*Thirty Hogsheads of Sugar, Adrian B. Bentzon, Claimant, *v.* Boyle and others, the Officers and Crew of the Privateer Comet. (*a*)

Enemy's property.—Decisions of foreign courts.

The produce of an enemy's colony is to be considered as hostile property, so long as it belongs to the owner of the soil, whatever may be his national character in other respects, or whatever may be his place of residence.

An island in the temporary occupation of the enemy, is to be considered as an enemy's colony.[1]

In deciding a question of the law of nations, this court will respect the decisions of foreign courts.

The Phœnix, 5 Rob. 25, recognised and followed.

Appeal from the sentence of the Circuit Court for the district of Maryland, condemning thirty hogsheads of sugar, the property of the claimant, a Danish subject, it being the produce of his plantation in Santa Cruz, and shipped, after the capture of that island by the British, to a house in London, for account and risk of the claimant, who was a Danish officer, and the second in authority in the government of the island before its capture; and who, shortly after the capture, withdrew, and has since resided in the United States and in Denmark. By the articles of capitulation, the inhabitants were permitted to retain their property, but could only ship the produce of the island to Great Britain. This sugar was captured in July 1812, after the declaration of war by the United Sates against Great Britain, and libelled as British property.

Harper, for the appellant, made two questions, 1. Is this case within the rule of the British prize courts, that the produce of a plantation in an enemy's country shall be considered, while such produce remains the property of the owner of the soil, as the property of an enemy, whatever may be the general national character of the owner? 2. If it be within that rule, is the rule to be considered in this country, as a rule of national law?

1. Sir William Scott, in laying down the rule in the case of *The Phœnix*, 5 Rob. 26, 20, refers to the case of *The Juffrow Catharina*, in 1783, and the reason of the rule seems to be, that the proprietor of the soil incorporates *himself with the permanent interests of the country. The rule is modern, and several exceptions have been made to it. In the case of *The Phœnix*, the claim was made by persons of Germany, for property taken on a voyage from Surinam to Holland, and described as the produce of their estates in Surinam, which was then a colony of Holland, with which Great Britain was at war, Germany being neutral. Sir William Scott admits, that if the estates had been purchased, while Surinam was in the possession of the British, the case would not have been within the general rule. So, in the case of *The Diana*, 5 Rob. 60 (Eng. ed.), those who settled in Demarara, while it was under British protection, were held not to be within the rule; and the case of *The Vrow Anna Catharina*, 5 Rob. 161 (Eng. ed.), is another modification of the rule. These cases were excepted, because the proprietors had not incorporated themselves with the permanent interests of the nation.

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(*a*) March 30th, 1815. Absent, Todd, Justice.

[1] S. P. Shanks *v.* Dupont, 3 Pet. 242.

In the present case, Mr. Bentzon never incorporated himself with the interests of the British nation, either permanently or temporarily. The character was forced upon him against his will; he always disclaimed it. He was, by birth, and always continued, a Danish subject. He did not voluntarily purchase a plantation in the country of the enemy. When he purchased his estate, Santa Cruz was neutral. The occupation of the island by the British was temporary; it was neither permanent in fact nor in law. Peace has restored the island to Denmark. Mr. Bentzon could not, by means of his estate in Santa Cruz, incorporate himself permanently with the interests of Great Britain.

2. But if the case comes within the British rule, are we to adopt that rule, and extend it to a neutral nation which has never itself adopted it? It is but the ordinary case of a neutral carrying on his lawful trade with our enemy; and has nothing in it contrary to the law of nations. The rule contended for is a mere arbitrary one, calculated to extend the field of rapine, and to increase the maritime power of Great Britain. We have no interest in aiding those views.

*What is the law of nations? Not a rule adopted by one nation only, but the law of nature, of reason, and of justice, applied to the intercourse of nations, and admitted by all such as are civilized. What is there in the code of any other nation to support this rule? It is to be found only in the maritime code of Great Britain; which is not more binding upon us than that of any other maritime power. It can have no force with us, but in cases where the rule of reciprocity or of retaliation will justify its use. But Denmark has never used nor acknowledged the rule; and therefore, we cannot justly enforce it against her. But if this court should adopt the rule, we trust it will be with the strictest limitation. [*193

Pinkney, contrà.—By the capture of Santa Cruz by the British, it immediately became the colony of an enemy. It is not necessary that the occupation should be perpetual; for the time, it was indefinite, and during the occupation, it was as much the colony of an enemy as any of his other possessions.

If, then, Santa Cruz was an enemy's colony, its produce, while it remained the property of the owner of the soil, was the property of an enemy. Sir W. Scott, in the case of *The Phœnix*, 5 Rob. 21 (Eng. ed.), says, that the rule has been so repeatedly decided, both in that and the superior court, that it is no longer open to discussion. No question can be made upon the point of law at this day. The opposite argument goes to show that if the property in the soil be acquired, before the capture of the island, the owner would not be considered an enemy, although the island should remain permanently a British colony. The case of *The Phœnix* contains no exception to the general rule; it is, however, said, that the case of *The Diana* shows an exception; but that was a mere question of domicil. The rule now under consideration was not discussed.

*It is said, that the party, in order to acquire the hostile character as to the produce of his estate, must incorporate himself with the interests of the enemy, while the soil is in possession of the enemy. But the rule is not so. There is no difference whether he acquire the estate before or after it come into the possession of the enemy; if he continues to [*194

hold the estate, he becomes immediately incorporated with the nation, *jure belli*.

But it is asked, is Great Britain to legislate for other nations? We say, no. But this court will pay great respect to the English decisions on this subject; especially, as the rule has been acquiesced in by all the nations of Europe. Not one of them has remonstrated—not even Denmark. It has therefore, the positive authority of England, and the negative authority of all the residue of Europe. The rule is not harder than that of domicil, to which it is analogous.

Harper, in reply.—It is said, that the rule is general, because all the nations of Europe have acquiesced in the English decisions. Several reasons may be given for this appearance of acquiescence. It is a recent rule. No authority can be produced for it, earlier than 1783, just at the close of the American war. Peace having immediately taken place, removed the cause of complaint. And as to the late war with France, no case of the kind appears to have arisen. The edicts of France, &c., had a different bearing. It is said, that the rule is analogous to that of domicil; but the rule of domicil rests upon a different principle—the principle of allegiance and the safety of the state. A man found in the enemy's country, at the breaking out of the war, receives the protection of that country, and is bound to do nothing to its injury; and if he do not remove in a reasonable time, is to be considered as having incorporated himself with the interests of that country. The rule of domicil is rather a rule of municipal than of national law; and the principal ground of the rule is the necessity of preventing treasonable intercourse with the enemy. It becomes a part of national law only when it is applied to neutrals. It has no analogy to the rule now in question,
*195] *which was adopted merely to prevent the interference of neutral with belligerent rights.

March 4th, 1815. (Absent, Todd, J.) Marshall, Ch. J., delivered the opinion of the court, as follows:—The island of Santa Cruz, belonging to the kingdom of Denmark, was subdued, during the late war, by the arms of his Britannic majesty. Adrian Benjamin Bentzon, an officer of the Danish government, and a proprietor of land therein, withdrew from the island, on its surrender, and has since resided in Denmark. The property of the inhabitants being secured to them, he still retained his estate in the island, under the management of an agent, who shipped thirty hogsheads of sugar, the produce of that estate, on board a British ship, to a commercial house in London, on account and risk of the said A. B. Bentzon. On her passage, she was captured by the American privateer, the Comet, and brought into Baltimore, where the vessel and cargo were libelled as enemy property. A claim for these sugars was put in by Bentzon; but they were condemned with the rest of the cargo; and the sentence was affirmed in the circuit court. The claimant then appealed to this court.

Some doubt has been suggested, whether Santa Cruz, while in the possession of Great Britain, could properly be considered as a British island. But for this doubt there can be no foundation. Although acquisitions made during war are not considered as permanent, until confirmed by treaty, yet, to every commercial and belligerent purpose, they are considered as a part of the domain of the conqueror, so long as he retains the possession and gov-

ernment of them. The island of Santa Cruz, after its capitulation, remained a British island, until it was restored to Denmark.

Must the produce of a plantation in that island, shipped by the proprietor himself, who is a Dane, residing in Denmark, be considered as British, and therefore, enemy property? *In arguing this question, the counsel for the claimants has made two points. 1. That this case does not come within the rule applicable to shipments from an enemy country, even as laid down in the British courts of admiralty. 2. That the rule has not been rightly laid down in those courts, and, consequently, will not be adopted in this. [*196

1. Does the rule laid down in the British courts of admiralty embrace this case? It appears to the court, that the case of *The Phœnix* is precisely in point. In that case, a vessel was captured in a voyage from Surinam to Holland, and a part of the cargo was claimed by persons residing in Germany, then a neutral country, as the produce of their estates in Surinam. The counsel for the captors considered the law of the case as entirely settled; the counsel for the claimants did not controvert this position. They admitted it; but endeavored to extricate their case from the general principle, by giving it the protection of the treaty of Amiens. In pronouncing his opinion, Sir WILLIAM SCOTT lays down the general rule thus: "Certainly, nothing can be more decided and fixed, as the principle of this court and of the supreme court, upon very solemn argument, than that the possession of the soil does impress upon the owner the character of the country, as far as the produce of that plantation is concerned, in its transportation to any other country, whatever the local residence of the owner may be. This has been so repeatedly decided, both in this and the superior court, that it is no longer open to discussion. No question can be made on the point of law, at this day."

Afterwards, in the case of *The Vrow Anna Catharina*, Sir WILLIAM SCOTT lays down the rule, and states its reason. "It cannot be doubted," he says, "that there are transactions so radically and fundamentally national as to impress the national character, independent of peace or war, and the local residence of the parties. The *produce of a person's own plantation, in the colony of the enemy, though shipped in time of peace, is liable to be considered as the property of the enemy, by reason that the proprietor has incorporated himself with the permanent interests of the nation, as a holder of the soil, and is to be taken as a part of that country, in that particular transaction, independent of his own personal residence and occupation." [*197

This rule laid down with so much precision, does not, it is contended, embrace Mr. Bentzson's claim, because he has not "incorporated himself with the permanent interests of the nation." He acquired the property, while Santa Cruz was a Danish colony, and he withdrew from the island when it became British. This distinction does not appear to the court to be a sound one. The identification of the national character of the owner with that of the soil, in the particular transaction, is not placed on the dispositions with which he acquires the soil, or on his general character. The acquisition of land in Santa Cruz binds him, so far as respects that land, to the fate of Santa Cruz, whatever its destiny may be. While that island belonged to Denmark, the produce of the soil, while unsold, was, according to

this rule, Danish property, whatever might be the general character of the particular proprietor. When the island became British, the soil and its produce, while that produce remained unsold, were British. The general commercial or political character of Mr. Bentzon could not, according to this rule, affect this particular transaction. Although incorporated, so far as respects his general character, with the permanent interests of Denmark, he was incorporated, so far as respected his plantation in Santa Cruz, with the permanent interests of Santa Cruz, which was, at that time, British; and though, as a Dane, he was at war with Great Britain, and an enemy, yet, as a proprietor of land in Santa Cruz, he was no enemy: he could ship his produce to Great Britain in perfect safety.

The case is certainly within the rule as laid down in the British courts. The next inquiry is, how far will that rule be adopted in this country?

*198] *The law of nations is the great source from which we derive those rules, respecting belligerent and neutral rights, which are recognised by all civilized and commercial states throughout Europe and America. This law is in part unwritten, and in part conventional. To ascertain that which is unwritten, we resort to the great principles of reason and justice: but as these principles will be differently understood by different nations, under different circumstances, we consider them as being, in some degree, fixed and rendered stable by a series of judicial decisions. The decisions of the courts of every country, so far as they are founded upon a law common to every country, will be received, not as authority, but with respect. The decisions of the courts of every country show how the law of nations, in the given case, is understood in that country, and will be considered in adopting the rule which is to prevail in this.

Without taking a comparative view of the justice or fairness of the rules established in the British courts, and of those established in the courts of other nations, there are circumstances not to be excluded from consideration, which give to those rules a claim to our attention that we cannot entirely disregard. The United States having, at one time, formed a component part of the British empire, their prize law was our prize law. When we separated, it continued to be our prize law, so far as it was adapted to our circumstances, and was not varied by the power which was capable of changing it.

It will not be advanced, in consequence of this former relation between the two countries, that any obvious misconstruction of public law, made by the British courts, will be considered as forming a rule for the American courts, or that any recent rule of the British courts is entitled to more respect than the recent rules of other countries. But a case professing to be decided on ancient principles will not be entirely disregarded, unless it be very unreasonable, or be founded on a construction rejected by other nations.

The rule laid down in *The Phœnix* is said to be a recent rule, because a case solemnly decided before the lords commissioners in 1783, is quoted in

*199] the margin, *as its authority. But that case is not suggested to have been determined contrary to former practice or former opinions. Nor do we perceive any reason for supposing it to be contrary to the rule of other nations in a similar case. The opinion that ownership of the soil does, in some decree, connect the owner with the property, so far as respects that

soil, is an opinion which certainly prevails very extensively. It is not an unreasonable opinion. Personal property may follow the person anywhere; and its character, if found on the ocean, may depend on the domicil of the owner. But land is fixed: wherever the owner may reside, that land is hostile or friendly, according to the condition of the country in which it is placed. It is no extravagant perversion of principle, nor is it a violent offence to the course of human opinion, to say, that the proprietor, so far as respects his interest in this land, partakes of its character; and that the produce, while the owner remains unchanged, is subject to the same disabilities. In condemning the sugars of Mr. Bentzon as enemy property, this court is of opinion, that there was no error, and the sentence is affirmed, with costs.

Sentence affirmed.

Evans *v.* Jordan and Morehead. (*a*)

Patents.

The act of January 1808, for the relief of Oliver Evans, does not authorize those who erected his machinery between the expiration of his old patent and the issuing of the new one, to use it, after the issuing of the latter.[1]

This was a case certified from the Circuit Court for the district of Virginia, in which the judges were divided in opinion upon the question, whether, after the expiration of the original patent granted to Oliver Evans, a general right to use his discovery, was not so vested in the public, as to require and justify such a construction of the act passed in January 1808, entitled "an act for the relief of Oliver Evans" as to exempt from either single or treble damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent, and previous to the passage of the said act.[2]

The act (6 U. S. Stat. 70) authorizes the secretary of state to issue letters patent to Oliver Evans, in the manner and form prescribed by the general patent law, granting to *him for the term of fourteen years the exclusive right of making, using and vending for use the machinery [*200 in question, "provided, that no person who may have heretofore paid the said Oliver Evans for license to use his said improvements, shall be obliged to renew the said license, or be subject to damages for not renewing the same; and provided also, that no person who shall have used the said improvements, or have erected the same for use, before the issuing of the said patent, shall be liable to damages therefor."

Harper, for the plaintiff.—The former patent of the plaintiff having expired, congress, in consideration of the particular circumstances of his case, authorized a new patent to issue for another term of fourteen years. Between the expiration of the old and the issuing of the new patent, the defendants had erected and used, and continued to use, the plaintiff's machinery, in the

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(*a*) March 2d, 1815. Absent, Todd, Justice.

[1] Evans v. Weiss, 2 W. C. C. 342.

[2] See 1 Brock. 248, for the opinion of the chief justice, which was unanimously sustained by this court. And for the decisions on Evans's patent, see 3 Wheat. 454; 7 Id. 356, 453; Pet. C. C. 215, 322; 3 W. C. C. 408, 443.