

United States Vs. Smith

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Court : US Supreme Court

Decided On : 1820

Appeal No. : 18 U.S. 153

Appellant : United States

Respondent : Smith

Judgement :

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United States v. Smith

18 U.S. (5 Wheat.) 153

ON CERTIFICATE OF DIVISION OF OPINION AMONG

THE JUDGES OF THE CIRCUIT COURT OF VIRGINIA

SYLLABUS

The Act of 3 March 1819, c. 76, s. 5, referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of Congress to define and punish that crime.

The crime of piracy is defined by the law of nations with reasonable certainty. Robbery or forcible depredation upon the sea, *anima furandi*, is piracy by the law of nations and by the act of Congress.

This was an indictment for piracy against the prisoner Thomas Smith before the Circuit Court of

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Virginia on the Act of Congress of 3 March, 1819, c. 76.

The jury found a special verdict as follows:

"We, of the jury, find that the prisoner Thomas Smith, in the month of March, 1819, and others, were part of the crew of a private armed vessel called the *Creollo*, commissioned by the government of Buenos Ayres, a colony then at war with Spain, and lying in the port of Margaritta; that in the month of March, 1819, the said prisoner and others of the crew mutinied, confined their officer, left the vessel, and in the said port of Margaritta seized by violence a vessel called the *Irresistible*, a private armed vessel lying in that port, commissioned by the government of Artigas, who was also at war with Spain; that the said prisoner and others, having so possessed themselves of the said vessel, the *Irresistible*, appointed their officers, proceeded to sea on a cruise without any documents or commission whatever, and while on that cruise, in the month of April, 1819, on the high seas, committed the offense charged in the indictment by the plunder and robbery of the Spanish vessel therein mentioned. If the plunder and robbery aforesaid be piracy under the act of the Congress of the United States entitled 'An act to protect the commerce of the

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United States, and punish the crime of piracy,' then we find the said prisoner guilty; if the plunder and robbery above stated, be not piracy under the said act of Congress, then we find him not guilty."

The circuit court divided on the question whether this be piracy as defined by the law of nations, so as to be punishable under the Act of Congress of 3 March, 1819, and thereupon the question was certified to this Court for its decision.

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MR. JUSTICE STORY delivered the opinion of the Court.

The act of Congress upon which this indictment is founded provides

"That if any person or persons whatsoever shall, upon the high seas, commit the crime of piracy as defined by the law of nations, and such offender or offenders shall be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof, &c.;, be punished with death. "

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The first point made at the bar is whether this enactment be a constitutional exercise of the authority delegated to Congress upon the subject of piracies. The Constitution declares that Congress shall have power "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." The argument which has been urged in behalf of the prisoner is that Congress is bound to define, in terms, the offense of piracy, and is not at liberty to leave it to be ascertained by judicial interpretation. If the argument be well founded, it seems admitted by the counsel that it equally applies to the 8th section of the Act of Congress of 1790, ch. 9, which declares that robbery and murder committed on the high seas shall be deemed piracy, and yet, notwithstanding a series of contested adjudications on this section, no doubt has hitherto been breathed of its conformity to the Constitution.

In our judgment, the construction contended for proceeds upon too narrow a view of the language of the Constitution. The power given to Congress is not merely "to define and punish piracies;" if it were, the words "to define," would seem almost superfluous, since the power to punish piracies would be held to include the power of ascertaining and fixing the definition of the crime. And it has been very justly

observed in a celebrated commentary that the definition of piracies might have been left without inconvenience to the law of nations, though a legislative definition of them is to be found in most municipal

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codes. But the power is also given "to define and punish felonies on the high seas and offenses against the law of nations." The term "felonies" has been supposed in the same work not to have a very exact and determinate meaning in relation to offenses at the common law committed within the body of a county. However this may be, in relation to offenses on the high seas, it is necessarily somewhat indeterminate, since the term is not used in the criminal jurisprudence of the admiralty in the technical sense of the common law. Offenses, too, against the law of nations cannot with any accuracy be said to be completely ascertained and defined in any public code recognized by the common consent of nations. In respect, therefore, as well to felonies on the high seas as to offenses against the law of nations, there is a peculiar fitness in giving the power to define as well as to punish, and there is not the slightest reason to doubt that this consideration had very great weight in producing the phraseology in question.

But supposing Congress was bound in all the cases included in the clause under consideration to define the offense, still there is nothing which restricts it to a mere logical enumeration in detail of all the facts constituting the offense. Congress may as well define by using a term of a known and determinate meaning, as by an express enumeration of all the particulars included in that term. That is certain

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which is by necessary reference made certain. When the act of 1790 declares that any person who shall commit the crime of robbery or murder on the high seas shall be deemed a pirate, the crime is not less clearly ascertained than it would be by using the definitions of these terms as they are found in our treatises of the common law. In fact, by such a reference the definitions are necessarily included, as much as if they stood in the text of the act. In respect to murder, where "malice

aforethought" is of the essence of the offense, even if the common law definition were quoted in express terms, we should still be driven to deny that the definition was perfect, since the meaning of "malice aforethought" would remain to be gathered from the common law. There would then be no end to our difficulties or our definitions, for each would involve some terms which might still require some new explanation. Such a construction of the Constitution is therefore wholly inadmissible. To define piracies in the sense of the Constitution is merely to enumerate the crimes which shall constitute piracy, and this may be done either by a reference to crimes having a technical name and determinate extent or by enumerating the acts in detail upon which the punishment is inflicted.

It is next to be considered whether the crime of piracy is defined by the law of nations with reasonable certainty. What the law of nations on this subject is may be ascertained by consulting the works of jurists writing professedly on public law, or by the general usage and practice of nations, or by judicial

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decisions recognizing and enforcing that law. There is scarcely a writer on the law of nations, who does not allude to piracy as a crime of a settled and determinate nature, and whatever may be the diversity of definitions in other respects, all writers concur in holding that robbery or forcible depredations upon the sea, *animo furandi*, is piracy. The same doctrine is held by all the great writers on maritime law in terms that admit of no reasonable doubt. The common law, too, recognizes and punishes piracy as an offense not against its own municipal code, but as an offense against the law of nations (which is part of the common law), as an offense against the universal law of society, a pirate being deemed an enemy of the human race. Indeed, until the statute of 28 Henry VIII, ch. 15, piracy was punishable in England only in the admiralty as a civil law offense, and that statute, in changing the jurisdiction, has been universally admitted not to have changed the nature of the offense. Sir Charles Hedges, in his charge at the admiralty sessions in the case of *Rex v. Dawson*, 5 State Trials, declared in emphatic terms that "piracy is

only a sea term for robbery, piracy being a robbery committed within the jurisdiction of the admiralty." Sir Leoline Jenkins, too, on a like occasion, declared that "a robbery, when committed upon the sea, is what we call piracy," and he cited the civil law writers in proof. And it is manifest from the language of Sir William Blackstone in his comments on piracy that he considered the common law definition as distinguishable in no essential respect from that of the law of nations. So that whether we advert to writers on the common law or the maritime law or the law of nations, we shall find that they universally treat of piracy as an offense against the law of nations and that its true definition by that law is robbery upon the sea. And the general practice of all nations in punishing all persons, whether natives or foreigners, who have committed this offense against any persons whatsoever with whom they are in amity is a conclusive proof that the offense is supposed to depend not upon the particular provisions of any municipal code, but upon the law of nations, both for its definition and punishment. We have therefore no hesitation in declaring that piracy, by the law of nations, is robbery upon the sea, and that it is sufficiently and constitutionally defined by the fifth section of the act of 1819.

Another point has been made in this case, which is that the special verdict does not contain sufficient facts upon which the court can pronounce that the

prisoner is guilty of piracy. We are of a different opinion. The special verdict finds that the prisoner is guilty of the plunder and robbery charged in the indictment, and finds certain additional facts from which it is most manifest that he and his associates were, at the time of committing the offense, freebooters upon the sea, not under the acknowledged authority or deriving protection from the flag or commission of any government. If, under such circumstances, the offense be not piracy, it is difficult to conceive any which would more completely fit the definition.

It is to be certified to the circuit court that upon the facts stated, the case is piracy, as defined by the law of nations, so as to be punishable under the Act of Congress of the 3d of March, 1819.

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MR. JUSTICE LIVINGSTON dissented.

In a case affecting life, no apology can be necessary for expressing

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my dissent from the opinion which has just been delivered.

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The only question of any importance in this case is whether the Act of 3 March, 1819, be a

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constitutional exercise of the power delegated to Congress of "defining and punishing piracies?"

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The act declares that any person who shall commit on the high seas the crime of piracy as defined by the

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law of nations shall be punished with death. The special power here given to define piracy can be attributed

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to no other cause than to the uncertainty which it was known existed on this subject in the

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law of nations, and which it must have been the intention of the framers of the Constitution to remove,

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by conferring on the national legislature the power which has been mentioned. It was well known to

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the members of the federal Convention, that in treatises on the law of nations, or in some of them at

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least, definitions of piracy might be found, but it must have been as well known to them that there

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was not such a coincidence on this subject, as to render a reference to that code a desirable or safe mode

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of proceeding in a criminal, and especially in a capital case. If it had been intended to adopt the definition

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or definitions of this crime, so far as they were to be collected from the different commentators on

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this code, with all the uncertainty and difficulty attending a research for that purpose, it might as well

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at once have been adopted as a standard by the Constitution itself. The object, therefore, of referring

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its definition to Congress was and could have been no other than to enable that body to select from sources it might think proper, and then to declare and with reasonable precision to define what act or acts should constitute this crime, and having done

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so, to annex to it such punishment as might be thought proper. Such a mode of proceeding would be consonant with the universal practice in this country and with those feelings of humanity which are ever opposed to the putting in jeopardy the life of a fellow being, unless for the contravention of a rule which has been previously prescribed and in language so plain and explicit as not to be misunderstood by anyone. Can this be the case, or can a crime be said to be defined, even to a common intent, when those who are desirous of information on the subject are referred to a code without knowing with any certainty where it is to be found and from which even those to whom it may be accessible can with difficulty decide in many cases whether a particular act be piracy or not? Although it cannot be denied that some writers on the law of nations do declare what acts are deemed piratical, yet it is certain that they do not all agree, and if they did, it would seem unreasonable to impose upon that class of men, who are the most liable to commit offenses of this description, the task of looking beyond the written law of their own country for a definition of them.

If in criminal cases everything is sufficiently certain which by reference may be rendered so, which was an argument used at bar, it is not perceived why a reference to the laws of China or to any other foreign code would not have answered the purpose quite as well as the one which has been resorted to. It is not certain that on examination, the crime would not be found to be more accurately defined in the code thus referred to than in any writer on the law

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of nations, but the objection to the reference in both cases is the same -- that it is the duty of Congress to incorporate into their own statutes a definition in terms, and not to refer the citizens of the United States for rules of conduct to the statutes or laws of any foreign country with which it is not to be presumed that they are acquainted. Nor does it make any difference in this case that the law of nations forms part of the law of every civilized country. This may be the case to a certain extent, but as to criminal cases and as to the offense of piracy in particular, the law of nations could not be supposed of itself to form a rule of action, and therefore a reference to it in this instance must be regarded in the same light as a reference to any other foreign code. But it is said that murder and robbery have been declared to be punishable by the laws of the United States without any definition of what act or acts shall constitute either of these offenses. This may be, but both murder and robbery, with arson, burglary, and some other crimes, are defined by writers on the common law, which is part of the law of every state in the Union, of which, for the most obvious reasons, no one is allowed to allege his ignorance in excuse for any crime he may commit. Nor is there any hardship in this, for the great body of the community have it in their power to become acquainted with the criminal code under which they live; not so when acts which constitute a crime are to be collected from a variety of writers, either in different languages or under the disadvantage of translations, and from a code with whose provisions even professional

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men are not always acquainted. By the same clause of the Constitution, Congress has power to punish offenses against the law of nations, and yet it would hardly be deemed a fair and legitimate execution of this authority to declare that all offenses against the law of nations, without defining any one of them, should be punished with death. Such mode of legislation is but badly calculated to furnish that precise and accurate information in criminal cases which it is the duty and ought to be the object of every legislature to impart.

Upon the whole, my opinion is that there is not to be found in the act that definition of piracy which the Constitution requires, and that therefore judgment on the special verdict ought to be rendered for the prisoner.

CERTIFICATE. This cause came on to be heard on the transcript of the record of the Circuit Court of the United States for the District of Virginia, and on the question on which the judges of that court were divided in opinion, and was argued by counsel. On consideration whereof this Court is of opinion that the offense charged in the indictment in this case and found by the jury to have been committed by the prisoner amounts to the crime of piracy as defined by the law of nations, so as to be punishable under the act of Congress entitled "An act to protect the commerce of the United States and punish the crime of piracy." All which is ordered to be certified to the Circuit Court for the District of Virginia.