

Case No. 1,898.

BRITISH CONSUL v. The NANCY et al.

[Bee, 73.]¹

District Court, D. South Carolina.

April Term, 1795.

NEUTRALITY LAWS—VIOLATION—AUGMENTATION OF FORCE.

An augmentation of force in our ports is a breach of neutrality, and of the law of nations, and of the United States; and will occasion a restitution of the prize if brought within our jurisdiction.

Before BEE, District Judge.

The schooner Nancy, belonging to British subjects, was captured on the 12th January 1795, by the schooner Fonspertius, Brown, commander.

On plea to the jurisdiction, it appeared that the Fonspertius arrived here from Jacquemel in St. Domingo with a cargo of coffee in bulk, which was regularly entered at the customhouse. She was then fitted as a privateer, but not armed, and had only eight or ten men on board. Some alterations were made to her in this port, but there was a contrariety in the evidence as to their applicability to purposes of war. Some time after her arrival in port, the collector was asked for his permission to arm, which was, of course, refused, and additional vigilance excited. When she was upon the point of sailing, the French consul applied by letter to the governor for leave that she might depart as a commissioned vessel. It was proved that she had increased her force of men from eight or ten to more than thirty, among whom were some American citizens. She sailed from hence on the 7th of October, chased the Nancy on the 9th, and captured her on the 10th, at the distance of nearly 100 leagues from the bar of Charleston; at which time she had both cannon and swivels mounted. As she was unarmed when she came in here with her cargo, there was the most violent presumption that these guns were taken in here.

THE COURT was of opinion that this was such an augmentation of force in our ports as amounted to a breach of our neutrality and of the law of nations, and to a violation of the act of congress of June [5], 1794 [1 Stat. 383, 384, §§ 4, 6], and restitution of the prize and her cargo was decreed accordingly.

¹ [Reported by Hon. Thomas Bee, District Judge.]

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