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FROM THE ROYAL GAZETTE.

ADMIRALTY REPORT.

JUNO, PACKARD.

The following case which lately occurred in our Vice Admiralty Prize Court, and the decision upon which remains as yet suspended, appears to be of so much importance, that a statement of the grounds upon which condemnation was urged, cannot fail of being interesting to many of your readers in these islands, and highly important to your subscribers and correspondents in the United States.*

The Juno was an American vessel belonging to *Newport*, Rhode-Island, from which place she sailed in April last, with a cargo of dry goods and provisions, which she delivered at *Havanna*, where she took on board 40 hogsheads of molasses and 13 boxes of sugar, with which she proceeded to the port of *Matanzas*, (about 15 or 20 leagues to the eastward of Havanna.) At Matanzas she took on board between 6 and 700 boxes of sugar, and was returning to Rhode-Island, when she was detained by the private ship of war *Mayflower, George Johnson*, commander, and sent to this port.

On the 21st day of June last, the cause came on to be heard before his honor *Henry Moreton Dyer*, Esq. sole judge and commissary of the Vice Admiralty Court.

Wm. Wyly, Esq. his majesty's advocate general and counsel for the captors, after admitting both ship and cargo to be neutral property, declared that this case was brought before the court for the express purpose of obtaining a judicial decision upon a point of no small importance to Great-Britain as a belligerent power—and as it was the first of the sort that had occurred here, he would state what he took to be the established law of nations upon this head, not indeed in the expectation of being able to offer any thing new to the intelligence of the court, but in order that those who heard him and who were affected by the capture, might be convinced the captors contended for no more than what they were justly entitled to. He said the principal object of the European powers in settling colonies in other quarters of the globe, was the extension of the trade of the mother country; and thus the monopoly of the colonial trade had always been claimed by the parent states from the first settlement in their colonies in other regions of the world—in so much that it soon became a part of the public law, "*That the ships of other nations which were found trading with those colonies were subject to condemnation.*" [Vide Montesquieu's sp. of laws.] And such a trade being prohibited to foreigners in time of peace, it followed that neutrals could not lawfully engage in it in time of war: It therefore became another settled point, [vide Black's. Reports, p. 314.] "*That if a neutral ship trades to an enemy's colony, with all the privileges of an enemy's ship, and is thus adopted and naturalized, she must be looked upon as an enemy's ship, and is liable to be taken.*"

That upon this principle many Dutch ships and Cargoes were condemned in the war of 1756, at which time lord Mansfield generally presided in our court of appeals in prize causes, whose decisions had the respect and approbation of all Europe.

That the American Revolution had certainly produced a considerable relaxation in this maxim of colonial trade, for the enterprizing inhabitants of the countries which now form the United States, having insinuated themselves more or less into the trade of most of the West India colonies, the rule of law had been much narrowed, and it could now only be laid down by a belligerent,

"*That neutrals cannot lawfully carry on any trade with an enemy's colony in time of war, from which they were excluded in time of peace.*"

This rule, he continued, had evidently been acted upon in our courts, in illustration of which he cited the case of the Immanuel, 2 Robinson's Reports, p. 197.—"Upon the breaking out of a war, it is the right of neutrals to carry on their *accustomed trade* with an exception of the particular cases of a trade to blockaded places, or in contraband articles, (in both which cases their property is liable to be condemned) and of their ships being subject to visitation & search; in which case however they are entitled to freight and expences. I do not mean to say that in the accidents of a war, the property of neutrals may not be variously entangled and endangered; in the nature of human connections it is hardly possible that inconveniences of this kind should be altogether avoided. Some neutrals will be unjustly engaged in covering the goods of the enemy, and others will be unjustly suspected of doing it: these inconveniences are more than fully balanced by the enlargement of their commerce; the trade of the belligerent is usually interrupted in a great degree, and falls in the same degree into the lap of neutrals. But without reference to accidents of the one or other, the general rule is, that the neutral has a right to carry on, in time of war, his accustomed trade to the utmost extent of which that accustomed trade is capable. Very different is the case of a trade which a neutral has never possessed, which he holds by no title of use and habit in time of peace, and which, in fact, can obtain in war by no other title than by the success of the one belligerent against the other, and at the expence of that very belligerent under whose success he sets up his title: and such I take to be the colonial trade generally speaking."

He added from the case of the Emanuel, 1st Robinson's Reports, p. 299—"It is said in argument that this principle which applied likewise to the colonial trade between the Mother countries and their plantations in the West-Indies (that being equally a trade guarded by a monopoly in time of peace, and having been likewise occasionally relaxed under the pressure of war) has been in a good measure abandoned in the decisions of the lords commissioners of appeal. I am not acquainted with any decision to that effect; and I doubt very much whether any decision yet made has given even an indirect countenance to this supposed dereliction of a principle apparently rational in itself, and conformable to all general reasoning on the subject. It is certainly true, that in the last war many decisions took place which then pronounced that such a trade between *France* and her colonies was not considered as an unneutral commerce: but under what circumstances? It was understood that *France* in opening her colonies during the war, declar'd that this was not done with a temporary view, relative to the war, but on a general and permanent purpose of altering her colonial system, and of admitting foreign vessels universally and at all times to a participation of that commerce. Taking that to be the fact, (however suspicious its commencement might be during the actual existence of a war,) there was no ground to say that neutrals were not carrying on a commerce as ordinary as any other in which they could be engaged; and therefore in the case of the *Verwagtig*, and in many other succeeding cases, the lords decreed payment of freight to the neutral ship owner. It is fit to be remembered on this occasion, that the conduct of *France* evinced how little dependence can be placed upon explanations of measures adopted during the pressure of a war; for hardly was the ratification of the peace signed, when she returned to her ancient system of colonial monopoly. In the present war I am not aware that any judgments of the supreme court yet pronounced, have receded from the principle, except in cases and under circumstances in which a respect to public stipulations and treaties required that the application should be limited; the general principle I take to be entire and untouched, as far as it relates to the trade of the colonies.

That it appeared from subsequent decisions of the Lords of Appeal, the learned judge spoke from the best information, and it was evident that the Court was by no means disposed to relinquish the principle an iota beyond what His Majesty had done by his instructions.

That this was undoubtedly the established law of nations and of the Prize Courts; and if any relaxation could be shewn, under which this claimant could alledge, that he was priviledged to carry on the trade in which this ship was taken the *onus probandi* lay upon him.—That he would however state, what trade neutrals had in times of Peace been permitted to carry on with the Spanish Colonies.

That Great Britain having almost annihilated the trade of *France*, *Holland* and *Spain*, at an early stage of the last war, these powers, to prevent the dismemberment of their colonies, were reduced to the necessity of opening their ports to neutral vessels; yet no sooner was the war at an end, but they returned to their old system of monopoly, especially Spain, and that so early as the 21st, of December, 1801, public notice was given at Havanna, that neutral ships could no longer be admitted into that port. He admitted however, that during the last peace, foreign vessels were admitted into that port, (but no other in the island of Cuba), if they carried slaves, plantation tools, mill timber, horses, and some other articles, which served as a sort of passport to the remainder of their cargoes, subject nevertheless to pain of confiscation of vessels and cargoes, if found in any degree whatsoever exceeding the restrictions and limitations under which such admittance of foreign vessels had been allowed by his Catholic Majesty's several edicts and royal orders given at *Arangez* on the 28th of Feb. 1789, the 24th of Nov. 1791, the 3d and 24th of Jan 1793, the 14th of Jan. the 19th and 23d of March and 14th of December, 1794, the 21st of May, 1795, the 14th of Jan. 1797, the 12th of April, 1798, and the last of the 22d of April, 1804, all which the learned counsel read before the Court, and largely expatiated upon the motives by which the court of Spain in the said last mentioned royal order of the 22d of April, 1804, must have been induced to leave the restrictions and severe penalties upon violating the same, in their full force.

That no sooner was the declaration of the present war received at Havanna, but orders were issued for laying their own ships under a strict embargo; the duties were reduced 15 per cent. and neutrals were told, *they might come with whatever cargoes they chose to bring*; and thus, surrounded as that island was by British cruizers, it was better supplied in every respect than in time of peace.

Here then, said the King's Advocate, he might perhaps rest the matter, and say this ship and cargo ought to be condemned under the law of nations, upon the single ground of her having been engaged in an unaccustomed trade. But that the King's instruction of the 24th of June, 1803, had so much relaxed the rigour of that rule, that this vessel must escape, unless it could be shewn, that the trade she was engaged in, was not permitted by that instruction.

But before he observed upon the instruction, he should state some other grounds upon which by the laws of nations, the Juno and her cargo were subject to condemnation viz.

"*That* she had been trading between the enemy's ports."

"*That* she was employed in the enemy's coasting trade."

"And that she had been guilty of a gross interposition in the war."

Here, Mr. Wylly cited the following cases occurred in the High Court of Admiralty viz.

The Immanuel, Tysenberg master, this was the case of a Hamburg ship, taken the 14th of August, 1799, on a voyage from Hamburg to St. Domingo having in her voyage touched at Bordeaux where she sold part of the goods brought from Hamburg, and took on board a quantity of stores and other articles for St Domingo, which were condemned—(Vide 2d Rob. Rep. p. 197.)

The Rose, Maurits, master an American ship going from *Amsterdam to Guadaloupe* with an assorted cargo, sentence the same—(Vide 2d Rob Rep. p. 206.)

The Minerva, Andaulle, master, which was the case of an American ship taken by the French, on a voyage from Laguira, a Spanish settlement to Corunna, afterwards retaken by a British cruizer, as the captors were carrying her to a French port. The ship and cargo were claimed for the same person. The learned judge was of opinion that his decree therein must be guided by the nature of the original voyage. "If" said he on pronouncing his judgement, "the destination was diverted only in consequence of a *vis major*, which the party was unable to resist I cannot consider it as a defeasance of the orginal illegality, any more than if the diversion had illegality any more than if the diversion had been occasioned by the temporary fury of the elements. In both cases, the orignal movement of the vessel must be considered; to which it must be presumed she would again immediately recur as soon as an opportunity presented itself. An allusion has been made to the case of the Imina Bouman, in which the court allowed to a party the full benefit of a deviation voluntarily made by the master, upon receiving information in the course of his voyage that Amsterdam was in a state of blockade. There it was deemed not unreasonable to allow the act of the master in changing his course, a favorable operation respecting the cargo; considering that it was taken in a voyage no longer in the act of being prosecuted towards the enemy's country, according to the intention of him to whom it had been confided. The court presumed favorably that the owners would have approved of this deviation. But it would be going a great deal further to say, that the act of foreign necessity to which this vessel and cargo were giving a temporary submission, no longer than whilst they were compelled so to do, was to be considered as a total discontinuance and abandonment of the intended voyage, on the part of the owners. The voyage of the ship and cargo, when left to their own discretion, would have continued the same, and must therefore be considered to be still existing in law, though controuled in fact by that overbearing necessity for the moment.

"But even giving the owners the benefit of a deviation compelled by a superior force of a party, who stood in no relation to them: yet this deviation being to a French port, it would be a voyage from the colony of one enemy to the mother country of an allied enemy; which I have before held, is attended with undistinguishable consequences as to the cargo." Condemned.

Ship restored but subject to a forfeiture of freight and expences.—Vide 3d Rob. Rep. p. 222.

The Vrouw Dorothea, taken on a voyage from Cayenne to Bordeaux, cargo condemned, ship restored without freight. The Judge declared that "until there should be some determination on that point by the superior court, he should not take upon himself to vary the practice which had prevailed, although by no means satisfied with its correctness.

That, in the *Young Thomas*, tried before the Lords, in November, 1801, which was the case of a ship going from Amsterdam to Surinam, the court of appeal considered the forfeiture to attach as strongly on the ship as on the cargo, and pronounced the ship subject to condemnation, on the ground of the illegality of the trade, between the mother country and the colony of the enemy.

The advocate general continuing, admitted, that in the cases cited, the vessels were going to ports in other countries, at a distance from those in which their cargoes had been laden; whereas the Juno had only gone from one port in Cuba to another in the same island; but he contended that in this case the principle applied more strongly than in any of those cited, because this was contrary to another established principle of the laws of nations, by which "neutrals are excluded from the coasting trade of other countries."

That the case of the Emanuel went upon this point, viz. "That it was not lawful for a neutral to carry goods from one port in Spain to another." That it had been at all times the policy of all nations, to keep the coasting trade to themselves, for reasons which were sufficiently obvious. That amidst all the rage of innovation this principle had been strictly adhered to by France herself: That the United States of America had adopted it in its fullest extent—confining their coasting trade to their own vessels; and that the claimant was therefore less to be excused: And if the rule held in Europe, much more strongly ought it to hold in the colonies, where in general, neutrals had no right to trade all. That, in truth, this coasting trade was not expressly permitted even by the Spanish government, it was only connived at, by the officers of the crown in Cuba, to suit their own present convenience.

He stated, that Havanna was the great mart, to which all the produce of the island of Cuba was formerly carried, but our cruisers having blocked up the ports of that island, and the roads being impracticable for waggons at any distance from Havanna, the whole trade of the island was in a state of stagnation; it was impossible for the Americans to obtain full cargoes at Havanna, which induced them to accept the new character of Spanish coasters, and they were therefore to be considered as Spaniards by adoption, according to the rule laid down in the war of 1756, which he said must still be considered as the law of nations, unless the claimant could shew that an alteration had taken place, by which this neutral trade is open to neutral vessels, either by Spain, in time of peace, or by his majesty's instructions since the commencement of the war, which it would be impossible for him to do.

That it would perhaps be said, that this case differed from that of the Emanuel in this respect, viz. "That the Juno's 40 hogsheads of molasses and 14 boxes of sugar, were not intended to be unladen at Matanzas." But, he intimated, that the offence was complete, if the goods were laden in one enemy's port, to be carried to another, and that, what their ultimate destination might be, could not be made a question. He said it was clear that goods could not be sent, by an illegal channel, to an ultimate lawful destination, e. g. Through a blockaded enemy's port, to a neutral place; as through Amsterdam, when blockaded by the king's ships, to Embden.

Suppose, these articles had been delivered at Matanzas,—that certainly would have been illegal—but after the goods were unladen, it would be too late to seize. If this ship had a right to carry these goods to Matanzas, she had, on the same principle, a right to convey the 600 boxes from Matanzas to Havanna; and after having done so, why not land them? To permit this, would open a door to endless frauds. In fact, it would either save a freight to the enemy, or make one to the neutral; neither of which was warranted,—and would relieve the Spaniards from difficulties, which would otherwise be intolerable. That it was well known, the impediments to communication between the different ports of Cuba, were so great, that instances had lately occurred, in which officers of the Spanish government, whose occasions led them from the distant ports of Cuba to Havanna, came to New Providence from the outports, in one licensed vessel, went on in another to Havanna, came back in a third, and returned home in a fourth.

The advocate gen. here cited the case of the *Rensberg, Nyberg*, master, and other ships, reported by Dr. Robinson—Vol. 4. p. 121.

It was, he said, a case respecting the cargoes of several vessels, taken in a voyage from Batavia to Copenhagen, and claimed for the house of de Coninck and Co. of Copenhagen, proceeding in virtue of contracts, which having been deemed unlawful by the judge of the high court of admiralty, the property engaged in the performance of them, was decreed subject to condemnation, which sentence had afterwards on appeal, been confirmed by the lords.

He read the following parts of the judgment in that case, as applicable to the present one:

"It has appeared in other cases, as it does in these, that during the war foreign ships have been permitted to import and export. Since the instructions of Jan. 1798, (supposing that those instructions apply to settlements in the East Indies) there is no right to question such a trade, if the vessels are going to the ports of their own country. And if this were a simple case of that nature, there would be no great difficulty in disposing of it, by the same rule on which other ships so engaged have been restored, with their cargoes, appearing to be bona fide neutral property. But this case comes under a different aspect. It is not the case of an individual merchant, nor of a company, going to trade on the general permission, in an ordinary character, or on a common footing. It is a trade, carried on to an enormous extent, invested with particular privileges, secured by peculiar contracts, and transferred from the public company, to which it exclusively belonged, to these individuals, upon an express acknowledgment, understood, and acted upon, on both sides, that it was so transferred, in order to relieve the goods, which were confined there by the pressure of war, and could not be delivered by any other practical mode. The question is, whether a commerce formed with such views, and so conducted, can be entitled to a neutral character? I will take it that there is no difficulty upon the particular facts, of the adventure, and that there is no objection to the sufficiency of the proofs of property. Taking the goods to be the property of De Coninck, is the commerce neutral? It is a possible thing that the commerce may not be neutral, although the property is; and if that is the case, the mere neutral ownership will not be a sufficient title for restitution."

"It has been argued, that the motive does not concern the buyers. *That the motive of the sellers is nothing to the buyers*, is laid down as a position true in the most unlimited extent. I think that is advanced a little too largely; because if the motive is disclosed, it is possible that the duties of neutrality may, on the disclosure of such a motive, create some new obligations in the neutral purchaser, arising from his relation to the other belligerent; *the grand fundamental duty of neutrality being, that he is not to relieve one belligerent from the infliction of his adversaries force, knowing the situation of affairs, upon which the interposition of his act would have such a consequence.*—Neutrals may not be bound to enquire very accurately, but if it is clearly declared, either by the fact itself, or *a fortiori*, by express acknowledgments, they are bound to take notice of it, and regulate their conduct accordingly. If one belligerent is in a state of distress, created by the superiority of his enemy, and on that account gives invitations to neutrals, for other pretended reasons, it is not necessary for me to say, how far the neutral is bound to scrutinise the truth of those reasons, and to decline, in all cases, a beneficial invitation upon upon his own private surmises.

"But if the belligerent come and say, I am in the utmost distress; my enemy is all powerful; without your assistance, I am a lost man; in such a case, it is an invitation, which he is manifestedly not at liberty to accept. He cannot afford such assistance, without being guilty of a direct interposition in the war. Nor does it affect the justice of the case at all, that such assistance is not given gratuitously: though done *lucrandi causa*, it is not less an unlawful interposition. A man does not send contraband out of pure love of the enemy, but with a view of obtaining advantage to himself, from the relief of the enemy's distress. If it is a sound principle of the law of nations, that you are not to relieve the distresses of one belligerent, to the prejudice of another, any advantage that you may derive from such an act, will not make it lawful. The adversary has a full right to destroy his commerce. By his own confession, the adversary is effecting this; he has the power, as well as the right, and you are not, from a prospect of advantage to yourself or from any other motive, to step in, on every cry-out for help, and rescue him from the gripe of his adversary.

The king's advocate next proceeded to shew that the trade in which the Juno was taken, was not permitted by the

* *Six months were granted by the court for adducing further proof, as to the nature of the Trade, which will expire on the 20th of December next.*