

## LA CONCEPTION: The SPANISH CONSUL, Claimant.

*Prize.—Breach of neutrality.*

Where a capture is made of the property of the subjects of a nation in amity with the United States, by a vessel built, armed, equipped and owned in the United States, such capture is illegal, and the property, if brought within our territorial limits, will be restored to the original owners.

Where a transfer of the capturing vessel, in the ports of the belligerent state, under whose flag and commission she sails on a cruise, is set up, in order to legalize the capture, the *bona fides* of the sale must be proved by the usual documentary evidence, in a satisfactory manner.

APPEAL from the Circuit Court of South Carolina. This was an allegation filed in the district court of South Carolina, by the vice-consul of his Catholic Majesty, claiming restitution of the ship *La Conception* and cargo, as the property of Spanish subjects to him unknown, which had been illegally captured by the armed ship *La Union*, sailing under the flag of Buenos Ayres, and pretending to have a commission or letter of marque from that government, but actually built, equipped, armed and manned in the United States. A claim was interposed \*by one Brown, claiming the property [\*236 as having been taken by him, as commander of *La Union*, on the high seas, under a commission from the government of Buenos Ayres, authorizing him to capture the property of the subjects of Spain.

The district and circuit courts decreed restitution of the property to the captors, no sufficient evidence being produced of the capturing vessel having been equipped, or having augmented her force in the ports of the United States. On appeal to this court, further proof was taken, showing conclusively, that the capturing vessel was originally built, owned and equipped in this country, and after proceeding to Buenos Ayres, and sailing from that port on a cruise, had touched at the port of New Orleans, and there illegally augmented her force, since which, the capture in question was made. This evidence was attempted to be repelled, on the part of the captors, by testimony tending to show a transfer of the capturing vessel, at Buenos Ayres, to domiciled subjects of that country, and that the subsequent augmentation of her force at New Orleans, if any, was very trifling, and only amounted to a replacement of her former equipment.

March 8th. The *Attorney-General* and *Hopkinson*, for the appellant and claimant, the Spanish consul, argued, that the original owners were entitled to restitution, according to the uniform series of decisions in this court, upon the ground, that the capturing ship was built and equipped in the United States, with the intention of cruising against the subjects of Spain, in violation of our neutrality, and actually belonged \*to citizens of [\*237 the United States, when the present capture was made; or had illegally augmented her force in our ports, previous to the capture. *The Alerta*, 9 Cranch 359; *The Divina Pastora*, 4 Wheat. 298; *The Estrella*, *Ibid.* 298; *La Amistad de Rues*, 5 *Ibid.* 385; *The Bello Corrunes*, *ante*, p. 152. That the pretended transfer at Buenos Ayres was evidently colorable, and was not proved by the production of the bill of sale, or any of the other documentary evidence usually expected by maritime courts, to establish a change of this species of property. That the enlistment of additional seamen to the crew at New Orleans, being proved, the *onus* was thrown back upon the

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captors, to show that the persons so enlisted were subjects of Buenos Ayres, transiently within the United States. *The Estrella*, 4 Wheat. 298.

*Winder*, contra, insisted, that it must be a clear case of the violation of our neutral rights, or the court would not interfere to restore a capture made under a commission from a sovereign state, and that the *onus probandi* for this purpose was on the Spanish claimant. *La Amistad de Rues*, 5 Wheat. 385. We have an unquestionable right to build ships for sale, and to export any kind of contraband, subject to the risk of capture: and even if a ship be expressly built for war, it may be sold to a belligerent, and afterwards equipped in his own ports, to cruise against his enemy. *The Alfred*, 3 Dall. \*238] 387. Here, the purchaser \*was actually domiciled at Buenos Ayres, and there is nothing to impeach the *bona fides* of the transaction. He then sailed again from Buenos Ayres on a cruise, and the alleged augmentation of the crew at New Orleans was, in effect, nothing but a replacement of the original force, the vessel having lost by desertion nearly the same number of men which she acquired by enlistment. Such a replacement, this court has already determined not to afford a ground for restitution. *The Phœbe Ann*, 3 Dall. 319. It is true, that the case cited was under the French treaty of 1778. But the 19th article of that treaty provides nothing more than a right of asylum and hospitality, the same as is enjoyed by the South American cruisers in our ports, under the president's instructions.

The counsel on both sides also argued on the same grounds which are stated in the case of *The Bello Corrunes* (*ante*, p. 155), and which it is not thought necessary to repeat.

STORY, Justice, delivered the opinion of the court.—In this case, if the cause had stood solely upon the evidence before the circuit court, we should have no difficulty in affirming its decision. But upon the new proofs which have been since taken, and are now produced to this court, it is apparent, that the capturing vessel was originally built, equipped, manned and armed in the United States for a cruise, being owned by citizens of this country, \*239] and \*sailed with the intent of cruising against Spain. It is true, that she went to Buenos Ayres, and sailed, under the colors of that government, on a second cruise, during which this capture was made; but, there is no satisfactory evidence, that the American ownership ever ceased, or that there was a real, *bonâ fide* sale, at Buenos Ayres. If such a sale had really taken place, it was perfectly in the power of the captors to have proved it, in the clearest manner. A bill of sale is the customary and universal document by which the ownership of vessels is evidenced; and the want of any document of this nature, or of any direct and positive evidence of an actual sale, leaves no doubt in the mind of the court, that no such sale ever was made. The consequence is, that the capturing vessel must still be considered, as owned in the United States; and according to the decisions which have already been made, the capture was illegal, and the property must be restored to the original Spanish owners.

Sentence reversed.