

The Josefa Segunda

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Appellant : The Josefa Segunda

Judgement :

The Josefa Segunda - 18 U.S. 338 (1820)

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18 U.S. (5 Wheat.) 338

APPEAL FROM THE DISTRICT

COURT OF LOUISIANA

SYLLABUS

An information under the Act of 3 March 1807, c. 77, to prevent the importation of slaves into the United States. The alleged unlawful importation attempted to be excused upon the plea of distress. Excuse repelled, and condemnation pronounced.

In the execution of the laws against the slave trade, no vigilance can be excessive, and restitution ought never to be made but in cases which are purged of every intentional violation by proofs the most clear, the most explicit and unequivocal.

Upon a piratical capture, the property of the original owners cannot be forfeited for the misconduct of the captors in violating the municipal laws of the country where the vessel seized by them is carried.

But where the capture is made by a regularly commissioned captor, he acquires a title to the captured property which can only be divested by recapture or by the sentence of a competent tribunal of his own country, and the property is subject to forfeiture for a violation by the captor of the revenue or other municipal laws of the neutral country into which the prize may be carried.

From the proceedings in the court below, it appeared

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that the brig *Josefa Segunda*, being Spanish property and on a voyage from the coast of Africa to the Island of Cuba with a cargo of negroes, was captured on 11 February, 1818, off Cape Tiberon in St. Domingo by the Venezuelan privateer *General Arismendi*. On 24 April following, she was seized in the River Mississippi by certain custom house officers and conducted to New Orleans, where a libel was filed against her in the District Court for the Louisiana District.

The libel contained four counts. The first alleged that the said negroes were unlawfully brought into the United States from some foreign country in the said brig with intent to hold, sell, or dispose of them as slaves or with intent that the same should be held to service or labor contrary to the act of Congress in such case made and provided.

The second count alleged that these negroes were taken, received and transported on board the said brig from some of the coasts or kingdoms of Africa or from some other foreign kingdom, place, or country for the purpose of selling them in some port or place within the jurisdiction of the United States as slaves or

to be held to service or labor contrary, &c.; In the third count it was charged that the said brig was found in some river, port, bay, or harbor of the United States, or on the high seas within the jurisdictional limits of the United States or hovering on the coast thereof, to-wit, in the River Mississippi, having on board some negroes, mulattoes, or people of color, for the purpose of selling them as slaves or with an intent to land the same in some port or

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place within the jurisdiction of the United States, contrary, &c.; The fourth allegation or count was that one hundred and seventy-five persons of color, not being native citizens or registered seamen of the United States or natives of countries beyond the Cape of Good Hope, were landed from said brig in a port or place situate in a state which by law had prohibited the admission or importation as aforesaid, to-wit, at or near the Balize in the State of Louisiana, contrary, &c.;

This libel was filed on 29 April, 1818, and on 5 May following, a claim was interposed by Messrs. Carricabura, Arieta & Co. merchants of the Havana, which stated, that they were owners of the said brig, which, with the said negro slaves, was on the high seas, while pursuing a lawful voyage, captured and taken from them by a certain Rene Beluche, and the crew of the armed ship or vessel called the General Arismendi, sailing under the flag of the revolted colonies of Venezuela and New Grenada; that the said brig put into the Balize in very great distress, and without any intention on the part of the crew, or any other person on board, to infringe or violate any law of the United States. That whatever may have been the conduct of the prize crew, or of any other persons on board, the claimants insist, that they cannot be made responsible for any of their acts, because the said brig, with her cargo, was taken from their possession unlawfully, and in violation of the law of nations, inasmuch as the captors had no legal authority to take the same, and if they had any commission, the capture

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was illegal, because the privateer the General Arismendi, was armed and fitted out, or her armament or equipment increased, in a port of the United States, in violation of the laws thereof.

On this libel and claim, it appeared in evidence that the capture of the brig *Josefa Segunda*, with a cargo of slaves, was made off Cape Tiberon in the Island of St. Domingo, on 11 February, 1818, on a voyage to the Havana, from the coast of Africa, which she had left in the preceding month of December or January. The capture was made by a Venezuelan brig, *The General Arismendi*. This vessel was commissioned as a privateer by John Baptista Arismendi, who styled himself commanding General of Venezuela, and Captain General of the Island of Marguerita. The caption of the commission was, "Republic of Venezuela," and it purported to have been given in the Island of Marguerita, 1 February, 1818, and to be sealed with the great seal of the state. At the time of capture, there were from two to three hundred slaves on board; some of these, but what number does not appear, afterwards died; others, but how many is not stated, were sold at the Jardins de la Reine, on the south side of the Island of Cuba, in order to purchase provisions. Toward the end of the month of February, the prize master of the brig received written orders from the Captain of the privateer to conduct the prize to the Island of Marguerita, and always steered, as he says, eastward, the winds being always ahead. The prize master had no log book on board; he wrote every day's occurrences on

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a slate, effacing what had been written the day before. On 18 April, 1818, in the morning, the brig was boarded by a pilot about 40 miles from the Balize, and arrived there at 4 o'clock, P.M. About 25 miles from the Balize, the brig fell in with the American ship Balize, from which no provisions were asked, but from whom he received six bags of rice. On 24 April, the brig was seized by the custom house officers, and conducted to New Orleans. On 27 April, 1818, Laporte, who was the agent of Beluche at New Orleans, wrote a letter to the prize master of the brig containing, among others, these expressions,

"Maintain always your declaration of being forced into port. -- Take care that your sailors neither say nor do anything which may prejudice the interest of Venezuela."

The privateer, after the capture of the brig, went to Jamaica for provisions. The pilot who first boarded the brig stated that her mainmast was sprung, her ropes were all bad, the sails not fit to go to sea; that they were pumping the last cask of water on board. Her spars were middling, except the mainmast; there were no provisions on board -- the men were in a State of starvation -- that the slaves had nothing but skin upon their bones. A witness, who was on board in her passage up the river, stated that the brig sailed equal to anything in the river; that he would not be afraid to make a voyage in her; her tackle, ropes, &c., were as good as usual; she was pumped out but once while he was on board; they carried topsails coming up; the spars were generally good. He saw nothing in the appearance of

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the crew of their having been starved. It also appeared that the agent of the claimants in New Orleans received letters from the owners of the brig sometime prior to her arrival at New Orleans, and that one of the owners had arrived in that city, while this cause was depending, and before 19 June, 1818.

It was admitted by the claimant that there existed an understanding between them and the captors; that the former were to render to the latter a compensation for their not interposing any claim, which was so far ascertained, that the sum which the captors were to receive was not to be less than six nor more than eight thousand dollars, to depend on the expense and trouble incident to the prosecution and the repairing of the vessel; that this arrangement was made by the advice of the captor's counsel from a conviction on his part that they could not recover on account, as he conceived, of the illegality of the commission. It was also admitted that the claimants were the original owners of the big and slaves on board.

On this testimony, the district court condemned the brig and effects found on board, to the United States and the cause was brought by appeal to this Court.

MR. JUSTICE LIVINGSTON delivered the opinion of the Court, and after stating the facts, proceeded as follows:

The third count of the libel is the only one

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that has any bearing on the present case. It alleges a violation of the seventh section of "An act of Congress prohibiting the importation of slaves into the United States after the first day of January in the year 1808," and which passed 3 March, 1807.

By this section it is enacted

"That if any ship or vessel shall be found, from and after 1 January, 1808, in any river, port, bay, or harbor, or on the high seas, within the jurisdictional limits of the United States or hovering on the coast thereof having on board any negro, mulatto, or person of color for the purpose of selling them as slaves or with intent to land the same in any port or place within the jurisdiction of the United States contrary to the prohibition of this act, every such ship or vessel, together with her tackle, apparel, and furniture, and the goods or effects which shall be found on board the same, shall be forfeited to the use of the United States and may be seized, prosecuted, and condemned in any court of the United States having jurisdiction thereof. And the proceeds of all such ships and vessels, their tackle, apparel and furniture, and the goods and effects on board of them which shall be so seized, prosecuted, and condemned shall be divided equally between the United States and the officers and men who shall make such seizure, or bring the same into port for condemnation, and the same shall be distributed in like manner, as is provided by law for the distribution of prizes taken from an enemy, provided that the officers and men to be entitled to one-half of the proceeds aforesaid,

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shall safekeep every negro, mulatto, or person of color, found on board of any ship or vessel so seized by them, and deliver them to such persons as shall be appointed by the respective states to receive the same,"

&c.;

It is not denied that the brig *Josefa Segunda*, shortly before her seizure, had been hovering on the coast of the United States, having on board a large number of persons of the description of those whose importation into this country is prohibited by the act; nor can there be any doubt from the situation and circumstances under which she was found and the manner in which she came within the jurisdictional limits of the United States, which appears to have been a voluntary act on the part of the prize master, that there is at least *prima facie* evidence of an intention to dispose of these people as slaves or to land them in some port or place within the jurisdiction of the United States.

The claimants, aware of the necessity of accounting for circumstances, which, unexplained, could not but prove fatal to their interests, contend in the first place that the coming into the Mississippi was a matter of necessity, produced by the perilous situation of the vessel, and the famishing condition of the people on board, and that therefore neither she nor her cargo can be obnoxious to the provisions of the act of Congress. If the claim be not sustained on this plea. It is insisted in the next place that the capture being illegal or piratical, the original owners cannot be affected by any of the acts of the prize crew, and,

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in the third place it is asserted that the vessel having been ransomed, and taken out of the hands of the captors, the claimants are restored to all their original rights, unimpaired by any acts on the part of the former.

Each of these claims for restitution will now be examined.

When any act is done which of itself and unexplained is a violation of law, and a party, to extricate himself or his property from the consequences of it, resorts to

the plea of necessity or distress, the burden of proof is not only thrown upon him, but when the temptation to infringe the law is great and the alleged necessity, if real, can be fully and easily established, no court should be satisfied with anything short of the most convincing and conclusive testimony. The proofs before us are so far from being of this character that we look in vain for testimony of any serious disaster's having befallen this vessel in her voyage from the Island of Cuba to the Mississippi -- or for a calamity of any kind which might not have been averted or prevented had the master seriously and honestly endeavored to reach the Island of Marguerita, which is now pretended to have been her real port of destination. That neither he nor his employer should have any great solicitude for the arrival of the prize at Marguerita is easily accounted for when it is recollected that this island, as well from its small extent, being not more than forty miles in length and perhaps not more than half as broad, as from the scantiness and poverty of its population, could afford but a wretched if

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any market at all for slaves, while at New Orleans, each of them would produce the extravagant and tempting sum of one thousand dollars. It has not escaped the observation of the court, that the General Arismendi, made the passage from Marguerita to the place of capture off the Island of St. Domingo, in the short space of nine days; for the owner's letter of instructions to the Captain bears date at Marguerita on 2 February, 1818, and on the 11th of the same month, the capture was made; and yet with the important fact before us, it is seriously contended that a voyage which had just been made in nine days, could not be performed back again in six weeks. This is a possible case, but we ought not to be expected on slight grounds to believe that a vessel after leaving the Island of Cuba, in the latter end of February, should, on 18 April following, be found not only several miles further from her destined port than at the time of sailing, but that she had pursued this circuitous route in search of provisions: a story so improbable could hardly under any circumstance be entitled to belief, but it becomes absolutely incredible, when so many ports, more contiguous, and where supplies might easily have been obtained, were passed in her way to the Balize, without a single effort to procure a

supply at any of them. Why not go to Kingston, in Jamaica, which was in the neighborhood of the place where the capture was made, and to which port, the privateer went after making the capture? Her not going there can be accounted for on no supposition other than that of her being well supplied

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with provisions at the time of her leaving Cuba. It is vain then to urge a plea, which is contradicted by the internal evidence of the case. If, however, it can be made out that an attempt were really made to reach Marguerita, which was frustrated by adverse winds, or by anyone of those disasters which so frequently occur on the ocean, or that the *Josefa* was forced by stress of weather so very far from the track of a direct voyage to that island, the claimant might still contend, that their plea of necessity had been made out. But, on this subject, there is an impenetrable obscurity, which it was their duty to remove. What winds, or what weather were encountered, we are not informed. No log book, from which alone accurate and safe knowledge might be derived, is produced. A journal of that kind was not even kept, a circumstance which of itself excites a suspicion, which none of the testimony in the cause is calculated to dispel. But it is not necessary to pursue this inquiry further, or to take notice of several minor circumstances which are relied on, and which so far from making out a case of real distress, only serve to confirm the view which has already been taken of the other evidence, and leave no reasonable doubt of the whole story being a fiction, or that the want of provisions, if real at the time of seizure, was produced by a voluntary protraction of the voyage for the purpose, and with the intent of violating the law on which the present libel is founded. If, on testimony so vague, so contradictory, and affording so little satisfaction, this Court should award restitution, all the acts of Congress which

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have been passed to prohibit the importation of slaves into the United States may as well be expunged from the statute book, and this inhuman traffic, for the abolition of which the United States have manifested an early and honorable

anxiety, might under the most frivolous pretexts be carried on not only with impunity, but with a profit which would keep in constant excitement the cupidity of those who think it no crime to engage in this unrighteous commerce. In the execution of these laws no vigilance can be excessive and restitution ought never to be made but in cases which are purged of every intentional violation by proofs the most clear, the most explicit and unequivocal.

But the claimants, not relying exclusively on the plea of necessity, contend that the capture being piratical, and by a vessel having no commission, they ought not to be injured by any acts of the prize master which may be deemed infractions of the laws of the United States.

It would indeed be unreasonable and unjust to visit upon the innocent owners of this property the sins of a pirate, and were this allegation made out, the Court would find no difficulty in making the restitution which is asked for. But is it so; was the *General Arismendi* a piratical cruiser? The Court thinks not. Among the exhibits is a copy of a commission, which is all that in such a case can be expected, which appears to have been issued under the authority of the Republic of Venezuela. This republic is composed of the inhabitants of a portion of the dominions of Spain in South America, who have

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been for sometime past, and still are, maintaining a contest for independence with the mother country. Although not acknowledged by our government as an independent nation, it is well known that open war exists between them and his Catholic Majesty, in which the United States maintain strict neutrality. In this state of things, this Court cannot but respect the belligerent rights of both parties, and does not treat as pirates the cruisers of either so long as they act under and within the scope of their respective commissions. This capture, then, having been made under a regular commission of the government of Venezuela, the captors acquired thereby a title to the vessel and cargo, which could only be divested by recapture or by the sentence of a prize court of the country under whose commission the capture was made. The courts of neutral nations have no right to interfere except

in cases which do not embrace the present capture. The captors therefore, at the time of the violation of our laws, must be regarded as the lawful owners of the property and as capable of working a forfeiture of it by any infraction on their part of the municipal regulations of the United States. The property in the present case not only belonged at the time to the captors in virtue of the capture which they had made, but it is evident from the testimony and admissions in this cause that it was owned at the time of capture by an enemy, and that a condemnation in a prize court of Venezuela was inevitable.

As little foundation is there for resting a claim to restitution on the ransom which it is alleged took

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place of this vessel and cargo. This ransom, whether real or pretended, whether absolute or contingent (about which, doubts may well be entertained) cannot affect the rights of the United States. The forfeiture, having attached before any ransom took place, could not be divested by any act between parties, conusant as these were not only of the fact that a seizure had taken place for a violation of law, but that legal proceedings had been instituted and were then carrying on to obtain a sentence of condemnation founded on such violation.

Decree affirmed with costs.

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