

Counsel for Parties.

mation of the President of the very language of the Order in Council, so many years after that order had been thus construed by the British Admiralty tribunal.

Thinking that the condemnation of this ship under the circumstances disclosed by the record will subject innocent private property to condemnation without just cause, will deprive it of the protection afforded by the proclamation of the President, which, according to its terms, but carried out those commendable principles of honesty and humanity, enforced by all civilized nations on the outbreak of war, I am constrained to dissent.

THE GUIDO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

No. 122. Argued November 8, 1899.—Decided December 11, 1899.

This was an appeal from a decree condemning the Guido as prize of war.

On the facts, concisely stated in the opinion of the court, it is held following *The Pedro*, *ante* 355, that the case was properly disposed of below.

THE statement of the case will be found in the opinion of the court.

Wilhelmus Mynderse for Julian de Ormaechea, claimant and appellant.

Mr. James H. Hayden for the captors. *Mr. Joseph K. McCammon* was with him on the brief.

Mr. Assistant Attorney General Hoyt filed a brief for the United States.

Mr. George A. King and *Mr. William B. King* filed a brief for certain captors.

Opinion of the Court.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This is an appeal from a decree of the District Court of the United States for the Southern District of Florida condemning the steamer Guido as prize of war.

The Guido belonged to La Compania La Flecha, a Spanish corporation of Bilboa, Spain, and sailed under Spanish registry and the Spanish flag, having a royal patent from the Crown of Spain, and being officered and manned by Spanish subjects. Her voyage began at Liverpool, whence she proceeded to Santander, Corunna and La Puebla, Spain. At Liverpool and at each of the Spanish ports she took on cargo consisting principally of food supplies, all shipped to Havana and Cuban ports. It had been her custom to carry cargo from Spanish and other European ports to Cuba, and then proceed to some port of the United States for a return cargo of lumber, and it was her intention on this occasion to do this, but she had no charter or specific engagement, so far as appeared, for the continuation of her voyage after discharging in Cuba. It was certified in her bill of health issued at Liverpool "that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for a port (unknown) in the United States of America, via Spain & Cuba ports (unknown)."

The steamer cleared from La Puebla for Havana April 10, and was captured April 27 about seventy miles to the eastward of Havana, and sent to Key West in charge of a prize crew. She was there libelled and proofs *in preparatorio* were taken. The master appeared on behalf of the owner and asserted claim to the vessel, and moved for leave to take further proofs in respect of matters set forth in his test affidavit therewith filed, which motion was denied. The averments of the affidavit corresponded with those in the case of the *Pedro*.

We are of the opinion that the case was properly disposed of, and the decree of the District Court is

Affirmed.

MR. JUSTICE SHIRAS, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM dissented.