

*The EUPHRATES.

*Prize court.—Further proof.**

Further proof, inconsistent with that already in the case, refused on the part of the claimant.

THIS was an appeal from the sentence of the United States Circuit Court for the district of Rhode Island.

The merchandise, in this case, was libelled in the district court of Rhode Island, as belonging to subjects of Great Britain. The capture was stated in the libel to have been made on or about the 23d day of August 1812. No libel was filed against the vessel. In June term 1813, a claim was interposed on behalf of the United States, on the ground, that these goods were imported in violation of the non-intercourse laws. In May 1813, Matthias Bruen interposed a claim to certain merchandise on board of the Euphrates, alleging that he is the sole legal owner thereof. The papers connected with this shipment were as follows :

1. An invoice, dated Mansfield, 30th June 1812, purporting the goods therein described to be shipped at Liverpool, under insurance, consigned to Mr. Henry Watkinson, New York, or, in case of his absence, to Mr. John French Ellis, of that place, for sale, on account of the manufacturers, Siddons & Johnston, who were British subjects.

2. A bill of lading, by which it appeared, that the goods were shipped at Liverpool, on the 7th of July 1812, on board of the Euphrates, to be delivered to Henry Watkinson, he paying freight, &c.

3. A letter from Siddons & Johnston, dated Mansfield, 30th June 1812, in which they say, "We have, this day, consigned to you for sale on our account, sixteen trunks," &c. (which are the goods claimed). We hope we shall shortly hear of sales being made by you, to advantage : we hope they will at least net us what they are invoiced at, covering all expenses. *We shall leave this shipment to your discretion, to make the best and most advantageous returns you can." [386]

There being no proof whatever, on the part of the claimant, and he not appearing to have any interest whatever, by any of the papers on board, the goods were condemned both in the district and circuit courts, and the claimants adjudged to pay costs to the libellants. From this decree, there was an appeal, on the part of Mr. Bruen, to this court.

Harper, for the captors, stated, that this was merely a question of further proof offered on the part of the claimants. The captors, he said, relied upon the documentary evidence produced in the cause. This evidence, he stated to the court, and contended, that it was too plain and consistent to justify the court in allowing the claimant further proof.

Stockton, contra, stated, that the object of the further proof now offered, was to show that Watkinson was agent for a manufacturing house in England; that the claimant ordered certain goods through this agent; that on the passage of the non-intercourse act, he directed the goods not to be shipped, &c.

Daggett, on the same side, observed, that it had been generally supposed, that the rules of the English courts respecting further proof, would not apply to the courts of the United States, but that parties would have the benefit of

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new evidence in this court, in prize cases, as well as in other cases in admiralty ; and that the parties in the present case had acted on that opinion.

The case was then submitted.

*387 *Tuesday, March 15th, 1814. (Absent, Marshall, Ch. J.) LIVINGSTON, J., delivered the opinion of the court. The court does not understand the counsel for the appellant as contending that there was any error in the sentence of the circuit court, or that any other than sentence of condemnation could have been pronounced there. It was, indeed, a very clear case, on the proceedings before that court. But it is supposed, that Mr. Bruen is entitled to an order for further proof ; and that the facts which he will be able to make out, if an opportunity be afforded him, will entitle him to a restitution of the property.

Without rejecting the application, on account of its being made at so late a period, the court has looked into the proof which it is proposed to bring forward, and on comparing it with the proof already in the cause, we are of opinion, that it is totally incompetent to make out a title in the appellant. There is not the least reason to believe, that these goods were shipped, in consequence of any previous orders given to Mr. Watkinson, by merchants in this country, and transmitted by him to Messrs. Siddons & Johnston. On the contrary, whatever orders may have been sent to those gentlemen, by Mr. Watkinson, it is most manifest, that they did not, in this case, act upon them ; for the invoice and letter accompanying the shipment announce, in terms not to be misunderstood, that these goods were sent to the United States for the exclusive account and at the sole risk of the British manufacturers.

It has not escaped the notice of the court, that not one of the gentlemen who are alleged to have given orders for these goods on Messrs. Siddons & Johnston, through Mr. Watkinson, and who all reside in the United States, appears as a claimant for any part of them. Instead of this, we find them, or several of them, assigning their interest in this adventure, whatever it may be, to the claimant ; but for what value does not appear ; and every instrument takes care to express that the property is to be recovered at the risk and expense of Mr. Bruen. Thus, is a total stranger to the shipment, and a mere volunteer, who may not have paid *a single cent for his
*388] title, made a party claimant : a mode of proceeding, novel at least, and well calculated to awaken suspicions not at all favorable to his pretensions. Whether a title to goods obtained in this way, would, under any circumstances, be sustained by a court of prize, we will not say ; but it is, in our opinion, sufficient reason, of itself, to refuse the party any opportunity to make further proof. Mr. Bruen not only does not pretend, that he owned any part of these goods, at or previous to the time of capture, but merely that he was the legal owner at the time of filing his claim ; and upon the affidavits now laid before the court, as the ground of an order for further proof, it appears, that this legal title was acquired in the way already mentioned ; that is, by a number of persons assigning to him a *chose in action*, which they must have considered of no value, or, at any rate, not worth pursuing. Such conduct can entitle the party to no favor or indulgence whatever. Upon the whole, the court is as well satisfied with the decree of the circuit court, as it is with the total insufficiency of the evidence in reserve

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to produce any alteration in it. The application, therefore, for further proof is rejected, and the sentence of the circuit court affirmed, with costs.

Decree affirmed.

The MARY, STAFFORD, Master.

War.—Withdrawing funds.—Further proof.

THIS was an appeal from the sentence of the United States Circuit Court for the district of Rhode Island. (Reported below, 8 Gallis. 620.)

The following is a statement of the facts connected with the case: General Garret Visscher, alias Fisher, a native of the state of New York, entered into the British army, before the revolution, and having obtained the rank of lieutenant-general, died in England, rich, intestate and without issue, leaving a large number of relatives, citizens of the state of New York, residing at or near Albany. Mr. *Nanning J. Visscher, one of the num- [*389
ber, went to England, and met with no obstruction in obtaining let-
ters of administration, and possessing himself of the estate to the amount of
150,000*l.* sterling. In August 1812, he set himself in motion to return to
the United States, and did return, leaving Mr. Harman Visger, his agent, in
England, to transmit the property to the United States, for the use of those
concerned. Harman Visger, finding that he could not remit to this coun-
try, in the course of exchange, without great loss, invested a large sum in
goods, of the growth and manufacture of Great Britain, and to transmit a
part of them to the United States, hired, on freight, the brig Mary, an
American registered vessel belonging to J. B. Kennedy, of South Carolina.
The brig being at the port of London, was sent to Bristol, in July 1812, to
take on board this cargo. She arrived off that place, according to her log-
book, on the 23d of the same month. On the 30th, an embargo was laid in
England, on account of the war; and on the 1st of August, the custom-
house mark of stop was put on the Mary. Having been detained, some
time, by the embargo, she sailed from Bristol, with the cargo on board, on
or about the 15th day of August 1812, bound to New York. Soon after
she put to sea, she sprang a leak, and on the 21st day of August 1812, put
into Waterford, in Ireland, to repair. Requiring a complete repair, her
cargo was relanded and stored in the King's store-houses, and she was
repaired by the freighter, at an expense of 1700*l.* sterling; to secure which
he took from the captain a bottomry-bond. On the 7th of April 1813, the
Mary sailed from Waterford; having cleared out for Newport, in Rhode
Island, in order to avoid the blockade, which was supposed to exist as to
New York. Before sailing, a British license of the description usually
denominated a Sidmouth license, was obtained for her from the king's privy
council, by Mullet, Evans & Co., subjects of the king of Great Britain.
The license ran in their name, and purported to be a renewal of a similar
license granted on the 8th of July 1812. She had no license from the
American government. On the 23d of April 1813, she was captured on the
high seas, by the American privateer Paul Jones, and sent into Newport,
with a single prize-master on board, the master being left in command of
the vessel and in possession of the ship's papers. On her arrival at [*390
Newport, she was libelled *by the captors, as being and bearing