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The @bello Corrunes,@

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Decided On : 1821

Appeal No. : 19 U.S. 152

Appellant : The @bello Corrunes,@

Judgement :

The @Bello Corrunes,@ - 19 U.S. 152 (1821)
U.S. Supreme Court The @Bello Corrunes,@, 19 U.S. 152 (1821)

The @Bello Corrunes@

19 U.S. 152

APPEAL FROM THE CIRCUIT

COURT OF RHODE ISLAND

SYLLABUS

A foreign consul has a right to claim or institute a proceeding *in rem,* where the rights of property of his fellow citizens are in question without a special procuration from those for whose benefit he acts.

But a consul cannot receive actual restitution of the *res* in controversy without a special authority from the particular individuals who are entitled.

A capture made by citizens of the United States of property belonging to subjects of a country in amity with the United States is unlawful wheresoever the capturing vessel may have been equipped or by whomsoever commissioned, and the property thus captured, if brought within the neutral limits of this country, will be restored to the original owners.

Whatever difficulty there may be under our municipal institutions in punishing as pirates citizens of the United States who take from a state at war with Spain a commission to cruise against that power, contrary to the fourteenth article of the Spanish treaty, yet there is no doubt that such acts are to be considered as piratical acts for all civil purposes, and the offending, parties cannot appear, and claim in our courts the property thus taken.

It seems that the terms "a state with which the said King shall be at war" in the fourteenth article of the treaty include the South American provinces which have revolted against Spain.

But however this may be, the neutrality act of June 1797, ch. 1, extends the same prohibition, with all its consequences, to a colony revolting and making war against its parent country:

In the case of such an illegal capture, the property of the lawful owners cannot be forfeited for a violation of the revenue laws of this country by the captors or by persons who have rescued the property from their possession.

The rights of salvage may be forfeited by spoliation, smuggling, or other gross misconduct of the salvors.

Page 19 U. S. 153

This was the case of a Spanish vessel and cargo stranded on Block Island, and there seized by the officers of the customs. An information on behalf of the United

States was filed in the district court against the property as forfeited for an alleged breach of the revenue laws. His Catholic Majesty's Vice Consul for the District of Rhode Island interposed a claim on behalf of "certain subjects of the King of Spain," the original owners of the ship and cargo, which was bound on a voyage from the port of Tarragona, in Spain, to La Vera Cruz, and was taken off Cape St. Antonio, on the west end of the Island of Cuba, on 21 March, 1818, by an armed vessel called the *Puyerredon,* commanded by one James Barnes, sailing under Buenos Ayres colors, and asserting a right to make captures under the authority of the government of that place. Restitution to the original Spanish owners was claimed

upon the ground that the capturing vessel had been equipped in the ports of this country, in violation of our neutrality. An allegation was also filed by Barnes demanding restitution of the property to the captors as having been taken *jure belli* on the high seas. Another claim was also filed by certain persons, part of the original crew of the *Bello Corrunes,* left on board after the capture, who asserted a claim for salvage, in case the property should be restored to the original Spanish owners, under the following circumstances. The master of the captured vessel, and all her crew except four, were taken out, and a prize master and crew put on board from the *Puyerredon.* Thus equipped, the *Bello Corrunes* cruised in company with the *Puyerredon* nearly two months, during which period another Spaniard, of the original crew of the *Bello Corrunes,* was returned to that vessel. The two vessels afterwards separated, and on 8 of May, in lat. 3230' north, and longitude 74W. from London, the prize crew, assisted by the persons originally on board the *Bello Corrunes,* rose on the prize master and other officers and rescued the vessel from their possession. They then steered their course for the United States, and the vessel was by some means stranded upon Block Island, where the vessel and cargo were seized by the revenue officers.

A decree was entered in the district court *pro forma* and by consent of parties restoring the property to the original Spanish owners as claimed and dismissing the other allegations and claims. This decree was affirmed *pro forma* and by

consent in

Page 19 U. S. 155

the circuit court, and the cause was brought by appeal to this Court.

It appeared by the evidence in the courts below and by the further proof taken under a commission from this Court that the capturing vessel was formerly owned by citizens of the United States, and called the *Mangoree,* and was originally armed, equipped, and manned at Baltimore and sailed from that port in March, 1817, under the command of Barnes, a citizen of the United States, domiciled in that city, under Buenos Ayres colors, on a cruise, and after capturing several Spanish vessels, proceeded to Buenos Ayres, where the vessel arrived in August, 1817. The vessel was then altered from a schooner into a brig, and her name changed to the *Puyerredon,* an addition of one gun was made to her armament, some of the original crew were reshipped, and other seamen recruited. An alleged sale of the vessel took place to one Higginbotham, a citizen of the United States domiciled at Buenos Ayres, and a commission was issued by the Supreme Director of the United Provinces of South America, dated 20 November, 1817, authorizing Barnes to capture Spanish property, with which the vessel sailed from Buenos Ayres on the cruise during which the present capture was made.

Page 19 U. S. 166

MR. JUSTICE JOHNSON delivered the opinion of the Court.

This vessel was stranded on Block Island in an alleged effort to reach a port of the United States. The vessel and cargo have been seized by the Collector of Newport for supposed violations of the trade laws of this country, and an information was accordingly filed to subject the whole to condemnation, in the District Court for Rhode Island District.

This claim of the United States has been opposed by three classes of competitors. The vessel and

cargo, it appears, are Spanish property and were captured on the southwestern coast of Cuba by the *Puyerredon,* a private armed brig bearing the flag of the Buenos Ayrean Republic and commanded by Captain James Barnes. Being armed and well calculated for a privateer, she was manned with a complement of the privateer's men, about thirty in number, and her original commander, and all except four of the Spanish crew, removed. Thus equipped, it appears that she cruised as a tender to the *Puyerredon* for about two months, during which time another Spaniard was added to her crew, and on 8 May, when in lat. 3230'N. and long. 74' from London, the crew rose upon the officers, subdued them, put them on board the first vessel they met with, and steered their course for this continent.

Thus circumstanced, Capt. Barnes has libeled in behalf of the captors, the Spanish Vice Consul in behalf of the original Spanish owners, and the crew of the *Bello Corrunes* have libeled for a compensation by way of salvage, to which they suppose themselves entitled in the event of restitution being decreed to the original owners.

To these several claims it is objected on behalf of the United States that restitution cannot be decreed to the Spanish Vice Consul because he is not in that capacity a competent party in court to assert the rights of individual subjects, nor in favor of the captors, because the privateer was originally fitted out in the United States, and is still owned by American citizens, nor in favor of the salvors because

they have forfeited their claim to salvage by spoliation and an attempt to smuggle.

As these suggestions open the whole case, it shall be disposed of by considering them severally in their order, only remarking *en passant* that though they were all sustained, it would avail the United States nothing, since without evidence sufficient to sustain the criminal charge, it would only follow that the proceeds of the property libeled must lie in the registry of the court until a proper claimant shall make his appearance.

On the first point made by the Attorney General, this Court feels no difficulty in deciding that a Vice Consul duly recognized by our government is a competent party to assert or defend the rights of property of the individuals of his nation in any court having jurisdiction of causes affected by the application of international law. To watch over the rights and interests of heir subjects wherever the pursuits of commerce may draw them or the vicissitudes of human affairs may force them is the great object for which consuls are deputed by their sovereigns, and in a country where laws govern and justice is sought for in courts only, it would be a mockery to preclude them from the only avenue through which their course lies to the end of their mission. The long and universal usage of the courts of the United States has sanctioned the exercise of this right, and it is impossible that any evil or inconvenience can flow from it. Whether the powers of the Vice-Consul shall in any instance extend to the right to receive in his national character,

Page 19 U. S. 169

the proceeds of property libeled and transferred into the registry of a court is a question resting on other principles. In the absence of specific powers given him by competent authority, such a right would certainly not be recognized. Much in this respect must ever depend upon the laws of the country from which and to which he is deputed. And this view of the subject will be found to reconcile the difficulties supposed to have been presented by the authorities quoted on this point. Considering, then, the original Spanish interest as legally represented, the questions are whether that interest is not forfeited to the United States or superseded by the superior claims of the capturing vessel.

This is not the ordinary case of a capture made under the taint of an illegal outfit. The decision of this Court must rest upon a very different principle. In those cases, the national character of the claimant is immaterial. He has violated the neutrality of this country, and cannot shelter himself under his commission or his allegiance, however unquestionable his right, individual or national, would have been otherwise. But can a citizen of this country who has violated its laws ever be recognized in our courts as a legal claimant of the fruits of his own wrong? We are of opinion he cannot, and it therefore becomes material to determine what is the

national character of the claimants under the capture made by the *Puyerredon.*

At the time of this vessel's first sailing from Baltimore, she was unquestionably American owned and commanded. During the time of her cruising

Page 19 U. S. 170

under the name of the *Mangoree,* it is not pretended that she changed owners. The legality of her conduct at that period has been defended altogether on the ground of her taking the flag of Buenos Ayres, being commissioned in a foreign state, and her commander, Barnes, assuming the character of a citizen of the power that had commissioned him. It is not until her arrival at Buenos Ayres in 1817 that any change of property in the vessel has been set up in proof. At that time it is contended she was set up at auction and changed owners, passing into the hands of a Mr. Higginbotham, a citizen of the United States, married and domiciled at Buenos Ayres.

If this fact had been satisfactorily made out in evidence, it would have drawn this Court into the consideration of some questions of great nicety which have never yet received a solemn adjudication in this Court. But the evidence to support this pretended change of property is so wholly unsatisfactory that the Court rejects it, for the ordinary solemnities of such transfers are too well known to admit the belief that in this instance the change of property, had it been real, would not have been effected or commemorated by written documents.

This Court, then, proceeds upon the assumption that the *Puyerredon* is still, in reality, American owned, and it is also of opinion that she must be held to be American commanded, since even if the doctrine could be admitted that a man's allegiance may be put off with his coat, it is very clear that Mr. Barnes' citizenship is altogether in fraud of the laws of his own country. His family has never

Page 19 U. S. 171

been removed from Baltimore, and his home has been always either there or upon the ocean.

The question, then, is whether, thus circumstanced, the claim in behalf of the owners and mariners of the *Puyerredon* can be sustained.

We are decidedly of opinion it cannot.

By the 2d section of the 14th article of the treaty with Spain, "Citizens, subjects or inhabitants" of the United States are strictly prohibited from taking

"any commission or letter of marque for arming any ship or vessel to act as privateers against the subjects of his Catholic Majesty or the property of any of them from any prince or state with which the said king shall be at war."

And it is further provided "that if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate."

Whatever difficulties there may exist under the free institutions of this country in giving full efficacy to the provisions of this treaty by punishing such aggressions as acts of piracy, it is not to be questioned that they are prohibited acts, and intended to be stamped with the character of piracy, and to permit the persons engaged in the open prosecution of such a course of conduct to appear and claim of this Court the prizes they have seized would be to countenance a palpable infraction of a rule of conduct declared to be the supreme law of the land.

Some doubts have been suggested on the use of the words "state at war" with Spain. This Court would not readily lean to favor a restricted construction

of language, as applied to the provisions of a treaty, which always combines the characteristics of a contract as well as a law, but it is not necessary to examine the grounds of these doubts, as applied to the present case, because this treaty has been enforced by the provisions of the Act of Congress of 14 June, 1797, so as to leave no doubt of its extension to the case of cruising against Spain under a commission from the new states formed in her colonies.

Citizens of the United States therefore present themselves to this Court to demand restitution of a prize which they had made in violation of the most solemn stipulations of a treaty and provisions of a law of their own country, and of which they have been dispossessed by their own associates in guilt. Under such circumstances, this Court cannot hesitate to reject the claim and adjudge the property to the original proprietors.

This view of the subject obviates the necessity of examining the reality and effect of the alleged rescue on behalf of the original owners with a view to the question of restitution, but it still becomes necessary with a view to the question of forfeiture and the merit of the alleged salvors. With regard to the former it is very clear that, supposing the rescue to have been real and complete, the Spanish consul ought not to be precluded from his election, whether to put his claim upon the ground that the interest of those whom he represents was never legally devested or that it was afterwards legally recovered. In the one case, there is no ground for

affecting it with the forfeiture because of the conduct of the crew, and in the other, some question may be made how far the property was affected by the illegal acts of those who, at that time, held in the right of the owners. But even in this latter view of the state of the property, we are of opinion that the forfeiture was not incurred, since, although it be supposed that the property was in custody of those who held for the Spanish owners, it was not held by those to whom the Spanish owners had entrusted the vessel and cargo. And this is the only ground upon which the acts of the ship's company are made to produce forfeitures of the interest of shippers or ship owners. For besides the considerations drawn from the great predominance of the force detached from the privateer in the effort to recapture, the few men of her own crew were gratuitous actors. Their contract with the owners had ceased, and they assumed the character of voluntary agents whose conduct the owners might or might not adopt according to their own views or interests.

As to the claims of the salvors, it may be remarked that maritime courts always approach them with great benignity and favor. Yet in proportion to the inclination to favor where there is merit is the indignation with which they view every indication of a disposition to take advantage of the unfortunate. Spoliation and even gross neglect may forfeit all the pretensions of salvors to compensation.

In the case before us, it is not too much to pronounce the claim of those of the crew of the *Puyerredon*

Page 19 U. S. 174

who libel for salvage to be not only groundless but impudent, for besides spoliation, smuggling, and the grossest irregularities, it is perfectly clear from the pilot's evidence that they ran the vessel on shore purposely. So that whatever may have been the reality of their benevolent designs towards the Spanish owners originally, their subsequent conduct not only casts a doubt over their candor, but divests them of all pretensions to compensation.

Nor do the five Spaniards who composed a part of the crew of the *Bello Corrunes* at the time she was stranded, and who were not of the capturing crew, escape being involved in the suspicions which fasten on their associates.

It is a melancholy truth too well known to this Court that the instruments used in the predatory voyages carried on under the colors of the South American states are among the most abandoned and profligate of men. Under the influence of strong interests or fears, the mind of man too often yields, even where the moral sense still exerts its influence, but hold out to one of these practiced adventurers in a course of plunder the hope of gain, on the one hand, and the fear of imprisonment for piracy, on the other, and what are the chances for truth!

That these men were selected from the Spanish crew to associate with those of the capturing vessel is a circumstance not very favorable to their characters and conduct, and it would require some strong evidence of their innocence to remove from them the suspicion of a voluntary association with the enemies of their King. Joining in or even setting on

foot or promoting the recapture (facts which rest wholly on their own veracity) can prove very little in their favor, since such mutinies are become everyday occurrences whenever such a crew find themselves in possession of a valuable cargo. Nor will the inference in their favor be very strong from their resorting to the consul of their country, since it was the only course which held out a chance of gain or of escape from the imputation both of piracy and smuggling. There is no evidence to separate their conduct from a complete identification with the rest of the crew except what is obtained from their own testimony. Yet it is suggested that they may still make their innocence and merits to appear, and as the parties have signified their consent that the case may be opened in the court below as to this class of salvors, the case will be remanded to the circuit court for further proceedings so far as the claim for salvage is concerned.

Decree accordingly.

DECREE. This cause came on to be heard on the transcript of the record of the Circuit Court for the District of Rhode Island, and was argued by counsel, on consideration whereof it is ORDERED and DECREED that the decree of the said circuit court in this case be and the same is hereby affirmed with costs against Barnes and others except so far as relates to the libel for salvage of Emanuel Rodriguez, Emanuel Josef, Emanuel Barbarus, Antonio

Josef, and Josef Isnages, who formed no part of the crew of the private armed brig *Puyerredon,* and as to so much of the said decree as relates to the said libellants Emanuel Rodrigues and others it is further DECREED and ORDERED by consent of parties by their counsel that the decree of the said circuit court be and the same is hereby reversed and annulled. And it is further ORDERED that the said cause be remanded to the said circuit court for further inquiry, and that the proceeds of the said *Bello Corrunes* and cargo lie in the registry of the said circuit court to be paid over under the order of that court to the Spanish owners as interest shall be

made to appear.

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