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IMPORTANT TRIAL. From the Charleston Courier.

L'AFRICANE vs. GARLAND.

Important Case in the District Court of South Carolina.

The Commercial Agent of the French Republic filed a Libel in the District Court against the Captain of the British letter of marque Garland, for restitution of and damages for the capture and detention of the French corvette L'Africane, illegally captured on the 3d inst. within the jurisdiction of the United States. To this Libel the Captain of the Garland pleaded in bar to the jurisdiction, alleging that the capture was not made within the jurisdiction of the United States—and to prove this, two branch pilots were examined by Mr. Drayton, proctor for the Defendant, who swore that the corvette, at the time of the capture, was about five or six miles distant from Sullivan's Island, a small island. On their cross examination by Mr. William Smith, proctor for the libellant, they admitted that the corvette having lost her mizen-mast of wind, and several of her men, and thrown overboard many of her guns, was brought to anchor off the bar of six fathoms water, and as near as she could be with safety, that at the time of her capture she was within one or two miles of the Rattlesnake breaker, and that the Capt. struck to the Garland on the advice of the pilot, and on his assuring the Captain that the corvette was then within the jurisdiction of the United States, and would certainly be delivered up. On these facts the question arose, whether the L'Africane was, at the time of the capture, within our jurisdiction? Mr. Drayton quoted the several authorities, viz. Martens, Vattel, Sir W. Scott, &c. to prove that by the law of nations territorial jurisdiction on the sea was limited to a marine league from the coast, that is, to the extent of the protection which could be given from the shore, by cannon shot, which was calculated at a marine league, or three miles. If there could be any doubt as to the law of nations in this respect, the act of Congress of 1794 settled the question; by that act the District Court is authorized to take cognizance of captures in the waters of the United States, or within a marine league of the coasts or shores thereof. He defined the terms coasts or shores to be of synonymous import, and referred to Johnson's Dictionary, the Dictionary of Arts and Sciences, and Cook's Voyages, to support his definition—the word bank, was the margin of a river, coast or shore, the margin of the sea. Consequently the Court had no jurisdiction in this case.

Mr. W. Laughton Smith, said that this claim to the aid of the Court to obtain restitution of the L'Africane, was founded on the law of nations, on our treaty with France, on the laws of neutrality and of hospitality, all of which had been grossly violated by the capture in question. He considered this a cause of considerable magnitude; it was not a common question between two ships of war, but a great national question, for the first time to be decided, and to fix the limits of our own jurisdiction. Different naval powers, by recurrence to history, would be found to have laid claim, and some of them to have maintained it for centuries, to whole oceans. Thus Great Britain claimed jurisdiction over the whole British Channel, St. Georges Channel, &c.; Venice the Adriatic; the Ottoman Empire the Black Sea; Denmark, the Sound, &c. In latter times some writers had attempted to ascertain the jurisdictional line with precision, but they all differed; some spoke of the extent of the human fight, some of the extent of protection, others of the distance requisite for the safety of trade, Bodinus fixed 20 miles, Martens 9, Vattel cannon shot, or a marine league, Sir W. Scott in a modern case, (quoted on the other side) seemed also to refer to that distance; but his decision could have no weight, because he was fixing the jurisdiction of Prussia, and no case could be produced where he had fixed the jurisdiction of Great Britain to a marine league from the shore. The law of nations had not then ascertained the precise distance, but all the writers, and Vattel particularly, had established that a neutral country ought to extend its jurisdiction over the sea, to the utmost extent of its protection, and as far as might be necessary for the safety of its trade. The treaties we have formed with France, Holland, Prussia, and Sweden, give those powers a right to our protection near our coasts; a reasonable distance must be allowed, otherwise the treaty would be violated, and if the act of Congress impugns the treaty by an unreasonable proximity, it would be void, as repugnant to the compact. In this case the corvette was anchored as near the bar as she could lie with safety, (one witness says within one mile) and she had a pilot on board, the mult. be considered as *ipso facto* in our jurisdiction; the pilots have declared that it is common for inward bound vessels to anchor without the bar, and are there considered within our jurisdiction; she was in distress, not coming to cruise but seeking an asylum and protection from the perils of the sea within the arms of the United States. Vattel lays it down that under such circumstances a ship has by the law of nations a right to enter even against the will of belligerent adverse parties; a fortiori a friend, a strong claim to the protection of neutral powers. At the commencement of the last war, an interesting evidence took place between the government of the United States and the French minister on this subject; the former claimed the French minister's jurisdiction, but being cal-

led on by the latter, after observing that from the peculiarity of our shores, and the shoalness of our coasts, we were entitled to claim the broadest possible margin of sea along the coasts; yet until a communication with other powers, the President would, for the present, claim no further than a marine league. That was evidently a provisional arrangement, confined to the last war. Soon after, the act of Congress in question passed and partook of the cautious spirit of the times; it was a temporary act, though since continued; in expounding its reference ought to be had to the preceding observations: it says "the District Court shall take cognizance of cases arising within a marine league of the coasts or shores." It does not confine and limit the District Court to such cases alone; the District Court of Pennsylvania had refused to take cognizance of cases manifestly arising within our jurisdiction, referring them to the Executive, where belligerents were alone concerned. The act of '94 compels them to act where our territory is violated within a marine league, but leaves the question where it was before, as to all distances beyond that, to be decided by the law and usage of nations having reference always to the peculiar situation and policy of our country. Admit, however, the law to be restrictive, still Mr. S. contended, that by the terms of it our jurisdiction clearly embraced the place of capture; the act says "coasts or shores."—What is meant by the term coasts? Not merely the visible part of the land, but that part also which is covered by water to a certain distance from the shore; the whole together, comprehending the land out of water and the shoals, constitutes the coast. In Comyn's Digest, it is said, "main land, or coasts thereof, out of the body of any country;" here coasts must mean something beyond the land or shore otherwise it could not be out of the body of a country. In common parlance, coasts mean something other than land not covered by water; fisheries on the coast, islands on the coast, wrecks on the coast, &c.—the distance ought then to be computed from the shoals on the bar, and not from Sullivan's Island. It had been proved that a line drawn from the Eastern extremity of Long Island, parallel to the shore, would run without the bar; if the distance is to be strictly reckoned from the land, in as much as the act does not mention the land nearest the place of capture, then this line ought to be deemed the line of sea coast, and a marine league computed from thence. The shoals of the bar are in fact a funken continuation of the coast; if the act be ambiguous, the court is bound to construe it beneficially for the United States. Mr. S. concluded with referring to the peculiarity of our bar and harbour, the dangers to which it would be exposed by a contrary construction of the act, and the fatal consequences of inviting the cruisers of the belligerent powers to take their station off our bar, which would endanger our commerce, make our port the focus of discord, enkindle the passions and interests of our fellow citizens, and destroy that harmony and tranquillity which now so happily subsist.

Several witnesses were called by Mr. Smith, and among them, Mr. Purcell the surveyor; he swore that he had been long employed, in conjunction with Mr. De Braham, to survey the coasts of Florida, &c.—that all geographers and surveyors of sea coasts always understood by coasts, the shoals along the land—that in Florida, these shoals extended to the distance of twenty miles from the land, and were within the territorial jurisdiction. Capt. Oakford had been many years at sea, and he never before heard it doubted that coast included the shoals; he considered every thing as coast where a ship might be stranded. Williams, one of the pilots, also said that he considered the coast to extend some miles from the land. Mr. Purcell being asked by the Judge from whence he would compute a marine league, replied from the outermost shoal of the bar.

Mr. Gaillard followed Mr. Smith, agreeing with him that the government had wisely left the question open, and the jurisdiction undefined. He argued, that the doctrine laid down by writers, respecting cannon shot, as interpreted by the other side, was absurd, for, in fact cannon shot, at the distance of a marine league, was ineffectual to protect; nothing more could be inferred from that dictum of the writers, than that a belligerent could not make a prize under the protection of a neutral fortress but it did no confine the protection of a neutral jurisdiction merely to cannon shot. Besides it was not confined to cannon shot from a fortress on land; protection might be given by gun-boats stationed off our bar; most of the writers say, within the limits of protection; that protection may vary according to the nature of the coast, and the shoalness of the water; our bar and harbour cannot possibly be protected by land batteries, gun-boats will be the only effectual protection. If the court now computes the distance from land, under the authority of Vattel, respecting cannon shot a new doctrine must be established with a new mode of protection.

The Attorney-General closed, on the same side, with many learned observations on the construction of statutes: a word of clear import cannot be defined by one of ambiguous significations; the word shore was certainly not intended by Congress to be defined by the word coast—these words are not synonymous, if they were, one only would have been used: Why did Congress use both? Because of different import—shore means the margin of the sea to low water mark; coast, the shoals along the margin of the shore to the high seas.

Mr. Drayton replied. He was stopped by the Judge, from answering the arguments of the other side.

tions and the correspondence, and confined to the act of Congress. From this, he argued that the land nearest the place of capture was clearly meant by the words coasts or shores, which are synonymous, referring to the authorities before mentioned, and to common understanding and acceptations. The arguments were closed on Friday last, and on Monday, his honor Judge Bee gave his decree.

He stated the circumstances of the case, and the plea in bar to the jurisdiction, viz. "the capture not having been made within a marine league of the shore of the United States." This, he said, was the only point before the court, and the only guide by which he was to be governed, was the act of Congress; as to the law of nations it did not apply, for the act was to govern; and as to the correspondence, it was all prior to the passing of the law. It had been said by the counsel for the libellant, that this was a great and important question, and that it was the first time the subject had come before an American tribunal. He acknowledged that it was a question of very considerable magnitude, and highly interesting to a neutral power; it was for that reason he had allowed them a full range, and to throw every possible light on the question, and he confessed that they argued it with great ability and ingenuity, but after all, the act of Congress was the only source from which he was to derive the true limits of our territorial jurisdiction over the sea; this was fixed at a marine league from our coasts or shores. In this case he had been enabled, by the testimony of pilots and an inspection of the charts, to locate with precision the place of capture, namely in six fathoms water, side the Rattlesnake; hence it was evident that the end of Sullivan's Island was the nearest land; the capture was made near six miles from the shore, there been any uncertainty as to the distance, the court would not have adopted the rule laid down by the act, but would have adopted the rule laid down by the act, but would not have sought the exact measure, but from the peculiar circumstances of the case, would rather have been disposed to extend the distance liberally. But the spot is he beyond a doubt, and is near six miles from the shore, the act confines our jurisdiction to a marine league from the shore, and on the meaning of the word several learned gentlemen displayed to show up all the shoals to a certain distance. In a marine view this might be correct, but his construction was too vague for any court to adopt, for as the distance along the coast, there would be no fixed rule to be governed, it would be impossible to fix a boundary for the different District Courts of the United States, obliged to apply various distances to the terms of the act, much uncertainty and confusion would result from such an interpretation, the distance would vary with every shoal. I admit that the United States, is the only nation which, thus, by law fitted its jurisdiction—but it is not for me to question the policy of the act; it is now the law of the land, and the rule of my decision. The distress of the corvette will not affect the question—the might, while in greater distress, have been lawfully captured on the high seas—there is nothing in the treaty with France which gives a claim beyond the act of Congress. The 18th section is not relevant—it gives protection when sailing along the coast within our jurisdiction; a distinction was attempted, in comparing the act and the treaty, between the words jurisdiction and protection, but protection must refer to the jurisdiction, as fixed by law, within a marine league.—As to the circumstance of the corvette being at an anchor near the bar, and having a pilot on board, undoubtedly they would have great influence, were there not a positive law, fixing the boundary. As the question is new and important, I have given it the maturest consideration, and am clearly of opinion that the word coasts cannot have such an operation as the counsel for the libellants have given it, but was intended to mean land as far as low water mark.

The plea in bar is therefore sustained and the Bill dismissed, but without costs, because it was the duty of the commercial agent of the French Republic, to bring the subject before the Court.

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SAINT JOHN, 25th November, 1803.

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