RECENT ENGLISH DECISIONS.

Crown Cases Reserved.

REGINA v. CARR AND WILSON.

Egyptian and other bonds were put on board a British ship lying in the river and moored to the shore at Rotterdam, for conveyance to England. The bonds were stolen, and the prisoners, British subjects, were found dealing with them in England, and were tried at the Central Criminal Court and found guilty of feloniously receiving the same knowing them to have been stolen. *Held*, assuming the bonds to have been stolen by a foreigner or other person not being one of the crew, from the ship at Rotterdam while so moored in the river, that the Admiralty had jurisdiction over the offence, and that the prisoners could be tried and convicted in England of feloniously receiving the goods.

CASE reserved for the opinion of the court by NORTH, J.

The facts were as follows: The prisoners were charged with stealing twenty-five bonds of Egyptian Preference Stock, three bonds of the Illinois Railway, and thirty bonds of Egyptian Unified Stock, and also with receiving the said securities knowing them to have been stolen. On the trial at the Old Bailey, at a session of the Central Criminal Court, the evidence showed that the bonds were made up in parcels by bankers in Holland, and sent on board the British steamship Avalon, then lying in the river Maas, at Rotterdam, moored to a quay which was about twenty or thirty feet distant, and lying against a structure of piles which projected from the quay and was called a "dolphin." The place where the Avalon was lying was sixteen or eighteen miles from the sea, but there was no bridge between that point and the sea, the tide ebbed and flowed there, and there was always enough water to float the ship. While she was lying at the "dolphin," persons were allowed to pass backwards and forwards between the vessel and the shore without hindrance. On the evening of the day on which the bonds were placed on the "Avalon" she sailed for England. Upon her arrival the bonds were missed, and were afterwards found in the possession of the prisoners, who were British subjects. NORTH, J., instructed the jury that if the securities were taken from the ship the taking them was an offence which could be tried in England, and that, if so, the prisoners could be tried in England for receiving. The jury found the prisoners guilty of receiving the securities knowing them to have been stolen. The judge reserved for the consideration of this court, whether, under the circumstances, there was any jurisdiction

to try the prisoners at the Old Bailey for the offence of which they were found guilty.

Sir *H. Giffard*, Q. C., and *E. Clarke*, Q. C. (*Tickell* and *Grain* with them), for the prisoners.

Poland (*Goodrich* with him), for the prosecution.

COLERIDGE, C. J.—This case has been argued at some length, and the question raised by it is no doubt of considerable importance. The facts are these. The bonds which the prisoners have been convicted of feloniously receiving were on board an English ship, in the river Maas, off Rotterdam, in front of a "dolphin," and was moored by ropes to the land of Holland. The tide ebbs and flows in the river, and at the place where she was lying in front of the "dolphin" there is always enough water to float ships of her class. There was no actual proof when, or by whom, the bonds were stolen. The case states, "There was no evidence upon which the jury could have found that the theft occurred after the voyage began; the evidence rather pointed to its having occurred before she sailed." Whether the bonds were carried off the ship on to the shore, and sent by some conveyance to the prisoners in England, or whether they were brought by the prisoners to England, does not appear. The prisoners were acquitted of stealing the bonds and found guilty of receiving them with guilty knowledge that they had been stolen. It is obvious that the prisoners could not be convicted of feloniously receiving the bonds unless they were stolen within the same jurisdiction where the receiving took place, and therefore it becomes material to inquire whether the jurisdiction of the Admiralty attached so that the prisoners could be tried at the Old Bailey. It is admitted that the exact point raised in this case has never arisen for decision in our courts before. There appear but two points for us to decide. 1. Was the ship within the jurisdiction of the Admiralty so as to make offences committed upon it triable according to the English law? 2. If that point is answered in the affirmative, were the prisoners, according to the decisions, liable to be tried in the English courts? First, as to the place. The place appears to me to come within the old definition of the Admiralty jurisdiction. The ship was at a part of the river which is never dry, and where it would not touch the ground at low water, and the tide ebbs and flows in the

river, and great ships do lie and hover there. This is sufficient to bring this ship within the Admiralty jurisdiction. Without saying that the reports of the case of *Rex* v. *Jemot* (MS. 1812), and *Rex* v. *Allen*, 1 Moo. C. C. 494, are as full as could be desired, it seems very difficult to draw any tangible distinction between them and the present case. This case also falls within the decision of *Reg.* v. *Anderson*, Law Rep., 1 Cr. Cas. Res. 161; 11 Cox. C. C. 198, where the ship was half-way up the river Garonne, in France, and at the time of the offence about 300 yards from the nearest shore, and this court held, the prisoner having been convicted of manslaughter, that the offence had been committed within the jurisdiction of the Admiralty, and that the Central Criminal Court had jurisdiction to try the prisoner. I am unable to distinguish this case from that, but if anything *Reg.* v. *Anderson* seems an *à fortiori* case. Then, as to the second point, whether there is anything in the personality of the prisoners which would make them not liable by the law of England. It is true that some of the judges in *Reg.* v. *Anderson*, *ubi sup.*, place reliance upon the fact that the prisoners formed part of the crew of the vessel, but BOVILL, C. J., in his judgment, points out that England has always insisted on her right to legislate for persons on board her vessels in foreign ports. None of the judges suggested that their judgments would have been in any way altered if the prisoners had not in those cases formed part of the crew. I think it makes no difference whether a person is a British subject or not who comes on board a British ship where the British law reigns, and places himself under the protection which that flag confers; if he is entitled to the privileges and protection of the British ship he is liable to the disabilities which it creates for him. I am unable, therefore, to make a distinction between a passenger or stranger on board a ship and one of the crew, and it makes no difference in my mind whether the person is on board voluntarily or involuntarily; if while on board he is entitled to the protection of its flag, he is also bound by the obligations imposed by the law governing that ship. The utmost that can be said as regards the theft in this case is that the bonds may have been stolen by some one who came on board casually; it may be a foreigner who took them off the vessel at Rotterdam. Suppose the thief had not been able to get off the ship, and had been captured and brought here, could he have been tried here? In my opinion he could, for if

while he was on board the ship he was entitled to the protection of the British flag, he was at the same time equally liable to the disabilities of the criminal law of this country. It appears to me that the evidence shows that the bonds were stolen within the jurisdiction of the English law, and I am of opinion that the prisoners therefore were triable at the Central Criminal Court for receiving them well knowing them to have been stolen. I think that the conviction should be affirmed.

POLLOCK, B.—I am of opinion that the conviction should be affirmed. The prisoners were convicted of the offence of feloniously receiving stolen goods, and the question is, were the prisoners within the jurisdiction of the Central Criminal Court for all purposes? The general rule of law is that a person on board an English ship is to be treated as within the dominion of the English Crown; and it is admitted that if the ship had been on the high seas, or had been moored in the middle of the river, this rule would have applied to the case. Then what distinction can there be because the ship was tethered by ropes to the shore? I think there is no distinction. She was a large ship carrying passengers and goods from Harwich to Rotterdam, and was in a tidal river at Rotterdam at a spot where great ships go. She was there for the purpose of unloading, and when unloaded would return to Harwich. I think, therefore, the conviction was right.

LOPES, J.—I think, also, that the conviction should be affirmed. As to the question of the thief not being one of the crew of the vessel, I do not think that that matters. The thief was on board an English ship at the time the bonds were stolen, and therefore came within the English law.

STEPHEN, J.—Since the time of Richard II., the jurisdiction of the Admiralty has been extended to waters where great ships go. There are many statutes which gave jurisdiction to particular courts in particular cases. But the jurisdiction of the Admiralty itself has never been defined in any other way than as laid down in the reported cases. The case of *Rex* v. *Jemot* bears on the question of local jurisdiction, and decided that the Admiralty had jurisdiction over a theft on board an English vessel in a Spanish port, and shows that the jurisdiction of the Admiralty was not confined to the waters outside creeks, ports, harbors, &c. *Rex* v. *Allen*,

ubi sup., is to the same effect. *Reg.* v. *Anderson, ubi sup.*, goes further, and affects both the questions of place and person, the place being in a foreign river, and the person being an American subject who had committed manslaughter on board an English ship. No doubt the prisoner was one of the crew of that ship, but it seems to me that we cannot lay down the rule in narrower terms than that the jurisdiction of the Admiralty extends to all tidal waters where great ships go, and to all persons on board of them whether foreigners or not. There is no reason which should induce us to lay down restrictions to the extent which has been contended by the prisoners' counsel, that the Admiralty jurisdiction extends only when the British flag is flying, and not when it is lowered. It seems to me that the protection of the British flag and the English jurisdiction are co-extensive, and that protection and obedience must co-exist. I think, therefore, that the thief in this case, if he had been captured, might have been tried at the Old Bailey.

Conviction affirmed.

WILLIAMS, J.—I concur.

As the peculiar point in the principal case had never been decided before, and as it involved, these questions—whether the stealing with which the prisoners were charged, was locally within the jurisdiction of the English courts, and, next, whether the persons stealing the bonds were personally without it, it is, desirable, in an international point of view, to inquire into the grounds, as disclosed by the cases cited, upon which the unanimous opinion of the court was based in affirming the conviction of the court below.

The facts were undisputed. Indeed the court for the consideration of Crown Cases Reserved has to deal with the law alone. The case of *Jemot* may be dismissed from consideration as, whether it was a case of piracy or of stealing, and in this respect the reports differ, both Russell and Archbold are agreed that where a robbery is committed in creeks, harbors, ports, &c., in foreign countries, the Court of Admiralty indisputably has jurisdiction of it. Russell on Crimes (Greaves), by Sharswood, 9 Am. ed. p. 153, and Jervis's Archbold Crim. Plead, 19 ed., by Bruce, p. 466. This of course is assuming that the crime was committed on board a British ship. The cases of *Anderson* and *Allen* are those to which we desire to direct attention. And first, with regard to *Anderson*. The question that arose was whether the admiralty jurisdiction of England extends over British vessels, not only when they are sailing on the high seas, but also when they are in the rivers of a foreign territory at a place below bridges, where the tide ebbs and flows, and where great ships go.

This case is the more interesting because the delinquent was an American citizen, serving on board a British ship, although the crime of murder with which he was charged was not committed in American waters but in the river Garonne, within French territory, at a place below bridges where the tide ebbed and flowed and great ships went.

It was held that the ship was within

the admiralty jurisdiction of England and that all seamen, whatever their nationality, serving on board British ships, are amenable to the provisions of British law. This case was decided Nov. 16, 1868.

The prisoner, as was said by Chief Justice BOVILL, was also subject to the law of France, but as M. Ortolan says, in his work entitled "Diplomatie de la Mer," book 2, ch. 13, pp. 269–271, ed. 4th, with regard to merchant vessels of foreign countries, the French nation do not assert their police laws against the crews of those vessels, unless the aid of French authority be invoked by those on board, or unless the offence committed leads to some disturbance in their ports.

Much stress was laid in the course of the argument in behalf of the prisoner, that he was an American citizen, but the case of *Genesee Chief* v. *Fitzhugh*, 12 How. 443, was cited on behalf of the Crown to show that the American courts hold that the large lakes and rivers of that country are within admiralty jurisdiction. And the case of *United States* v. *Hamilton*, 1 Mason 152, was also referred to to the effect that although a ship in a foreign port loses its character as a ship, it does not lose that character while in a river. "When vessels go into a *foreign port*," remarked Chief Justice BOVILL, "they must respect the laws of that nation to which the port belongs; but they must also respect the laws of the nation to which the vessel belongs."

In *Anderson's Case*, as the chief justice observed, "It was said that the prisoner was an American citizen; but he had embarked by his own consent on board a British ship, and was at the time a portion of the crew." Further American cases were cited by Mr. Justice BLACKBURN, as follows: "In the American case of *United States* v. *Wiltberger*, 5 Wheat. 76, "the court seems to have held as a fact that the ship was out of the admiralty jurisdiction; but in *Thomas* v. *Lane*, 2 Sumner 1, and *United States* v. *Coombs*, 12 Peters 72, they give the grounds of their decision, not in conformity with the *United States* v. *Wiltberger*, but very much in conformity with the English decisions, and therefore I consider that the American courts would agree with us that the admiralty jurisdiction would extend to this place; and so, just as an American seaman on board an American ship at the place in question would have been triable in America, so a foreign subject serving on board a British ship can be tried here." It seems that Kent agrees that the admiralty jurisdiction extends, not only to the high seas, but over all rivers where, and as far as, the tide ebbs and flows, and where great ships go—and that a ship, under such circumstances, is within the admiralty jurisdiction of the country to which she belongs: 1 Kent's Com., 10th ed., p. 401, referred to by the Court in *Reg.* v. *Anderson*.

The only difference between the cases of *Anderson* and *Allen* consisted in the fact that in the latter the crime was committed in the river Wampa, in China, twenty or thirty miles from the sea, and no evidence was given of the ebb or flow of the tide where the vessel lay, but the judges who sat as a court of revision in Hilary Term 1837, were unanimously of opinion that the conviction was right, the place being one where great ships go.

Mr. Justice BLACKBURN, in *Anderson's Case*, cited the *United States* v. *Holmes*, 5 Wheat. 412, where it was held that under the Act of 30 April 1790, it made no difference whether the offender were a citizen of the United States or not, if the crime were committed on board a foreign vessel, for *pro hac vice* the offender must be considered as belonging to the nation under whose flag he sailed. No hint of limiting such jurisdiction to the crew alone was intimated. And in pronouncing his judgment the same learned judge said: "My present impression is that where a ship is sailing under a particular flag, the flag affords protection to all who sail under it, and

the nation to whom the flag belongs has a perfect right to legislate for *all those on board*, because she affords them that protection."

Although no question of nationality respecting the citizenship of the prisoners in the principal case arose, as they were admitted to be British subjects, that question was amply ventilated in the *Anderson Case*, and can scarcely be said to have become more complicated since. The struggle for jurisdiction in former times was not one of nationality but rather was one between the common-law courts and the admiralty courts. In the United States that conflict has taken the phase of the federal courts *versus* the state courts. In England it was a matter of venue and of the right to be tried by a jury at common law, which right the admiralty courts virtually denied, but this controversy the statute 4 & 5 Wm. 4, c. 36, s. 22, terminated. Earlier statutes had been passed to cure such defects in certain cases, viz., 13 Rich. II., st. 1, c. 5, 15 Rich. II., c. 3., and 25 Henry VIII. c. 15; 1 Kent's Com., 11 ed., p. 390. The American courts hold that the large lakes and rivers of that country are also within admiralty jurisdiction: *Genesee Chief* v. *Fitzhugh*, *supra*. But even if the country or states of the lakes or rivers have concurrent jurisdiction that would not affect the international question, since no offence can be tried in the English admiralty courts which does not fall within the jurisdiction specially conferred by statute of Henry VIII. *supra*. 2 Bro. Civ. & Crim. Law, Appendix, No. 3; Opinion of Law Officers of the Crown, Ibid. "There is therefore a strong precedent," says KENT, vol. 1, 389, "for the doctrine of the Supreme Court of the United States, which refuses to the federal courts any criminal jurisdiction in admiralty cases, not derived from statute." The Judiciary Act of 1789 accordingly provides that the trial of all issues in fact in the district courts, in all causes except civil cases of admiralty and maritime jurisdiction, shall be by jury. Not but what the court of admiralty in criminal matters originally proceeded by indictment and trial by jury, according to the course of the common law, before and independent of the Act of Henry VIII. (Kent's Com. 11 ed. vol. 1, p. 389), but as it conformed its practice to the rules of the civil rather than the common law and dispensed with a jury of the *vicinage*, although it might have retained the show or shadow of one, its future proceedings were regulated by statute as before mentioned. (See a note in Kerr's Blackstone, vol. 4, p. 278), "that the course of its proceedings should be according to the law of the land." Id.

To return to the question of jurisdiction. It has always been rather a matter of contention between the jurisdiction of the high seas and that of the inland courts, which though now clearly defined in England by the several statutes 28 Henry VIII., c. 15; 4 & 5 Wm. IV., c. 36; 7 & 8 Vict. c. 2; and 18 & 19 Vict. c. 91, s. 21, may yet require some further definition as between the federal and state courts of the United States. The international question may be said to have been solved, and that is all that the case before us professes to deal with, if indeed its decision does not rather relate to the jurisdiction over a theft committed in a foreign river, where the tide ebbs and flows and possibly by a foreigner. It should be remembered that the United States courts have no *unwritten* criminal code. There is no national common law. They have no jurisdiction but what is conferred by statute by Congress: *United States* v. *Coolidge*, 1 Gallison 488, 1 Wheat. 415; *United States* v. *Hudson & Goodwin*, 7 Cranch 32; *United States* v. *Bevans*, 3 Wheat. 336; *United States* v. *Wiltberger*, 5 Id. 76. The jurisdiction of the Supreme Court is pointed out by the Constitution; but the powers of the inferior courts are regulated by statute,

and they have no powers but such as the statute gives them: *Smith* v. *Jackson*, Paine C. C. 453.

Under the head of arms of the sea enclosed within *fauces terræ*, or narrow headlands or promontories, is included rivers, harbors, creeks, basins, bays, &c., where the tide ebbs and flows. Such are within the admiralty jurisdiction of the United States; but if they are within the body of a county of any particular state, the state jurisdiction attaches. But in *Thomas* v. *Lane*, 2 Sumner 1, it was held that the exception did not apply to tide *waters in foreign countries*, and that the admiralty jurisdiction attached to torts on such waters. The numerous cases on the subject are very conflicting, but it seems to be conceded that the admiralty has an established jurisdiction to award damages for torts, or personal wrongs done on the high seas; and that waters within the ebb and flow of the tide, and which lie within the body of a county, are not, in England, within the admiralty jurisdiction: Coke's 4th Inst. 134; 2 Brown's Civ. & Adm. Law 111; *The Nicolas Witzen*, 3 Hagg. Adm. 369; but that in the United States all tide waters, though within the body of a county, are within the admiralty jurisdiction, and torts committed on such waters are cognizable in the admiralty: see Curtis's Treatise on Seamen, p. 562, and the cases there cited. Nay, if the tort be one continued act, though commencing on land and consummated on tide water, the admiralty has cognizance of it: *Plummer* v. *Webb*, 4 Mason 383, 384; *Steele* v. *Thacher*, Ware Adm. 91. It is admitted, however, that the courts of common law have in America concurrent jurisdiction in cases of tort committed on the high seas. But these courts are not competent to supply a remedy *in rem*.

Although, Wheaton's Treatise on International Law (ed. 1864), pp. 202–3, cited by Ortolan in his "Regles Internationales et Diplomatie de la Mer," before referred to, formulates the general rule that "merchant ships of one state when they enter into the ports of another state are not exempt from the local jurisdiction, unless by express convention, and that they are only entitled to what has been provided by that convention," yet as M. Ortolan observes, "En France, à défaut de convention spéciale, est entendue, et pratiquée la règle de droit international sur cette matière." He then proceeds to draw a distinction between crimes committed on board ships of commerce in a foreign port by one of the crew on another, when the tranquillity of the port is not compromised, and crimes committed on board against persons forming no part of the crew, or even those committed by those of the crew among themselves, if the tranquillity of the port is compromised, and in the first instance declares that French legislation respects the rights of the power to which the ship belongs, and that the local authority ought not to interfere unless its assistance is called for. "Ces faits restent donc sous la police, et sous la jurisdiction de l'état auquel appartient le navire."—Ortolan. Id.

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