

**The Anne**

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**Court :** US Supreme Court

**Decided On :** 1818

**Appeal No. :** 16 U.S. 435

**Appellant :** The Anne

**Judgement :**

The Anne - 16 U.S. 435 (1818)

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**The Anne**

**16 U.S. (3 Wheat.) 435**

*APPEAL TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF MARYLAND*

## **SYLLABUS**

The captors are competent witnesses upon an order for further proof, where the benefit of it is extended to both parties.

The captors are always competent witnesses as to the circumstances of the capture, whether it be joint, collusive, or within neutral territory.

It is not competent for a neutral consul, without the special authority of his government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.

*Quaere* whether such a claim can be interposed even by a public minister without the sanction of the government in whose tribunals the cause is pending?

A capture made within neutral territory is, as between the belligerents, rightful, and its validity can only be questioned by the neutral state.

If the captured vessel commence hostilities upon the captor, she forfeits the neutral protection, and the capture is not an injury for which redress can be sought from the neutral sovereign.

Irregularities on the part of the captors, originating from mere mistake or negligence, which work no irreparable mischief and are consistent with good faith will not forfeit their rights of prize.

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The British ship *Anne*, with a cargo belonging to a British subject, was captured by the privateer *Ultor*, while lying at anchor near the Spanish part of the Island of St. Domingo on 13 March, 1815, and carried into New York for adjudication. The master and supercargo were put on shore at St. Domingo, and all the rest of the crew, except the mate, carpenter, and cook, were put on board the capturing ship. After arrival at New York, the deposition of the cook only was taken before a commissioner of prize, and that, together with the ship's papers, was transmitted by the commissioner under seal to the District Judge of Maryland District, to which district the *Anne* was removed by virtue of the provisions of the Act of Congress of 27 January, 1813, ch. 478.

Prize proceedings were duly instituted against the ship and cargo, and a claim was afterwards interposed in behalf of the Spanish consul, claiming restitution of the property, on account of an asserted violation of the neutral territory of Spain. The testimony of the carpenter was thereupon taken by the claimant, and the captors

were also admitted to give testimony as to the circumstances of the capture, and upon the whole evidence the district court rejected the claim and pronounced a sentence of condemnation to the captors. Upon appeal to the circuit court, peace having taken place, the British owner, Mr. Richard Scott, interposed a claim for the property, and the decree of the district court was affirmed, *pro forma*, to bring the cause for a final adjudication before this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

The first question which is presented to the Court is whether the capture was made within the territorial limits of Spanish St. Domingo. The testimony of the carpenter and cook of the captured vessel distinctly asserts that the ship, at the time of the capture, was laying at anchor about a mile from the shore of the island. The testimony of the captors as distinctly asserts, that the ship then lay at a distance of from four to five miles from the shore. It is contended, by the counsel for the claimants, that captors, are in no cases admissible witnesses in prize causes being rendered incompetent by reason of their interest. It is certainly true, that, upon the original hearing, no other evidence is admissible than that of the ship's papers, and the preparatory examinations of the captured crew. But upon an order for further proof, where the benefit of it is allowed to the captors, their attestations are clearly admissible evidence. This is the ordinary course of prize courts, especially where it becomes material to ascertain the circumstances of the capture, for in such cases the

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facts lie as much within the knowledge of the captors as the captured, and the objection of interest generally applies as strongly to the one party as to the other. It is a mistake to suppose that the common law doctrine as to competency is applicable to prize proceedings. In courts of prize, no person is incompetent merely on the ground of interest. His testimony is admissible, subject to all exceptions as to its credibility. The cases cited at the argument distinctly support

this position, and they are perfectly consistent with the principles by which courts of prize profess to regulate their proceedings. We are therefore of opinion that the attestations of the captors are legal evidence in the case, and it remains to examine their credit. And without entering into a minute examination, in this conflict of testimony, we are of opinion that the weight of evidence is decidedly that the capture was made within the territorial limits of Spanish St. Domingo.

And this brings us to the second question in the cause, and that is whether it was competent for the Spanish consul, merely by virtue of his office and without the special authority of his government, to interpose a claim in this case for the assertion of the violated rights of his sovereign. We are of opinion that his office confers on him no such legal competency. A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes. He has an undoubted right to interpose claims for the restitution of property belonging to the subjects of his own country, but he is not considered as a minister or diplomatic agent of his sovereign

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entrusted by virtue of his office with authority to represent him in his negotiations with foreign states or to vindicate his prerogatives. There is no doubt that his sovereign may specially entrust him with such authority, but in such case his diplomatic character is superadded to his ordinary powers, and ought to be recognized by the government within whose dominions he assumes to exercise it. There is no suggestion or proof, of any such delegation of special authority in this case, and therefore we consider this claim as asserted by an incompetent person and on that ground it ought to be dismissed. It is admitted that a claim by a public minister, or in his absence by a charge d'affaires in behalf of his sovereign would be good. But in making this admission it is not to be understood that it can be made in a court of justice without the assent or sanction of the government in whose courts the cause is depending. That is a question of great importance, upon which this Court expressly reserve their opinion, until the point shall come directly in judgment.

The claim of the Spanish government for the violation of its neutral territory being thus disposed of, it is next to be considered whether the British claimant can assert any title founded upon that circumstance. By the return of peace, the claimant became rehabilitated with the capacity to sustain a suit in the courts of this country, and the argument is that a capture made in a neutral territory is void, and

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therefore, the title by capture being invalid, the British owner has a right to restitution. The difficulty of this argument rests in the incorrectness of the premises. A capture made within neutral waters is, as between enemies, deemed to all intents and purposes rightful; it is only by the neutral sovereign that its legal validity can be called in question, and as to him and him only, is it to be considered void. The enemy has no rights whatsoever, and if the neutral sovereign omits or declines to interpose a claim, the property is condemnable, *jure belli*, to the captors. This is the clear result of the authorities, and the doctrine rests on well established principles of public law.

There is one other point in the case which, if all other difficulties were removed, would be decisive against the claimant. It is a fact that the captured ship first commenced hostilities against the privateer. This is admitted on all sides, and it is no excuse to assert that it was done under a mistake of the national character of the privateer, even if this were entirely made out in the evidence. While the ship was lying in neutral waters, she was bound to abstain from all hostilities except in self-defense. The privateer had an equal title with herself to the neutral protection, and was in no default in approaching the

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coast without showing her national character. It was a violation of that neutrality which the captured ship was bound to observe, to commence hostilities for any purpose in these waters, for no vessel coming thither was bound to submit to search or to account to her for her conduct or character. When, therefore, she

commenced hostilities, she forfeited the neutral protection, and the capture was no injury for which any redress could be rightfully sought from the neutral sovereign.

The conclusion from all these views of the case is that the ship and cargo ought to be condemned as good prize of war. And the only remaining inquiry is whether the captors have so conducted themselves as to have forfeited the rights given by their commission, so that the condemnation ought to be to the United States. There can be no doubt that if captors are guilty of gross misconduct or laches in violation of their duty, courts of prize will visit upon them the penalty of a forfeiture of the rights of prize, especially where the government chooses to interpose a claim to assert such forfeiture. Cases of gross irregularity, or fraud may readily be imagined in which it would become the duty of this Court to enforce this principle in its utmost "rigor". But it has never been supposed that irregularities, which have arisen from mere mistake or negligence, when they work no irreparable mischief, and are consistent with good faith, have ordinarily induced such penal consequences. There were some irregularities in this case, but there is no evidence upon the record from which we can infer that there was any fraudulent

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suppression, or any gross misconduct inconsistent with good faith, and therefore we are of opinion that condemnation ought to be to the captors.

It is the unanimous opinion of the court, that the decree of the circuit court be affirmed with costs.

*Decree affirmed.*