(A. B.)

Circuit Court of the United States Oct. 7 1837.

In the two cases

Charles I. Williams & al. v. Suffolk Ins. Co.

Defts' points for the Court.

Facts.

The Schooners Harriet & Breakwater, of Stonington, Connecticut, were owned by the plffs. and were insured, for Sealing voyages, by policies in the usual form; and, being so insured, proceeded to the South Seas.

The Falkland Islands were then in actual possession of Lewis Vernet, who had been appointed their Governor by the government of Buenos Ayres, by decree in regular form.

Buenos Ayres claims the Falklands (or Malvinas) as appurtenant to the ancient province of which is now Buenos Ayres: and under this claim made divers decrees, laws and regulations in relation to them, — which are in the case. Among these is one prohibiting the Seal fishing on these coasts; and another requiring Vernet to see this decree enforced.

The Harriet and Breakwater visited the Falklands, and were notified of these decrees and prohibitions, and

warned that seizure and confiscation would follow a disregard of them. The vessels then left the port in which they had the notice; caught seals elsewhere on the coast; returned within reach of Vernet, and were seized by him.

The Harriet was taken to Buenos Ayres — a Court or commissioner was commissioned to try her and she was tried, condemned & sold. The decree of the Court or Commission or is in the case

The Breakwater while under seizure was recaptured by some of her hands, and brought to this Country. The recaptors claimed and recovered salvage by a decree of the District Court sitting in Connecticut, and so far as the Breakwater is concerned, the action is brought to recover from the underwriters this salvage. The decree of the District Court is in the case

So far as the Harriet is concerned, the action is brought to recover her value

The defendants contend

1. That the Malvinas are rightfully

in possession of Buenos Ayres, and that historical evidence and established principles of the Law of Nations shew this to be so

2. That however this may be, the Courts of this Country will not decide this question against Buenos Ayres, unless authorized to do so by a formal act of our Government; Buenos Ayres being a nation friendly to us, claiming the Malvinas, certainly under colour of right, and claiming and exercising dominion for many years

3. That there is no such act of our Government. An American Sloop of War, the Lexington, Capt Duncan, arriving at Buenos Ayres soon after the seizure of the Harriet and Breakwater, proceeded to the Falkland's, and broke up the establishment by violence. The Government of Buenos Ayres complained bitterly of this, and a correspondence ensued, wherein our Consul and our Charge d'affairs at Buenos Ayres and our Secretary of State took a part, but the question remains unsettled between the Countries: And

4. By the Constitution of this Coun-

try, it is of vital importance that our Courts call nothing an act of the Government, but one which passes through the forms of the Constitution, and has the force and sanction of the regular government enactment. No analogies drawn from European nations (if any there be) can apply – because the Judiciary holds no such place, and is entrusted with no such duties there.

Hitherto the two cases have been considered together. We could now present our views of them seperately: And

5. The Harriet has been duly condemned by a competent Court, acting under the authority of a friendly nation

a. The Court is not called an Admiralty Court; but the Judge was specially commissioned to try the case

b It appears, by the papers in the case that a mass of evidence was taken for the Court

c It appears by the final decree that a permanent and established tribunal, called "the Court of Prizes" – (

took cognizance of the case also and confirmed the decree of the Commissioners.

d And these things are quite enough to give the decree of condemnation, the full force of a decree of Admiralty.

6. The Breakwater was under seizure, under colour of law, by the power of a friendly nation.

a The Court will presume that if she was innocent, she would have been acquitted.

b And if she would have been condemned, she must be held to be guilty.

c And in neither point of view can this Court sanction a claim for salvage in this case as for a lawful and meritorious act. For the acknowledged principles of national courtesy forbid this Court to call the act either meritorious or lawful.

7. This Court is not bound by the decree of the District Court of the U States

sitting in Connecticut, because the two Courts are not of concurrent nor of equal jurisdiction

But we again return to the views we have to offer as applicable equally to both cases. We also urge them as entirely sufficient to bar the claims advanced in these actions, even if the positions hitherto taken are wholly untenable

8. We say that it is fully sufficient to discharge the underwriters

a. That the Falklands were actually in the possession of Genet.

b. That he warned the vessel that seizure and confiscation would inevitably follow a certain course of conduct

c. That he had obviously powers sufficient to enforce his threat

d. And that the vessel disregarded his warning; violated the regulations of which they were notified, and afterwards came voluntarily into the

power of Venet

9. a This way barratry on the part of the masters, against which we did not insure

6. Or it is such gross negligence on the part of the servants of the insured as discharges us: —

c. Or it is a voluntary incurring by them of risks which they have no right to throw on us, — and which it cannot be supposed we contemplated insuring against.

10. In this point of view it is wholly immaterial whether the possession of Venet was lawful or not. It was actual And if he had been a pirate, or if he had held an armed ship in the middle of the sea, instead of an Island, these vessels could not knowingly and willingly run into his hands at our risk

Suppose them on a lawful voyage a thousand miles from land, and they are notified that a pirate has taken possession of a whaling ground, and seized

every vessel that comes within his reach. If they see fit, they may go under his guns and be seized, but they cannot go there carrying ~~carrying~~ carrying an unknown danger with them.

Nor can it be said that this is a lawful voyage, and the vessels are not bound to take notice of an unlawful obstacle or danger.

But if the unlawful obstacle or danger was unknown to them, then true it is we intend against it as against a pirate from whom they cannot escape — or a whirlpool or a rock, or a hidden sand bank, by which they are destroyed without their fault.

On the other hand if the unlawful obstacle or danger

a. Be perfectly known.

b. Be perfectly avoidable —

Then the vessels are bound to avoid the pirate, the whirlpool, the rock or the sandbank: or to incur the danger if they see fit to do so at their own risk.

There are no words in the

policy which can be considered as an Insurance
the insured voluntarily & in an
known, certain and unavoidable
peril at our risk

Upon the right of Buenos Ayres & the Falk lands, the Court is referred to the common historical evidence, and to well known principles of international law.

As to the force of the decree of Condemnation, in the case of the Hermitt, we feel bound to assume, that the cases on this subject are fully in possession of the Court. No cases are now cited as to these points, some of them may hereafter be commenced on

On this point that the vessels could not voluntarily incur this known peril at our risk, which may involve questions not so fresh in the recollection of the Court. The following cases are cited on Park & Rawcroft 8 East 116. Petalpsco Ins Coy v Coulter 3 Peters 222 & Phillips Ins 734 Calhoun v Ins Coy of Penn. 1 Binney 321 Elmslie v Hammond 2 March 72. Cox & al v United States Ins Coy 2 Johnson Cases 187. 1 Caines Cases in Error 411

2 Phillips Ins 187. Richardson v Mechanics Ins Co. 6 Mass Re 117. Cleveland v Union Ins Comp. 8 Mass 308. 1 Phillips Ins 260. Schmidt v Union In Co. 1 Johns 260. Scott v Libbey 2. Johns 336. Quinn v Phoenix Ins Co 12. 13 Johns 451. 4 T R 160 Lowe v Hollingsworth. (Others may be here after cited)

The Junior Counsel for the Defts feels to be impelled to say that he has been obliged to prepare this brief in the absence of the Senior Counsel, who may have further points and authority to offer to the Court. It is believed however from frequent conversations, that he would regard the foregoing as the principal points of the defence

Theophilus Parsons
for Defts.

Williams v Suffolk Ins Co

Dfts. points