

The Estrella

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Appellant : The Estrella

Judgement :

The Estrella - 17 U.S. 298 (1819)

U.S. Supreme Court The Estrella, 17 U.S. 4 Wheat. 298 298 (1819)

The Estrella

17 U.S. (4 Wheat.) 298

APPEAL FROM THE DISTRICT

COURT OF LOUISIANA

SYLLABUS

The seal to the commission of a new government, not acknowledged by the government of the United States, cannot be permitted to prove itself, but the fact that the vessel cruising under such commission is employed by such government, may be established by other evidence without proving the seal.

Where the privateer, cruising under such a commission, was lost subsequent to the capture in question, the previous existence of the commission on board was allowed to be proved by parol evidence.

Where restitution of captured property is claimed upon the ground that the force of the cruiser making the capture has been augmented within the United States by enlisting men, the burden of proving such enlistment is thrown upon the claimant and that fact being proved by him, it is incumbent upon the captors to show by proof that the persons so enlisted were subjects or citizens of the prince or state under whose flag the cruiser sails transiently within the United States in order to bring the case within the proviso of the second section of the Act of June 5, 1794, c. 226, and of the Act of 20 April, 1818, c. 83.

The right of adjudicating on all captures and questions of prize exclusively belongs to the courts of the captors' country, but it is an exception to the general rule that where the captured vessel is brought or voluntarily comes *infra praesidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the cruiser which made the capture, and if such violation has been committed, is in duty bound to restore to the original owner property captured by cruisers illegally equipped in its ports.

No part of the Act of 5 June, 1794, c. 226, is repealed by the Act of 3 March 1817, c. 58; the Act of 1794, c. 226, remained in force until the Act of 20 April, 1818, c. 83, by which all the provisions respecting our neutral relations were embraced and all former laws on the same subject were repealed.

In the absence of any act of Congress on the subject, the courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of its neutrality under a commission issued within the United States or under an armament or augmentation of the armament or crew of the capturing vessel within the same.

This vessel and her cargo were libeled in the District Court for the Louisiana district by the alleged former Spanish owner.

The libel stated that he was owner of the schooner and cargo, which sailed from Havana for the coast of Africa on 23 April, 1817; that on the next day she was lawlessly and piratically captured on the high seas and held as prize by an armed schooner called the *Constitution*, of Venezuela, and forcibly brought within the jurisdiction of the United States, when she was recaptured by the United States ketch *The Surprise* and conducted to New Orleans. That the captors had no lawful commission from any sovereign state to commit hostilities at sea, but that the said schooner and cargo, until their recapture, were forcibly withheld from the libellant in open violation and contempt of the law of nations. That if they had such commission, the same was issued or delivered within the waters and jurisdiction of the United States with intent that the said vessel, the *Constitution*, should be employed in the service of Venezuela to commit hostilities at sea against the subjects of the King of Spain, with whom the United States then were and now are at peace, in violation of their laws and of the laws of nations. The libel further stated that the *Constitution* had, previously to her cruising, been fitted out and

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armed or increased or augmented in force within the jurisdiction and waters of the United States, and also that she had been manned by sundry citizens or residents of the United States with the intent that she should be employed to commit hostilities as aforesaid in violation of the laws aforesaid. For these causes, the libellant prayed a restitution to him of the *Estrella* and cargo.

A claim was interposed by J. F. Lamoureux, prize master of the *Estrella* which stated that the *Constitution* was duly commissioned by the Republic of Venezuela and authorized to capture all vessels belonging to its enemies, under which authority she had captured the *Estrella*, which, with her cargo, belonged to the enemies of the said republic. That before he could receive his prize commission, the *Constitution* upset in a gale, and her commission and papers, with the greater part of the crew, were lost. The claimant further represented that as he was

carrying the *Estrella* into port to have her condemned before a court of competent jurisdiction, she was captured by the United States ketch *Surprise* and conducted to New Orleans, and therefore claimed that the *Estrella* and cargo might be adjudged to be restored to him.

It appeared from the transcript of the proceedings in this case that the *Estrella* was also libeled on the part of the United States, although it was not stated for what cause such libel was filed, but the same was dismissed, from which decree there was no appeal.

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It appeared in evidence that the *Constitution* had a commission from the government of Venezuela at the time the capture was made which was issued and delivered at Carthagena, but that the same was lost by the sinking of the privateer immediately after the capture. There was some contradictory testimony as to her having increased her armament in the United States, and it was proved, that she had augmented the number of her crew in the port of New Orleans.

On the libel filed by the Spanish owner, decree was made that the claim of Lamoureux, the prize master be dismissed with costs, and that the *Estrella* and cargo be delivered up and restored to the libellant, from which sentence the cause was brought by appeal to this Court.

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LIVINGSTON, JUSTICE, delivered the opinion of the Court.

The first allegation of the Spanish owner is that the *Constitution* had no lawful commission from any sovereign state to commit hostilities at sea, and he contends that the commission in the present case, if any there was, being that of a government not acknowledged by the United States, ought to have been produced and its seal proved, or that if the vessel carrying it had been lost, yet an exemplification of it ought to have been obtained from the proper department of

the state which issued it.

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The Court is satisfied with the proof which has been made of the *Constitution's* having had a commission at the time of making the capture, and that such commission was granted by the government of Venezuela, and also that the same was lost with the privateer herself a very short time after the prize crew took possession of the *Estrella*. The fact of the sinking of the *Constitution* is not disputed, and that she had, at the time she went down, a commission on board is also fully made out, which commission there is no reason to believe was any other than the one which the collector of New Orleans says was on board when she arrived in that port from Carthagena. This was some time in the month of October in the year 1816, Mr. Chew then saw the commission, and describes it as a very regular one from the Venezuelan republic, signed, as others were, by Bolivar. Although the Court in another case has said, that the seal of a government, unacknowledged, cannot be permitted to prove itself, it has in the same case said, that the fact of a vessel's being so employed may be established without proving the seal. [*United States v. Palmer*](#), 3 Wheat. 635.

But if the *Constitution* had a commission on board, it is next alleged that the same was issued or delivered within the waters of the United States with intent that she should be employed in the service of Venezuela to commit hostilities at sea against the subjects of the King of Spain, with whom the United States was at peace. This allegation is not supported by any evidence;

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on the contrary, the same witnesses who declare that the *Constitution* was a commissioned vessel, and whose testimony has already been adverted to, establish beyond controversy that the same was obtained abroad, and not issued or delivered within the United States.

The libel next alleges that the *Constitution*, previous to her last cruise, had been fitted out and armed, or that her force had been increased or augmented, within the jurisdiction and waters of the United States, and also, that she had there been manned by sundry citizens or residents of the United States with the same intent. Whatever doubt there may be as to the augmentation of the armament of the *Constitution* within the United States, the Court is satisfied that a very considerable addition was made to her crew, at New Orleans after her arrival at that port; one of the custom house officers declares that at that time she had only from twenty to twenty-five men; another of these officers, who went on board on her first arrival, states the number of her crew at about twenty, and a witness by the name of Guzman, totally unconnected with this transaction, mentions by name two persons who entered on board while she was lying there. Several of the original crew of the *Estrella* have also been examined to this point, who state that after the capture, they had many conversations with the officers and seamen who composed the prize crew, by whom they were informed that the *Constitution*, when she left Carthagena, had but few hands on board; that at New

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Orleans she shipped almost the whole of her crew, which at the time of the *Estrella's* capture amounted to sixty or seventy men. This species of testimony has been objected to as being hearsay and proceeding from a source entitled to no great credit. Although there may be something in this objection, it is no reason for rejecting the evidence altogether. If the testimony be hearsay, it must be recollected that the declarations proceeded from persons very much interested in giving a different representation of the transaction; and as to the witnesses themselves, although they formed a part of the *Estrella's* crew and may have felt some little interest in the question, they were the only persons who could give any account of the armament or crew of the *Constitution* at the time of her making the capture. It may be also remarked that the testimony of these men is in this respect corroborated by that of other witnesses who are liable to no objection, and that their declarations, if untrue, might have been disproved by the claimant by showing where and when the crew of the *Constitution* had been entered.

But if any of the crew of the *Constitution* were enlisted or entered within the jurisdiction of the United States, they may, it is said, have been citizens or subjects of the Republic of Venezuela who were transiently in the United States at the time of her arrival and had, therefore, a right, within one of the provisos of the second section of the Act of Congress of 6 June, 1794, c. 226, to enlist or enter themselves on board of her; and it is insisted that the libellant should have shown that they were not persons of this

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description. The Court is not of this opinion. On the libellant, in the first instance, lay the onus of showing that the crew of the *Constitution* had been increased within the United States; having done this, it became incumbent on the captors, if they wanted to establish their innocence, to show, as was in their power, if the fact was so, that they had done nothing contrary to law by bringing their case within the proviso that has been mentioned.

The allegation, then, in the libel being made out that the *Constitution*, being a privateer commissioned by the Republic of Venezuela, was manned within the United States previous to the cruise on which she captured the *Estrella* by sundry citizens or residents of the United States, it remains to see whether the libellant has not made out a case for restitution. It has been attempted, but without success, to distinguish this case in principle from several which have already been decided in this Court. We have been told, as heretofore, that to the courts of the nation to which the captor belongs and from which his commission issues exclusively appertains the right of adjudicating on all captures and questions of prize. This is not denied, nor has the Court ever felt any disposition to entrench on this rule, but, on the contrary, whenever an occasion has occurred, as in the case of [*The Invincible*](#), 1 Wheat. 238, it has been governed by it. Not only is it a rule well established by the customary and conventional law of nations, but it is

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founded in good sense, and is the only one which is salutary and safe in practice. It secures to a belligerent the independence to which every sovereign state is entitled and which would be somewhat abridged were he to condescend so far as to permit those who bear his commission to appear before the tribunals of any other country and submit to their interpretation or control the orders and instructions under which they have acted. It ensures also not only to the belligerent himself but to the world at large a great decree of caution and responsibility on the part of the agents whom he appoints, who not only give security to him for their good behavior, but will sometimes be checked in a lawless career by the consideration that their conduct is to be investigated by the courts of their own nation and under the very eye of the sovereign under whose sanction they are committing hostilities. In this way also is a foundation laid for a claim by other nations of an indemnity against the belligerent for the injuries which their subjects may sustain by the operation of any unjust or improper rules which he may think proper to prescribe for those who act under his authority.

But general and firmly established as this rule is, it is not more so than some of the exceptions which have grown out of it. A neutral nation which knows its duty will not interfere between belligerents so as to obstruct them in the exercise of their undoubted right to judge, through the medium of their own courts, of the validity of every capture made under their respective commissions, and to decide on every question of prize law which may

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arise in the progress of such discussion. But it is no departure from this obligation if, in a case in which a captured vessel be brought or voluntarily comes *infra praesidia*, the neutral nation extends its examination so far as to ascertain whether a trespass has been committed on its own neutrality by the vessel which has made the capture. So long as a nation does not interfere in the war, but professes an exact impartiality towards both parties, it is its duty as well as right, and its safety, good faith and honor demand of it, to be vigilant in preventing its neutrality from being abused for the purposes of hostility against either of them. This may be done not only by guarding, in the first instance, so far as it can,

against all warlike preparations and equipments in its own waters, but also by restoring to the original owner such property as has been wrested from him, by vessels which have been thus illegally fitted out. In the performance of this duty, all the belligerents must be supposed to have an equal interest, and a disregard or neglect of it would inevitably expose a neutral nation to the charge of insincerity and to the just dissatisfaction and complaints of the belligerent, the property of whose subjects should not under any such circumstances be restored.

The United States, instead of opening its ports to all the contending parties when at peace themselves (as may be done if not prevented by antecedent treaties), has always thought it the wisest and safest course to interdict them all from fitting out or furnishing vessels of war within their limits, and to punish those who may contribute to such equipments.

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To enforce a general and strict observance of this neutrality on the part of our own citizens and of others who reside among us, a law passed as early as the year 1794 making it penal, among other things, for anyone within the jurisdiction of the United States to enlist in the service of any foreign prince or state as a soldier, marine, or seaman on board of any vessel of war, letter of marque or privateer. This law, it is supposed, was not in force at the time when the crew of the *Constitution* was increased at New Orleans, having been repealed, as is alleged, by the Act of 3 March, 1817, c. 58. But this act contains no repealing clause of this or any other section of the former law, and having made no provision on the subject of enlistment, it must have been the intention of the legislature to leave in full force all those parts of the first law which had undergone no alteration in the one which was then passing, and we therefore find no repeal of the act in question until 20 April, 1818, when all the provisions respecting our neutral relations were embraced by one act and all former laws on the same subject were repealed.

But whether the Act of 1794, c. 226, was in force or not would make no difference, for it did not in terms contain, nor did any of the others which have from time to

time been passed, contain a provision for the restitution of property captured on the ocean by vessels which might be thus illegally fitted out or manned in our ports. It is true they recognize a right in the courts of the United States to make restitution when these laws have been disregarded, and impart

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to the courts a power to punish those who are concerned in such violations. But in the absence of every act of Congress in relation to this matter, the Court would feel no difficulty in pronouncing the conduct here complained of an abuse of the neutrality of the United States, and although in such case the offender could not be punished, the former owner would nevertheless be entitled to restitution. Nor is our opinion confined to the single act of an illegal enlistment of men, which is the only fact proved in this case, for we have no hesitation in saying that for any of the other violations of our neutrality alleged in the libel, if they had been proved, the Spanish owner would have been equally entitled to restitution.

Sentence affirmed with costs.