

Case No. 15,429. UNITED STATES v. HUTCHINGS.

{Brunner, Col. Cas. 489;¹ 2 Wheeler, Cr. Cas. 543.}

Circuit Court, D. Virginia.

Dec., 1817.

PIRACY—EVIDENCE—COMMISSION FROM UNRECOGNIZED
GOVERNMENT—INTERNATIONAL, LAW.

1. On an indictment for piracy, a commission from a government whose independence has not been recognized may be given as evidence merely as a paper found on board of the vessel, but not to justify acts done under it.
2. As respects its own government, a nation becomes independent from the declaration thereof,

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but as regards other nations, only when recognized by them.

The leading facts proved on the part of the prosecution were the following: The schooner *Romp*, armed with six eighteen pound carronades, sailed from Baltimore early in April last, ostensibly on a commercial voyage for Buenos Ayres. She took with her an American register, and was in all respects documented as an American vessel. About twelve days after leaving the capes of Virginia her crew were mustered, when they were informed of the destination of the vessel against the commerce of Spain. A salute was fired, the colors of Buenos Ayres hoisted, the name of the vessel changed from the *Romp* to the *Santafecino*, and articles under the government of Buenos Ayres signed by the crew. There was some disagreement between the witnesses as to the manner in which the crew received the intelligence of this change in the national character of the vessel, some affirming that the colors of Buenos Ayres were saluted with cheers, and some that they were saluted with murmurs. The *Santafecino*, however, proceeded on her cruise, and in the course of it captured five Spanish vessels, out of which they took everything valuable, sent two of them to Buenos Ayres for condemnation, and gave up the rest to the prisoners. Near a hundred vessels, American, Portuguese, Dutch, English, and others, which were neutral between Buenos Ayres and Spain were spoken during the cruise, all of which were treated politely. The general conduct of the *Santafecino* appeared to be that of a regular commissioned vessel, her prisoners being treated humanely, and their private property restored to them, and perfect respect always paid to the vessels of neutral nations. Some of the witnesses who were of the crew of the *Santafecino* further proved that the crew were dissatisfied with the colors under which they sailed, and that the revolt among them was in consequence of this dissatisfaction.

The only evidence offered on the part of the prisoner [William Hutchings] was a paper, purporting to be a commission to the *Santafecino*, and a commission to the prisoner as sailing master on board of her, from the government of Buenos Ayres. The district attorney objected to their going to the jury, because: First There was no evidence of their being genuine papers, as there was no proof that Buenos Ayres was an independent government, nor that the seals attached to these commissions was the seal of Buenos Ayres. Second. If the commissions were genuine papers, they obviously did not belong to this vessel, for they bore date in November, 1815, and the name of *Santafecino* was not borne by this vessel until the April following. These points Mr. Wirt pressed with his usual eloquence and vigor.

Mr. Upshur, for the prisoner, contended that the papers ought to go to the jury as evidence to be allowed, whatever weight they should be entitled to. He contended that the question, whether Buenos Ayres was independent or not, was for the executive to decide, and not the judiciary. That a late correspondence between Don Onis, the Spanish minister, and the American secretary of state proved that the people of Buenos Ayres were in

a state of revolution, exerting themselves to throw off the yoke of Spain. That there was an exact and perfect analogy between that contest and the revolutionary contest of our country. That by the treaty of 1783, by numerous decisions of our courts, recognizing the validity of laws passed during the Revolution, and by express decisions on the point, the principle was settled that our existence as an independent nation commenced with our declaration of independence in 1776, and not with the definite treaty of peace in 1783. That by parity of reasoning the independence of Buenos Ayres commenced with their declaration of independence; and as that declaration was matter of notoriety throughout the world, and was more particularly proved by the correspondence between Don Onis and Mr. Monroe, we were bound to consider them an independent people. That the seal of an independent people proved itself, and was not the subject of proof by any other sort of evidence. That it was in its nature the highest species of evidence, because no nation could delegate to subordinate agents a greater power or authority than it possessed itself. That this principle was fully recognized in the supreme court; and it was indeed an offspring of the comity of nations, which all civilized nations acknowledged. That of course the seal attached to the commissions in the present instance proved itself, proved the genuineness and object of the commissions, and that it was incompetent to the prosecution to call for any other evidence as to these points. This argument Mr. Upshur considered applied to both points made by the district attorney; but even if it did not that there was nothing in the second point, because these commissions were executed and dated in Buenos Ayres, in blank, and were left to be filled up by the agent of that government in this country. That this was a satisfactory mode of accounting for the difference of time between the date of the commission and the adoption of the name of the Santafecino, and that there could be no reason to believe that the commissions had ever been used on board of any other vessel.

William Wirt, Esq., for the United States.

Messrs. Upshur and Murdaugh, for the prisoner.

THE COURT (MARSHALL, Circuit Justice) decided that the commissions should go to the jury, merely as papers found on board the vessel. But on the main question, the court was of opinion, that a nation became independent from its declaration of independence, only as respects its own government,

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and the various departments thereof. That before it could be considered independent by the judiciary of foreign nations, it was necessary that its independence should be recognized by the executive authority of those nations. That as our executive had never recognized the independence of Buenos Ayres, it was not competent to the court to pronounce its independence. That, therefore, the court could not acknowledge the right of that country to have a national seal, and of course that the seals attached to the commissions in question prove nothing.

Upon this state of the testimony, the case was argued before the Jury. The cause occupied the whole of Thursday and Friday. In the course of the argument, Mr. Upshur made the point, whether by the act of congress, under which the prisoner was indicted, a robbery on the high seas amounted to piracy in any case. The words of the act are, that "if any person shall, upon the high seas, or in any haven, bay, or river, out of the jurisdiction of any particular state, commit murder, robbery, or any other crime or misdemeanor, which, if committed in the body of a country, would by the laws of the United States be punished with death, it shall amount to piracy." The argument of Mr. Upshur was, that it was necessary that robbery should first be made punishable with death by the laws of the United States, when committed on land, before it could amount to piracy, when committed on the sea, which was not now the case. That Judge Johnson had so decided in South Carolina, although a contrary decision had been subsequently pronounced by Judge Washington. That the conflict between these two learned judges proved that the law was at least doubtful, that the jury in a capital case were judges, as well of the law as the fact, and were bound to acquit, where either was doubtful.

THE COURT being appealed to for the interpretation of the law, decided that it was not necessary that robbery should be punishable by death when committed on land, in order to amount to piracy if committed on the ocean; but as two judges (for both of whom the court entertained the highest respect) had pronounced opposite decisions upon it, the court could not undertake to say that it was not at least doubtful.

Mr. Murdaugh contended, that the acceptance of these commissions amounted to an act of expatriation. Mr. Wirt, on the other hand, insisted that it was not competent to anyone to change his national character by his own act alone, without the concurrent act of the government he adopted.

THE COURT indicated an opinion against Mr. Murdaugh, founded chiefly upon the opinion already pronounced, that the government of Buenos Ayres could not be recognized by the court as existing at all.

The facts were commented on by all the counsel at considerable length.

The jury retired at candle-light on Friday evening, and in about ten minutes returned a verdict of not guilty.

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NOTE. International Law—Rights of Sovereignty. The doctrine as laid down in the above, case, that a nation becomes independent from its declaration, as respects its own government, and as to other nations, when it is recognized by them, was again pronounced under similar circumstances in Consul of Spain v. The Conception [Case No. 3,137] and The Maria Josepha [Id. 9,078].

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]