

The JOSEFA SEGUNDA : CARRICABURA *et al.*, Claimants.

*Slave trade.—Captures.*

An information under the act of the 3d of March 1807, to prevent the importations of slaves into the United States : The alleged unlawful importation attempted to be excused, upon the plea of distress : Excuse repelled, and condemnation pronounced.

Upon a piratical capture, the property of the original owners cannot be forfeited for the misconduct of the captors, in violating the municipal laws of the country where the vessel seized by them is carried.

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

APPEAL from the District Court of Louisiana. From the proceedings in \*339] the court below, it appeared, \*that the brig Josefa Segunda, being Spanish property, and on a voyage from the coast of Africa to the island of Cuba, with a cargo of negroes, was captured, on the 11th day of February 1818, off Cape Tiberon, in St. Domingo, by the Venezuelan privateer, the General Arismendi. On the 24th of April following, she was seized, in the river Mississippi, by certain custom-house officers, and conducted to New Orleans, where a libel was filed against her, in the district court for the Louisiana district.

The libel contained four counts. The first alleged, that the said negroes were unlawfully brought into the United States, from some foreign country, in the said brig, with intent to hold, sell or dispose of them as slaves, or with intent that the same should be held to service or labor, contrary to the act of congress in such case made and provided. The second count alleged, that these negroes were taken, received and transported, on board the said brig, from some of the coasts or kingdoms of Africa, or from some other foreign kingdom, place or country, for the purpose of selling them in some port or place within the jurisdiction of the United States, as slaves, or to be held to service or labor, contrary, &c. In the third count, it was charged, that the said brig was found in some river, port, bay or harbor of the United States, or on the high seas, within the jurisdictional limits of the United States, or hovering on the coast thereof, to wit, in the river Mississippi, having on board some negroes, mulattoes or people of color, for the purpose of selling them as slaves, or with an intent to land the same, in some port or \*340] \*place within the jurisdiction of the United States, contrary, &c. The fourth allegation or count was, that 175 persons of color, not being native citizens, or registered seamen of the United States, or natives of countries beyond the Cape of Good Hope, were landed from said brig, in a port or place, situate in a state which, by law, had prohibited the admission or importation as aforesaid, to wit, at or near the Balize, in the state of Louisiana, contrary, &c.

This libel was filed on the 29th of April 1818, and on the 5th of May following, a claim was interposed by Messrs. Carricabura, Arieta & Co., merchants, of the Havana, which stated, that they were owners of the said brig, which, with the said negro slaves, was, on the high seas, while pursuing a lawful voyage, captured and taken from them, by a certain Rene Beluche, and the crew of the armed ship or vessel called the General Arismendi, sail-

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ing under the flag of the revolted colonies of Venezuela and New Grenada ; that the said brig put into the Balize, in very great distress, and without any intention on the part of the crew, or any other person on board, to infringe or violate any law of the United States. That whatever may have been the conduct of the prize-crew, or of any other persons on board, the claimants insist, that they cannot be made responsible for any of their acts, because the said brig, with her cargo, was taken from their possession, unlawfully, and in violation of the law of nations, inasmuch as the captors had no legal authority to take the same ; and if they had any commission, the capture \*was illegal, because the privateer, the General Arismendi, was armed and fitted out, or her armament or equipment increased, in a [\*341 port of the United States, in violation of the laws thereof.

On this libel and claim, it appeared in evidence, that the capture of the brig Josefa Segunda, with a cargo of slaves, was made off Cape Tiberon, in the island of St. Domingo, on the 11th of February 1818, on a voyage to the Havana, from the coast of Africa, which she had left in the preceding month of December or January. The capture was made by a Venezuelan brig, the General Arismendi. This vessel was commissioned as a privateer, by John Baptista Arismendi, who styled himself commanding general of Venezuela, and captain-general of the Island of Marguerita. The caption of the commission was, "Republic of Venezuela ;" and it purported to have been given, in the Island of Marguerita, the 1st of February, in the year 1818, and to be sealed with the great seal of the state. At the time of capture, there were from two to three hundred slaves on board ; some of these, but what number did not appear, afterwards died ; others, but how many was not stated, were sold at the Jardins de la Reine, on the south side of the Island of Cuba, in order to purchase provisions. Toward the end of the month of February, the prize-master of the brig received written orders from the captain of the privateer, to conduct the prize to the Island of Marguerita ; and always steered, as he says, eastward, the winds being always ahead. The prize-master had no log-book on board ; he wrote every day's occurrences on \*a slate, effacing what had been written the day [\*342 before. On the 18th of April 1818, in the morning, the brig was boarded by a pilot, about 40 miles from the Balize, and arrived there at four o'clock, P. M. About 25 miles from the Balize, the brig fell in with the American ship Balize, from which no provisions were asked, but from whom he received six bags of rice. On the 24th of April, the brig was seized by the custom-house officers, and conducted to New Orleans. On the 27th of April 1818, Laporte, who was the agent of Beluche, at New Orleans, wrote a letter to the prize-master of the brig, containing, among others, these expressions, "Maintain always your declaration of being forced into port."—"Take care that your sailors neither say, nor do anything, which may prejudice the interest of Venezuela." The privateer, after the capture of the brig, went to Jamaica for provisions. The pilot who first boarded the brig stated, that her mainmast was sprung, her ropes were all bad, the sails not fit to go to sea ; that they were pumping the last cask of water on board. Her spars were middling, except the mainmast ; there were no provisions on board ; the men were in a state of starvation ; that the slaves had nothing but skin upon their bones. A witness, who was on board, in her passage up the river, stated, that the brig sailed equal to anything in the river ; that he



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would not be afraid to make a voyage in her; her tackle, ropes, &c., were as good as usual; she was pumped out but once while he was on board; they carried topsails, coming up; the spars were generally good. He saw \*343] nothing in the appearance of \*the crew of their being starved. It also appeared, that the agent of the claimants in New Orleans, received letters from the owners of the brig, some time prior to her arrival at New Orleans, and that one of the owners had arrived in that city, while this cause was depending, and before the 19th of June 1818.

It was admitted by the claimant, that there existed an understanding between them and the captors; that the former were to render to the latter a compensation for their not interposing any claim, which was so far ascertained, that the sum which the captors were to receive, was not to be less than \$6000, nor more than \$8000, to depend on the expense and trouble incident to the prosecution, and the repairing of the vessel; that this arrangement was made, by the advice of the captors' counsel, from a conviction on his part, that they could not recover, on account, as he conceived, of the illegality of the commission. It was also admitted, that the claimants were the original owners of the brig and slaves on board.

On this testimony, the district court condemned the brig and effects found on board, to the United States, and the cause was brought by appeal to this court.

March 9th. *C. J. Ingersoll*, for the appellants and claimants, argued:

1. That the vessel was compelled by necessity to enter the Mississippi, and therefore, was not liable to forfeiture, under the acts of congress for suppressing the slave trade.

\*344] 2. That the commission \*of General Arismendi, under which the original capture was made, was unlawful, he having no authority to issue it as governor of the island of Marguerita, a dependent province of the new state of Venezuela. The owners were, therefore, entitled to restitution, under the 9th article of the Spanish treaty of 1795, as well as under the general law of nations; the right of property not being changed by a piratical seizure. Grotius, *de Jure Belli ac Pacis*, lib. 3, c. 9, § 17; Bynk. Q. J. Pub., lib. 1, c. 17; Valin, *sur l'Ordon.*, lib. 3, tit. 9, art. 10; 2 Bro. Civ. & Adm. Law 461.

3. But supposing it to have been a regular capture, in the exercise of the rights of war, and supposing the captors to have entered the waters of the United States, with the intention of violating the acts of congress, it is insisted, that the prize, thus carried into a neutral port, before adjudication, cannot be forfeited to the neutral state, for a breach of its municipal laws, committed by the captors, without the consent or collusion of the original owners. It has been repeatedly determined, that when captures are made in violation of our neutral rights, as ascertained by the law of nations, the acts of congress, and treaties with foreign powers, restitution of the captured property will be decreed by our tribunals, to the original owners. (a) Why? Because it is the right as well as duty of the nation, to prevent its neutral territory and resources from being used for the purposes of hostility by \*345] either belligerent. It will, therefore, restore in two cases: \*First, where the capture is made within its territorial limits; and secondly,

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(a) The *Divina Pastora*, 4 Wheat. 52, 55, and the cases cited in note.

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when made by a vessel armed or re-equipped in its ports. The same principles apply, where the captor violates the laws of police, or the revenue laws of the neutral state. The infringement of the one is as injurious to that state, and to the captured belligerent, as the infringement of the other. The injury to the original owner is equally great, whether the privateer was fitted in the neutral ports, or is permitted to carry his prizes into those ports for sale. The *spes recuperandi* is gone; and will the neutral sovereign condescend to avail himself, as against an innocent friend, of the forfeiture incurred by the misconduct of the enemy of the latter? The captor cannot sell; he cannot completely divest the original owner of his remaining right to the captured property, before its lawful condemnation: shall he then be permitted to do so, by smuggling, or even by attempting, or barely intending to smuggle it, in a neutral port? It is the well-established doctrine of public law, that belligerents have no right to sell or dispose of their prizes in a neutral port, before they are judicially condemned in a competent court of the captor's country; unless in case of necessity, or when the right is secured to them by treaty, or by the express permission of the neutral government; or in case of the intervention of peace.<sup>(a)</sup> If, then, the captor has not such an \*interest in his uncondemned prize as will enable him to dispose of it by sale to another, how can he be said to have such [\*346 an interest, as will enable him to forfeit it to the neutral state for a breach of its municipal laws? This is a novel question, both here and in the European courts of prize. It is, indeed, settled, that the prize court may dismiss the claim of a citizen, violating the law of his own country where the court sits; or of an ally or neutral, violating the treaties between his own country and that of the court; and that it may dismiss the libel of a captor (of the country where the court sits), for a collusive capture, or for a violation of the laws of trade. But the moment the neutral court, in the present case, ascertained that this was a capture *jure belli*, or piratical, it had nothing to do but restore it to the original possessor. The captor had not such a proprietary interest as rendered him capable of forfeiting it to the United States.

The first case of a forfeiture in the prize court for a breach of municipal law, which is reported, is that of *The Walsingham Packet*, 2 Rob. 64: that was the case of a British packet, retaken from the enemy, wherein a claim was given for the cargo, as the property of British and Portuguese merchants, and resisted on the part of the captors, on the ground, that such trade was prohibited by act of parliament. Here, the jurisdiction of the \*court, with respect to the thing re-captured, was unquestionable; [\*347 and Sir W. Scott rejected the claim, on account of the claimants' own personal misconduct, reserving the ultimate question, to whom the property should be condemned. In the case of *The Etrusco*, 4 Rob. 256 note, it was subsequently determined, that condemnation, in such cases, should be, not to the captors, but to the crown. In the case of *The Recovery*, 6 Rob. 341,

(a) Bee 263; The Flad Oyen, 1 Rob. 114; The Purissima Concepcion, 6 Ibid. 45; The Schooner Sophie, Ibid. 138; 2 Bro. Civ. & Adm. Law 255; 1 Peters Adm. 24; 2 Ibid. 345; The Kierlighett, 3 Rob. 82; Wheelright v. Depeyster, 1 Johns. 471, 481; 2 Valin, Com. sur l'Ord. 272, *et seq.*; Vattel, lib. 4, c. 2, § 22; Marten's Law of Nations 323; Wheat. on Capt. 262.



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Sir W. SCOTT determined, that the claim of a neutral could not be rejected in a prize court of the captors' country, for violating the municipal law of that country. Why? Because, as to him, it was a mere court of the law of nations, though as to British subjects, it was also a court of municipal law. As to him, the offence was merely *malum prohibitum*; as to British subjects, it was *malum in se*: and the had no right to complain, if they were punished for it, in any tribunal of their own country, however constituted. The cases of *The Bothnea* and *The Jahnstaff*, 2 Wheat. 169, and of *The George*, Ibid. 276, in this court, were also cases where the court had undoubted prize jurisdiction, and the original owner, being an enemy, could interpose no claim. The captor had been guilty of collusion with the public enemy, and had assisted him in violating the non-importation act. The court, therefore, dismissed his libel, and condemned the property to the United \*States. A similar observation is applicable to the case of \*348] *The Venus*, 8 Cranch 253, in which the joint claim of a citizen and an alien to the vessel was rejected, on the ground, that the former had made a false oath, in order to obtain a register, whereby she became liable to forfeiture, under the registry act.

The district court of Louisiana, beside its circuit court powers, may exercise jurisdiction as a prize court, or an instance court of admiralty. In neither of these capacities, could it take cognisance of the present case. Not as a prize court: for the jurisdiction belonged exclusively to the Venezuelan tribunals. Nor as an instance court of the law of nations: since, as such, its decree could only be for restitution to the captors, or to the original owners, according as our neutrality had, or had not, been violated. Nor as an instance court of municipal law, could it condemn the captured property of a friend, before it had been declared good prize, by a competent prize tribunal; unless, perhaps, where the owner or his agent had subjected his property to such a forfeiture, by an offence against the municipal law, consummated before the capture. The proper course of proceeding, where there is no collusion between the captor and the former owner, is, to punish those captors who attempt to violate our municipal laws, in the same manner as those who violate our neutrality; that is, by dispossessing them of their prizes, and restoring them to the original proprietors. Such was the conduct of Holland, on a similar occasion, as \*stated by Bynkershoek.(a) It \*349] is true, that he animadverts upon these ordinances of the States-

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(a) The passage of Bynkershoek here alluded to is as follows: He begins by observing, "although it be lawful, on national principles, to carry a prize into neutral territory, and there to sell it, if the captor thinks proper, laws have, nevertheless, more than once been made to the contrary." He then proceeds—"The States-General, on the 9th of August 1658, issued an edict, by which they ordered, that no foreign captor, who might be compelled by stress of weather, or some other reasonable cause, to bring his prize into the ports of this country, should presume to sell any part of it, or even to break bulk, but that he should inform the bailiff of the place, of his arrival, who, having placed a guard on board of the ship, should keep a strict watch over her, until her departure: inflicting, moreover, a discretionary penalty, and a fine of one thousand florins, on any one that should assist in unloading, or purchase anything out of her. To which edict, the said States-General, on the 7th of November, in the same year, enacted a supplement, by which it was ordered, that no prize-ship should be brought into the port itself, but merely into the outer roads, where she might be shel-

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General ; but his reflections will be found to be solely applicable to his own favorite notion of the right of belligerents to carry their prizes into neutral ports, and to \*sell them there, which has long since been exploded. [\*350 The force of this historical example is not diminished by his criticism, founded, as it is, upon a false theory. In the case now before the court, there can be no objection to restitution, on the ground of the traffic in which the original owners were engaged, being prohibited by the laws of their own country ; for it is notorious, that Spain tolerates the trade. The principle, therefore, applied by the Lords of Appeal, in England, to an American slave-trader, in the case of *The Amedie*, (a) does not apply to this case. And Sir WILLIAM SCOTT, since the determination of the Lords, has decided, in the case of a Swedish vessel, that he would not condemn, because there was no positive proof that Sweden had prohibited the trade, although it did not appear, that this state had ever sanctioned it, or that her subjects had been in the habit of carrying it on. *The Diana*, 1 Dods. 95. If it be said, that the condemnation rests on the act of congress, and that this act is general in its terms, and makes no distinction as to the manner in which vessels violating the law may have been brought into our waters ; it is answered, that, like all other penal laws, it must receive an equitable and liberal construction, and cannot be applied to cases of distress, or other cases of *vis major*.

The *Attorney-General*, contrà, argued principally upon the facts, to show, that the capture was collusive, \*and that, consequently, the [\*351 court had jurisdiction to condemn the property to the United States, in a case where the captor and captured had combined in a scheme of fraud, to defeat the execution of our municipal laws. He insisted, that even if this were not the fact, that the captors had, by possession, *jure belli*, such a title to the property, as rendered it liable to confiscation for any breach of our laws by the captors. Their title could only be divested by re-capture, or by the sentence of a competent prize court of their own country ; and how improbable it was, that such court would dispossess them of it, is shown by the proofs and the pleadings in this cause, by which it appears, that the property was Spanish, and therefore, liable to condemnation in the prize courts of Venezuela. The establishment of a contrary doctrine by the court, would furnish an effectual *recipe* by which all our laws of trade might be violated with impunity ; since it would be extremely difficult, in many cases, to show, that the capture was collusive, and in case of detection in the attempt to smuggle, the claimant would have nothing to do, but to throw the blame upon the pretended captor, whilst in case of success, he would

tered from danger, and that nothing should be unladen or sold out of her ; and if any one should act to the contrary, the prize should be restored to the former owner, as though it had never been taken, and the captor himself should be detained, and his own vessel seized and confiscated. The remainder of the edict merely confirms that of the 9th of August above mentioned. Whether those edicts were extorted from the States-General by fear, or by any other cause, I do not know ; but lest they should hereafter militate against national principles, we must declare, that we rather believe them to have been temporary than perpetual laws." Bynk. Q. J. Pub., lib. 1, p. 121, of Mr. Du Ponceau's Translation.

(a) Acton 240; Edinburgh Rev., vol. 16, No. 21, p. 436; Wheat. on Capt. 227.



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reap the fruits which might attend it. However ingeniously contrived such a scheme might be, it was the duty of the court to penetrate through it, and when detected, to visit it with the penalty of confiscation.

March 14th, 1820. LIVINGSTON, Justice, delivered the opinion of the court, and after stating the facts, proceeded as follows:—The third count \*352] of the libel is the only one \*that has any bearing on the present case. It alleges a violation of the 7th section of an act of congress, prohibiting the importation of slaves into the United States, after the first day of January, in the year 1808, and which passed the 3d of March 1807.

By this section it is enacted, "That if any ship or vessel shall be found, from and after the first day of January 1808, in any river, port, bay or harbor, or on the high seas, within the jurisdictional limits of the United States, or hovering on the coast thereof, having on board any negro, mulatto or person of color, for the purpose of selling them as slaves, or with intent to land the same in any port or place within the jurisdiction of the United States, contrary to the prohibition of this act, every such ship or vessel, together with her tackle, apparel and furniture, and the goods or effects which shall be found on board the same, shall be forfeited to the use of the United States, and may be seized, prosecuted and condemned, in any court of the United States having jurisdiction thereof. And the proceeds of all such ships and vessels, their tackle, apparel and furniture, and the goods and effects on board of them, which shall be so seized, prosecuted and condemned, shall be divided equally between the United States and the officers and men who shall make such seizure, or bring the same into port for condemnation, and the same shall be distributed in like manner as is provided by law for the distribution of prizes taken from an enemy : provided, that the officers \*353] and men to be entitled to one-half of the proceeds aforesaid, \*shall safe keep every negro, mulatto or person of color, found on board of any ship or vessel so seized by them, and deliver them to such persons as shall be appointed by the respective states to receive the same," &c. (2 U. S. Stat. 428.)

It is not denied, that the brig Josefa Segunda, shortly before her seizure, had been hovering on the coast of the United States, having on board a large number of persons of the description of those whose importation into this country is prohibited by the act : nor can there be any doubt, from the situation and circumstances under which she was found, and the manner in which she came within the jurisdictional limits of the United States, which appears to have been a voluntary act on the part of the prize-master, that there is at least *prima facie* evidence of an intention to dispose of these people as slaves, or to land them in some port or place within the jurisdiction of the United States.

The claimants, aware of the necessity of accounting for circumstances, which, unexplained, could not but prove fatal to their interests, contend, in the first place, that the coming into the Mississippi was a matter of necessity, produced by the perilous situation of the vessel, and the famishing condition of the people on board : and that, therefore, neither she nor her cargo can be obnoxious to the provisions of the act of congress. If the claim be not sustained on this plea ; it is insisted, in the next place, that the capture being illegal or piratical, the original owners cannot be affected by any of

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the acts of the prize-crew ; and, \*in the third place, it is asserted, that the vessel having been ransomed, and taken out of the hands of the captors, the claimants restored to all their original rights, unimpaired by any acts on the part of the former. Each of these claims for restitution will now be examined.

When any act is done, which, of itself, and unexplained, is a violation of law, and a party, to extricate himself, or his property, from the consequences of it, resorts to the plea of necessity or distress, the burden of proof is not only thrown upon him, but when the temptation to infringe the law is great, and the alleged necessity, if real, can be fully and easily established, no court should be satisfied with anything short of the most convincing and conclusive testimony. The proofs before us are so far from being of this character, that we look in vain for testimony of any serious disaster having befallen this vessel, in her voyage from the Island of Cuba to the Mississippi, or for a calamity of any kind, which might not have been averted or prevented, had the master seriously and honestly endeavored to reach the Island of Marguerita, which is now pretended to have been her real port of destination. That neither he, nor his employer, should have any great solicitude for the arrival of the prize at Marguerita, is easily accounted for, when it is recollected, that this island, as well from its small extent, being not more than forty miles in length, and perhaps, not more than half as broad, as from the scantiness and poverty of its population, could afford but a wretched, if \*any market at all for slaves ; while at New Orleans, [\*355 each of them would produce the extravagant and tempting sum of \$1000. It has not escaped the observation of the court, that the General Arismendi, made the passage from Marguerita to the place of capture, off the Island of St. Domingo, in the short space of nine days ; for the owner's letter of instructions to the captain bears date, at Marguerita, on the 2d day of February 1818, and on the 11th of the same month, the capture was made ; and yet, with the important fact before us, it is seriously contended, that a voyage which had just been made in nine days, could not be performed back again in six weeks. This is a possible case ; but we ought not to be expected, on slight grounds, to believe, that a vessel, after leaving the Island of Cuba, in the latter end of February, should, on the 18th of April following, be found, not only several miles farther from her destined port than at the time of sailing, but that she had pursued this circuitous route in search of provisions : a story so improbable could hardly, under any circumstance, be entitled to belief ; but it becomes absolutely incredible, when so many ports, more contiguous, and where supplies might easily have been obtained, were passed in her way to the Balize, without a single effort to procure a supply at any of them. Why not go to Kingston, in Jamaica, which was in the neighborhood of the place where the capture was made, and to which port, the privateer went, after making the capture ? Her not going there can be accounted for on no supposition other than that of her being well supplied \*with provisions, at the time of her leaving Cuba. It is vain, then, [\*356 to urge a plea, which is contradicted by the internal evidence of the case.

If, however, it can be made out, that an attempt was really made to reach Marguerita, which was frustrated by adverse winds, or by any one of those disasters which so frequently occur on the ocean, or that the Josefa was forced, by stress of weather, so very far from the track of a direct voy-



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age to that island, the claimant might still contend, that their plea of necessity had been made out. But on this subject, there is an impenetrable obscurity, which it was their duty to remove. What winds, or what weather, were encountered, we are not informed. No log-book, from which alone, accurate and safe knowledge might be derived, is produced. A journal of that kind was not even kept, a circumstance which, of itself, excites a suspicion, which none of the testimony in the cause is calculated to dispel. But it is not necessary to pursue this inquiry further, nor to take notice of several minor circumstances which are relied on, and which so far from making out a case of real distress, only serve to confirm the view which has already been taken of the other evidence, and leave no reasonable doubt of the whole story being a fiction; or that the want of provisions, if real, at the time of seizure, was produced by a voluntary protraction of the voyage for the purpose, and with the intent of violating the law on which the present libel is founded. If, on testimony so vague, so contradictory, and affording so little satisfaction, this court should award restitution, all the acts of congress \*357] which \*have been passed to prohibit the importation of slaves into the United States, may as well be expunged from the statute book; and this inhuman traffic, for the abolition of which the United States have manifested an early and honorable anxiety, might, under the most frivolous pretexts, be carried on, not only with impunity, but with a profit which would keep in constant excitement the cupidity of those who think it no crime to engage in this unrighteous commerce. In the execution of these laws, no vigilance can be excessive, and restitution ought never to be made, but in cases which are purged of every intentional violation, by proofs the most clear, the most explicit and unequivocal.

But the claimants, not relying exclusively on the plea of necessity, contend, that the capture being piratical, and by a vessel having no commission, they ought not to be injured by any acts of the prize-master, which may be deemed infractions of the laws of the United States. It would, indeed, be unreasonable and unjust, to visit upon the innocent owners of this property, the sins of a pirate; and were this allegation made out, the court would find no difficulty in making the restitution which is asked for. But is it so? was the General Arismendi a piratical cruiser? The court thinks not. Among the exhibits, is the copy of a commission, which is all that, in such a case, can be expected, which appears to have been issued under the authority of the republic of Venezuela. This republic is composed of the inhabitants of a portion of the dominions of Spain, in South \*358] America, who have \*been, for some time past, and still are, maintaining a contest for independence with the mother country. Although not acknowledged by our government, as an independent nation, it is well known, that open war exists between them and his Catholic Majesty, in which the United States maintain strict neutrality. In this state of things, this court cannot but respect the belligerent rights of both parties; and does not treat as pirates, the cruisers of either, so long as they act under, and within the scope of, their respective commissions. This capture, then, having been made under a regular commission of the government of Venezuela, the captors acquired thereby a title to the vessel and cargo, which could only be divested by re-capture, or by the sentence of a prize-court of the country under whose commission the capture was made. The courts

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of neutral nations have no right to interfere, except in cases which do not embrace the present capture. The captors, therefore, at the time of the violation of our laws, must be regarded as the lawful owners of the property, and as capable of working a forfeiture of it, by any infraction on their part of the municipal regulations of the United States. The property, in the present case, not only belonged, at the time, to the captors, in virtue of the capture which they had made, but it is evident from the testimony and admissions in this cause, that it was owned, at the time of capture, by an enemy, and that a condemnation in a prize court of Venezuela was inevitable.

As little foundation is there for resting a claim to restitution on the ransom, which it is alleged took place, of this vessel and cargo. This ransom, whether real or pretended, whether absolute or contingent [\*359 (about which, doubts may well be entertained), cannot affect the rights of the United States. The forfeiture having attached, before any ransom took place, could not be divested by any act between parties, consensual as these were, not only of the fact that a seizure had taken place, for a violation of law, but that legal proceedings had been instituted, and were then carrying on, to obtain a sentence of condemnation founded on such violation.

Decree affirmed, with costs.<sup>1</sup>

BLAKE *et al.* v. DOHERTY *et al.*

*Land-law of Tennessee.*

It is essential to the validity of a grant, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind; but it not necessary, that the grant itself should contain such a description, as, without the aid of extrinsic testimony, to ascertain precisely what is conveyed.

Natural objects, called for in a grant, may be proved by testimony, not found in the grant, but consistent with it.

The following description, in a patent, of the land granted, is not void for uncertainty, but may be made certain by extrinsic testimony: "A tract of land, in our middle district, on the west fork of Cane creek, the waters of Elk river, beginning at a hickory, running north 1000 poles, to a white oak, then east, 800 poles, to a stake, then south, 1000 poles, to a stake, thence west, 800 poles, to the beginning, as *per* plat hereunto annexed doth appear."

\*The plat and certificate of survey annexed to the patent, and a copy of the entry on which the survey was made, are admissible in evidence for this purpose. [\*360

A general plan, made by authority, conformable to an act of the local legislature, may also be submitted, with other evidence, to the jury, to avail, *quantum valere potest*, in ascertaining boundary.<sup>2</sup>

But a demarcation, or private survey, made by direction of a party interested under the grant, is inadmissible evidence, because it would enable the grantee to fix a vagrant grant, by his own act.

ERROR to the Circuit Court of West Tennessee.

March 2d, 1820. THIS cause was argued by *Swann* and *Jones*, for the plaintiffs in error, and by the *Attorney-General* and *Kelly*, for the defendants in error.

March 13th. MARSHALL, Ch. J., delivered the opinion of the court.—This was an ejectment, brought in the circuit court of the United States for the district of West Tennessee. The plaintiff made title, under a grant

<sup>1</sup> For a further decision in this case, see 10 Wheat. 312.

<sup>2</sup> *Meehan v. Forsyth*, 24 How. 175.