

\*The NEUSTRA SENORA DE LA CARIDAD : BAGES *et al.*, Claimants.

*Capture by revolutionary cruiser.*

A cruiser, equipped at the port of Carthagena, in South America, and commissioned under the authority of the province of Carthagena, one of the United Provinces of New Grenada, at war with Spain, sailed from the said port, and captured on the high seas, as prize, a vessel and cargo, belonging to the subjects of the king of Spain, and put a prize-crew on board; and ordered her to proceed to the said port of Carthagena; the captured vessel was afterwards fallen in with, by a private armed vessel of the United States, and the cargo taken out and brought into the United States for adjudication, as the property of their enemy; the original Spanish owner and the prize-master from the Carthagenian cruiser, both claimed the goods: the possession was decreed to be restored to the Carthagenian prize-master.

War having been recognised to exist between Spain and her colonies, by the government of the United States, it is the duty of the courts of the United States, where a capture is made by either of the belligerent parties, without any violation of our neutrality, and the captured prize is brought innocently within our jurisdiction, to leave things in the same state they find them; or to restore them to the state from which they have been forcibly removed by the act of our own citizens.

The Spanish treaty held not to apply to the above case, as the court could not consider the Carthagenian captors as pirates, and the capture was not made within the jurisdictional limits of the United States—the only two cases in which the treaty enjoins restitution.

APPEAL from the Circuit Court of North Carolina. This was a prize allegation against certain goods, taken by a private armed vessel of the United States, the Harrison, during the late war with Great Britain, [\*498 out of a ship called the Neustra Senora de la Caridad.

A claim was interposed by Salvador Bages, and others, Spanish subjects, domiciled at St. Iago, in the island of Cuba, alleging that the ship was a Spanish ship, and with the goods, their property, was captured on the high seas, by an armed vessel cruising under the pretended colors of Carthagena, the commander of which produced no commission, nor did the claimants know, or admit, he had one, and who detained the Caridad as prize, and put a prize-crew on board. That having separated from the capturing vessel, they were met with and boarded by the privateer Harrison. That the said privateer captured and took possession of the Caridad, and the captors unladed the cargo from on board of her, into the Harrison, and having brought the same into the port of Wilmington, North Carolina, proceeded against it as prize of war.

A cross-claim was filed by Pedro Brugman, master and commander of the Carthagenian armed schooner Neustra Senora de la Popa, in behalf of himself and others, the owners of said privateer, to the goods thus proceeded against as prize of war, by the commander, officers and crew of the Harrison. This claim pleaded, that the goods were not, at the time of the proceedings, nor at the time of capture by the Harrison, the property of any British subjects, or of any persons domiciled in the dominions of Great Britain, nor of any of the enemies of the United States, but that the same then were, and yet are, the property of the owners, officers and crew of the La Popa, from whose lawful possession the same \*had been violently [\*499 and wrongfully taken, on the high seas, by the Harrison, as before mentioned. That the La Popa, having been duly commissioned by the sovereign authority of the independent state of Carthagena, and furnished with letters of marque and reprisal, authorizing her to capture, on the high seas, the property of the enemies of said state, left the port of Carthagena,

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in the month of December 1814, on a cruise. That on the 21st of January 1815, while cruising off St. Iago de Cuba, the said privateer La Popa, commanded by the claimant, seized and captured the ship La Caridad, sailing from Jamaica to Cuba, loaded with dry-goods, and belonging, with the cargo, to the enemies of the said independent state of Carthagena, as the papers on board, and the information of the master and crew, convinced the claimant to be the fact. That the claimant put a prize-master and crew on board the captured vessel, and ordered her to proceed to the said port of Carthagena. That the said prize-master and crew retained the possession for four days, and while they were proceeding to Carthagena, the Caridad was forcibly taken by the Harrison from their possession, the goods taken out, and brought into the port of Wilmington, as aforesaid.

An order was made by the court below, that the claimant, Pedro Brugman, should be allowed to make further proof, that the commission which he produced, and under which he alleged the original capture to have been made, was issued by the authority acting as the sovereign authority of the United Provinces of New Grenada.

\* At the hearing, it was proved, by the testimony of witnesses, \*500] that the La Popa belonged to and had been actually fitted out in Carthagena, one of the said United Provinces of New Grenada; that the commission produced by the commander, was in the usual form in which letters of marque were issued by the sovereign authority of that province; that the seal affixed to the same was the seal used at the time by those who exercised the sovereign authority of Carthagena to authenticate the commissions by them granted; that the officers of state by whom the same was signed, were at the time, and had been for some time before, respectively, the governor and the secretary of war and the marine of the said province; that the witnesses were acquainted with the handwriting of the said governor and secretary, the witnesses having often seen them write, as well as seen their public and acknowledged writings, and verily believed the same to be their signatures. And the commission was also proved to be genuine, and to have regularly issued by the certificates and declarations of the officers of state of the Province of Carthagena. The original capture by the La Popa, the retaking by the Harrison, and the proprietary interest of the original Spanish owners of the goods, were all fully proved.

The circuit court decreed, at May term 1818, the goods to be restored to the possession of Pedro Brugman; from which sentence an appeal was taken to this court, by the claimant, Salvador Bages, for himself and the original Spanish owners. The cause was submitted, without argument.

\*March 12th, 1819. JOHNSON, Justice, delivered the opinion of the \*501] court.—This case arose out of a capture made in the late war. The La Popa, a commissioned cruiser of the Province of Carthagena, had made prize of the Caridad, a Spanish vessel, in a voyage from Jamaica to Cuba. The American private armed vessel Harrison fell in with the Caridad, then in possession of the prize crew of the La Popa, and suspecting her cargo to be British, took possession of it, and transhipped it into their own vessel. On the arrival of the Harrison, in a port of North Carolina, the cargo was claimed both by the Caridad and La Popa, and finally restored to the La Popa. This is an appeal from the decision of the circuit court of North

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Carolina, made by the original Spanish owner, and the case has been submitted on the evidence and the grounds, taken in the argument below.

There is no doubt, that the property was Spanish, nor that the privateer La Popa was commissioned as a cruiser, whilst the Province of Carthagena had an organized government; and there is the fullest evidence, that her armament and equipment was unaffected by any charge of having been made in violation of our laws. The only question in the case is, whether an original Spanish owner is entitled to the aid of the courts of this country, to restore to him property of which he has been dispossessed by capture, under a commission derived from the revolted colonies? and this question is considered, by this court, as having \*been fully decided by the principles [\*502 assumed in the case of the *United States v. Palmer*, at the last term (3 Wheat. 610), and by the decisions in the cases of *The Estrella* (*ante*, p. 298), and *The Divina Pastora* (*ante*, p. 52), at the present term.

War notoriously exists, and is recognised by our government to exist, between Spain and her colonies. This is an appeal to the highest of all tribunals on a question of right. No neutral nation can act against either, without taking part with the other in the war. All that the law of nations requires of us, is strict and impartial neutrality. And no friendly nation ought to demand of the courts of this country to do an act which may involve it in a war with the victor. Our duty is, where the property of either is brought innocently within our jurisdiction, to leave things as we find them; much more, to restore them to that state from which they have been forcibly removed by the act of our own citizens. The treaty with Spain can have no bearing upon the case, as this court cannot recognise such captors as pirates, and the capture was not made within our jurisdictional limits. In those two cases only, does the treaty enjoin restitution.

Decree affirmed, with costs.

\*WHEATON v. SEXTON'S Lessee.

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*Judicial sale.—Fraudulent conveyance.*

A sale, under a *fi. fa.*, duly issued, is legal, as respects the purchaser, provided the writ be levied upon the property, before the return-day, although the sale be made after the return-day, and the writ be never actually returned.<sup>1</sup>

A deed made upon a valuable and adequate consideration, which is actually paid, and the change of property is *bonâ fide*, or such as it purports to be, cannot be considered as a conveyance to defraud creditors.<sup>2</sup>

ERROR to the Circuit Court for the District of Columbia. This was an action of ejectment, brought in the court below, by the defendant in error, Sexton, against the plaintiff in error, Wheaton, to recover the possession of a parcel of ground in the city of Washington, being lot number 17, in square 254, containing 8254 $\frac{1}{4}$  square feet, with the buildings thereon.

At the trial, the plaintiff produced and read in evidence to the jury, a deed of bargain and sale of the premises from John P. Van Ness and wife, and C. Stephenson, to Sally Wheaton, the wife of the defendant in ejectment; and a deed from one Watterson to the same, of the same premises;

<sup>1</sup> S. P. McNitt v. Turner, 16 Wall. 365.

<sup>2</sup> Crane v. Hardy, 1 Mich. 56.