U.S. Supreme Court

THE PAQUETE HABANA, 175 U.S. 677 (1900)

175 U.S. 677

THE PAQUETE HABANA.

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Nos. 395, 396.

Argued November 7, 8, 1899.

Decided January 8, 1900.

Mr. Justice Gray delivered the opinion of the court:

These are two appeals from decrees of the district court of the United States for the southern district of Florida condemning two fishing vessels and their cargoes as prize of war.

Each vessel was a fishing smack, running in and out of Havana, and regularly engaged in fishing on the coast of Cuba; sailed under the Spanish flag; was owned by a Spanish subject of Cuban birth, living in the city of Havana; was commanded by a subject of Spain, also residing in Havana; and her master and crew had no interest in the vessel, but were entitled to shares, amounting in all to two thirds, of her catch, the other third belonging to her owner. Her cargo consisted of fresh fish, caught by her crew from the sea, put on board as they were caught, and kept and sold alive. Until stopped by the blockading squadron she had no knowledge of the existence of the war or of any blockade. She had no arms or ammunition on board, and made on attempt to run the blockade after she knew of its existence, nor any resistance at the time of the capture.

Both the fishing vessels were brought by their captors into Key West. A libel for the condemnation of each vessel and her cargo as prize of war was there filed on April 27, 1898; a claim was interposed by her master on behalf of himself and the other members of the crew, and of her owner; evidence was taken, showing the facts above stated; and on May 30, 1898, a final decree of condemnation and sale was entered, 'the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure.'

Each vessel was thereupon sold by auction; the Paquete Habana for the sum of $490; and the Lola for the sum of $800. There was no other evidence in the record of the value of either vessel or of her cargo.

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We are then brought to the consideration of the *question* whether, upon the facts appearing in these records, the fishing smacks were subject to capture by the armed vessels of the United States during the recent war with Spain.

By an ancient usage among civilized nations, beginning centuries ago, and gradually ripening into a rule of international law, coast fishing vessels, pursuing their vocation of catching and bringing in fresh fish, have been recognized as exempt, with their cargoes and crews, from capture as prize of war.

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The doctrine which exempts coast fishermen, with their vessels and cargoes, from capture as prize of war, has been familiar to the United States from the time of the War of Independence.

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Since the United States became a nation, the only serious interruptions, so far as we are informed, of the general recognition of the *exemption of coast fishing vessels from hostile capture,* arose out of the mutual suspicions and recriminations of England and France during the wars of the French Revolution.

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***International law is part of our law*, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, *where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations,* and, as *evidence* of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is. Hilton v. Guyot, 159 U.S. 113, 163 , 164 S., 214, 215, 40 L. ed. 95, 108, 125, 126, 16 Sup. Ct. Rep. 139.**

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This review of the precedents and authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent states, that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war.

The exemption, of course, does not apply to coast fishermen or their vessels if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way.

Nor has the exemption been extended to ships or vessels employed on the high sea in taking whales or seals or cod or other fish which are *not brought fresh to market,* but are salted or otherwise cured and made a regular article of commerce.

This rule of international law is one which *prize courts* administering the law of nations are bound to take *judicial notice* of, and to give effect to, in the absence of any treaty or other public act of their own government in relation to the matter.

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To this subject in more than one aspect are singularly applicable the words uttered by Mr. Justice Strong, speaking for this court: *'Undoubtedly no single nation can change the law of the sea.* The law is of universal obligation and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, *but because it has been generally accepted as a rule of conduct.* Whatever may have been its origin, whether in the usages of navigation, or in the ordinances of maritime states, or in both, it has become the *law of the sea* only by the concurrent sanction of those nations who may be said to constitute the commercial world. Many of the usages which prevail, and which have the force of law, doubtless originated in the positive prescriptions of some single state, which were at first of limited effect, but which, when generally accepted, became of universal obligation.' 'This is not giving to the statutes of any nation extraterritorial effect. It is not treating them as general maritime laws; but it is recognition of the historical fact that by common consent of mankind these rules have been acquiesced in as of general obligation. Of that fact, we think, we may take judicial notice.

***The position taken by the United States during the recent war with Spain was quite in accord with the rule of international law,* now generally recognized by civilized nations, in regard to coast fishing vessels.**

On April 21, 1898, the Secretary of the Navy gave instructions to Admiral Sampson, commanding the North Atlantic Squadron, to 'immediately institute a blockade of the north coast of Cuba, extending from Cardenas on the east to Bahia Honda on the west.' Bureau of Navigation Report of 1898, appx. 175. The blockade was immediately instituted accordingly. On April 22 the President issued a proclamation declaring that the United States had instituted and would maintain that blockade, *'in pursuance of the laws of the United States, and the law of nations applicable to such cases*.' 30 Stat. at L. 1769. And by the act of Congress of April 25, 1898, chap. 189, it was declared

that the war between the United States and Spain existed on that day, and had existed since and including April 21, 30 Stat. at L. 364.

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Each vessel was of a moderate size, such as is not unusual in coast fishing smacks, and was regularly engaged in fishing on the coast of Cuba. The crew of each were few in number, had no interest in the vessel, and received, in return for their toil and enterprise, two thirds of her catch, the other third going to her owner by way of compensation for her use. Each vessel went out from Havana to her fishing ground, and was captured when returning along the coast of Cuba. The cargo of each consisted of *fresh fish, caught by her crew from the sea, and kept alive on board*. Although one of the vessels extended her fishing trip across the Yucatan channel and fished on the coast of Yucatan, we cannot doubt that each was engaged in the coast fishery, and not in a commercial adventure, within the rule of international law.

The two vessels and their cargoes were condemned by the district court as prize of war; the vessels were sold under its decrees; and it does not appear what became of the fresh fish of which their cargoes consisted.

Upon the facts proved in either case, it is the duty of this court, sitting as the highest prize court of the United States, *and administering the law of nations*, to declare and adjudge that the capture was unlawful and without probable cause; and it is therefore, in each case,

Ordered, that the decree of the District Court be reversed, and the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with damages and costs. [175 U.S. 677, 715]