

Houston v. Moore.

researches and resources. Should a similar case ever again occur in that court, and the decisions of this court have passed the Atlantic, that learned judge will be called on to acknowledge, that the danger of condemnation was not as great as he had imagined; and that, independent of the question agitated in this case, this court would have had respect to the embarrassing state of warfare in which the people of Buenos Ayres were involved, and adjudged, that the precautions for defence were intended against their enemies rather than their friends. With regard to the award of salvage, it is well known, that the grant of salvage upon the re-capture of a neutral was the favorite offspring of that judge's administration; until then, no contribution had been levied upon neutral commerce, to give activity to hostile enterprise. When a question of salvage on such a re-capture shall occur in this court, those adjudications will come under review; but this case cannot be considered in point, until this court is called on to decide, whether the British example shall prevail, or the obvious dictate of reason, that the neutral should be liberated and permitted to pursue his voyage, or, at least, to decide for himself, in which of the belligerent courts his rights will be most secure.

Upon the whole, I am fully satisfied that the decision in the case of *The Nereide*, was founded in the most correct principles, and recognise the rule, that lading on board an armed belligerent is not, *per se*, a cause of forfeiture; *433] as not only the most correct *on principle, but the most liberal and honorable to the jurisprudence of this country.¹

Further proof ordered.(a)

HOUSTON v. MOORE.

Error to state court.—Final judgment.

The court has no jurisdiction, under the 25th section of the judiciary act of 1789, unless the judgment or decree of the state court be a final judgment or decree. A judgment, reversing that of an inferior court, and awarding a *venire facias de novo*, is not a final judgment.²

ERROR to the Supreme Court of the state of Pennsylvania. This was an action of trespass, brought by the plaintiff in error, against the defendant in error, for levying a fine ordered to be collected by the sentence of a court-martial, under an act of the legislature of the state of Pennsylvania, which was alleged to be repugnant to the constitution and laws of the United States.

The suit was commenced in the court of common pleas for the county of Lancaster, in which court a trial was had, and the jury, under the charge of the court, found a verdict for the plaintiff, on which *judgment was *434] rendered. The cause was carried to the supreme court of the state of Pennsylvania, by writ of error, where the judgment of the court of common pleas was reversed, and the cause remanded to that court, with directions to award a *venire facias de novo*. The plaintiff then sued out a writ of error, to bring the cause to this court.

(a) Mr. Justice TODD and Mr. Justice DUVALL did not sit in this cause.

¹ The property was finally condemned, the court. See 5 Wheat. 433.
further proof not being deemed satisfactory by ² S. P. Reddall v. Bryan, 24 How. 420.

The Anne

C. J. Ingersoll moved to dismiss the writ of error, as having been improvidently issued, under the 25th section of the judiciary act, the decision of state court not being a "final judgment," in the cause.

Hopkins, contra.

MARSHALL, Ch. J., delivered the opinion of the court.—The appellate jurisdiction of this court, under the 25th section of the judiciary act, ch. 20, extends only to a final judgment or decree of the highest courts of law or equity in the cases specified. This is not a final judgment of the supreme court of Pennsylvania. The cause may yet be finally determined in favor of the plaintiff, in the state court.

Writ of error dismissed.

JUDGMENT.—This cause came on to be heard, on the transcript of the record of the supreme court of the commonwealth of Pennsylvania for the Lancaster district. On examination whereof, it is adjudged and ordered that the writ of error in this cause be, and the same is hereby dismissed, this court not having jurisdiction in said cause, there not having been a final judgment in said suit, in the said supreme court of the [*435 commonwealth of Pennsylvania. (a)

The ANNE: BARNABEU, Claimant.

Captors as witnesses.—Claim by neutral consul.—Capture within neutral territories.

The captors are competent witnesses, upon an order for further proof, where the benefit of it is extended to both parties.

The captors are always competent witnesses, as to the circumstances of the capture, whether it be joint, collusive, or within neutral territory.

It is not competent for a neutral consul, without the special authority of his government, to interpose a claim, on account of the violation of the territorial jurisdiction of his country.¹

Quære? Whether such a claim can be interposed, even by a public minister, without the sanction of the government in whose tribunals the cause is pending?

A capture, made within neutral territory, is, as between the belligerents, rightful; and its validity can only be questioned by the neutral state.²

If the captured vessel commence hostilities upon the captor, she forfeits the neutral protection, and the capture is not an injury for which redress can be sought from the neutral sovereign.

Irregularities on the part of the captors, originating from mere mistake or negligence, which work no irreparable mischief, and are consistent with good faith, will not forfeit their rights of prize.³

APPEAL to the Circuit Court for the district of Maryland. *The [*436 British ship *Anne*, with a cargo belonging to a British subject, was captured by the privateer *Ultor*, while lying at anchor, near the Spanish part of the island of St. Domingo, on the 13th of March 1815, and carried into New York for adjudication. The master and supercargo were put on

(a) Costs are not given, where the writ of error is dismissed for want of jurisdiction. *Inglee v. Coolidge*, 2 Wheat. 368.

¹ See *The Bello Corrunes*, 6 Wheat. 152; *The London Packet*, 1 Mason 14; *The Adolph*, 1 Curt. 87; *The Huntress*, 2 Wall. Jr. C. C. 59.

² *The Sir William Peel*, 5 Wall. 517.

³ *The Arabella*, 2 Gallis. 368.