[Instance Court. Slave Trade Acts.]

The Merino. The Constitution. The Louisa. Barrias, and others, *Claimants.*

The technical niceties of the common law are not regarded in Admiralty proceedings. It is sufficient, if an information set forth the offence so as clearly to bring it within the statute upon which the information is founded. It is not necessary that it should conclude *contra formam statuti.*

The District Court of the District where the seizure was made, and not where the offence was committed, has jurisdiction of proceedings *in rem* for an alleged forfeiture.

If the seizure is made on the high seas, or within the territory of a foreign power, the jurisdiction is conferred on the Court of the District where the property is carried and proceeded against.

A municipal seizure, within the territory of a foreign power, does not oust the jurisdiction of the District Court into whose District the property may be carried for adjudication.

The prohibitions in the Slave Trade Acts of the 10th of May, 1800, c. 205. [li.] and of the 20th of April, 1818, extend as well to the carrying of slaves on freight, as to cases where the persons transported are the property of citizens of the United States; and to the carrying them from one port to another of the same foreign empire, as well as from one foreign country to another.

Under the 4th section of the act of the 10th of May, 1800, c. 205. [li.] the owner of the slaves transported contrary to the provisions of that act, cannot claim the same in a Court of the United States, although they may be held in servitude according to the laws of his own country. But if, at the time of the capture by a commissioned vessel, the offending ship was in possession of a non-commissioned captor, who had made a seizure for the same offence, the owner of the slaves may claim; the section only applying to persons interested in the enterprise or voyage in which the ship was employed *at the time of such capture.*

APPEAL from the District Court of Alabama. These were the cases of several vessels, and their

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cargoes of African slaves. The information filed in the case of the *Constitution* was, as well on behalf of the United States, as of George M. Brooke, a colonel in the army of the United States. The first count, after stating the seizure of this vessel, with a valuable cargo on board, and eighty-four African slaves, by the said Brooke, on waters navigable from the sea by vessels of ten tons burthen and upwards, alleges, that the said vessel, being a vessel of the United States, owned by citizens of the United States, was employed in carrying on trade, business or traffic, contrary to the true intent of an act of Congress, passed on the 10th of May, 1800, entitled, "an act to prohibit the carrying on of the slave trade from the United States to any foreign place or country," that is to say, was employed or made use of in the transportation of slaves from one foreign country to another, viz. from Havanna to Pensacola, both places belonging to the king of Spain, contrary to the form of the said act, whereby the said vessel and her cargo became forfeited.

It was admitted, by the counsel for the respondents, that the second and third counts were unsupported by the evidence, and they were, therefore, abandoned.

The fourth count charges, that certain citizens of the United States did, in June, 1818, take on board, or transport from one foreign place or country to another, certain negroes, in a vessel, for the purpose of holding, selling, or otherwise disposing of them as slaves, or to be held to labour or service. In the case of the *Merino*, the information

contains three counts, the second of which alone was relied upon by the counsel for the respondent, and this states, that on the day of June, 1818, certain citizens of the United States received on board of the said vessel, belonging to citizens of the United States, and transported from one foreign place or country, viz. from Cuba to Pensacola, a certain number of negroes, for the purpose of holding the said negroes as slaves; and that the said vessel, with her cargo, and the negroes, were, on the 21st of June, 1818, seized on the high seas by Capt. M'Keever, commander of the United States ketch Surprise, and were brought into the District of Mobile, for a violation of the laws of the United States, and particularly of the 4th section of the act of 1818.

The information in the case of the *Louisa* and her cargo, was substantially the same as the one last mentioned, the second count being also founded on the 4th section of the act of 1818.

The evidence in these cases established the following facts, viz. that the above vessels, owned by citizens of the United States, and registered as such, sailed from certain ports in the United States to Havana, where they each received on board certain goods, as also a number of slaves, newly imported from the coast of Africa, the latter belonging to subjects of Spain, residents either of Havana or Pensacola, to be transported from the former to the latter place. The Merino cleared out at Havana on the 2d of June, 1818, for Mobile, and the Constitution and Louisa, on the 10th of the same month, for New-Orleans.

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The owners of these vessels, however, engaged to land the slaves at Pensacola, on their respective voyages to New-Orleans and Mobile. On their arrival within, or near to, the bay of Pensacola, that place was found in possession of the American army, under the command of Gen. Jackson. The Merino was seized by the United States ketch Surprise, commanded by Capt. M'Keever, within a mile and a half of fort Barancas, inside the bar, and within the harbour of Pensacola. The Constitution was taken possession of by Col. Brooke, of the United States army, under the guns of fort Barancas, then in possession of the United States forces. The Louisa was captured by Capt. M'Keever, in the ketch before mentioned, outside of the bar at Pensacola, standing in. These vessels, with their goods on board, and the negroes, were sent to the district of Mobile for adjudication. The Constitution, having on board an agent of Col. Brooke, was boarded off Mobile point by the United States revenue boat, and was carried in and reported by Capt. Lewis, commanding said boat, to the Collector, as having been seized by him, the agent reporting the seizure as having been made by Col. Brooke.

The informations against these vessels and their cargoes, were filed in the General Court for the territory of Alabama, from whence the proceedings were removed into the District Court of Alabama, where the vessels and their cargoes were severally condemned as forfeited to the United States, but the distribution was reserved for the future order of the Court. From these

sentences of condemnation, the claimants of the vessels and the cargoes appealed to this Court.

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Mr. *C. J. Ingersoll*, for the appellants, (1.) argued upon the facts, to show that the transactions were in good faith; that Pensacola was the real destination of the persons transported, who were slaves by the laws of Spain established in the island of Cuba: that there was no intention of introducing them into the United States, contrary to our laws, but that they were bound from one Spanish colony to another, under a license from the local government. (2.) That the temporary occupation of Pensacola, in 1818, by the troops of the United States, under Gen. Jackson, was not such a conquest in war as changed the national character of the province of Florida, but was a mere incursion into the country, for the purpose of chastising the Indian savages, and depriving them of succours and a place of refuge. The principle, that a lawful conquest in war has the effect of suspending the operation of the local laws of the place, and of establishing such others as the conqueror thinks fit to substitute, was incontestable, but could not apply to such a case as that before the Court.[a] The United States were not at war with Spain; and even if they had been, the occupation of the Spanish territory by their arms would not change the jurisdiction, until its possession was confirmed by a

[a] The United States v. Hayward, 2 *Gall. Rep.* 501. United States v. Rice, 4 *Wheat. Rep.* 246. The Foltina, *Dodson's Adm. Rep.* 450.

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treaty of peace.[a] But, according to our municipal constitution, even if the territory had been ceded by treaty, it would require an act of Congress to apply the laws of trade for its government. (3.) The slave act of 1800, c. 205., does not affect the slaves transported, unless they belong to the owner of the vessel. Besides, it merely prohibited their transportation from one foreign country to another, and not from one place of the same country to another. This was the case of a removal of slaves, who were such by the laws of the island, from Cuba to another Spanish colony. Since the enactment of the first law on the subject, in 1794, down to the present time, the policy of the National Legislature has been limited to the suppression of the slave trade, (properly so called,) and to prevent, as far as could be done, the bringing into a state of servitude those persons who were free in their own country; and since the condition of persons who are already slaves, cannot be changed or made worse, by their removal from one slave-holding country to another, the statutes ought not to be so construed as to prohibit citizens of the United States from being concerned in such removals. (4.) The District Court of Alabama had no jurisdiction of these causes, under the Judiciary Act of 1789, c. 20. s. 9., since the seizure was made, neither *upon the high seas*, nor upon waters navigable from the sea, *within the district*, but it was made within

[a] *Grotius de S. B. ac P. lib.* 3. c. 6. s. 4, 5. *par Barbeyr.* tom. 2. p. 786. *Mably, Droit de l'Europe.* tom. 1. c. 2. p. 144.

the territorial jurisdiction of a foreign power. The waters where this seizure was made, form no part of the "high seas."[a] He also insisted, that no regular Admiralty process had issued in the Court below, and that the informations were defective, in not concluding *contra formam statuti*, and, at the same time, not containing any express reference to the statutes under which the proceedings were commenced.

The *Attorney-General* and Mr. *Kelly*, contra, (1.) insisted, that there was no ground for limiting the operation of the slave trade acts in the manner proposed on the part of the appellants. Foreigners cannot be permitted, with impunity, to employ our shipping in the transportation of slaves. The acts of Congress may attach to American vessels, wherever they may be, or however employed. Both the vessels and the slaves had here committed an offence, in the eye of the law, for which it pronounced a forfeiture, without regard to the national character of the owners of ship or cargo. Foreigners are bound to know, and are supposed to know, our laws of trade, in all cases where those laws may be justly applied; and they may be justly applied to the conduct of our vessels, whether in our own ports, in foreign ports, or on the high seas. Under the statutes now in question, it is not necessary that the two foreign ports or places, between which the traffic is carried on, should be in

a United States v. Wiltberger, 5 *Wheat. Rep.* 93. United States v. Pirates, *Id.* 200.

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different foreign countries or empires. Much of the slave trade was carried on from European factories on the coast of Africa to the colonies of the same nation in the West Indies or South America; and could there be a doubt, that this trade was meant to be prohibited by Congress? It is sufficient to satisfy the words of the statute, if the two places are foreign with respect to the United States. Nor is it material, whether the American owner of the vessel has any proprietary interest in the slaves or not. Whether they are carried as his property for sale, or to be held to service, or are transported on freight for the slave merchant, or owner, the forfeiture equally attaches to vessel and cargo. (2.) By the 4th section of the act of 1800, c. 205. the claimants, if interested in the enterprise or voyage in which the vessel is employed, are expressly excluded from restitution of the slaves which belong to them. But here it may be doubted, whether they have proved any proprietary interest, which will entitle them to restitution. The *onus probandi* was on them. They must show, by positive evidence, that those persons were slaves according to the laws of Spain, and that they had a right to carry them from one colony to another, by those laws. Foreign laws are matters of fact, and as such, must be proved, according to the rules of evidence applicable to them, whether written or unwritten. (3.) It was not meant to be contended, that the United States acquired any sovereignty or jurisdiction over the Spanish territory, by its temporary occupation. It was unnecessary to

maintain such a position. Here was a fraudulent attempt to violate our laws, by transporting those persons from the Island of Cuba, with a colourable destination, for another Spanish colony, but with the real intention of introducing them into the United States. In order to give the District Court of Alabama jurisdiction, it is immaterial where the offence was committed; and it is equally immaterial where the seizure was made, provided it was not made in any other district of the United States. In any other case, jurisdiction is given to the Court within whose district the property is carried for adjudication. The trespass on the Spanish territory cannot be so connected with the subsequent seizure, under the process of the Court below, as to invalidate the seizure.[a] If there was any offence against the sovereignty of Spain in the original seizure, that is a matter to be adjusted between the two governments. 1824. The Merino, *et al.*

Mr. Justice WASHINGTON delivered the opinion of the Court; and, after stating the case, proceeded to enumerate the objections made by the counsel *March 5th.*

a The Richmond, 9 *Cranch*, 102.

b The counsel was proceeding to argue the question as to the rights of Colonel Brooke, as a non-commissioned captor, or seizor, but was stopped by the Court, upon the suggestion, that the decrees of the Court below had reserved the question of distribution of the proceeds of the seizure, for its further directions, as in cases of prize and other Admiralty proceedings; and that nothing was before this Court upon the present appeal, but the question of forfeiture.

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for the appellants, to the several decrees of the Court below.

1. That the regular Admiralty process was not issued in these cases.

2. That the informations do not conclude against the form of the statute.

3. That the District Court of Alabama had not jurisdiction, the seizures having been made, not within the waters of that State, or on the high seas, but within the jurisdiction of a foreign nation.

4. That the acts of Congress, on which these informations are founded, were intended to apply exclusively to the suppression of the slave trade, from the coast of Africa, or elsewhere, for the purpose of holding or disposing of the subjects of the trade, as slaves, and not to the carrying of them, when in a state of slavery, from one foreign country to another.

1. That the proceedings in these cases were not conducted with the regularity usually observed in Admiralty causes, must be admitted. But the Court is of opinion, that all objections of this nature were waived, by the appearance of the parties interested in the property seized, and filing their claims to the same. In each case, a warrant issued to the Marshal to seize the property libelled, and to cite and admonish all persons claiming an interest in the same, to appear before the Court, and to show cause why the same should not be condemned, as forfeited to the United States. This process was returned executed, and claims were interposed for the several vessels and their

cargoes, by the asserted owners thereof. Upon the strictest rules which govern in Courts of common law, objections to the regularity of the process, to enforce an appearance, would be considered as removed by the appearance of the party, and pleading to the merits.

2. The second objection is without foundation, *in fact*, in relation to the information against the Constitution and her cargo; and we think it inadmissible in point of *law*, in the other two cases; the count relied upon in those informations stating expressly, that the seizure was made for a violation of the 4th section of the act of 1818, the title of which is accurately set forth. For all the purposes of justice, and of notice to the claimant of the charge which he was called upon to answer, this must be deemed sufficient; and the addition of the technical words, *contra formam statuti*, is altogether formal and unnecessary. In the cases of the *Samuel*, (1 *Wheat. Rep.* 9.) and the *Hoppet*, (7 *Cranch*, 389.) it was observed by this Court, that technical niceties of the common law, as to informations, which are unimportant in themselves, and stand only on precedents, are not regarded in Admiralty information; the material inquiry in the latter cases being, whether the offence is so set forth, as clearly to bring it within the statute upon which the information is founded.

3. The objection raised to the jurisdiction of the District Court of Alabama, is principally grounded upon the 9th section of the Judiciary Act of 1789, c. 20. which provides, "that the District Courts shall have exclusive original cog-

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nizance of all civil causes of Admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas." It is contended, that the seizures in these cases, were not made upon the high seas, or upon waters within the District of Alabama, and, therefore, the jurisdiction was not conferred on that Court. The section above recited, marks out, not only the general jurisdiction of the District Courts, but that of the several District Courts in relation to each other, in cases of seizures on waters of the United States, navigable from the sea, by vessels of a particular burthen. If made within the waters of one district, the jurisdiction attaches to the Court of that district, and the suit must be there prosecuted. The jurisdiction, in these cases, is given to the Court of the district, not where the offence was committed, but where the seizure is made. But where the seizure is made on the high seas, the jurisdiction is conferred upon no particular District Court, and it may, therefore, be exercised by the Court of any district into which the property is carried, and there proceeded against. In like manner, if the seizure be made within the waters of a foreign nation, as was done in these cases, cognizance of the cause is given, under the general expressions of the section, as to civil cases of Admiralty and maritime jurisdiction, to the Court of the district into which the property

is conducted, and on which the prosecution is instituted. The illegality of the service in this latter case, has nothing to do with the question of jurisdiction, as was decided by this Court, in the case of the *Richmond.* (9 *Cranch,* 102.)

4. The last objection involves the merits of these causes. In the case of the Constitution, the counsel for the appellees rely upon the first and fourth counts in the information; and, in the two other cases, on the second count. But, we think, that the first count, in the first of these cases, must be put out of view; because, although it charges a violation of the act of 1794, it states the offence within the words of the act of the 10th of May, 1800, and yet it alleges it to have been committed contrary to the form of the act of 1794, the title of which is specially recited. This was, no doubt, a mistake of the proctor; but it partakes too much of substance to be the foundation of a sentence of condemnation, in a case so highly penal as this is. But, that count is not, in the opinion of the Court, material to the decision of that case, because, we are all of opinion, that the fourth count is fully supported by the evidence in the cause, and warrants the sentence of condemnation pronounced by the inferior Court. This count is strictly within the 4th section of the act of 1818; and so is the second count in the informations against the Merino and Louisa, and their cargoes.

The argument relied upon by the counsel for the appellants, was, that the policy of our laws, from the year 1794, down to the latest act of legislation, has been confined to the suppression of

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the slave trade, and to prevent, as far as could be done, the bringing into bondage those persons who were free in their own country; and, that since the condition of persons already slaves cannot be changed or made worse, by their removal from one slave-holding country to another, the acts of 1800 and 1818, ought not to be so construed, as to prohibit citizens of the United States being concerned in such removals.

It may well be doubted, whether even the act of 1794, the first which passed upon this subject, can fairly receive the narrow construction which is contended for, since it prohibits the fitting of vessels within the United States, not only for the purpose of procuring from any foreign kingdom the *inhabitants* thereof, to be transported to some foreign country, to be disposed of as slaves, but also for the purpose of carrying on any trade or traffic in *slaves*, to any foreign country, apparently embracing the two cases of free persons of colour, whose condition is changed by being brought into a state of slavery, and also persons already slaves, and intended to be used as subjects of traffic. Be this as it may, the language of the acts of 1800 and 1818, leaves no reasonable doubt, that the intention of the Legislature was to prevent citizens of, or residents within, the United States, from affording any facilities to this trade, although they should have no interest or property in the slaves themselves, and although they should not be immediately instrumental to the transportation of them from their native country. By the former of these laws, the offence is made to con-

sist in the employment of a vessel belonging to citizens of the United States, or to persons resident within the same, in carrying slaves from one foreign country or place to another, no matter for what purpose. By the latter, it consists in the taking on board, or transporting from Africa, or from any foreign country or place, any negro, &c., in *any vessel*, for the purpose of holding or disposing of such person as a slave, or to be held to service, &c., where those acts are performed by citizens of, or residents within the United States.

It cannot be questioned, but that the case of the Constitution, as stated in the information, and proved by the evidence, is literally within the provisions of the latter act. The slaves seized in that vessel, were taken on board of her by a citizen of the United States, in one foreign place, for the purpose of their being held to service or labour. The Court do not feel themselves justified in restraining the general expression of this law, upon the ground of a supposed policy, the reality of which, to say the most of it, is very questionable. The sentence, therefore, of the Court below, in the case of this vessel and her cargo, must be affirmed.

The same decision would, of course, be made in the cases of the Merino and the Louisa, and their cargoes, if it were not for the circumstance, that the second count in the informations against those vessels alleges, that the citizens of the United States, who took the slaves on board at the Havana, did so for the purpose of *holding them as slaves*, which allegation is not proved by the evidence in those cases. They were taken on board

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merely as passengers, to be delivered at Pensacola to their owners, or to those to whom they were consigned. The sentences in these two cases must, therefore, be reversed, and the causes remitted to the District Court, with directions to permit the libellants to amend, it being obvious to this Court, from the evidence, that the negroes taken on board of those vessels, were transported for the purpose of their being *held to service*.

The three remaining cases, present the claims of the asserted owners of the slaves transported in the above vessels, from Havana to Pensacola, which were brought before the Court below, in the form of libels for restitution. To these libels no claims were filed, and the sentence of the Court in each of the cases, was, "that the slaves remain subject to the laws of Alabama;" from which decision appeals were taken; and as they amount, substantially, to a dismission of the libels, it becomes necessary to examine their correctness. The ownership of the slaves, as claimed by the respective libellants, appears to the Court to be sufficiently established. It is in proof, that slavery was, and is, permitted to exist in the Island of Cuba, either by particular ordinances of the Spanish government, or by custom; that the slaves in question were imported into that island from Africa by Antonio de Frias, and were shipped at Havana for Pensacola by these libellants, as their property, under a passport regularly granted by the Governor-General of Cuba; the slaves claimed by the libellants, other than Frias, having been purchased from him by those libellants. It would

seem unreasonable to require other or better proof of ownership, in property of this description, than these facts furnish.

The only question, then, is, whether these persons are prevented from claiming restitution of these slaves by any law of the United States. The only act which bears upon this subject, is that of the 10th of May, 1800, the 4th section of which, after declaring that it should be lawful for any of the commissioned vessels of the United States, to seize any vessel employed in carrying on trade, business, or traffic, contrary to the intent and meaning of that act, or the act of 1794, enacts, that "all persons interested in such vessel, or in the enterprise or voyage in which such vessel shall be employed, at the time of such capture, shall be precluded from all right or claim to the slaves found on board such vessel, and from all damages or retribution on account thereof." There can be no question, but that this section is strictly applicable to the claimants of the slaves on board the Merino and Louisa, those vessels having been seized whilst employed in carrying on trade forbidden by the act of 1800, by a commissioned vessel of the United States. The case of the claimants of the slaves on board of the Constitution, is different. That vessel, with her cargo, was seized in the bay of Pensacola by a military officer, and was conducted by his agent to Mobile, for the purpose of being libelled for his use. The 1st section of this act, which declares the forfeiture of any vessel belonging to a citizen of the United States, employed in transporting slaves from one foreign country to ano-

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ther, contains a provision, that the said vessel may be libelled and condemned for the use of the person who shall sue for the same. The right to seize the vessel, and slaves on board, would seem to be a necessary consequence of the right to enforce the forfeiture. The possession of the vessel, then, being lawfully vested in Col. Brooke, at the time she was boarded by the revenue boat, off Mobile Point, it could not, with any propriety, be asserted, that she was employed in carrying on trade, contrary to law, at the time she was so boarded. Her employment in such trade was completely terminated by the first seizure, and she was on her way for adjudication when the second seizure was made. If, under these circumstances, a capture of the vessel could not be legally made by the revenue boat, then the claims of the owners of the slaves on board, is not precluded by the 4th section of the act of 1800; the sentence above quoted applying only to persons interested in the voyage in which the vessel was employed at *the time of such capture.*

The Court is, therefore, of opinion, that in the case of Antonio de Frias and David Nagle against eighty-four African slaves, the sentence of the Court below is erroneous, and ought to be reversed, and that a decree of restitution ought to be made.

Sentence in the case of the *Constitution* affirmed. Sentences in the cases of the *Louisa* and *Merino* reversed, with leave to amend. Sentence reversed as to the claim of Frias and Nagle, and restitution decreed.