

Underhill v. Hernandez

168 U.S. 250 (1897)

On a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

In the early part of 1892 a revolution was initiated in Venezuela, against the administration thereof, which the revolutionists claimed had ceased to be the legitimate government. The principal parties to this conflict were those who recognized Palacio as their head, and those who followed the leadership of Crespo. Gen. Hernandez belonged to the antiadministration party, and commanded its forces in the vicinity of Ciudad Bolivar. On the 8th of August, 1892, an engagement took place between the armies of the two parties at Buena Vista, some seven miles from Bolivar, in which the troops under Hernandez prevailed; and, on the 13th of August, Hernandez entered Bolivar, and assumed command of the city. All of the local officials had in the meantime left, and the vacant positions were filled by Gen. Hernandez, who from that date, and during the period of the transactions complained of, was the civil and military chief of the city and district. In October the party in revolt had achieved success generally, taking possession of the capital of Venezuela, October 6th; and on October 23, 1892, the 'Crespo government,' so called, was formally recognized as the legitimate government of Venezuela by the United States.

George F. Underhill was a citizen of the United States, who had constructed a waterworks system for the city of Bolivar, under a contract with the government, and was engaged in supplying the place with water; and he also carried on a machinery repair business. Some time after the entry of Gen. Hernandez, Underhill applied to him, as the officer in command, for a passport to leave the city. Hernandez refused this request, and requests made by others in Underhill's behalf, until October 18th, when a passport was given, and Underhill left the country.

This action was brought to recover damages for the detention caused by reason of the refusal to grant the passport, for the alleged confinement of Underhill to his own house, and for certain alleged assaults and affronts by the soldiers of Hernandez's army.

The cause was tried in the circuit court of the United States for the Eastern district of New York, and on the conclusion of plaintiff's case the circuit court ruled that upon the facts plaintiff was not entitled to recover, and directed a verdict for defendant, on the ground that 'because the acts of defendant were those of a military commander, representing a de facto government in the prosecution of a war, he was not civilly responsible therefor.' Judgment having been rendered for defendant, the case was taken to the circuit court of appeals, and by that court affirmed, upon the ground 'that the acts of the defendant were the acts of the government of Venezuela, and as such are not properly the subject of adjudication in the courts of another government.' 26 U. S. App. 573. Thereupon the cause was brought to this

court on certiorari.

Mr. Chief Justice FULLER, after stating the facts in the foregoing language, delivered the opinion of the court.

Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

Nor can the principle be confined to lawful or recognized governments, or to cases where redress can manifestly be had through public channels. The immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority, whether as civil officers or as military commanders, must necessarily extend to the agents of governments ruling by paramount force as matter of fact. Where a civil war prevails (that is, where the people of a country are divided into two hostile parties, who take up arms and oppose one another by military force), generally speaking, foreign nations do not assume to judge of the merits of the quarrel. If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government, from the commencement of its existence, are regarded as those of an independent nation. If the political revolt fails of success, still, if actual war has been waged, acts of legitimate warfare cannot be made the basis of individual liability. *U. S. v. Rice*, 4 Wheat. 246; *Fleming v. Page*, 9 How. 603; *Thorington v. Smith*, 8 Wall. 1; *Williams v. Bruffy*, 96 U. S. 176; *Ford v. Surget*, 97 U. S. 594; *Dow v. Johnson*, 100 U. S. 158; and other cases.

Revolutions or insurrections may inconvenience other nations, but by accommodation to the facts the application of settled rules is readily reached. And, where the fact of the existence of war is in issue in the instance of complaint of acts committed within foreign territory, it is not an absolute prerequisite that that fact should be made out by an acknowledgment of belligerency, as other official recognition of its existence may be sufficient proof thereof. *The Three Friends*, 166 U. S. 1.

In this case the archives of the state department show that civil war was flagrant in Venezuela from the spring of 1892, that the revolution was successful, and that the revolutionary government was recognized by the United States as the government of the country; it being, to use the language of the secretary of state in a communication to our minister to Venezuela, 'accepted by the people, in the possession of the power of the nation, and fully established.'

That these were facts of which the court is bound to take judicial notice, and for information as to which it may consult the department of state, there can be no doubt. *Jones v. U. S.*, 137 U. S. 202; *Mighell v. Sultan of Jahore* [1894] 1 Q. B. 149.

It is idle to argue that the proceedings of those who thus triumphed should be treated as the acts of baditti, or mere mobs.

We entertain no doubt, upon the evidence, that Hernandez was carrying on military operations in support of the revolutionary party. It may be that adherents of that side of the controversy in the particular locality where Hernandez was the leader of the movement entertained a preference for him as the future executive head of the nation, but that is beside the question. The acts complained of were the acts of a military commander representing the authority of the revolutionary party as a government, which afterwards succeeded, and was recognized by the United States. We think the circuit court of appeals was justified in concluding 'that the acts of the defendant were the acts of the government of Venezuela, and as such are not properly the subject of adjudication in the courts of another government.'

The decisions cited on plaintiff's behalf are not in point. Cases respecting arrests by military authority in the absence of the prevalence of war, or the validity of contracts between individuals entered into in aid of insurrection, or the right or revolutionary bodies to vex the commerce of the world on its common highway without incurring the penalties denounced on piracy, and the like, do not involve the questions presented here.

We agree with the circuit court of appeals that 'the evidence upon the trial indicated that the purpose of the defendant in his treatment of the plaintiff was to coerce the plaintiff to operate his waterworks and his repair works for the benefit of the community and the revolutionary forces,' and that 'it was not sufficient to have warranted a finding by the jury that the defendant was actuated by malice or any personal or private motive,' and we concur in its disposition of the rulings below. The decree of the circuit court is affirmed.