

THE SPANISH GUNBOATS.

THEIR UNCONDITIONAL RELEASE

The Action of the Peruvian Minister.

Cessation of Hostilities Between Spain and Peru.

THE END OF THE LITIGATION

Pursuant to adjournment the motion to release the Spanish gunboats seized at the instance of the United States government was made yesterday in the United States District Court before Judge Blatchford. The court was crowded by a number of persons anxious to hear the arguments of the case.

Mr. E. W. Stoughton, counsel for Mr. Delamater, the claimant, said that the motion was now made upon the ground that a state of war no longer existed between Spain and Peru. Founded upon the idea that a state of warfare existed between Spain and Peru, the government authorized the District Attorney to seize those gunboats upon the theory that they were designed to be used by Spain against Peru, a country with which the United States was at peace. There was now evidence to show that a war no longer existed. He (Mr. Stoughton) thought the District Attorney would hardly be disposed to resist the application.

District Attorney Pierrepont said as the case had not been before the Court in any formal way it was proper to state how the libel had been filed. The Peruvian Minister, last summer, notified the Secretary of State that those gunboats were being built for the purpose of committing hostilities against Peru, which republic was at war with Spain; and if not intended to be used directly against Peru that they were intended to relieve other ships of war blockading Cuba, and thus indirectly that they were being fitted out against Peru, with which the United States was at peace. It remained under Executive order until it was thought desirable on the part of the government that they should be immediately brought into court. The libel proceeded on the ground that the United States was at peace with Peru and that Spain and Peru were at war; moreover, that these gunboats were fitted out in American waters for the purpose of making war against Peru, with which this country was at peace. He had within a few hours received instructions from Washington copies of the notes that had passed between Peruvian and Spanish Ministers and the Secretary of State in reference to the matter at issue; and it appeared that the war between Spain and Peru no longer existed, and for that reason the government did not feel disposed and did not feel at liberty to press the libel any further, since the cause had ceased to exist upon which the libel was granted.

Mr. Stoughton thought it proper to add to the motion, which was simply to discharge the boats, that the libel be altogether dismissed, in order that the whole proceedings may be disposed of and the litigation brought to an end.

The District Attorney said he was not moving to dismiss the libel. He could not take any further action in the matter, except that if the motion was granted the gunboats should be discharged. He did not see that there was anything further in it.

Mr. Stoughton said it was not of any consequence what form of order might be made so long as the motion was granted.

Judge Blatchford said it was a matter of considerable importance. If the government chose to dismiss those libels of course it has a right to do so and let the whole thing fall; but the question of the discharge of the gunboats before the return day of the process was quite a different thing, and he should feel very reluctant to establish a rule or precedent in a suit of rem. before the libel was returned. Upon principle it struck him that the discharge of the property seized was open to objection. He knew of one case in which that was done and very serious prejudice was done by it some years since. This was a suit in rem. Next Tuesday was the day of the return, and he did not see how the boats could be discharged before that time, provided the process was regular upon its face. In a case of regular libel and regular process, where the return has been issued, how the court could discharge it before the return day he was unable to see. If the government chose to withdraw, or dismiss the libel entirely, of course it had a right to do so. Under all the circumstances, however, he disliked very much to establish any precedent or principle which might be in violation of the sound principles of jurisprudence.

Mr. Stoughton remarked that it was so utterly improbable that any claim or lien to the property would be made at any time other than that set forth in the libel that he presumed the District Attorney could offer no objection. The case had been abandoned by the government, and there was no reason under the circumstances why the gunboats should not be discharged. In view of the great expense incurred in keeping these vessels and the great hardship entailed upon the claimant it was not asking too much of the District Attorney to assent to the dismissal of the libel. He was sure the District Attorney did not intend to hold the libel on the gunboats upon imagination. The government had now no claim upon the boats, and as the charge in fact was not to be maintained he asked that the proceedings be dismissed. As the libel could last only a day, as it were, it was not unreasonable to ask that it be entirely abandoned, and thus relieve the claimant from further embarrassment.

The District Attorney said he could only repeat that the government had had no information from anybody that there was any other claim made except that set forth in the libel, which was granted on the ground that the United States was at peace with Peru and that Spain was at war with Peru. It was moved in consequence of the notes of the Peruvian Minister giving such information. But he (the District Attorney) had just received from Washington documents from the Secretary of State, such copies of notes as passed since the filing of the libel between the Spanish and Peruvian Ministers and the Secretary of State, from which it appears, clearly and distinctly, that whatever war may have existed it had now ceased to exist, and for that reason the libels should not further be prosecuted. That was all he had to state about the matter. The government did not intend to prosecute. He was advised that the war had ceased, and therefore he could not resist the motion. The exact mode or form of granting the end he did not undertake to suggest, and he accordingly left it to the Court to determine. It was the desire of the government that the boats should be discharged in a formal way through the Court.

Judge Blatchford said that in this case a party brought forward a litigation setting forth his cause of action. If the proceedings then were to be dismissed the usual and only course was to withdraw the action and not to ask the Court to determine whether he had decided properly in coming to that conclusion. Here was an official statement that the government had no cause of action in order to prosecute the suit; but that the Court should be asked to decide upon something in connection with it was an anomalous administration of justice.

The District Attorney intimated that the only embarrassment arose from the fact that he was there simply on the motion. The Court had heard the motion and the reply to it, and the only matter before the Court was the question of granting it.

Judge Blatchford said that it was not a proper motion, and he would hear the arguments in order to satisfy himself as to granting it.

Mr. Stoughton said that after the statement made by the District Attorney that the prosecution had been abandoned it seemed to him that the case, involving deep questions, was at end. The District Attorney could easily dispose of it by doing now that which he certainly would do hereafter—consenting that the libels be dismissed. That relieved the Court from all embarrassment suggested. The District Attorney consented to the discharge of the vessels on the ground that the foundation upon which the government rested had disappeared.

The District Attorney said from the despatches which he received he was informed that the government did not intend further to prosecute. War no longer existed between Spain and Peru, and it was because of that war that the libels were originally filed. If the Court were now sitting in admiralty he would state that the government had no cause of action for the libel and under the advice would not attempt to sustain it.

Judge Blatchford, after some further discussion, made the following order:—The United States of America vs. a certain gunboat now lying at pier No. 1 North river, her tackle, &c., known as gunboat No. 1. The same vs. twenty-nine other gunboats, their tackle, &c., numbered from 2 to 30, both inclusive. These suits and the libels of information filed in the same have been consolidated into one suit, and a motion being now made on the part of Cornelius H. Delamater, who duly filed a claim for such gunboat, &c., to be discharged, and it appearing by the libels of information filed in such suits that the ground of forfeiture alleged therein is that the said gunboats are about to sail from the port of New York with intent to cruise under the flag of Spain against the government of Peru, with which the United States are at peace, in violation of the thirtieth section of the act of April, 1813; and it appearing to the Court on such libel of information that the only ground on which it is founded is that

said gunboats are intended to be used in committing hostilities in the interests of the government of Spain against the citizens and property of the government of Peru; and the District Attorney of the United States for the Southern district of New York appearing now in open court, and stating that the government of the United States is satisfied that as a political fact, a state of war does not exist at the present time between the government or kingdom of Spain and the government of Peru, and also stating that the government of the United States has no intention of further prosecuting the libel mentioned, and further stating that he does not object to the granting of the motion for dismissing it, it is, therefore, on motion of the attorney of said Delamater, ordered that the said motion be granted, and that the said gunboats be discharged from the custody in which they are held by the Marshal of the Southern district of New York, by virtue of the several motions and processes ordered therein.