

**The Dos Hermanos**

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**SooperKanoon Citation :** [sooperkanoon.com/79030](http://sooperkanoon.com/79030)

**Court :** US Supreme Court

**Decided On :** 1825

**Appeal No. :** 23 U.S. 306

**Appellant :** The Dos Hermanos

**Judgement :**

The Dos Hermanos - 23 U.S. 306 (1825)

U.S. Supreme Court The Dos Hermanos, 23 U.S. 10 Wheat. 306 306 (1825)

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**23 U.S. (10 Wheat.) 306**

*APPEAL FROM THE DISTRICT*

*COURT OF LOUISIANA*

## **SYLLABUS**

Seizures made *jure belli* by noncommissioned captors are made for the government, and no title of prize can be derived but from the prize acts.

A noncommissioned captor can only proceed in the prize court as for salvage, the amount of which is discretionary.

The appellate court will not interfere in the exercise of this discretion as to the amount of salvage allowed, unless in a very clear case of mistake.

An appeal under the Judiciary Acts of 1789, ch. 20, s. 22, and of 1803, ch. 353, prayed for and allowed within five years, is valid although the security was not given until after the lapse of five years.

The mode of taking the security, and the time for perfecting it are within the discretion of the court below, and this Court will not interfere with the exercise of that discretion.

This was the same case reported in [15 U. S. 2](#) Wheat. 76, where the decree of the court below condemning the cargo as enemy's property was affirmed by this Court, reserving the question as to the distribution of the prize proceeds. The original capture was made by Mr. Shields, a purser of the navy, in the year 1814, in a barge armed and fitted out to cruise, but not regularly attached to the navy. The cause was remanded to the court below for further proceedings, and that court decreed the proceeds to be equally distributed between the United States and the captor,

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without deducting the captor's expenses. From this decree the captor appealed to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court that whatever might have been the ancient doctrine in England in respect to captures in war, it is now clearly established in that kingdom that all captures *jure belli* are made for the government, and that no title of prize can be acquired but by the public acts of the government conferring rights on the captors.

If the original law of England authorized an individual to acquire to his own use the property of an individual without any express authority from the public, that law

was changed long before the settlement of this country. It never was the law of this country. Before the Revolution, all captures from the enemy accrued to the government, to be distributed according to law, and the Revolution could not strip the government of this exclusive prerogative and vest it in individuals. It is then the settled law of the United States that all captures made by noncommissioned captors, are made for the government, and since the provisions in the prize acts as to the distribution of prize proceeds are confined to public and private armed vessels cruising under a regular commission, the only claim which can be sustained by the captors in cases like the present must be in the nature of salvage for bringing in and preserving the property.

In the present case, the district court awarded one-half of the prize proceeds, or salvage, to the captors. It was an exercise of sound discretion, and this Court would with extreme reluctance interfere with that discretion unless

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in a very clear case of mistake. We perceive no such mistake in this case, and are well satisfied with the amount of the salvage as decreed by the district court.

As to the question which has been made whether the appeal was in due time, it appears that the appeal was prayed for within five years and was actually allowed by the court within that period. It is true that the security required by law was not given until after the lapse of the five years, and under such circumstances the court might have disallowed the appeal and refused the security. But as the court accepted it, it must be considered as a sufficient compliance with the order of the court and that it had relation back to the time of the allowance of the appeal. The mode of taking the security and the time for perfecting it are matters of discretion, to be regulated by the court granting the appeal, and when its order is complied with, the whole has relation back to the time when the appeal was prayed. We must presume the security was given in this case according to the rule prescribed by the district court, and the appeal was therefore in time.

*Decree affirmed with costs.*

