

The Divina Pastora

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Court : US Supreme Court

Decided On : 1819

Appeal No. : 17 U.S. 52

Appellant : The Divina Pastora

Judgement :

The Divina Pastora - 17 U.S. 52 (1819)

U.S. Supreme Court The Divina Pastora, 17 U.S. 52 (1819)

The Divina Pastora

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APPEAL FROM THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

The government of the United States having recognized the existence of a civil war between Spain and her colonies, but remaining neutral, the courts of the union are bound to consider as lawful, those acts which war authorizes and which the new governments in South America may direct against their enemy.

Unless the neutral rights of the United States (as ascertained by the law of nations, the acts of Congress, and treaties) are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures *jure belli* are regarded, the legality of which cannot be determined in the courts of a neutral country.

Where the pleadings in a prize or other admiralty cause are too informal and defective to pronounce a final decree upon the merits, the cause will be remanded to the circuit court with directions to permit the pleadings to be amended and for further proceedings.

The petition or libel in this cause by the consul of his Catholic Majesty at Boston alleges and propounds:

1. That there lately arrived at the port of New Bedford in this district and is now lying in the said port of New Bedford, a Spanish vessel called the *Esperanza*, otherwise called the *Divina Pastora*, having on board a cargo consisting of cocoa, cotton, indigo, hides and horns, of great value, to-wit, of the value of \$10,000; that the said vessel is navigated by seven persons, who are all American citizens, as he is informed and believes; and that there are no

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other persons on board of said vessel, and none other were on board when the said vessel arrived at said port. That the aforesaid persons say that the said vessel was bound on a voyage from Laguayra to Cadiz, in Spain, and that she was captured by a privateer or armed vessel sailing under a flag, which they denominate the flag of La Plata, and that they did intend to carry said vessel to some port in the West Indies, but afterwards came into the port of New Bedford.

2. That the said vessel and cargo purport to have been consigned to Antonio Seris, a merchant at Cadiz.

3. That the said consul verily believes that the said vessel has been captured and brought into the aforesaid port contrary to the law of nations and in violation of the

rights of the said Antonia Seris, and that the said Antonio is justly and lawfully entitled to the possession of the said vessel and her cargo,

concluding with a prayer that the process of the court may issue directed to the marshal of this district or his deputy, requiring of them respectively to take the said vessel and cargo into custody to the end that due inquiry may be made into the facts pertaining to this case and that the property may be adjudged, decreed, and restored according to the just rights of whomsoever may be therein interested and according to law and the comity which the United States have always manifested towards foreign nations.

The plea and answer of

"Don Daniel Utley, a citizen of the free and independent United Provinces of Rio de la Plata, &c.;, in behalf of himself and all concerned in the capture to the Spanish polacre brig

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Divina Pastora and her cargo, to the libel and petition exhibited by Don Juan Stoughton, consul of his Catholic Majesty, &c.;"

sets forth that the said Utley, by protestation, and not confessing or acknowledging any of the matters and things in the libellant's petition and libel contained to be true in such manner and form as the same are therein and thereby alleged, for plea to the said libel and petition says that the United Provinces of Rio de la Plata in South America are free and independent states, and as such have the power to levy war and make peace, raise armies and navies, &c.;, and that the supreme provisional director of said provinces, at the fort of Buenos Ayres on 25 October 1815, commissioned a certain schooner called the *Mangoree* to cruise against the vessels and effects of the kingdom of Spain and the subjects thereof, excepting only the Spanish Americans who defend their liberty, and authorized one James Barnes to act as commander of said schooner and to seize and capture the vessels and effects of European Spaniards and bring them within the government of the United Provinces for adjudication according to the law of

nations, Ferdinand VII, King of Spain, then being at war with said provinces and general reprisals having been granted by said provisional government against the European subjects of the said King. That said schooner *Mangoree*, bearing the flag of the said independent provinces, sailed on a cruise from the harbor of Buenos Ayres within the said provinces on or about 1 January, 1816, by virtue of said commission. And having touched

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at Port-au-Prince in the island of Hispaniola, sailed again on said cruise, and on 31 October 1816, on the high seas, &c.;, captured the polacre brig *Divina Pastora*, belonging to the said King or to his European subjects, on board of which brig said Utley was put as prize master. And the original crew of said prize was taken out by the said Barnes, &c.;, and put on board of said schooner *Mangoree*, and a prize crew sent on board the *Pastora*. And the said Barnes, &c.;, then appointed said Utley to the command of the said prize, and delivered to him a copy of his commission, &c.;, which the said Utley now brings with him, and respectfully submits to the inspection of this Honorable Court. And thereupon the said Utley proceeded to navigate the said prize from the place where she was captured to Port-au-Prince in the Island of Hispaniola for the purpose of there procuring supplies and provisions, and thence proceeding to the port of Buenos Ayres. The plea then proceeds to state that in the prosecution of the voyage, the prize vessel was compelled by stress of weather and want of provisions and water to put into the port of New Bedford, and concludes with alleging that by the law of nations and the comity and respect due from one independent nation to another, it doth not pertain to this Court nor is it within its cognizance at all to interfere or hold plea respecting said brig or goods on board, so taken as prize of war, and a prayer for restitution, with costs and damages.

The replication of the Spanish consul states that inasmuch as the said Utley in his plea admits that

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the said vessel, and the cargo laden on board, were, on 31 October 1816, the property of a subject or subjects of his Majesty Ferdinand VII, the said consul claims the same as the property of such subject or subjects, the names of whom are to him at present unknown, excepting that he verily believes the same to be the lawful property of Antonio Seris, as he, in his petition, hath set forth, and avers that the same ought to be restored and delivered up for the use of the Spanish owner or owners. The replication then proceeds to aver that as the said vessel is stated in the plea to have been captured on the high seas by a certain armed vessel called the *Mangoree*, commanded by one James Barnes, which armed vessel is stated to have been commissioned under a certain authority called the United Provinces of Rio de La Plata in South America, the said capture and seizure, &c.;, were piratical or tortious, and contrary to the lawful and well known rights of the faithful subjects of his said Majesty, to whom the same belonged at the time of such capture, &c.;, and that no right of property thereby vested in the said Barnes or Utley or any other person or persons who were navigating and sailing in the said armed vessel called the *Mangoree*,

1st. Because, at the time when the said pretended capture as prize of war was made, &c.;, the several provinces, situate in South America, and near to the river called Rio de La Plata, were provinces and colonies of his said Majesty Ferdinand VII and now are provinces and colonies of his said Majesty, and that the same had been for a long course of years provinces and colonies of the successive

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kings of Spain, and that all the people, persons and inhabitants dwelling therein were, on 21 October, 1815, and for a long time before had been and now are Spanish subjects, and did at the aforesaid times, and now do owe allegiance and fidelity to his said Majesty.

2d. Because the said subjects and persons, dwelling in the said provinces and colonies in South America, had not, on 25 October 1815, nor had any or either of the said subjects and persons then or at any other time any lawful right, power or authority to commission any vessel or vessels or any person or persons

whomsoever to wage war against him, the said Ferdinand VII, nor against his subjects or their persons or property, by sea or elsewhere, and that no person or persons whomsoever could lawfully receive and take from any person or persons in any of the said colonies or provinces any commission, power, or authority of right to wage war and make captures of any property on the high seas.

3d. Because all captures made on the high seas under the pretense of power or authority derived from or in virtue of any such commission as set forth in said plea is unlawful and piratical, and that all pretended captures and seizures as prize of war of property belonging to the subjects of his said Majesty, when made under such commissions as aforesaid, are cognizable by the courts of nations at peace and in amity with his said Majesty, which hold pleas of admiralty and maritime jurisdiction and take cognizance of cases arising under the law of nations whenever the property so captured is found within

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their respective jurisdictions.

And as a further ground for the claim of restitution to the original Spanish owners, the replication recites the 6th, 9th and 14th articles of the treaty of 1795 between the United States and Spain. And as a further ground for the claim it alleges that the papers exhibited with the plea and by which the capture is pretended to be justified are false and colorable; that the prize crew did not speak the Spanish language, and were shipped at Port-au-Prince; that one of the crew stated in his affidavit that the flag of the privateer was obtained at that place, and that all of them stated that the *Divina Pastora*, from the time of her capture, was ordered for and bound to the same place, all the captured persons having been previously taken out of her and put on board the privateer. And concludes with renewing the averments of the piratical and tortious capture and praying that restitution of the property may be decreed to him, the Spanish consul, to be held for the right owners or owner thereof, who are subjects or a subject of the King of Spain.

Upon these pleadings further proceedings were had in the district court under which a decree was pronounced of restitution of the vessel and cargo to the libellant, for the benefit of the original Spanish owners. This decree was affirmed *pro forma* in the circuit court, and the cause was brought by appeal to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The decision at the last term in the case of the [*United States v. Palmer*](#), 3 Wheat. 610, establishes the principle that the government of the United States, having recognized the existence of a civil war between Spain and her colonies but remaining neutral, the courts of the Union are bound to consider as lawful those acts which war authorizes and which

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the new governments in South America may direct against their enemy. Unless the neutral rights of the United States, as ascertained by the law of nations, the acts of Congress, and treaties with foreign powers, are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures *jure belli* are regarded, the legality of which cannot be determined in the courts of a neutral country. If, therefore, it appeared in this case that the capture was made under a regular commission from the government established at Buenos Ayres by a vessel which had not committed any violation of our neutrality, the captured property must be restored to the possession of the captors. But if, on the other hand, it was shown that the capture was made in violation of our neutral rights and duties, restitution would be decreed to the original owners.

But the pleadings in this case are too informal and defective to pronounce a final decree upon the merits. The proceedings in the admiralty must always contain at least a general allegation of such a nature as will apply to the case, as of prize, &c.; The Court has always endeavored to keep these proceedings within some

kind of rule, though not requiring the same technical strictness as at common law. Here, the pleadings present a case which may be consistent with the demand of the former owners for restitution, but which is tied up to such a state of facts as, if proved, will not authorize it, and will not admit the introduction of evidence varying from the facts alleged. The decree of the circuit court must therefore

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be reversed and the cause remanded to that court with directions to permit the pleadings to be amended and for further proceedings.

Cause remanded.

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