**The Palmyra**

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**Appeal No.** : 25 U.S. 1

**Appellant** : The Palmyra

**Judgement** :

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U.S. Supreme Court The Palmyra, 25 U.S. 12 Wheat. 1 1 (1827)

**The Palmyra**

**25 U.S. (12 Wheat.) 1**

*APPEAL FROM THE CIRCUIT*

*COURT OF SOUTH CAROLINA*

## SYLLABUS

A question of probable cause of seizure under the Piracy Acts of 3 March, 1819, c. 75, and 15 May, 1820, c. 112.

General rule as to libels *in rem.*

How far the strict rules of the common law as to pleading in criminal cases are applicable to informations *in rem.*

How far a previous prosecution *in personam* is necessary to found the proceeding *in rem.*

In such a case, although the crew may be protected by a commission *bona fide* received and acted under from the consequences attaching to the offense of piracy by the general law of nations, although such commission was irregularly issued, yet if the defects in the commission be such as, connected with the insubordination and predatory spirit of the crew, to excite a justly founded suspicion, it is sufficient under the act of Congress to justify the captors for bringing in the vessel for adjudication and to exempt them from costs and damages.

Probable cause of seizure a bar to the claim for damages.

Although probable cause of seizure will not exempt from costs and damages, in seizures under mere municipal statutes, unless expressly made a ground of justification by the law itself, this principle does not extend to captures *jure belli,* nor to marine torts generally, nor to acts of Congress authorizing the exercise of belligerent rights to a limited extent, such as the Piracy Acts of 3 March, 1819, c. 75, and 15 May, 1820, c. 112.

An objection to the competency of a witness on the ground of interest cannot betaken in the Supreme Court on a hearing on the appeal where the witness had been admitted without objection in the district and circuit court.

This was a libel of information under the Act of Congress of 3 March, 1819, c. 75, entitled, "An act to protect the commerce of the United States and punish the crime of piracy," continued in force by the Act of 15 May, 1820, c. 112. The libel was filed by the district attorney, as well in behalf of the United States as of the captors, and alleged that the brig *Palmyra,* alias the *Panchita,* was a vessel from which a piratical aggression, search, depredation, restraint, and seizure had been attempted and made upon the high seas in and upon the schooner

*Coquette,* a vessel of the United States, and of the citizens thereof, and in and upon the master, officers, and crew of the said schooner *Coquette,* citizens of the United States, and in and upon the *Jeune Eugenie,* a vessel of the United States and of the citizens thereof and in and upon Edward L. Coffin, the master, and the officers and crew of the said vessel, being citizens of the United States, and also in and upon other vessels of the United States, their officers and crews, citizens of the United States, and in and upon other vessels of various nations, states, and kingdoms, their officers and crews, citizens and subjects of the said states and kingdoms. The vessel in question was an armed vessel, ostensibly cruising as a privateer under a commission from the King of Spain, and was captured on the high seas on 15 August, 1822, by the United States vessel of war the *Grampus,* commanded by Lieutenant Gregory, after a short resistance, and receiving a fire from the *Grampus* by which one man was killed and six men were wounded. The captured vessel was sent into the port of Charleston, South Carolina, for adjudication. A libel was filed and a claim interposed, and upon the proceedings in the district court a decree was pronounced restoring the brig to the claimants without damages for the capture, injury, or detention. From this sentence an appeal was interposed by both parties to the circuit court, and upon the hearing in that court a decree was pronounced affirming so much of the decree as acquitted the brig and reversing so much of



it as denied damages; and the circuit court proceeded finally to award damages to the amount of $10,288.58. From this decree an appeal was interposed in behalf of the United States and the captors to the Supreme Court. The cause coming on to be heard in this Court at February term, 1825, it not appearing that there had been any final decree in the circuit court ascertaining the amount of damages, the cause was dismissed. * But at the last term, it being discovered that in point of fact there had been a final award of damages, which was omitted by mistake in the transcript of the record certified by the Clerk of the court below, this Court, on motion of the appellants, ordered the cause to be reinstated.

At the hearing in the court below, it appeared that the commission of the Palmyra was numbered 38, and entitled in the margin, "Real Passaporte de Corso para los Mares de Indias;" that is, "A royal cruising passport for the Indian seas." The great seal of Spain was affixed to it, and it was signed with the royal sign manual with the usual formula: "Yo el Reg." It was afterwards countersigned by the Secretary of State and Marine Affairs, and dated at Madrid, the 10th of February, 1816. The blanks in the passport or commission, were filled up to Don Pablo Llanger, an inhabitant of Cadiz, to arm for war his Spanish schooner (Goleta) called the Palmyra, of ninety-three tons, one twelve pound cannon, and eight carronades, ten pounders, with a crew of one hundred men. A printed note on the back of the commission, signed by Juan Dios Robiou, lieutenant in the national navy, and captain of the port of Porto Rico, dated on the 5th of February, 1822, renewed the commission in favor of Llanger, as captain of the Palmyra, for a new cruise of three months, it having been originally granted for the term of three months, which had expired. The vessel, on board of which the commission was found, was in fact a brig of one hundred and sixty tons, commanded by Captain Escura. Various testimony was taken as to the

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acts of piracy committed by the *Palmyra* upon the *Coquette* and the *Jeune Eugenie,* as to the insubordination and predatory spirit of the crew of the *Palmyra,* and as to the nature and circumstances attending the encounter between the *Palmyra* and the *Grampus,* which gave rise to a question of fact in respect to the justifiableness of the cause of capture. But it has not been thought necessary to analyze the testimony, as the most material facts are stated in the opinion of the Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is the case of a proceeding *in rem* by a libel of information founded on the Act of Congress of

March, 1819, ch. 75, as continued in force by the Act of Congress of 15 May, 1820, ch. 112. The second section of the former act authorizes the President

"to instruct the commanders of public armed vessels of the United States to seize, subdue, and send into any port of the United States any armed vessel or boat or any vessel or boat the crew whereof shall be armed and which shall have attempted or committed any piratical aggression, search, restraint, depredation or seizure upon any vessel of the United States or of the citizens thereof or upon any other vessel."

The fourth section declares

"That whenever any vessel or boat from which any piratical aggression, search, restraint, depredation, or seizure shall have been first attempted or made shall be captured and brought into any port of the United States, the same shall and may be adjudged and condemned to their use and that of the captors after due process and trial in any court having admiralty jurisdiction and which shall be holden for the district into which such captured vessel shall be brought, and the same court shall thereupon order a sale and distribution thereof accordingly, and at their discretion."

The brig *Palmyra* is an armed vessel, asserting herself to be a privateer and acting under a commission of the King of Spain, issued by his authorized officer at the Island of Porto Rico. She was captured on the high seas on 15 August, A.D. 1822, by the United States vessel of war *Grampus,* commanded by Lieutenant Gregory, after a short resistance, and receiving a fire from the *Grampus,* by which one man was killed and six men were wounded. She was sent into Charleston, South Carolina, for adjudication. A libel was duly filed and a claim interposed, and upon the proceedings in the district court of that district a decree was pronounced by the court that the brig be acquitted, without any damages for the capture, injury, or detention. From this decree an appeal was made by both parties to the circuit court, and upon the hearing in that court, where, for the first time, the officers of the privateer were examined as witnesses, the circuit court

pronounced a decree affirming

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so much of the decree of the district court as acquitted the brig and reversing so much of it as denied damages, and proceeded finally to award damages to the claimants to the amount of $10,288.58. From this decree there was an appeal interposed on behalf the United States and the captors to the Supreme Court. The cause came on to be heard upon this appeal at February term, 1825, and upon inspection of the record it did not then appear that there had been any final decree ascertaining the amount of damages. The Court was of opinion that if there had been no such decree, the case was not properly before the court upon the appeal, there not being any final decree within the meaning of the act of Congress. The court considered that the damages were but an incident to the principal decree, that the cause was but a single one, and that the cause could not at the same time be in the circuit court for the purpose of assessing damages and in this Court upon appeal for the purpose of an acquittal or condemnation of the vessel. The questions, indeed, were different, but the cause was the same. Upon this ground the appeal was dismissed. But at the last term of the Court, it appearing that in point of fact there had been a final award of damages and that the error was a mere misprision of the clerk of the circuit court in transmitting an imperfect record, the Court, upon motion of the appellants at the last term, ordered the cause to be reinstated.

It is now contended that this Court had no authority to reinstate the cause after such a dismissal 1. because it may operate to the prejudice of the stipulators or sureties, to whom the privateer was delivered upon stipulation in the court below; and 2. because the cause was capable of being heard in this Court upon the appeal in respect to the decree of acquittal, that being the only decree in which the United States had any interest as a party, and that as to the damages the captors were the only persons responsible for damages, and they alone had a right of appeal respecting the same, so that by operation of law the cause had become

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divided into two separate and distinct causes, in which each party was an actor.

This Court cannot concur in either objection. Whenever a stipulation is taken in an admiralty suit for the property subjected to legal process and condemnation, the stipulation is deemed a mere substitute for the thing itself, and the stipulators liable to the exercise of all those authorities on the part of the court which it could properly exercise if the thing itself were still in its custody. This is the known course of the admiralty. It is quite a different question whether the court will, in particular cases, exercise its authority where sureties on the stipulation may be affected injuriously. That is a subject addressed to its sound discretion. In the present case there was no ground for surprise or injury to the stipulators, or indeed to any party in interest. If there had been no final award of damages, the cause would not have been properly before this Court, and the appeal itself, being a nullity, would have left the cause still in the circuit court. But as such an award was made, the appeal was rightfully made, and the dismissal, being solely for a defect of jurisdiction apparent on the record and founded on a mistake, constituted no bar to a new appeal, even if a general dismissal might. The appeal then might, at any time within five years, have been lawfully made and have bound the parties to the stipulation, to all its consequences. The difference between a new appeal and a reinstatement of the old appeal after a dismissal from a misprision of the clerk is not admitted by this Court justly to involve any difference of right as to the stipulators. Every court must be presumed to exercise those powers belonging to it which are necessary for the promotion of public justice, and we do not doubt that this Court possesses the power to reinstate any cause dismissed by mistake. The reinstatement of the cause was founded, in the opinion of this Court, upon the plain principles of justice, and is according to the known practice of other judicial tribunals in like cases.

The other objection has not, in our opinion, a more solid



foundation. The libel was filed by district Attorney as well in behalf of the United States as of the captors, and prayed, as usual, a condemnation of the vessel and

distribution of the proceeds. This fact is noticed for the purpose of answering the observation made at the bar as to the parties to the libel. It has been supposed that the United States and the captors are to be deemed severally libellants having distinct rights both of prosecution and appeal. But this proceeds upon a mistake. In every case of a proceeding for condemnation upon captures made by the public ships of war of the United States, whether the same be cases of prize, strictly *jure belli,* or upon public acts in the nature of captures *jure belli,* the proceedings are in the name and authority of the United States, who prosecutes for itself as well as for the captors. The captors cannot, without the authority of the government, proceed to enforce condemnation. The suit is in form and substance a proceeding by and in the name of the United States for the benefit of all concerned. And whether the question respect the point of condemnation or of damages, the United States has a right of appeal coextensive with the whole matter in litigation, and may interpose its protection to guard its agents and officers against injury and damages. These agents and officers are indeed, in a certain sense, parties to the suit, as the seizing officer is in cases of mere municipal seizures, and when the claimant makes himself, by a demand of damages, an actor in the suit, no doubt exists that the court may proceed to decree damages against them, and thus entitle them to a separate right of appeal if the government should feel that it had no further interest to pursue the suit. But still the right to damages must always be dependant upon the question of condemnation or acquittal, for it can never be successfully contended that if a condemnation is finally adjudged, a decree for damages can be maintained. And on the other hand, in a case of acquittal, the whole circumstances of the case must be taken into consideration in order to ascertain that the case is one which justifies an award of damages.

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In the present case there was an appeal entered by the district attorney for the United States, and also for the captors, from the decree of the circuit court. If this decree was final, such an appeal brought up the whole cause as to all he parties, and would, in point of law, have produced the same effect if in form the appeal had only been in the name of the United States. If the decree was not final (as upon

the original record it appeared to this Court not to be), then it was void as to all parties. Either way, then, there never was any separation of the parties libellants so as to give rise to the point of separate independent causes. We are, then, of opinion that the whole cause is now rightfully before us.

It is contended on behalf of the appellees that the present suit cannot be maintained, because the libel itself is fatally defective in its averments. It is said to be too loose, inartificial, and general in its structure to give a just foundation for any judgment of condemnation. If this were admitted to be true, the only effect would be, supposing the merits on the evidence appeared to be in favor of the libellants, that the court would, according to its known course of practice, remand the cause the circuit court with directions to allow an amendment of the libel and ulterior proceedings consequent thereon. But there is asserted to be another fatal defect in the averments of the libel, which is incapable of being cured because it cannot be established in point of fact, and that is that the offenders are not alleged to have been convicted upon any prosecution *in personam* of the offense charged in the libel. The argument is that there must be a due conviction upon a prosecution and indictment for the offense *in personam* averred and proved in order to maintain the libel *in rem.*

In respect to the first objection it must be admitted that the libel is drawn in an inartificial, inaccurate, and loose manner. The strict rules of the common law as to criminal prosecutions have never been supposed by this Court to be required in informations of seizure in the admiralty for forfeitures, which are deemed to be civil proceedings *in*



*rem.* Even on indictments at the common law, it is often sufficient to state the offense in the very terms of the prohibitory statute, and the cases cited by the Attorney General are directly in point. In informations in the Exchequer for seizures, general allegations bringing the case within the words of the statute have been often held sufficient. And in this Court it has been repeatedly held that in libels *in rem,* less certainty than what belongs to proceedings at the common law

will sustain a decree of condemnation if the words of the statute are pursued and the allegations point out the facts, so as to give reasonable notice to the party to enable him to shape his defense. There is indeed in admiralty proceedings little ground to insist upon much strictness of averment, because in however general terms the offense may be articulated, it is always in the power of the court to prevent surprise by compelling more particular charges as to the matters intended to be brought forward by the proofs. In general it may be said that it is sufficient in libels *in rem* for forfeitures to allege the offense in the terms of the statute creating the forfeitures. There may be exceptions to this rule where the terms of the statute are so general as naturally to call for more distinct specifications. Without pretending to enumerate such exceptions, let us look at the allegations in the amended libel in the present case. It charges

"that the said brig, called the *Palmyra,* &c.;, was and is a vessel from which a piratical aggression, search, depredation, restraint, and seizure has been first attempted and made, to-wit, upon the high seas in and upon the schooner *Coquette,* a vessel of the United States and of the citizens thereof and in and upon the master, officers, and crew of the said schooner *Coquette,* citizens of the United States, and also in and upon the *Jeune Eugenie,* a vessel of the United States and of the citizens thereof, and in and upon Edward L. Coffin, the master, and the officers and crew of the said vessel, being citizens of the United States, and also in and upon other vessels of the United States, their officers and crews, citizens of the United States, and in and upon other vessels of various nations, states, and



kingdoms, their officers and crews, citizens and subjects of said states and kingdoms."

Now whatever may be said as to the looseness and generality and consequent insufficiency of the latter clauses of this allegation, the former specifying the *Coquette* and *Jeune Eugenie* (upon which alone the proofs mainly rely for condemnation) have, in our opinion, reasonable and sufficient certainty. It was not

necessary to state in detail the particular acts constituting the piratical aggression, search, depredation, restraint, or seizure. The general words of the statute are sufficiently descriptive of the nature of the offense, and the particular acts are matters proper in the proofs. We may, then, dismiss this part of the objection.

The other point of objection is of a far more important and difficult nature. It is well known that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the Crown. The forfeiture did not, strictly speaking, attach *in rem,* but it was a part, or at least a consequence, of the judgment of conviction. It is plain from this statement that no right to the goods and chattels of the felon could be acquired by the Crown by the mere commission of the offense, but the right attached only by the conviction of the offender. The necessary result was that in every case where the Crown sought to recover such goods and chattels, it was indispensable to establish its right by producing the record of the judgment of conviction. In the contemplation of the common law, the offender's right was not devested until the conviction. But this doctrine never was applied to seizures and forfeitures created by statute, *in rem,* cognizable on the revenue side of the Exchequer. The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing, and this whether the offense be *malum prohibitum* or *malum in se.* The same principle applies to proceedings *in rem* on seizures in the admiralty. Many cases exist where the forfeiture for acts done attaches solely *in rem* and there is no accompanying penalty *in personam.* Many cases exist where there is both a forfeiture *in rem* and a personal penalty.

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But in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been, and so this Court understand the law to be, that the proceeding *in rem* stands independent of and wholly unaffected by any criminal proceeding *in personam.* This doctrine is deduced from a fair interpretation of the legislative intention apparent upon its enactments. Both in England and America, the jurisdiction over proceedings *in rem* is usually vested in different courts from those exercising criminal jurisdiction. If the argument at the bar were well founded, there could never be a judgment of

condemnation pronounced against any vessel coming within the prohibitions of the acts on which the present libel is founded, for there is no act of Congress which provides for the personal punishment of offender, who commit "any piratical aggression, search, restraint, depredation or seizure" within the meaning of those acts. Such a construction of the enactments, which goes wholly to defeat their operation and violates their plain import, is utterly inadmissible. In the judgment of this Court, no personal conviction of the offender is necessary to enforce a forfeiture *in rem* in cases of this nature.

Having disposed of these questions which are preliminary in their nature, we may now advance to the consideration of those which turn upon the merits of the cause. These questions are 1. whether the present be, upon the facts, a case for condemnation, and if not 2. whether it be a case for remunerative damages, for vindictive damages are and must be disclaimed.

Upon the first point it is unnecessary to go into any examination at large of the various facts preceding and accompanying the capture, because the judges are divided in opinion, and consequently, according to the known practice of the Court, the decree of the circuit court, so far as it pronounced a decree of acquittal, must be affirmed.

In respect to the second point, we are all of opinion that the case is clearly not a case for damages. The whole circumstances present such well founded grounds for suspicion



of the piratical character and conduct of the privateer as required Lieutenant Gregory, in the just exercise of his instructions from the President, under the acts of Congress, to subdue and send her in for adjudication. That her crew were guilty of plunder from the *Coquette* and the *Jeune Eugenie* is established by proofs entirely competent and satisfactory. Her exercise of the right of search on these vessels was irregular and unjustifiable, and indicated on the part of the boarding officers no disinclination to petty thefts if they avoided forcible robbery. Her

commission is itself liable to much suspicion and criticism. It varies essentially in the description of the rig, the size, and the denomination of the vessel from that on board of which it is found. It purports to be for a schooner of 93 tons, under the command of Don Pablo Llanger; it is found on board of a brig of 160 tons, commanded by Captain Escurra. It was originally granted for a three months' cruise, which had expired, and it purports to be renewed by the Port Captain of Porto Rico, a subordinate agent of the King of Spain, for a new cruise, by an endorsement on it without any known authority.

We do not advert to these circumstances to establish the position that the commission was utterly void or rendered the exercise of belligerent rights piratical. Whatever may be the irregularities in the granting of such commissions or the validity of them so far as respects the King of Spain, to found an interest of prize in the captors, if the *Palmyra* *bona fide* received it, and her crew acted *bona fide* under it, it ought at all events, in the courts of neutral nations, to be held a complete protection against the imputation of general piracy. But the defects of the commission, connected with the almost total want of order and command on board of the privateer and the manifest insubordination and predatory spirit of the crew, could not but inflame to a high degree every other just suspicion. In short, taking the circumstances together, the court thinks that they presented *prima facie* a case of piratical aggression, search, restraint, and depredation within the acts of Congress, open to explanation, indeed, but if unexplained,



pressing heavily on the vessel for the purpose of forfeiture. Lieutenant Gregory, then, was justifiable in sending her in for adjudication, and has been guilty of no wrong calling for compensation.

It has been argued at the bar that probable cause of seizure in this case constitutes no ground of defense against the claim of damages. It has been truly stated as the settled doctrine of this Court that in cases of seizures under mere municipal laws, probable cause, unless so made by statute, constitutes no ground for denying damages or justifying the seizure. But it is supposed that probable

cause is not an excuse or justification of any seizure or capture except in cases *jure belli,* and the case of *The Apollon,* in this Court, 9 Wheat. 362, is relied on to establish this position. That case contains no doctrine leading justly to any such conclusion. It was a case of seizure under our revenue laws, and in the opinion of the Court the point is examined how far probable cause constituted in that case a ground to exempt from damages. On that occasion the Court said that the argument had not distinguished between probable cause as applied to cases of capture *jure belli* and as applied to cases of municipal seizures, and then proceeded to state the distinction. There was no intimation that in cases of marine torts generally, or under laws authorizing the exercise to a limited extent of belligerent rights, or *quasi-* belligerent rights, probable cause might not be a sufficient excuse. In the case of the *Marianna Flora,* at the last term, 11 Wheat. 1, the very point was before the Court, and it was in that case held that probable cause was a sufficient excuse for a capture under circumstances of hostile aggression at sea. Indeed, in cases of marine torts arising under the general maritime law, probable cause often is a complete excuse for the act, and always goes in mitigation of damages. In the admiralty, the award of damages always rests in the sound discretion of the court under all the circumstances. The case of *The St. Louis,* in 2 Dods. 210, is a strong illustration of the doctrine. But in cases like the present, where the public armed ships



of the United States are authorized to make captures to a limited extent, the authority so exercised by them must be deemed to stand upon the same analogy as captures strictly *jure belli.* And the doctrine of the prize courts as to the denial of damages, where there is probable cause for the capture, furnishes the proper rule to govern the discretion of the court. We are then of opinion that in the present case there was strong probable cause for the capture, and that the decree of the circuit court, so far as it awards damages to the claimants, ought to be reversed.

It remains only to remark upon one or two points made against the competency of some of the testimony in the cause. It is objected that Lieutenant Gregory is not a competent witness because he is, notwithstanding his release of his interest as

captor, interested to defeat the claim for damages. However well founded this objection may be as to his competency on the point of damages, having been admitted both in the district and circuit courts as a witness without objection, we think there was a waiver of the objection, and it cannot now be insisted on. As to the depositions of Captains Souther and Coffin, they were taken under commissions duly issued from the circuit court according to the rule of this Court, and are therefore admissible upon the strictest principles.

DECREE. This cause came on, &c.;, On consideration whereof, it is ADJUDGED, ORDERED, and DECREED, that so much of the decree of the circuit court as decrees restitution of the brig *Palmyra* to the claimants, be, and the same is, hereby affirmed, and that so much of the decree of the said circuit court as awards damages to the claimants be and the same is hereby REVERSED and ANNULLED, and it is further ORDERED that said cause be remanded to said circuit court for further proceedings according to law.

* *S.C.* 23 U. S. 10 Wheat. 502.