

The Gran Para

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Appeal No. : 20 U.S. 471

Appellant : The Gran Para

Judgement :

The Gran Para - 20 U.S. 471 (1822)

U.S. Supreme Court The Gran Para, 20 U.S. 7 Wheat. 471 471 (1822)

The Gran Para

20 U.S. (7 Wheat.) 471

APPEAL FROM THE CIRCUIT

COURT OF MARYLAND

SYLLABUS

Prizes made by armed vessels which have violated the statutes for preserving the neutrality of the United States will be restored if brought into our ports.

This Court has never decided that the offense adheres to the vessel under whatever change of circumstances that may take place, nor that it cannot be deposited at the termination of the cruise in preparing for which it was committed, but if this termination be merely colorable, and the vessel was originally equipped with the intention of being employed on the cruise during which the capture was made, the *delictum* is not purged.

This was a libel filed in the District Court of Maryland by the Consul General of Portugal, alleging that a large sum of money in silver and gold coins had been, in the year 1818, taken out of the Portuguese ship *Gran Para*, then bound on a voyage from Rio Janeiro to Lisbon, by a private armed vessel called the *Irresistible*, which had been fitted out in the United States in violation of the neutrality acts, that the said sum of money had been brought within our territorial jurisdiction and deposited in the Marine Bank of Baltimore, and praying that the same might be restored to the original Portuguese owners. A claim was filed by one Stansbury, as agent for John D. Daniels, master and owner of the *Irresistible*, stating him to be a citizen of the Oriental Republic, which was at war with Portugal, and that he was cruising under the flag

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and commission of that republic at the time the capture was made, as set forth in the libel, and insisting on his title to the money as lawful prize of war. By the proofs taken in the cause, it appeared that the capturing vessel was built in the port of Baltimore in the year 1817, and was in all respects constructed for the purposes of war. On 16 February, 1818, after being launched, she was purchased by the claimant, Daniels, then a citizen

of the United States. A crew of about fifty men was enlisted in Baltimore, and she cleared out for Teneriffe, having in her hold 12 eighteen-pound gunnades with their carriages, and a number of small arms, and a quantity of ammunition, entered outwards as cargo. The vessel proceeded directly for Buenos Ayres, where she remained a few weeks, during which time the crew was discharged.

Having obtained a commission from the government at that place to cruise against Spain, a crew was enlisted consisting chiefly of the same persons who had come in the vessel from Baltimore, and she sailed in June, 1818, on a cruise under the command of the claimant. The next day after she left the port, a commission from General Artigas, as Chief of the Oriental Republic, was produced under which the claimant declared that he intended to cruise, and that granted by the government of Buenos Ayres was sent back to that place. During this cruise several Portuguese vessels were captured, and the money the restitution of which was prayed for by the libellant was taken out of them. In September, 1818, the *Irresistible* returned to Baltimore,

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and a large sum of money captured during the cruise was deposited in the bank.

Decrees were entered in the district and circuit courts restoring the property to the original owners, and the cause was brought by appeal to this Court.

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

The principle is now firmly settled that prizes made by vessels which have violated the acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought within their territory, shall be restored. The only question therefore is does this case come within the principle?

That the *Irresistible* was purchased and that she sailed out of the port of Baltimore armed and manned as a vessel of war for the purpose of being employed as a cruiser against a nation with whom the United States was at peace is too clear for controversy. That the arms and ammunition were cleared out as cargo cannot vary the case. Nor is it thought to be material that the men were enlisted in form as for a common mercantile voyage. There is nothing resembling a commercial adventure in any part of the transaction. The vessel was constructed for war, and not for commerce. There was no cargo on board but what was adapted to the purposes of war. The crew was too numerous for a merchantman, and was sufficient for a privateer. These circumstances demonstrate the intent with which the *Irresistible* sailed out of the port of Baltimore.

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But she was not commissioned as a privateer, nor did she attempt to act as one, until she reached the River La Plata, when a commission was obtained and the crew reenlisted. This Court has never decided that the offense adheres to the vessel whatever changes may have taken place, and cannot be deposited at the termination of the cruise in preparing for which it was committed, and as the *Irresistible* made no prize on her passage from Baltimore to the River La Plata, it is contended that her offense was deposited there, and that the Court cannot connect her subsequent cruise with the transactions of Baltimore.

If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and reenlisting their crew to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would indeed be a fraudulent neutrality, disgraceful to our own government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts,

that the arms and ammunition taken on board the *Irresistible* at Baltimore were taken for the purpose of being used on a cruise, and that the men there enlisted, though engaged, in form, as for a

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commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe that there was one. Although there might be no express stipulation to serve on board to *Irresistible* after her reaching the La Plata and obtaining a commission, it must be completely understood that such was to be the fact. For what other purpose could they have undertaken this voyage? Everything they saw, everything that was done, spoke a language too plain to be misunderstood.

The Act of June, 1794, c. 296, declares, that

"If any person shall, within the territory or jurisdiction of the United States, . . . hire or retain another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince or state as a soldier or as a mariner or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be guilty of a high misdemeanor,"

&c.;

Now if the crew of the *Irresistible* were not enlisted in the port of Baltimore to cruise under the commission afterwards obtained, it cannot, we think, be doubted but that they were "hired or retained to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered" into that service. For what other purpose were they hired in the port of Baltimore for the voyage to La Plata?

The third section makes it penal for any person, within any of the waters of the United States, to be

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"knowingly concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise,"

&c.;

It is too clear for controversy that the *Irresistible* comes within this section of the law also.

The act of 1817, c. 58, adapts the previous laws to the actual situation of the world by adding to the words "of any foreign prince or state" the words, "or of any colony, district, or people," &c.; The Act of April, 1818, c. 83, reenacts the acts of 1794, 1797, and 1817, with some additional provisions.

It is therefore very clear that the *Irresistible* was armed and manned in Baltimore in violation of the laws and of the neutral obligations of the United States. We do not think that any circumstances took place in the River La Plata by force of which this taint was removed. To the objection that there is no proof that any part of the money was taken out of a vessel called the *Gran Para* it need only be answered that the allegation of the libel is that she was called the "*Gran Para* or by some other name."

Decree affirmed with costs.