

THE
TRIAL
OF
William Holmes,
Thomas Warrington,
AND
Edward Rosewain,
ON
AN INDICTMENT

FOR
Murder on the High Seas.

BEFORE THE
CIRCUIT COURT OF THE UNITED STATES.

Holden for the District of Massachusetts.

At Boston, on the 4th Jan. 1829.



BOSTON :
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The Property
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DISTRICT OF MASSACHUSETTS, TO WIT :

District Clerk's-Office.

BE IT REMEMBERED, That on the twenty-third day of May, A. D. 1820 in the forty-fourth year of the Independence of the United States of America, JOSEPH C. SPEAR of said District, has deposited in this office the title of a Book the right whereof he claims as Proprietor in the words following to wit :

“ The Trial of William Holmes, Thomas Warrington, and Edward Rosewain, on an indictment for Murder on the High seas: before the Circuit Court of the United States, holden for the District of Massachusetts, at Boston, on the 4th January, 1819.”

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JNO. W. DAVIS, } Clerk of the District
of Massachusetts.

Trial of the Pirates.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts, October Term, 1818, at Boston,

PRESENT HON. JOSEPH STORY,

Associate Justice of the Supreme Court.

HON. JOHN DAVIS,

District Judge.

UNITED STATES, vs. WILLIAM HOLMES, THOMAS
WARRINGTON, and EDWARD ROSEWAIN.

On the 30th day of December, 1818, the prisoners were arraigned upon an indictment for the murder of one Reed a mariner, upon the high seas, in, and on board a certain Schooner, the name whereof was to the jurors unknown, to which indictment, they severally pleaded not guilty.

JAMES T. AUSTIN, and WILLIAM J. SPOONER, Esquires, are assigned by the Court, as Counsel for the Prisoners at their request, and this 4th day of January, appointed for their trial.

The Court was opened at 11 o'clock, A. M. and the prisoners brought in. The Clerk then asked them if they had been furnished with a copy of the Indictment, and a list of the Jurors two days previous to this; and whether they would challenge the Jurors by themselves or their Counsel. To this they replied, that they had been furnished with the Indictment and list of jurors, and that they would challenge by their counsel. The clerk then proceeded to empanel the Jury. Several were challenged, and the following gentlemen sworn as JURORS.

JOSEPH CURTIS, Foreman.	ELISHA BARTLETT,
EBENEZER GOODRICH,	AARON BARKER;
LUTHER EATON,	ROBERT HARRIS,
ISAAC APPLETON,	WALEs PLIMPTON,
ISAAC VINTON,	SAMUEL SILSBEE,
CORNELIUS STONE,	NATHAN BLOOD.

The Clerk then read to them the Indictment as follows :

United States of America, } At a Circuit Court of the United States,
Massachusetts District. } for the first Circuit, begun and held at
 Boston, within and for the District of Massachusetts, on the fifteenth
 day of October, in the year of our Lord one thousand eight hundred
 and eighteen.

The Jurors of the United States of America, within and for the District aforesaid, upon their oath present, that WILLIAM HOLMES, mariner, THOMAS WARRINGTON, otherwise called WARREN FAWCETT, mariner, both being citizens of the said United States, and EDWARD ROSEWAIN, mariner, all late of Boston in the aforesaid District of Massachusetts, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the fourth day of July, now last past, with force and arms, upon the high seas, out of the jurisdiction of any particular state, in and on board a certain schooner or vessel, the name whereof being to the said jurors as yet unknown, in and upon a person known and commonly called by the name of REED a mariner, in and on board said vessel, in the peace of God and of the said U. States, then and there being, piratically, feloniously, wilfully, and of their malice aforethought, did make an assault : And that they the said WILLIAM HOLMES, THOMAS WARRINGTON, otherwise called WARREN FAWCETT, and EDWARD ROSEWAIN, with a certain steel dagger, of the value of ten cents, which he the said WILLIAM HOLMES in his right hand, then and there had and held, the said person commonly called REED, in and upon the arms and breast of him the said REED, upon the high seas, in and on board the vessel aforesaid, and out of the jurisdiction of any particular state, piratically, feloniously, wilfully, and of their malice aforethought, did strike and thrust, giving to the said person commonly called REED, then and there with the steel dagger aforesaid, in and upon the said arms and breast of him the said REED, several grievous wounds, and did then and there in and on board the vessel aforesaid, upon the high seas, and out of the jurisdiction of any particular state, piratically, feloniously, wilfully, and of their malice aforethought, him the said person commonly called REED, cast and throw, from out of said vessel, into the sea, and plunge, sink, and drown him in the sea aforesaid, of which said grievous wounds, casting, throwing, plunging, sinking and drowning, the said person commonly called REED, upon the high seas aforesaid, out of the jurisdiction of any particular state, then and there instantly died.

And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said WILLIAM HOLMES, THOMAS WARRINGTON, otherwise called WARREN FAWCETT and EDWARD ROSEWAIN, him the said person commonly called REED, then and there upon the high seas, as aforesaid, and out of the jurisdiction of any particular state, piratically, wilfully, and of their malice aforethought, did kill and murder, against the peace and dignity of the said United States, and against the force of the statute of the said United States in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid offenders, after the commission of said offence, were first brought into, and apprehended in the District of Massachusetts aforesaid.

A true bill.

Attest, HENRY DEARBORN, Foreman

GEORGE BLAKE, U. S. Attorney for Massachusetts District.

The prosecution was then opened, on behalf of the United States, by GEORGE BLAKE, Esquire, District Attorney. He made a brief and impressive statement of the case, as he supposed it would appear in evidence, and proceed to call the witnesses. The facts and circumstances that were disclosed by the testimony of witnesses on either side, were in substance, the following, viz. :

It appeared that one of the defendants, namely Warrington, was a citizen of the United States, and that the other two were foreigners, probably Englishmen, but that all of them had been residents, within the United States, for a considerable time, previously to the commencement of their career as Privateersmen under the Patriot flag of the South American Provinces. That two of the prisoners, Holmes and Warrington, were seamen on board a privateer schooner called the Buenos Ayres, Deter, master, (who, it seems, was a citizen of the United States, having his domicile and family at Baltimore.) And that Rosewaine, the other defendant, was one of the crew on board another Privateer schooner called the Tucuman, under the command of a captain Wilson, supposed also to be a citizen of the United States, having his residence at Baltimore.

It appeared that on or about the 28th of May, 1818, while these two vessels were cruising in company, they fell in with, and captured a merchant vessel, (whose national character was not established by any satisfactory evidence adduced, on either side at the trial,) being laden with a valuable cargo from Havanna, and bound to some port in Europe; that a prize crew, consisting of the three prisoners, together with a person by the name of Reed, and another person whose first name was Joseph, together with two or three other seamen, were sent from the privateers to take possession of the captured vessel, with orders to proceed with her to the port of Buenos Ayres; and that of this prize crew, the person called Reed, was the master, and Joseph the mate.

That, on the 4th of July ensuing, at about 8 o'clock in the evening, a conversation was overheard on board the vessel, by one of the witnesses, between Holmes and Rosewaine, in the course of which, it was proposed and agreed between them, that the prize master Reed, and the mate Joseph, should immediately be seized upon, and thrown overboard; and that after thus getting command of the vessel, they would change her course and proceed with her to some place or port in the United States. The consummation of this diabolical confederacy, almost immediately succeeded its conception. The mate, Joseph, in course of a few moments, after the conversation above alluded to, took place, was forcibly seized upon by Warrington and Holmes, and thrown into the sea. At this moment, the prize master, who it appeared, had been roused by the cries of this first victim, while floating in the wake,

of the vessel, came upon deck from the cabin, and while employed in attempting to back the sails, and in making other arrangements for the rescue of his drowning companion, was himself, suddenly seized by Holmes and Rosewaine, and thrown over from the vessel's side. It appeared, however, that in his fall overboard, having fixed his grasp upon some part of the rigging, he sustained himself for a minute or two, by the vessel's side; and that while in this situation, and imploring mercy of his murderers, he was stabbed several times, in the breast, by Holmes, with a misshapen dagger, (being a long, triangular file, ground sharp at the point, apparently for the purpose of being employed upon this occasion,) and, thus, was forced to quit his hold, and fell into the sea. From this time, nothing more was seen or heard of either of these victims!

The Prisoners having thus gained possession of the vessel, and reduced all on board, to subjection, proceeded immediately, according to their original intention, to change the vessel's course, and to make for a port in the United States. It appeared that about three weeks after the occurrence of these events, the vessel being then in the vicinity of the Cape de Verd Islands, the persons composing her original crew, who were principally Spaniards, were upon their own request, sent on shore in a boat, and the vessel proceeded immediately, afterwards on her way.

That on, or about the 30th of August ensuing, she arrived at the small harbor of Scituate, in Massachusetts, when she was immediately abandoned by the convicts, who, while making their way, under assumed names, towards Boston, were soon afterwards overtaken by some persons who had set off in pursuit of them, and having been apprehended and detained for examination, were finally committed to the jail in Boston to take their trial.

[The following short sketch of the evidence, and arguments of Counsel is subjoined, from an account of the trial published in the *Daily Advertiser*.

Thomas Harrison, Sworn. On the 4th of July last, he was on board the schooner which arrived at Scituate some time since. Reed (the person named in the indictment) was master, and a person called Joseph was mate. On that day, the crew had some liquor, and became rather intoxicated. About 10 o'clock in the evening, a violent quarrel took place between Holmes, one of the prisoners, and Joe, the mate. The quarrel, however, subsided; and Holmes went forward. Two hours after, the witness heard Rosewaine propose to throw the master and mate overboard, to which Holmes assented. Holmes went below, and in a few minutes brought up a large file, sharp at the point. He and Warrington went aft, where they found the mate asleep on the quarter deck. They took him, one by the head and the other by the feet,—and threw him into the sea. The cries which the mate uttered upon reaching the water, brought up the master from the cabin, who immediately gave orders to back the topsail. The witness sprang to execute the order; and the master jumped on

to the hen-coop, to see who was in the water, when Holmes and Warrington seized him by the heels and pitched him over the rail of the vessel. He however caught by a rope and hung by it; when Holmes leaned over and stabbed him several times with the file. Finding they could not make him lose his hold, the rope was cut, and he dropped into the water. Nothing more was heard or seen of the master or mate, and no vessel was in sight at the time. Rosewain took the command of the vessel, and changed her course, intending to enter the Delaware. They however, arrived at Scituate, on the 30th August. Finding where they were, the crew deserted the vessel and dispersed. They were all apprehended in the course of the next day, when the witness made a statement of the whole transaction.

In the course of the cross examination, he stated that he was put on board the schooner mentioned, as part of a prize crew.— That the schooner was captured off Cadiz by two privateers, viz. the Buenos Ayres and the Tucuman; to one of which the witness belonged. That the privateers were publicly fitted out at Buenos Ayres, and shipped their crews there. That they sailed in company on a cruise, and molested none but Spanish vessels. But that one of the Privateers was formerly owned in Baltimore, and he did not know whether she had since been sold. The prize was Spanish built, when captured was manned by a Spanish crew and commanded by a Spanish captain, but he never saw her papers. That the night of the 4th July was star light, and as he stood at midships he had a fair view of the transaction on deck. That the prize crew consisted of the two deceased, of the three prisoners, Chappel and himself. There were on board five Spaniards; three of them part of the original crew of the schooner; the other two were priests, and passengers from Laguirra to Cadiz. The Spaniards were below at the time the murder took place. They were afterwards put ashore at one of the Cape de Verd Islands.

Thomas Chappel was the next witness called on the part of the government. He stated he was on the fore-castle at the time the alleged murder took place. That it was a cloudy night, and so dark that he could not see what took place on deck, and that he could not see where *Harrison* stood.

It was stated by the witnesses that *Rosewain* was an Englishman, *Holmes* a Scotchman, and *Warrington* a citizen of Connecticut. Both the witnesses belonged to Baltimore.

The Counsel for the Prisoners contended, that the government's testimony was not to be credited. *Harrison's* own account of his former habits of life—he having formerly been on board a privateer owned in Baltimore, and fitted out for the purpose of preying on the property of a nation with whom we are at peace, showed that he was a man whose moral feelings were not very nice, and who should be listened to with caution, even if he had given a probable and consistent narrative. But his story was in itself incredible. The witnesses did not pretend that the prisoners dis-

covered any inclination to plunder the vessel ; and no motive was or could be assigned for the commission of the foul crime with which they were charged. The two witnesses had contradicted one another in several particulars. Harrison swore that it was star-light, and that as he stood amidstships he could distinguish persons on the quarter deck, and see all that they did ; whilst Chappel stated that it was a cloudy night, and so dark that he could not see how many were on the deck, and could not even see where Harrison stood. Other contradictions were pointed out. But if such a transaction as Harrison related, did take place, he was an accomplice. It was evident from his not having alarmed the rest of the people on board. He stood a silent spectator of the horrible tragedy ; when by joining the master or by calling to Chappel, or alarming the five Spaniards below, he might have prevented the catastrophe. If the Jury suspected him of being an accomplice, they were bound to reject the whole of his testimony, he having made no confession of his own guilt. But whatever the Jury should think of the fact, it was argued as the next point of the defence, that the courts of this country had no cognizance of the offence. It had recently been decided in the case *United States vs. Palmer*, that an offence committed on board " a vessel belonging exclusively to subjects of a foreign State " was not " punishable in the Courts of the United States." The indictment should therefore have alledged that the vessel on board of which the offence was committed, belonged to American citizens. Having omitted to do this, it did not appear that the Court had jurisdiction of the cause. But if the government were not bound to alledge this fact, at least they were bound to prove it. The burden of proof was always on the prosecutor to show, that the prisoners had violated some law of the country. It was reasonable and proper that the evidence on this point should come from the government. If the vessel were American, the evidence of its character was in the country, and consequently under command of the Court. But when the vessel was foreign, it would generally be out of the waters of the United States ; no proofs from the Court could assist the prisoners in obtaining the evidence ; and without such assistance, men poor and friendless, like those at the bar, could not obtain it. The government had not proved the fact ; they could not prove it. On the contrary the Counsel warmly contended, that the facts stated by the witnesses were sufficient to prove the schooner to have been a Spanish vessel prize to Buenos Ayrean privateers. That the jury were bound to estimate the evidence by the rules of common sense ; and if the facts which had been stated were sufficient to convince them as men, it was absurd to doubt as jurors.

Mr. Blake in reply—went into an examination of the arguments which had been urged on the other side. As to the contradictions between the two witnesses, (if any existed,) they were only sufficient to show that there was no concert between them. In all the material facts they agreed. Unless the jury believed both

the witnesses perjured, they must believe the prisoners to have committed the murder. He urged the improbability that two men, between whom there appeared no concert, should each have conceived the idea of taking the lives of three of their fellow beings by cool and deliberate perjury.—And although the employment in which Harrison acknowledged himself to have been engaged, was not to be justified; yet considering the youth of the witness (he being but 24 years old.) the numerous examples which had unhappily been set him, in the place to which he belonged, might offer some palliation of his offence. As to there being no motive for the conduct of the prisoners, if they did not attempt to sequester the property on board, it was because they arrived at Scituate, instead of entering the Delaware, as they intended. As to the alleged omission in the indictment—the statute upon which the indictment was founded, merely mentioned “offences committed on the high seas” and said nothing about the vessel. Offences might be committed on the high seas, without being committed on board a vessel, of which our Courts would have jurisdiction. The prisoners having been proved to have committed a murder, it was for them to show that the vessel on board of which they committed it, was exclusively under the jurisdiction of a foreign state. This they had not done. He protested against the principle advanced on the other side, that the jury were to decide on this point as they would about the ordinary transactions of life. It might be safe on common affairs to trust to belief, surmise and conjecture. But there were general rules of evidence, by which the jury must be bound. “The best evidence, the nature of the case admitted of” ought to have been produced. He therefore called for the commissions of the capturing vessels, or at least for exemplifications of them attested by a proper officer of State. He felt bound to call for such evidence, especially at the present time, when the ocean was crowded with vessels wearing the Patriot flag without a right to do so, and exercising all the rights of belligerents with forged commissions or with none at all.

After the Arguments, the Court adjourned to the next morning. On Tuesday, His Honor Judge STORY delivered a very able and elaborate charge, of which the following is the substance, so far as it related to the points of law in the cause.

THE statute of 1790, ch. 9, s. 8, on the subject of piracies is general in its terms, and no case ought to be excepted from its operation unless it be manifestly without its purview. In Palmer's case, the Supreme Court held that a piracy committed on the high seas on board of any ship or vessel belonging exclusively to subjects of a foreign state, on persons within a vessel belonging exclusively to subjects of a foreign state, is not punishable under the statute. But that decision left every other case open for consideration.

The statute under consideration declares, that if any person shall commit *upon the high seas*, &c. murder, &c. he shall be deemed a pirate, and suffer death. No allusion is made to any ship or vessel whatsoever, as a necessary ingredient to give jurisdiction over the crime; nor is the jurisdiction confined to crimes committed on board of ships or vessels on the high seas. The statute refers as to locality to "the high seas" only, and it would be far too narrow a construction, to limit its operation to crimes committed on board of ships or vessels. Murder may be committed on the high seas when neither the murderer, or the murdered is on board of any ship or vessel. A man may in the sea murder another who is in the sea swimming, or on a plank or raft; and it is obvious, that when the death is by drowning, the murder is committed literally on the high seas, wherever the murderer may at the time be. If a person standing on land, kill another who is on the high seas, by shooting him, it is a murder on the high seas. We see no reason in a case of this sort, where the murder is committed actually in the sea, why the case which is within the literal terms of the statute, should not be held within its purview, whether the murder were committed by a citizen on a citizen, or by a foreigner on a citizen, or by a foreigner on a foreigner. Such a case is not within the reason of Palmer's case. Every nation has concurrent jurisdiction with every other nation on the high seas; and when a crime is committed on the high seas, not on board of any ship or vessel, it is not exclusively within the jurisdiction of any nation; and every nation may, if it choose, punish such crime without doing any wrong to either nation. It is incumbent also on those who assert that such a case ought to be excepted from the statute, to shew some principle upon which such an exception should stand. The words of the statute cover it; and this Court sees no ground upon which it should say, that the statute did not mean to cover it.

In the present case if the Jury are satisfied, that the crime if committed at all, was committed by drowning the party on the high seas, and that the murder was not on board of any vessel, the Court is of opinion that the case is within the statute.

But it is not necessary to rest the present case upon this ground. The court do not admit, that the statute is confined to piracies committed on board of ships owned in whole or in part, by citizens of the United States. If a murder be committed on board of a ship having no national character, as on board of ships owned and possessed by pirates, it is within the statute, if the ship be on the high seas when the crime is perpetrated. If it were otherwise, it would not be punishable by any nation, for no nation has exclusive jurisdiction over crimes committed on board of piratical ships, yet all nations claim a common right to punish pirates, and language more comprehensive to embrace the case than that of the statute, could scarcely be used. Palmer's case goes only to exclude the operation of the statute, in cases where other na-

tions have an exclusive jurisdiction. The Court can upon no sound principle except other cases, unless it is to make, and not merely to construe the statute.

In the present case, the prisoners are to make out an exception in their own favor, from the terms of the statute, and it is incumbent upon them to establish it in point of law, and also in point of fact, unless such exception manifestly appears from the evidence on the part of the government. The court cannot intend that the crime was in this case committed within the jurisdiction of a foreign government, on board of a ship having a real national character, unless there be competent evidence to establish it.

From the evidence it appears, that a vessel apparently Spanish, (whose national character however is not distinctly proved, by any documentary evidence, or by the testimony of any person conusant of its character,) was captured by two privateers from Buenos Ayres, a prize crew put on board, and the Prisoners were of that prize crew. One of the prisoners is an American citizen: the other two are foreigners. The crime is alleged to have been committed by the Prisoners, on the person whose death is charged in the indictment, by drowning him on the high seas, he being at the time a prize master of the captured vessel, and thrown or driven overboard by the Prisoners. If at the time when the crime was committed, supposing it (if at all) committed on board the vessel, this vessel was under the exclusive jurisdiction of the Government of Buenos Ayres, then the statute does not reach the case, and the Prisoners ought to be acquitted. And this depends upon the fact, whether the capture was made by the privateers, under any authority derived from the Government of Buenos Ayres as a belligerent and independent nation. It is not necessary that the privateers should have had commissions from the Government of Buenos Ayres; it is sufficient, if they belonged to Buenos Ayres, sailed rightfully under its flag, and were recognized as ships belonging to the nation or its subjects, and entitled to its protection. If such were their predicament, then the capture was rightful, and the captured vessel immediately after the capture, may be justly deemed to have been exclusively under the jurisdiction of the Government of Buenos Ayres. But if these privateers had no legitimate national character; if they were not owned by subjects of Buenos Ayres, nor navigated bona fide under its flag, nor recognized as ships entitled to the protection of the nation, then they must be deemed in law mere pirates, having no title to make captures; and the vessels which they captured, must be considered as under the exclusive jurisdiction of no government, and dealt with accordingly. If too, these privateers were fitted out and armed in the United States, for the purpose of cruising against Spain and her subjects, and against the provisions of our laws; and this vessel was captured in fraud of those laws, the capture was illegal, and in respect to our courts it must be treated as fraudulent. And if the commanders of these privateers were American citizens, who took commissions to cruise against

Spain, from any foreign government at war with her, they are by the express provisions of our treaty with Spain, liable to be deemed pirates.

Upon looking at the evidence in this case, there is no legal proof that either of these privateers ever had any commission from the Government of Buenos Ayres, or had any ship's papers or documents from that government, or was ever recognized as a ship of the nation or its subjects. There is no proof who are the owners of the privateers, nor where they reside, nor what were the ship's papers or documents; nor where, nor at what time, they were armed and equipped for war. From what then is it to be inferred, that these privateers were ships belonging to Buenos Ayres, and *bona fide* sailing under its flag? The circumstance principally relied on is, that they were at Buenos Ayres, and openly kept a rendezvous there, and shipped the crews there. But this circumstance whatever might be its weight standing alone, is accompanied with other facts. It is in evidence, that very few of the crews were natives. They consisted chiefly of Englishmen, Frenchmen, and Americans. Capt. Dieter the commander of one of them, is by birth an American citizen, and has a family domiciled at Baltimore. Capt. Wilson the commander of the other privateer, is by birth an Englishman, but has long been domiciled at Baltimore. There is not the slightest proof, that either of them have ever lived at Buenos Ayres, or been naturalized there. One of the witnesses too states, that Capt. Dieter is part owner of the privateer he commands. He also states, that she belongs to Baltimore, is owned there, and was equipped there. In this however he speaks upon the statements of others of the crew; and these statements are not legal evidence. All the witnesses however agree, that the vessels are Baltimore built. The privateers had been at Buenos Ayres but a short time, one about six weeks, the other a few days only. Under these circumstances, the court cannot say that there is any satisfactory evidence of the national character of these privateers. It is not thought that the evidence is competent in point of law, to establish that these privateers had a legitimate national character. The existence of such national character, must in the nature of things be susceptible of better and more decisive proof. And it is incumbent upon the prisoners to produce such proof. If the crime has been committed, and the jury upon the evidence are not satisfied that the privateers had any national character, then the case is within the statute, and they ought to pronounce a verdict accordingly.

After being out for two hours and a half, the Jury returned a verdict of **GUILTY** against each of the prisoners.

A motion having been made on behalf of the prisoners for a new trial, at a subsequent day of the term

the legal points of the cause were upon that motion fully discussed. The Hon. Judges having been divided in opinion, a transcript of the record, was sent to Washington, for the decision of the Supreme Court.

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AT the Term of the CIRCUIT COURT holden in Boston, May 15, 1820—The Prisoners were on motion of the District Attorney, brought into Court, and Mr. BLAKE read the following transcript from the records of the *Supreme Court of the United States*.

SUPREME COURT OF THE UNITED STATES.

February Term, 1820.

United States, vs. William Holmes, Thomas Warrington alias Warren Fawcett and Edward Rosewain.

This cause came on to be heard on the transcript of the record of the Circuit Court of the United States for the District of Massachusetts, and on the questions on which the Judges of that Court were divided in opinion, and was argued by counsel, on consideration whereof, the Court is of opinion ;

1. That the said Circuit Court had jurisdiction of the offence charged in the indictment, although the vessel on board of which the offence was committed, was not at the time owned by a citizen or citizens of the United States, and was not lawfully sailing under its flag.

2. The said circuit court had jurisdiction of the offence, charged in the indictment, if the vessel on board of which it was committed at the time of the commission thereof, had no real national character, but was possessed and hold by pirates, or by persons not lawfully sailing under the flag, or entitled to the protection of any government whatsoever.

3. It makes no difference as to the point of jurisdiction, whether the prisoners or any of them were citizens of the United States, or the deceased was a citizen of the United States, or that the offence was committed not on board any vessel, but on the high seas.

4. The burden of proof of the national character of the vessel on board of which the offence was committed, was under the circumstances stated in the charge of the Court, on the prisoners.

The District Attorney then stated, that all the points of law reserved for the decision of the Supreme Court had been decided against the prisoners, and moved that the motion on which the cause had been from term to term continued, might be overruled.

The Counsel for the Prisoners, made no objection, and the motion was accordingly overruled.

Mr. BLAKE, then addressed the Court as follows—
May it please your Honours,

It is my duty to represent, that at a former term of this Court, which was begun and holden in this place on the 15th of October, in the year eighteen hundred and eighteen, the Grand Inquest for the body of this District, returned a Bill of Indictment against the Prisoners, now standing at the Bar, by the names respectively, of William Holmes, Thomas Warrington, otherwise called Warren Faucett, and Edward Rosewain, wherein they were charged with the commission of a Piracy and Felony upon the High Seas, in having perpetrated the Murder of a person, by the name of Reed.

Upon this Indictment, the prisoners were duly arraigned, and being called to plead, severally answered that they were not guilty of the offence whereof they were accused. In pursuance of the humane provisions of the law in such case, they were, thereupon, duly apprized by the Court of the privilege which belonged to them of claiming the assistance of Counsel in their defence; And accordingly two gentlemen of the Bar, distinguished for their learning, and abilities, whom the Prisoners had, themselves, designated, were assigned by the Court as their counsel; and admitted, with the aid of all the usual processes and facilities which it is incumbent on the Courts of the United States to grant on such occasions, to afford every possible professional advice and assistance to the Prisoners, as well before, as at the time of their trial.

At a subsequent day of the same term, a Traverse Jury, composed of intelligent and impartial men, drawn from the list of Jurors, of which list the Prisoners and their Counsel had, theretofore, been seasonably furnished with copies, were duly impanelled and sworn to try the issue; and after a patient investigation of the cause, and a diligent attention to the arguments of Counsel on either side, and the instructions of the Court, this Jury returned a verdict in due form of law, whereby each and every of the Defendants was found guilty of the offence, as laid in the Indictment. In the course of this trial, there were however, suggested by the Counsel for the Prisoners, several objections in point of law, as to the jurisdiction of any Court of the United States, in a case like the one under consideration. Upon a full argument of these objections, it appearing that the opinions of the two Judges composing this Court, were divided, the points of law upon which this disagreement had occurred, were afterwards "during the same term," upon the request of the Attorney of the United States for this District, stated and certified, under the direction, and the seal of this Honorable Court, to the Supreme Court of the United States, at its then next succeeding session, for a final decision.

Now it will have been perceived, *May it please your honors,* from the contents of the official document under the seal of the Court last mentioned, which I have, already, had the honor to submit to the view of this Court, that all the points of law which

were reserved at the principal trial, have since been considered by the highest Judiciary tribunal of the nation ; and that its decision is against the Prisoners upon all the grounds that were assumed by Counsel in their defence.

Thus it is apparent, from the verdict which was returned in this case, and from all the subsequent proceedings that have ensued, that the Prisoners at the Bar are now standing upon record, as legally convict of the crime of "Piratical and felonious homicide upon the high seas"—A crime to which, by an act of Congress of the United States, made and passed on the 30th of April, 1790, and which is still remaining in full force, is annexed the penalty of death.

It becomes then, may it please your Honors, my duty, (the most sad and painful one that I have yet had to fulfil in the course of this interesting cause,) to move the Court, and accordingly, in the name and behalf of the United States, I now do move that sentence of death be passed upon these convicts !!

The Judge then asked the prisoners if they had any thing to say why judgment should not be passed against them. One of them replied, ' No sir, I suppose not.' The other two answered in very respectful terms, something to the same effect. The prisoners were then remanded, and ordered to be brought up again for judgment, at 9 o'clock on the following.

Tuesday the prisoners were again brought into Court, and the Hon. Judge STORY thus solemnly and impressively addressed them, in pronouncing the

Sentence of Death.

WILLIAM HOLMES, THOMAS WARRINGTON,
EDWARD ROSEWAIN,

Prisoners at the Bar,

You have been charged by the Grand Jury of the United States, for this District, on their oaths with the murder of one Reed, on the high seas. Upon this charge you have been tried by an intelligent and impartial jury, selected by yourselves from a panel, against which there was no exception. You had the

assistance of eloquent and learned counsel to aid you at your trial, assigned by the Court at your own request, and of your own choice. After a full and deliberate hearing, that Jury pronounced you guilty of the offence charged against you ; and I must say that there never was a verdict more fully justified by the evidence ; and scarcely could there be a murder more foul, gross, and abominable in its circumstances. From a tenderness for human life, and a sacred regard for the Law, the Court, notwithstanding they entertained no doubt of your guilt, still felt it their duty to reserve certain questions relative to their own jurisdiction over the cause, and again deliberately to consider them on a motion for a new trial. The questions were most ably and powerfully argued by your Counsel, and the Court felt an anxious desire to have all the light, that could be obtained from the highest tribunal known to our Laws. The questions were therefore certified to the Supreme Court for a final decision. that our errors, if any, might be corrected, and that life should not be taken away even in the clearest case of guilt, without it was fully justified by the law in its most rigorous construction. It has pleased the Supreme Court to certify an opinion on these questions conformable to the doctrines delivered by this Court at your trial. We have felt ourselves constrained therefore, to overrule the motion of your Counsel for a new trial as unsupported in point of law. If in truth it could have succeeded, it would only have added to the many instances in which the purposes of justice have been defeated by defects of the law, which human wisdom had not sufficiently provided for. If it had succeeded, it could have been of no

permanent avail to you ; for independent of the murder with which you now stand charged, I am fully justified by the doctrines recently held by the Supreme Court, in declaring, that the facts of your case clearly amounted to piracy or robbery on the high seas ; and if you had been indicted for that offence, this Court would have an unquestionable jurisdiction ; for the very act by which you consummated your offence, being a piratical usurpation and seizure of the vessel, to which you belonged, placed the vessel without the authority of any foreign government, and left you only the character of general pirates and enemies of the human race, who had thrown off allegiance to all nations, and were justly amenable for your crime to the tribunal of all.—Your offence was indeed general piracy, perpetrated by the murder of all the officers of the ship, for the purpose of more easily running away with her. It was a breach of your duty as seamen, a piratical revolt, a wicked and treacherous conspiracy, stained with innocent blood. There is then nothing *in point of law* in your case, which entitles you to the favorable consideration of the Court ; and there is nothing, absolutely nothing—*in point of fact*, so far as is known to us, to call forth the public mercy for your succour or pardon. You had no excuse for your inhuman butcheries. There was not even the pretence of irritated passions to soften the deep malignity of the scene. It was a mild summer evening, the close of a day of pleasure and festivity, consecrated to liberty and independence. Your officers were already retired to repose. One keeping on deck, the other in his cabin. The time was fast approaching to midnight. One would have thought that the coolness and tranquillity of the scene, might have awakened other thoughts than deeds of darkness. Yet you chose this as the time of your detestible plot. You seized one of your officers by surprise, in sleep, and threw him into the sea. His cries called up the captain, and he too, was instantly pushed overboard. He caught hold of

the main boom *guy*, and struggled to save himself from destruction. During ten agonizing minutes, he remained suspended there, grappling for life, and entreating mercy. Did your hearts relent on this occasion? It was a moment for repentance, for submission, for humanity, for mercy. Did you listen to the appeals of conscience, to the pleadings of the miserable wretch just sinking into eternity, and looking round for the last hope of safety. No—no. There was no mercy there—You stabbed him with many a wound, till exhausted with fatigue and loss of blood, he seemed ready to fall, a dying, fainting victim—You then cut away the rope, his last feeble hold on life. He dropped—The ocean threw its dark waves over him, and he was gone forever. He was sent to his final account without preparation, and without warning. It was a most cruel, and ferocious, and unnatural murder. Yet it stood not alone. The transition of the mate, from sleep to death, though more sudden, and less terrific in its circumstances, was not less agonizing. His shrieks were heard on the desolate ocean, and then in a moment all was silence, deep, and dreary, and fearful.

All this was done without any reasonable provocation or injury. It was the triumph of cold and brutal cruelty deliberately planning its revenge. You thought perhaps that crimes, like these, perpetrated in a distant sea, far from the haunts of men, and shrouded in the darkness of night, could go unpunished. That if not betrayed by your comrades, you were safe from all scrutiny; and that common danger and common fears might restrain them from a discovery. You forgot that there was an Almighty Being to whom the hearts and the actions of all men are open; who never slumbereth, nor sleepeth, from whom nothing is hidden; to whom the darkness of midnight is as the lightness of the noonday, who heareth all things, and sustaineth all things, and governeth all things—who is the friend of the poor and suffering, and oppressed; who rewardeth the good

and will in his own good time, *assuredly* punish the guilty. Though unseen by mortal eyes, he saw your bloody and barbarous deeds; though unheard by mortal ears, he heard the cries of your dying victims! though buried in the bottom of the ocean, he will at the day of judgment, raise up the unfortunate sufferers as witnesses of your crimes. In that fearful day, how can you appear before him, loaded with the guilt of a double murder; a crime than which none can be more offensive to a Being of perfect holiness and justice.

It is my painful duty on this occasion to be called to pronounce the sentence of the law upon you, which will cut you from society, consign you to an ignominious death, and send you to the awful presence of your maker and God. You are young, in the very blossom of your sins, and in the vigour of manhood.—The sentence pronounced by the laws of God and man upon your crime is DEATH.—Whoso sheddeth man's blood, by man shall his blood be shed.—Yet a few short days, and you must descend to the cold and narrow grave, where there are neither works nor device, nor repentance, nor pardon. As you die, so shall your fate be sealed for eternity. As the grave closes upon you, so shall the resurrection find you. Let me recommend to you, earnestly and affectionately recommend to you, to employ the few days left, while yet the sun shall shed his cheering beams upon you, while yet the dying flame of hope lingers in your hearts—in fervent prayers to God for the forgiveness of your manifold sins—in penitent and holy devotion—in humble acts of piety—in sincere repentance and contrition of spirit.—Seek the ministers of the Gospel.—They will open to you the inestimable truths of the Christian religion.—They will teach you the horrid character of your crimes—the nature of repentance—the bitter fruits of sin—the hopes and promises of the Gospel—the rewards and punishments of a future state. They will pour consolation into your hearts in your dying moments; and if you are sincerely pen-

itent, for a broken and contrite spirit God will not despise—you may yet hope for his pardoning mercy. I say, *hope for his pardoning mercy*—for it belongs not to man to know or to declare your irrevocable destiny,—that belongs solely to God: who possesses infinite goodness, and wisdom, and benevolence: and is alone able to succour and to save you.

I now proceed to declare the Sentence which the law has made it my painful duty to pronounce against you :—

It is considered by the Court here, that you, William Holmes, Thomas Warrington otherwise called Warren Fawcett, and Edward Rosewain, be and you are hereby severally deemed, taken and adjudged to be pirates and felons. And that you, and each of you, be hanged by the neck until each of you be DEAD. And it is further considered by the Court here, that the Marshal of this District do cause execution to be done in the premises aforesaid upon each of you, on the *fifteenth day of June* next ensuing, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the same day. And that each of you be now taken from hence to the Gaol in Boston, in this District, from whence you came; there, or in some other safe and convenient prison within the District aforesaid, to be safely kept until the day of Execution, and from thence on the day appointed for Execution as aforesaid, to be taken to the place of execution;—there to be HANGED as aforesaid.

May Almighty God succour and support you in your dying moments, and of his infinite goodness, have mercy on your souls.—I bid you a last, solemn, affectionate farewell!

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