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The Merino

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Decided On : 1824

Appeal No. : 22 U.S. 391

Appellant : The Merino

Judgement :

The Merino - 22 U.S. 391 (1824)
U.S. Supreme Court The Merino, 22 U.S. 391 (1824)

The Merino

22 U.S. 391

APPEAL FROM THE DISTRICT

COURT OF ALABAMA

SYLLABUS

The technical niceties of the common law are not regarded in admiralty proceedings. It is sufficient if an information set forth the offense so as clearly to bring it within the statute upon which the information is founded. It is not necessary that it should conclude *contra formam statuti.*

The district court of the district where the seizure was made, and not where the offense was committed, has jurisdiction of proceedings *in rem* for an alleged forfeiture.

If the seizure is made on the high seas, or within the territory of a foreign power, the jurisdiction is conferred on the court of the district where the property is carried and proceeded against.

A municipal seizure, within the territory of a foreign power does not oust the jurisdiction of the- district court into whose district the property may be carried for adjudication:

The prohibitions in the Slave Trade Acts of 10 May 1800, c. 205, and of 20 April, 1818, extend as well to the carrying of slaves on freight as to cases where the persons transported are the property of citizens of the United States, and to the carrying them from one port to another of the same foreign empire as well as from one foreign country to another.

Under the fourth section of the Act of 10 May 1800, c. 205, the owner of the slaves transported contrary to the provisions of that act cannot claim the same in a court of the United States, although they may be held in servitude according to the laws of his own country. But if, at the time of the capture by a commissioned vessel, the offending ship was in possession of a noncommissioned captor who had made a seizure for the same offense, the owner of the slaves may claim the section only applying to persons interested in the enterprise or voyage in which the ship was employed at the time of such capture.

These were the cases of several vessels, and their

Page 22 U. S. 392

cargoes of African slaves. The information filed in the case of the Constitution was as well on behalf of the United States as of George M. Brooke, a Colonel in the army of the United States. The first count, after stating the seizure of this vessel with a valuable cargo on board and eighty-four African slaves by the said Brooke,

on waters navigable from the sea by vessels of ten tons burden and upwards, alleges that the said vessel, being a vessel of the United States, owned by citizens of the United States, was employed in carrying on trade, business or traffic, contrary to the true intent of an act of Congress, passed on 10 May, 1800, entitled, "an act to prohibit the carrying on of the slave trade from the United States to any foreign place or country," that is to say, was employed or made use of in the transportation of slaves from one foreign country to another, *viz.,* from Havana to Pensacola, both places belonging to the King of Spain, contrary to the form of the said act, whereby the said vessel and her cargo became forfeited.

It was admitted by the counsel for the respondents that the second and third counts were unsupported by the evidence, and they were therefore abandoned.

The fourth count charges that certain citizens of the United States did, in June, 1818, take on board or transport from one foreign place or country to another certain negroes in a vessel for the purpose of holding, selling, or otherwise disposing of them as slaves or to be held to labor or service. In the case of the *Merino,* the information

Page 22 U. S. 393

contains three counts, the second of which alone was relied upon by the counsel for the respondent, and this states that on the ___ day of June, 1818, certain citizens of the United States received on board of the said vessel, belonging to citizens of the United States, and transported from one foreign place or country, *viz.,* from Cuba to Pensacola, a certain number of negroes for the purpose of holding the said negroes as slaves, and that the said vessel, with her cargo and the negroes, were, on 21 June, 1818, seized on the high seas by Capt. McKeever, commander of the United States ketch *Surprise,* and were brought into the District of Mobile for a violation of the laws of the United States, and particularly of the 4th section of the act of 1818.

The information in the case of the *Louisa* and her cargo was substantially the same as the one last mentioned, the second count being also founded on the 4th

section of the act of 1818.

The evidence in these cases established the following facts, *viz.,* that the above vessels, owned by citizens of the United States and registered as such, sailed from certain ports in the United States to Havana, where they each received on board certain goods, as also a number of slaves, newly imported from the coast of Africa, the latter belonging to subjects of Spain, residents either of Havana or Pensacola, to be transported from the former to the latter place. The *Merino* cleared out at Havana on 2 June, 1818, for Mobile, and the *Constitution* and *Louisa* on the 10th of the same month, for New Orleans.

Page 22 U. S. 394

The owners of these vessels, however, engaged to land the slaves at Pensacola on their respective voyages to New Orleans and Mobile. On their arrival within or near to the Bay of Pensacola, that place was found in possession of the American army under the command of Gen. Jackson. The *Merino* was seized by the United States ketch *Surprise,* commanded by Capt. McKeever, within a mile and a half of Fort Barancas, inside the bar, and within the harbor of Pensacola. The *Constitution* was taken possession of by Col. Brooke, of the United States army, under the guns of Fort Barancas, then in possession of the United States forces. The *Louisa* was captured by Capt. McKeever in the ketch before mentioned outside of the bar at Pensacola, standing in. These vessels, with their goods on board and the negroes, were sent to the District of Mobile for adjudication. The Constitution, having on board an agent of Col. Brooke, was boarded off Mobile Point by the United States revenue boat and was carried in and reported by Capt. Lewis, commanding said boat, to the collector as having been seized by him, the agent reporting the seizure as having been made by Col. Brooke.

The informations against these vessels and their cargoes were filed in the General Court for the Territory of Alabama, from whence the proceedings were removed into the District Court of Alabama, where the vessels and their cargoes were severally condemned as forfeited to the United States, but the distribution was reserved for the future order of the court. From these

Page 22 U. S. 395

sentences of condemnation the claimants of the vessels and the cargoes appealed to this Court.

Page 22 U. S. 399

MR. JUSTICE WASHINGTON delivered the opinion of the Court, and after stating the case, proceeded to enumerate the objections made by the counsel

Page 22 U. S. 400

for the appellants to the several decrees of the court below.

1. That the regular admiralty process was not issued in these cases.

2. That the informations do not conclude against the form of the statute.

3. That the District Court of Alabama had not jurisdiction, the seizures having been made, not within the waters of that state, or on the high seas, but within the jurisdiction of a foreign nation.

4. That the acts of Congress on which these informations are founded were intended to apply exclusively to the suppression of the slave trade from the coast of Africa or elsewhere for the purpose of holding or disposing of the subjects of the trade, as slaves, and not to the carrying of them when in a state of slavery from one foreign country to another.

1. That the proceedings in these cases were not conducted with the regularity usually observed in admiralty causes must be admitted. But the Court is of opinion that all objections of this nature were waived by the appearance of the parties interested in the property seized and filing their claims to the same. In each case, a warrant issued to the Marshal to seize the property libeled and to cite and admonish all persons claiming an interest in the same to appear before the court and to show cause why the same should not be condemned as forfeited to the United States. This process was returned executed, and claims were interposed

for the several vessels and their

Page 22 U. S. 401

cargoes by the asserted owners thereof. Upon the strictest rules which govern in courts of common law, objections to the regularity of the process to enforce an appearance would be considered as removed by the appearance of the party and pleading to the merits.

2. The second objection is without foundation in fact in relation to the information against the *Constitution* and her cargo, and we think it inadmissible in point of law in the other two cases, the count relied upon in those informations stating expressly that the seizure was made for a violation of the 4th section of the act of 1818, the title of which is accurately set forth. For all the purposes of justice and of notice to the claimant of the charge which he was called upon to answer, this must be deemed sufficient, and the addition of the technical words *contra formam statuti* is altogether formal and unnecessary. In the cases of *The Samuel,* 1 Wheat. 9, and, *The Hoppet,* 7 Cranch 389, it was observed by this Court that technical niceties of the common law as to informations, which are unimportant in themselves and stand only on precedents, are not regarded in admiralty information, the material inquiry in the latter cases being whether the offense is so set forth as clearly to bring it within the statute upon which the information is founded.

3. The objection raised to the jurisdiction of the District Court of Alabama is principally grounded upon the 9th section of the Judiciary Act of 1789, c. 20. which provides

"That the district courts shall have exclusive original cognizance

Page 22 U. S. 402

of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more

tons burden, within their respective districts, as well as upon the high seas."

It is contended, that the seizures in these cases were not made upon the high seas or upon waters within the District of Alabama, and therefore the jurisdiction was not conferred on that court. The section above recited marks out not only the general jurisdiction of the district courts, but that of the several district courts in relation to each other in cases of seizures on waters of the United States navigable from the sea by vessels of a particular burden. If made within the waters of one district, the jurisdiction attaches to the court of that district and the suit must be there prosecuted. The jurisdiction, in these cases is given to the court of the district not where the offense was committed but where the seizure is made. But where the seizure is made on the high seas, the jurisdiction is conferred upon no particular district court, and it may therefore be exercised by the court of any district into which the property is carried, and there proceeded against. In like manner, if the seizure be made within the waters of a foreign nation, as was done in these cases, cognizance of the cause is given, under the general expressions of the section as to civil cases of admiralty and maritime jurisdiction, to the court of the district into which the property

Page 22 U. S. 403

is conducted and on which the prosecution is instituted. The illegality of the service in this latter case has nothing to do with the question of jurisdiction, as was decided by this Court in the case of *The Richmond,* 9 Cranch 102.

4. The last objection involves the merits of these causes. In the case of the *Constitution,* the counsel for the appellees rely upon the first and fourth counts in the information, and in the two other cases on the second count. But we think that the first count in the first of these cases must be put out of view, because although it charges a violation of the act of 1794, it states the offense within the words of the Act of 10 May, 1800, and yet it alleges it to have been committed contrary to the form of the act of 1794, the title of which is specially recited. This was no doubt a mistake of the proctor, but it partakes too much of substance to be the foundation of a sentence of condemnation in a case so highly penal as this is. But that count

is not, in the opinion of the Court, material to the decision of that case, because, we are all of opinion that the fourth count is fully supported by the evidence in the cause, and warrants the sentence of condemnation pronounced by the inferior court. This count is strictly within the 4th section of the act of 1818, and so is the second count in the informations against the *Merino* and *Louisa* and their cargoes.

The argument relied upon by the counsel for the appellants was that the policy of our laws from the year 1794 down to the latest act of legislation has been confined to the suppression of

Page 22 U. S. 404

the slave trade and to prevent, as far as could be done, the bringing into bondage those persons who were free in their own country, and that since the condition of persons already slaves cannot be changed or made worse by their removal from one slave-holding country to another, the acts of 1800 and 1818 ought not to be so construed as to prohibit citizens of the United States being concerned in such removals.

It may well be doubted, whether even the act of 1794, the first which passed upon this subject, can fairly receive the narrow construction which is contended for, since it prohibits the fitting of vessels within the United States not only for the purpose of procuring from any foreign kingdom the inhabitants thereof to be transported to some foreign country to be disposed of as slaves, but also for the purpose of carrying on any trade or traffic in slaves to any foreign country, apparently embracing the two cases of free persons of color whose condition is changed by being brought into a state of slavery and also persons already slaves and intended to be used as subjects of traffic. Be this as it may, the language of the acts of 1800 and 1818 leaves no reasonable doubt that the intention of the legislature was to prevent citizens of or residents within the United States from affording any facilities to this trade, although they should have no interest or property in the slaves themselves and although they should not be immediately instrumental to the transportation of them from their native country. By the former

of these laws, the offense is made to consist

Page 22 U. S. 405

in the employment of a vessel belonging to citizens of the United States or to persons resident within the same in carrying slaves from one foreign country or place to another, no matter for what purpose. By the latter, it consists in the taking on board or transporting from Africa or from any foreign country or place any negro, &c.;, in any vessel, for the purpose of holding or disposing of such person as a slave or to be held to service, &c.;, where those acts are performed by citizens of or residents within the United States.

It cannot be questioned but that the case of the *Constitution,* as stated in the information, and proved by the evidence, is literally within the provisions of the latter act. The slaves seized in that vessel were taken on board of her by a citizen of the United States in one foreign place for the purpose of their being held to service or labor. The Court does not feel itself justified in restraining the general expression of this law upon the ground of a supposed policy the reality of which, to say the most of it, is very questionable. The sentence, therefore, of the court below in the case of this vessel and her cargo must be affirmed.

The same decision would, of course, be made in the cases of the *Merino* and the *Louisa* and their cargoes if it were not for the circumstance that the second count in the informations against those vessels alleges that the citizens of the United States who took the slaves on board at the Havana did so for the purpose of holding them as slaves, which allegation is not proved by the evidence in those cases. They were taken on board

Page 22 U. S. 406

merely as passengers, to be delivered at Pensacola to their owners or to those to whom they were consigned. The sentences in these two cases must therefore be reversed and the causes remitted to the district court with directions to permit the libellants to amend, it being obvious to this Court from the evidence that the negroes taken on board of those vessels were transported for the purpose of their

being held to service.

The three remaining cases, present the claims of the asserted owners of the slaves transported in the above vessels, from Havana to Pensacola, which were brought before the court below in the form of libels for restitution. To these libels no claims were filed, and the sentence of the court in each of the cases was "that the slaves remain subject to the laws of Alabama," from which decision appeals were taken, and as they amount substantially to a dismission of the libels, it becomes necessary to examine their correctness. The ownership of the slaves, as claimed by the respective libellants, appears to the Court to be sufficiently established. It is in proof that slavery was and is permitted to exist in the Island of Cuba, either by particular ordinances of the Spanish government or by custom; that the slaves in question were imported into that island from Africa by Antonio de Frias, and were shipped at Havana for Pensacola by these libellants as their property under a passport regularly granted by the Governor-General of Cuba, the slaves claimed by the libellants, other than Frias, having been purchased from him by those libellants. It would

Page 22 U. S. 407

seem unreasonable to require other or better proof of ownership in property of this description than these facts furnish.

The only question, then, is whether these persons are prevented from claiming restitution of these slaves by any law of the United States. The only act which bears upon this subject is that of 10 May, 1800, the 4th section of which, after declaring that it should be lawful for any of the commissioned vessels of the United States to seize any vessel employed in carrying on trade, business, or traffic, contrary to the intent and meaning of that act or the act of 1794, enacts, that

"All persons interested in such vessel or in the enterprise or voyage in which such vessel shall be employed at the time of such capture shall be precluded from all right or claim to the slaves found on board such vessel and from all damages or retribution on account thereof."

There can be no question but that this section is strictly applicable to the claimants of the slaves on board the *Merino* and *Louisa,* those vessels having been seized whilst employed in carrying on trade forbidden by the act of 1800, by a commissioned vessel of the United States. The case of the claimants of the slaves on board of the *Constitution* is different. That vessel, with her cargo, was seized in the bay of Pensacola by a military officer, and was conducted by his agent to Mobile for the purpose of being libeled for his use. The 1st section of this act, which declares the forfeiture of any vessel belonging to a citizen of the United States employed in transporting slaves from one foreign country to another,

contains a provision that the said vessel may be libeled and condemned for the use of the person who shall sue for the same. The right to seize the vessel and slaves on board would seem to be a necessary consequence of the right to enforce the forfeiture. The possession of the vessel, then, being lawfully vested in Col. Brooke, at the time she was boarded by the revenue boat off Mobile Point, it could not with any propriety be asserted that she was employed in carrying on trade contrary to law at the time she was so boarded. Her employment in such trade was completely terminated by the first seizure, and she was on her way for adjudication when the second seizure was made. If, under these circumstances, a capture of the vessel could not be legally made by the revenue boat, then the claims of the owners of the slaves on board is not precluded by the 4th section of the act of 1800, the sentence above quoted applying only to persons interested in the voyage in which the vessel was employed at the time of such capture.

The Court is therefore of opinion that in the case of Antonio de Frias and David Nagle against eighty-four African slaves, the sentence of the court below is erroneous and ought to be reversed, and that a decree of restitution ought to be made.

Sentence in the case of the Constitution affirmed. Sentences in the cases of the Louisa and Merino reversed, with leave to amend. Sentence reversed as to the claim of Frias and Nagle, and restitution decreed.

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