? 2d, if not, then does not jurisdiction over the subject matter draw after it every incidental or resulting question relative to the disposal of the proceeds of the *res subjecta?*

The first of these questions was the only one settled in the case of *Glass v. Betsey,* and the case was sent back with a view that the district court should exercise jurisdiction, subject, however, to the law of nations on this subject as the rule to govern its decision.

And this is certainly the correct course. Every violent dispossession of property on the ocean is *prima facie* a maritime tort; as such, it belongs to the admiralty jurisdiction. But sitting and judging, as such courts do, by the law of nations, the moment it is ascertained to be a seizure by a commissioned cruiser, made in the legitimate exercise of the rights

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of war, their progress is arrested, for this circumstance is in those courts a sufficient evidence of right.

That the mere fact of seizure as prize does not, of itself, oust the neutral admiralty court of its jurisdiction is evident from this fact, that there are acknowledged cases in which the courts of a neutral may interfere to divest possessions -- to-wit, those in which her own right to stand neutral is invaded -- and there is no case in which the court of a neutral may not claim the right of determining whether the capturing vessel be in fact the commissioned cruiser of a belligerent power. Without the exercise of jurisdiction thus far, in all cases, the power of the admiralty would be

inadequate to afford protection from piratical capture. The case of *Talbot v. Jansen,* as well in the reasoning of the judges as in the final decision of the case, is fully up to the support of this doctrine. But it is supposed that the case of the *Mary Ford* supports the idea that as the court had acknowledged jurisdiction over the question of salvage, its jurisdiction extended over the whole subject matter, and authorized it to proceed finally to dispose of the residue between the parties litigant.

That case certainly will not support the doctrine to the extent contended for in this case. It is true that the court there lay down a principle which in its general application is unquestionably correct, and which, considered in the abstract, might be supposed applicable to the present case. But this presents only one of innumerable cases which occur in

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our books to prove how apt we are to misconceive and misapply the decisions of a court by detaching those decisions from the case which the court propose to decide. The decision of the Supreme Court in that case is in strict conformity with that of the circuit court in the present case. For when the court come to apply their principle, it does not enter into the question of prize between the belligerents, but decree the residue to the last possessor, thus making the fact of possession, as between the parties litigant, the criterion of right, and this is unquestionably consistent with the law of nations. Those points, which can be disposed of without any reference to the legal exercise of the rights of war, the court proceeds to decide, but those which necessarily involve the question of prize or no prize it remits to another tribunal.

It would afford us much satisfaction could we with equal facility vindicate the consistency of this Court in the case of *Del. Col v. Arnold.* To say the least of that case, it certainly requires an apology. We are, however, induced to believe from several circumstances that we have transmitted to us but an imperfect sketch of the decision in that case. The brevity with which the case is reported, which we are informed had been argued successively at two terms by men of the first legal

talents, necessarily suggests this opinion, and when we refer to the case of the *Cassius,* decided but the term preceding, and observe the correctness with which the law applicable to this case in principle is laid down in

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the recital to the prohibitions, we are confirmed in that opinion.

But the case itself furnishes additional confirmation. There is one view of it in which it is reconcilable to every legal principle. It appears that when pursued by the *Terpsicore,* the *Grand Sachem* was wholly abandoned by the prize crew and left in possession of one of the original American crew and a passenger; that, in their possession, she was driven within our territorial limits and was actually on shore when the prize crew resumed their possession and plundered and scuttled her. Supposing this to have been a case of total dereliction (an opinion which, if incorrect, was only so on a point of fact, and one in support of which much might to said, as the prize crew had no proprietary interest, but only a right founded on the fact of possession), it would follow that the subsequent resumption of possession was tortious, and subjected the parties to damages. On the propriety of the seizure of the *Industry* to satisfy those damages the court give no opinion, but place the application of the proceeds of the sale of this vessel on the ground of consent -- a principle on the correctness of the application of which to that case the report affords no ground to decide.

But admitting that the case of the *Grand Sachem* was decided under the idea that the courts of the neutral can take cognizance of the legality of belligerent seizure, it is glaringly inconsistent with the acknowledged doctrine in the case of the *Cassius* and of *Talbot v. Jansen,* decided the term next

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preceding, and in the *Mary Ford,* decided at the same term with that of the *Grand Sachem.* The subject has frequently, since that term, been submitted to the consideration of this Court, and the decision has uniformly been that it is a question exclusively proper for the courts of the capturing power.

Sentence affirmed.