

THE PETERHOFF

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The Peterhoff by E. Delafield Smith

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E. DELAFIELD SMITH

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ARGUMENT

OF

E. DELAFIELD SMITH,

United States District Attorney,

ADDRESSED TO THE

UNITED STATES COURT AT NEW YORK,

IN THE CASE OF THE

PRIZE STEAMER PETERHOFF,

July 10, 1863.

PRINTED FOR THE USE OF THE COURT, FROM A STENOGRAPHIC
REPORT BY A. F. WARBURTON, Esq., AND REVISED
BY THE DISTRICT ATTORNEY.

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1863.

The Prize Steamer Peterhoff.

ARGUMENT

OF

E. DELAFIELD SMITH,

UNITED STATES DISTRICT ATTORNEY.

July 10th, 1863.

MAY IT PLEASE THE COURT :

THIS case is clothed with profound interest in the public mind, both of Europe and America. It is brought to the bar of a court, commissioned by the government of a great country, and charged with the determination and application of international law. Not solely individuals, but nations, are parties to this controversy. Not alone an august judicial tribunal at Washington, but the imperial courts of a distant continent, will sit in review of the judgment which shall be pronounced here. Yet the testimony spread upon this record is within a narrow scope. The facts marshaled before us are few. A decision may be reached without straining the eye in search of precedents, beyond such

familiar adjudications as have long ago sunk to the level margin of an elementary treatise. It is true, indeed, that consequences of magnitude have become entangled in the issue. But for them, the world might well wonder that so simple a case should have so aroused the populace of one country, and so interested the publicists of many.

Was the recent enterprise of the "Peterhoff" honest or fraudulent? Was her voyage lawful or illegal? Was her destination real or simulated?

In deciding the issue involved in this capture, two classes of facts demand attention. First, such as are of a public character, too general to require specific proof, and sufficiently notorious to come, of their own force, within the range of unaided judicial cognizance. And, secondly, those established by the testimony taken *in preparatorio*, consisting of the responses of witnesses to the standing interrogatories administered by the prize commissioners, together with such light as an inspection of the ship's papers and of her cargo may throw upon the intent of those by whom her course has been directed.

In the summer of 1861 the foundations of this land trembled with an earthquake of territorial war. The country was aroused as from a sleep. Guards, of her own appointment, still lingering in her high places, were prepared to trample out her life if she lay still, and to assassinate her if she arose. Perjured treachery and audacious force vied with each other to destroy a government, which discovered its worst enemies amongst the most pampered and caressed of the children of her protection. The war was not for a boundary, a province, or a form of government. Its purpose, sorrowfully seen at home, was to annihilate the unity and life of

the nation. Its consequences, greedily predicted abroad, were to open the best portion of the western hemisphere to insolent foreign footsteps, which periodically humiliate the States of Mexico and South America. It was a rising, not to overthrow tyranny, but to establish it. Guilty leaders and deluded communities affected to reproduce the drama of the American revolution, making Oppression perform now the part that Liberty enacted then.

Words and acts of attempted conciliation were wasted. Awakened to its own defence, the government is forced, at length, to the arbitrament of war. The Executive establishes a blockade of the insurrectionary ports. The Emperor of the French, dreaming of his personal aggrandizement, and hating the principles of republican government, weaves wily arts for our embarrassment; and Britain, without his excuses, green with jealousies which our ovations to her prince should have cleansed away, whets with the stone of national animosity the cupidity of her tradesmen. Government and people, emulating each the bad faith of the other, hasten to confer rights upon one belligerent and to heap wrongs upon the other. Ships, clad in iron, start from her docks to prey upon the merchant marine of a friendly power, while vessels crowd the harbor of New York flying the red signals of England, to the exclusion of the flag which was once the protection of American commerce. [In defiance of the public law of the world, English bottoms infest our southern seas, violate the belligerent right of blockade, and bear food, medicines and arms to the enemies of human freedom and of stable government.]

Such was the situation of public affairs, when the naval forces and the federal courts of the United States,

the one with untiring energy, the other with intelligent firmness, surrounded with increasing hazards the bold breaches of blockade and the wholesale indulgences in contraband trade, with which this unnatural conflict was fostered and prolonged.

[Then cunning greed invoked frauds and subterfuges, to do by indirection what had proved at length too dangerous and impracticable for the open arts of enterprise. The little harbor of Nassau, in the island of New Providence; the port of Cardenas, on the northerly coast of Cuba; and, at last, the unfrequented region of Matamoras, in Mexico, are magnified into vast marts of trade, and become the rivals of Liverpool, Havre and New York.] Ships of ponderous tonnage traverse the seas and swarm in the vicinity of these inconsiderable places. Owners, shippers and masters, with remarkable effrontery, claim that they are centres of substantial, legitimate and independent trade. At the same time, the common sense and common knowledge of the world acknowledge that they are mere stopping places and ports of transshipment, by or through which munitions of war and articles of necessity, of comfort and of luxury, may be carried from the British Isles to the insurgent section of the American Union.] So the British bark "Springbok" sets her chaste sails for Nassau. So the British schooner "Stephen Hart" turns an honest face toward Cardenas. And thus, we say, the steamer "Peterhoff" pursues her virtuous pathway to Matamoras. But the rough sailor follows in the track of each. He sees through the thin disguises. He thrusts aside the flimsy veil. He arrests the pretender and sends her where she must submit to the scrutiny of a court of justice.

In the light, then, of the notorious fraud, the simu-

lation, the circuitry, the indirection, with which this contraband trade to the Southern ports has been projected and persisted in, we approach the proofs in the case now under consideration. No intelligent examination of the testimony now before us can be attempted, without a recognition of the public facts to which I have adverted.

Sailing under such circumstances, it must be conceded that the "Peterhoff," if guilty, would shroud her purpose in the depths of dissimulation; and, if innocent, would fail in no mark of frankness. We shall observe, in the course of our inquiry, how much she has displayed of the one, and how little of the other.

It appears that this steamer, immediately preceding her late adventure, had been the subject of an agreement between Messrs. Pearson, Kahnweiler and Dobson, gentlemen extensively engaged in shipments to the so-called Confederate States. In that agreement, it was provided that she should transport a cargo of merchandise for the "Confederate States," and deliver it by running the blockade, if possible, or by sailing to the port of Nassau or Bermuda, and she was to return with a cargo of cotton produced in the "Confederate States." Pearson seems to have been her owner. This contract was performed in a voyage to Nassau, and return to London with a cargo of "Confederate" cotton.

The "Peterhoff" appears to have been built in Great Britain, is now registered in the name of Joseph Spence, of London, and is rated of the burthen of 669 tons. Her cargo for the present voyage was put on board in December, 1862, and January, 1863, by twenty-six different shippers. A large quantity was consigned "to order," and the remainder to three passengers,

Redgate, Bowden and Almond, or to their order. These three passengers were in the ship at the time of the capture. (The entire cargo is ostensibly destined, by the bills of lading, to "off the Rio Grande, for Matamoras, to be taken over the bar in lighters.") The cargo is a general assorted one, a large portion, however, being contraband of war, there being more or less contraband in every shipment.

She cleared from London, ostensibly for Matamoras, Mexico, on the fifth of January, 1863. No criticism is provoked by her papers. Leaving London, she called at Plymouth, England, where she lay some seven or eight days, and left about the 20th of January. Compelled to put back to Falmouth, she sailed thence on the 27th of January, and proceeded to the island of St. Thomas. She remained five days, and again set sail on the 25th of February. Before entering that port, she was boarded, but released by the United States steamer "Alabama." And after leaving St. Thomas, when about four miles out from the harbor, she was visited and captured by the United States steamer "Vanderbilt." It will be observed that the commander of the "Peterhoff," although properly and respectfully summoned, had refused to proceed with the papers of his vessel for examination on board the "Vanderbilt."

The prize was taken to Key West, Florida; but no court being at the time in session at that place, the British Consul requested that she should be conveyed to a Northern port, and she was brought to New York for adjudication. Arriving here on the 28th of March, the ship and cargo were libelled on the 30th, and the process was made returnable on the 21st of the ensuing April. The claims and answers were filed upon that day. They have been read, and I need not stop to restate their contents.