

**United States Vs. Preston**

**United States Vs. Preston**

**SooperKanoon Citation :** [sooperkanoon.com/79231](http://sooperkanoon.com/79231)

**Court :** US Supreme Court

**Decided On :** 1830

**Appeal No. :** 28 U.S. 57

**Appellant :** United States

**Respondent :** Preston

**Judgement :**

United States v. Preston - 28 U.S. 57 (1830)

U.S. Supreme Court United States v. Preston, 28 U.S. 3 Pet. 57 57 (1830)

**United States v. Preston**

**28 U.S. (3 Pet.) 57**

*APPEAL FROM THE DISTRICT COURT FOR*

*THE EASTERN DISTRICT OF LOUISIANA*

## **SYLLABUS**

The offense against the law of the United States, under the seventh section of the Act of Congress passed 2 March, 1807, entitled "An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from

and after 1 January, 1808" is not that of importing or bringing into the United States persons of color with intent to hold or sell such persons as slaves, but that of hovering on the coast of the United States with such intent, and although it forfeits the vessel and any goods or effects found onboard, it is silent as to disposing of the colored persons found on board, any further than to impose a duty upon the officers of armed vessels who make the capture to keep them safely, to be delivered to the overseers of the poor, or the governor of the state, or persons appointed by the respective states to receive the same.

The *Josefa Segunda*, having persons of color on board of her, was, on 11 February, 1818, found hovering on the coast of the United States, and was seized and brought into New Orleans, and the vessel and the persons on board were libeled in the District Court of the United States of Louisiana under the Act of Congress of 2 March, 1807. After the decree of condemnation below, but pending the appeal to this Court, the Sheriff of New Orleans went on, with the consent of all the parties to the proceedings, to sell the persons of color as slaves, and \$65,000, the proceeds were deposited in the registry of the court to await the final disposal of the law.

By the tenth section of the act of 30 April, 1818, the six first sections of the act are repealed, and no provision is made by which the condition of the persons of color found on board a vessel hovering on the coast of the United States is altered from that in which they were placed under, the act of 1807, no power having been given to dispose of them otherwise than to appoint someone to receive them. The seventh section of the act of 1818, confirms no other sales previously or subsequently made under the state laws, but those for illegal importation, and does not comprise the case of a condemnation under the seventh section.

The final condemnation of the persons on board the *Josefa Segunda* took place in this Court on 13 March, 1820, after Congress had passed the Act of 3 March, 1819, entitled "An act in addition to an act prohibiting the slave trade," by the provisions of which persons of color brought in under any of the acts prohibiting traffic in slaves were to be delivered to the President of the United States to be sent to Africa. It could not affect them.

In admiralty cases, a decree is not final while an appeal from the same is depending in this Court, and any statute which governs the case must be an existing valid statute at the time of affirming the decree below. If, therefore, the persons of color who were on board the *Josefa Segunda* when captured had been specifically before the court on 13 March, 1820, they must have been delivered up to the President of the United States to be sent to Africa under the provisions of the Act of 3 March, 1819, and therefore there is no

Page 28 U. S. 58

claim to the proceeds of their sale under the law of Louisiana, which appropriated the same. The Court does not mean to intimate that the United States is entitled to the money, for it had no power to sell the persons of color.

The brig *Josefa Segunda*, a Spanish vessel, proceeding with a cargo of negroes from the coast of Africa to the Island of Cuba, was captured on 11 February, 1818, off St. Domingo by a regularly commissioned Venezuelan privateer, and on the 24th of the following April she was seized in the River Mississippi by custom house officers of the United States, carried to New Orleans, and there the vessel and negroes were libeled at the suit of the United States in the District Court of the United States for the Louisiana District.

The libel alleged that the negroes were unlawfully brought into the United States with an intent to dispose of them as slaves contrary to the provisions of the Act of Congress passed March 2, 1807, entitled an act to prohibit the importation of slaves, &c.;, 2 Story's Laws U.S. 1050. The libel was filed on 20 April, 1818, and a claim was put in by the Spanish owners alleging an unlawful capture of the brig; that the brig put into the Balize in distress, and without any intention to infringe or violate a law of the United States. The district court condemned the brig and effects found on board to the United States, and the claimants appealed to this Court.

At February term, 1820 of this Court, the sentence of the District Court of Louisiana was affirmed, the court having been of opinion that "the alleged unlawful

importation could not be excused on the plea of distress" and that

"where a capture is made by a regularly commissioned captor, he acquires a title to the captured property which can only be divested by recapture or by the sentence of a competent tribunal, and the captured property is subject to capture for a violation by the captors of the revenue or other municipal laws of the neutral country into which the prize may be carried."

[18 U. S. 5](#) Wheat. 338.

Page 28 U. S. 59

After the decree of the District Court of Louisiana had been pronounced and before the appeal to this Court, the negroes found on board of the captured brig were, under the provisions of the fourth section of the act of Congress and under the act of the State of Louisiana passed 13 March, 1818, delivered by the collector of the port of New Orleans to the Sheriff of the Parish of New Orleans, and they were by him sold for \$68,000, and the proceeds lodged in the Bank of the United States subject to the order of the district court.

Upon the return of the cause to the District Court of Louisiana from this Court, Mr. Roberts, an inspector of the revenue and others who alleged that they had made "military seizures" subsequent to that of the officers of the customs filed claims to the moneys which were the proceeds of the sales of the brig and "effects," and of the negroes. Mr. Chew, the collector, conjointly with the naval officers, filed a like claim, and the court having dismissed the claims of Roberts and the asserted "military captors" and allowed those of the collector and other officers of the customs, the cause was again brought before this Court. [23 U. S. 10](#) Wheat. 312.

This Court, at February term, 1825, decided that

"The district court, under the slave trade acts, has jurisdiction to determine who are the actual captors under a state law made in pursuance of the fourth section of the slave trade act."

The Court also decided that

"under the seventh section of this Act of 2 March, 1807, ch. 77, the entire proceeds of the vessel are forfeited to the use of the United States unless the seizure be made by armed vessels of the navy or by revenue officers, in which case distribution is to be made in the same manner as prizes taken from the enemy."

The Court also decided

"That under the Act of the State of Louisiana of 13 March, 1828, passed to carry into effect the fourth section of the act of 1807 and directing the negroes imported contrary to the act to be sold and the proceeds to be paid"

"one moiety for the use of the commanding officer of the capturing vessel and the other moiety to the treasurer of the Charity Hospital of New Orleans for the use and benefit of the said hospital,"

"no other

Page 28 U. S. 60

person is entitled to the first moiety than the commanding officer of the navy or revenue cutter, who may have made the seizure under the seventh section of the act of Congress."

The case having returned again to the District Court of Louisiana, Mr. Preston, as attorney general of that state, filed a claim on behalf of that state setting forth the illegal importation of the negroes that the greater part of them had been delivered over to the Sheriff of New Orleans, that the sheriff had disposed of them under the law of the Legislature of Louisiana, that the proceeds of the sale, \$68,000, were brought into the district court by the order of the court, and that part of the same remains deposited in court. He insisted that the money belongs to the state, and has been brought into court contrary to law and the rights of the state, and prays for an account and that the said money may be paid over to him so far as the same had not been disposed of conformably to the laws of Louisiana.

In the district court, this claim was opposed on behalf of the United States.

The decree of the court was in favor of the claim, and an appeal was taken by the district attorney of the United States to this Court.

Page 28 U. S. 64

MR. JUSTICE JOHNSON delivered the opinion of the Court.

The case of the *Josefa Segunda* has been twice already before this Court: the first time upon the question of condemnation; the second upon the application of several claimants to be preferred in the distribution of the proceeds.

It now comes up upon a claim to the proceeds of the sale of the persons of color found on board at the time of the

Page 28 U. S. 65

seizure, interposed by the law officer of the State of Louisiana.

The vessel was condemned under the seventh section of the act of 1807, passed to abolish the slave trade. By the fourth section of the act, the State of Louisiana was empowered to pass laws for disposing of such persons of color as should be imported or brought into that state in violation of that law. The offense under the seventh section, on which this condemnation was founded, is not that of importing or bringing into the United States, but that of hovering on the coast with intent to bring in persons of color to be disposed of as slaves contrary to law, and although it forfeits the vessel and any goods or effects found on board, it is silent as to disposing of the colored persons found on board, any further than to impose a duty upon officers of armed vessels who may capture them to keep them safely, to be delivered to the overseers of the poor or the governor of the state or persons appointed by the respective states to receive the same.

The State of Louisiana passed an Act of 13 March, 1818, which recites the provisions of the fourth and seventh sections of the acts of Congress and

authorizes and requires the Sheriff of New Orleans to receive any colored persons designated under either of those sections and the same to keep until the district or circuit court of the United States shall pronounce a decree upon the charge of illegal importation.

The second section makes provision for selling them upon receiving a certificate of such decision, and enjoins a distribution of the proceeds one-half to the commanding officer of the capturing vessel, the other to the treasurer of the Charity Hospital of New Orleans.

In pursuance of this law of the state, it appears that after the decree of condemnation below, but pending the appeal in this Court, the sheriff went on to sell, with the consent, it is said, of all parties, and \$65,000, the sum now in controversy, was deposited in the registry of the court below, to await the final disposal of the law.

20 April, 1818, Congress passed another act on

Page 28 U. S. 66

this subject, by the tenth section of which the six first sections of the act of 1807 are repealed, but their provisions are reenacted with a little more amplitude, and the fifth section of this act, which professes to reserve to the states the powers given in the former act as well as the language of the repealing clause, in the saving which it contains as to offenses, still confines all their provisions to the case of illegal importation, thus leaving the seventh section in force, but without any express power to dispose of the colored persons otherwise than to appoint someone to receive them.

And so likewise the seventh section of the act of 1818, which professes to confirm sales previously or subsequently made under the state laws, confines its provisions to sales made under condemnation for illegal importation, thus not comprising the cases of condemnation under the seventh section of the act of 1807, at least so far as relates to this offense.

The final condemnation in this Court took place March 13, 1820, but previous to that time was passed the Act of March 3, 1819, entitled "An act in addition to an act prohibiting the slave trade," by which a new arrangement is made as to the disposal of persons of color seized and brought in under any of the acts prohibiting the traffic in slaves. By the latter act, they are deliverable to the orders of the President, not of the states. And the repealing clause repeals all acts and parts of acts which may be repugnant to this act. So that if in the disposal of persons of color brought into the United States, the provisions of this act embrace the case of such persons when brought in under the seventh section of the act of 1807, the power to deliver them to the order of the states was taken away before the final decree in this Court.

Such, in the opinion of the Court, is the effect of the act of 1819. And then the question is how does it affect the present controversy?

Ever since the case of [Yeaton v. United States](#), 5 Cranch 286, the Court has uniformly acted under the rule established in that case, to-wit that in admiralty causes, a decree was not final while it was depending here. And any

Page 28 U. S. 67

statute which governs the case must be an existing valid statute at the time of affirming the decree below.

Whatever was the extent of the legal power of the state over the Africans, it is clear that such power could not be exercised finally over them at any time previous to the final decree of this Court; we must therefore consider whether, if they had been specifically before the Court at the date of that decree, they must have been delivered up to the state or the United States, clearly to the United States. And then this claim of the state cannot be sustained. We would not be understood to intimate that the United States is entitled to this money; for it had no power to sell. Nor do we feel ourselves bound to remove the difficulties which grow out of this state of things.

With regard to the ground of irregularity, if not abandoned by the attorney general, it was but slightly touched upon, and we know of no other mode in the existing state of things in which the rights of the parties could be reached according to the course of the admiralty but that here pursued.

On the question whether the decision in the second cause, in which the subject of this seizure was before us, was not final as to the rights of the United States we are clearly of opinion that it was not as against this party. Although this question might then have been raised by the state, and could as well then have been settled, yet it was not raised, nor was it the interest of any of the parties then before the court that it should be raised.

*The decree below must be reversed.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana and was argued by counsel, on consideration whereof it is ordered and decreed by this Court that the decree of the said district court in this cause be and the same is hereby reversed and that the said cause be and the same is hereby remanded for further proceedings to be had therein according to law and justice and in conformity to the opinion of this Court.