

The St. Lawrence.

vague allegation, which, in adjusting conflicting claims of the United States and individuals, against debtors, it would be difficult to ascertain.

The property in question being in the possession of the sheriff, by virtue of legal process, before the issuing the writ on behalf of the United States, was bound to satisfy the debts for which it was taken ; and the rights of the individual creditors, thus acquired, could not be defeated by the process on the part of the United States, subsequently issued. The court is of opinion, that priority does not attach in this case, and that there is no error in the judgment of the supreme judicial court of the commonwealth of Massachusetts.

Judgment affirmed.

The St. LAWRENCE, WEBB, Master.

Trade with the enemy.—Suppression of papers.

A vessel sailing to an enemy's country, after knowledge of the war, and taken, bringing from that country a cargo, consisting chiefly of enemy goods, is liable to confiscation as prize of war. Suppression of papers, where it appears to have been intentional and fraudulent, and attended with other suspicious circumstances, is good cause for refusing further proof.

But where the suppression appears to be owing to accident or mistake, and no other suspicious circumstances appear in the case, further proof may be allowed.

The St. Lawrence, 1 Gallis. 467, affirmed.

THIS was an appeal from the sentence of the United States Circuit Court for the district of New Hampshire. *The material facts of the case were as follows :

The ship St. Lawrence, Silas Webb, master, was captured, on the 20th of June 1813, by the private armed vessel America, and with her cargo, libelled as prize, in the district court of New Hampshire. On the proceedings which were had there, it appeared, that the St. Lawrence, owned by Robert Dickey, of New York, and Hugh Thompson, of Baltimore, arrived at Liverpool, from Sweden, in April 1813, with a cargo of iron and deals. In the month of May 1813, the agent of Dickey and Thompson entered into a contract for the sale of the St. Lawrence, with the house of Ogden, Richards & Selden, of Liverpool, the contract to be ratified or disaffirmed by Dickey and Thompson, and the bill of sale to be executed by them, in case of affirmance, to Andrew Ogden and James Heard, of New York, or either of them. On the 5th of May 1813, a license was granted by the privy council of Great Britain, to Thomas White, of London, and others, permitting them to export, direct to the United States, an enumerated cargo, in the St. Lawrence, provided she cleared out before the last day of that month. On the 30th of May 1813, she sailed from Liverpool for the United States, with the cargo specified in the license, Mr. Alexander McGregor and his family were passengers on board.

Upon the return of the monition in the district court, Andrew Ogden interposed a claim, in behalf of himself and McGregor, to the ship and part of the cargo. He also claimed another part of the cargo as his sole property. He likewise interposed a claim in favor of Selah Strong & Son ; of John Whitten ; of the firm of Howard, Phelps & Co. ; of Abraham and George Smedes ; of Peter and Ebenezer Irving & Co. ; of Henry Van Wart ; of Irving & Smith ; of Jabez Harrison ; of Hugh R. Toler ; and

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of Thomas C. Butler. This claim was an affidavit of Mr. Ogden, in which he swore that he had not a full knowledge of the concerns of all the persons from whom he claimed, but verily and fully believed that many of the said goods on board the St. Lawrence were sent in payment of debts due, previous to the war, to several of the persons for whom he claimed. This claim was filed on the 17th of August 1813.

*William Penniman, of Baltimore, also interposed a claim for five [*436 chests of merchandise, which he swore were purchased for him by John Barnet, of London, prior to the war, with funds which he had in England eighteen months before the declaration of war, and in pursuance of orders given by him, nine months previous to that event. He also swore that he had at Baltimore, the original invoice of the purchase of said goods, and other documentary evidence to prove the aforesaid fact.

There was also a claim of the master for two cases and five trusses of merchandise, and six bolts of Russia duck. In none of these claims was there a designation of the marks or numbers of the casks, bales or cases which belonged to the different parties for whom the property was claimed.

The master, in answer to the 12th standing interrogatory, said, that for the names of the respective laders, he referred to the bills of lading. That the goods were mostly, if not all, consigned "to order." That the goods were to be delivered to order, at such place as the owners or consignees should appoint; but that he did not know what interest any of the consignees or the shipper might have in the goods. In answer to the 16th interrogatory, the master stated, that his letter-bags, two in number, had been taken possession of, and sent to the custom-house: and that, as to any letter he had, directed to the consignees or owners, he had done what he had a right to do; and that all his other papers had been forcibly taken away.

By Mr. McGregor's answer to the 9th interrogatory, it appeared, that he was interested one-half part in the ship; that his sole object in becoming interested in the ship was that of returning to the United States; that he also owned one-half of the copperas and of the earthenware on board, shipped by Ogden, Richards & Selden, and as he believed, one-half of the coal, but that, as to the last article, he was not positive, no invoices of said goods having been delivered to the deponent.

*In relation to the vessel, Mr. McGregor deposed, that the only [*437 document relative to the sale of the ship, he believed to be a letter to the former owners, from their agents, requesting them to make a bill of sale transferring said ship to Andrew Ogden and James Heard, or either of them, which he gave to Andrew Ogden.

It appeared further, from the examination of Mr. McGregor, that he was born in Scotland, was naturalized in the United States in 1795, had lived, the last seven years, in Liverpool, and was returning in the St. Lawrence, with his family, to the United States.

The goods claimed by Ogden as his sole property, were shipped by the house of Ogden, Richards & Selden. The two gentlemen last named resided at Liverpool.

The district court condemned the St. Lawrence and all the cargo, except the parts claimed by McGregor and the master. Both parties appealed from this decree to the circuit court, where the ship and whole cargo were condemned. From this decree, the claimants appealed to the supreme court,

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where the cause was argued by *Irving* and *Webster*, for the claimants, and *Pitman*, for the captors.

Irving, for all the claimants, except *McGregor* and *Penniman*.—It is contended, on the part of the claimants generally—

1. That the ship *St. Lawrence*, being an American vessel, owned and navigated wholly by citizens of the United States, and being on her return to the United States, with a cargo owned wholly by American citizens, could not legally be subject to capture by American cruisers.

2. That the character of an American citizen, whether native or naturalized, is not rendered hostile, by his residence in a hostile country, if, within a reasonable time after the declaration of war, he withdraws with his funds from the hostile country and returns to his own : and that he has a right so to withdraw.

*438] *3. That a citizen of the United States, not resident in the enemy country, has also a right, after the declaration of war, to withdraw his funds, within a reasonable time, from that country.

4. That if the courts below were not satisfied that the property claimed was, *bonâ fide*, property of American citizens, fairly purchased and shipped, the said courts ought to have let the claimants into further proof fully to establish that fact ; and as they refused so to do, that the claimants are entitled, in this court, to the same privilege. The argument will be confined to this last point.

It will probably be urged, on the part of the captors, that the secreting of papers by the master, is good ground for refusing us further proof. We contend, that as the master was only the agent of the claimants to navigate the ship, his act is not sufficient to justify the court in such refusal. On this point, the court is referred to the following authorities. *The Concordia*, 1 Rob. 100, 119 ; *The Hoop*, Ibid. 109, 129 ; *The Bernon*, Ibid. 86, 102 ; *The Polly*, 2 Ibid. 296, 362 ; *Chitty's Law of Nations*, App. 303 ; *The Rising Sun*, 2 Rob. 87, 104. The last case goes also to show that a claim may be made by an agent : and that too, without clearly distinguishing the rights of each particular claimant. See also, *Le Caux v. Eden*, 2 Doug. 614.

Webster, for *McGregor* and *Penniman*, several claimants.—1. *McGregor* claims half the ship and part of the cargo. We contend, that a distinction is to be taken between an American citizen, domiciled in England at the breaking out of the war, withdrawing his funds, and an American citizen who goes to England, after the declaration of war, for the same purpose. That the former, whether a native or naturalized citizen, has a right (and perhaps it is his duty) to return to the United States with his effects. If he has no such right, why should the law of nations have provided a reasonable time for removing, in case of war? This rule of the law of nations *439] *has been founded upon the necessity of the case, and upon the hardship which would attend the want of such a rule. A citizen of one country may lawfully go to any other country, in time of peace, and take up his residence there ; and it would be very hard, if he must suffer by the sudden and unexpected breaking out of a war—an event over which he had no control. A neutral would be permitted to withdraw his funds, in such a case ; and if we should allow the privilege to neutrals, why should we deny it to our own citizens? *The Vigilantia*, 1 Rob. 1 ; *Bell v. Gilson*, 1 Bos.

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& Pul. 355. The case of *Escott*, cited in *The Hoop*, 1 Rob. 165, 196, may perhaps be thought to make against our claim. But the cases are not alike. In that case, Escott sent for his property : here, McGregor came with his.

A character gained by residence, is lost by non-residence. When McGregor ceased to reside in England, his character, if hostile before, no longer continued hostile. That it was not his intention to continue his residence in England, is clearly evidenced by his actual return to the United States with his family.

With regard to his half of the ship, we contend, that if he had a right to return, he had a right to use the means necessary for that purpose ; he had a right to purchase a ship for the conveyance of himself and his family. So, if it was lawful for him to withdraw his funds, he might lawfully invest those funds in merchandise, if he could not otherwise withdraw them. *The Madonna delle Gracie*, 4 Rob. 161, 195 ; *The Indian Chief*, 3 Ibid. 17, 12 ; *The President*, 5 Ibid. 248 ; *The Ocean*, Ibid. 84, 90 ; *The Diana*, Ibid. 60.

2. As to Penniman's claim, we shall, at present, merely ask the court to allow us further proof.

Pitman, contra, contended, 1. That there was no legal evidence that the cargo belonged to the claimants, as claimed. 2. That from the origin and character of the voyage, and suppression of papers, concealed enemy interests were to be presumed ; that, therefore, all right to further [*440] *proof was forfeited, and that condemnation of the whole, as enemy's property, must ensue. 3. That the ship, at the time of capture, belonged to Dickey and Thompson, and was liable to condemnation on the ground of having gone to Liverpool, in April 1813, with a cargo of iron and deals, as well as from the circumstances of the voyage upon which she was captured. 4. That the ship and cargo, whether belonging to citizens or enemies, being taken in trade with the enemy, were clothed with a hostile character, and therefore, liable to condemnation.

Some other points were also touched upon in the course of the argument, viz : The want of proper claimants, of definite claims, and the requisite affidavits to support them. The connection of Ogden with a house of trade in the enemy country : the presumption that the partnership was, in fact, interested in what he claimed as his sole property ; and that he must be considered as a British merchant, in regard to those transactions originating with his house in Liverpool. The national character of McGregor, which presents itself in the case of *The Venus*. The presumption that Van Wart resides in England, the claim being by Ogden for Irving and Smith, of New York, his consignees : and the effect of the license.

Tuesday, March 15th, 1814, the case was submitted, without further argument : and on—

Wednesday, March 16th (Absent, Marshall, Ch. J.), LIVINGSTON, J., after stating the facts of the case, delivered the opinion of the court, as follows :—

*From the manner in which the appellants have argued this [*441] cause, it does not appear that they are very sanguine in their expectations of our reversing the decree of the circuit court, on the evidence on which that court and the district court proceeded ; but that their chief hope

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is derived from the further proof which they have it in their power to produce, provided an opportunity be afforded them for that purpose. Except as to the property claimed by Mr. Penniman and Mr. McGregor, this court does not perceive how the circuit court could have done otherwise, upon the proof before it, than confiscate the cargo of the St. Lawrence, as prize of war. Without meaning to decide, at present, on the right of an American citizen, having funds in England, to withdraw them, after a declaration of war, or of the latitude which he may be allowed in the exercise of such a right, if it exists, we think the evidence would have justified the court in considering this property as belonging to enemies of the United States.

The St. Lawrence had gone to England, after the war was known, and had sailed from a British port, nearly one year after war had been declared : she was loaded in the country of the enemy, and by persons carrying on trade there : she was furnished with a British license, which extended both to British and American property : and the bills of lading, not being in a very common form, were well calculated to excite suspicion. But these circumstances, strong as they are, might, if everything had been fair, have been so explained as to have convinced the court that the property was truly American. Was this done, or even attempted ? If we look at the conduct of the master and the claimants, we find them both acting in a way which left the court no other safe conclusion but that the cargo of the St. Lawrence was enemy property. The master, instead of delivering to the captors, or bringing into court the letters to the consignees, which, no doubt, covered invoices and bills of lading, lets us know, in a way not to be misunderstood, that he had delivered or sent them to the parties to whom they were addressed. Taking his examination, with the usual course of business, which is to accompany every shipment with a letter, no doubt can remain, that such letters were not only on board, but that they have been regularly received by the respective *consignees ; for it is not pretended by the master, that they *442] were taken from him by the captors. Here, then, is not only a subduction of very important papers by the master, but an acquiescence in such conduct, on the part of the consignees, and a continued suppression of the same papers, to this day. The only proof, then, which the court had of the interest of the claimants, except of Mr. Penniman's, the master's and Mr. McGregor's, is in the claim of Mr. Ogden, who states, that he is not acquainted with their concerns, but believes they had an interest in the cargo ; without, however, attempting to designate the packages belonging to either of them. The court below, therefore, might fairly consider the claimants as having not only failed in making out a legal title to the property, but as concealing papers which would have shown a title elsewhere.

But if there was a defect of proof below, it is thought the claimants are entitled to time for further proof ; and that, if this be allowed, they will be able to show that the property in question was purchased, with American funds which were in England previous to the war, and that the claimants were the true and *bonâ fide* owners thereof. It is certainly not a matter of course, in this court, to make an order for further proof. When the parties are fully apprised of the nature of the proof which their case requires, and have it in their power to produce it, an appellate court should not readily listen to such an application : but when it appears that the parties who ask this indulgence have most pertinaciously withheld from the court, letters

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and other documentary testimony, which must be supposed, in this particular case, to have been in their possession, they come with a very ill grace to ask for any further time to make out their title. But if we examine the affidavits which have been made to obtain further time, we shall find them all silent as to the papers which they must have received by the St. Lawrence; for in not one of them is a letter of that kind, or an invoice, mentioned; nor do they deny that such letters or invoices were received by them. Under such circumstances, this court thinks that it cannot, consistent with the circumspection with which such applications ought always to be received, allow the appellants time for further proof. The master's adventure, it is said, has been given up.

*Of Mr. Peniman's claim the court thinks more favorably. In the claim which he filed personally, he not only swears that the prop- [*443 erty belongs to him, but states very particularly how and when it was purchased. He states, further, that the original invoice and other documentary evidence were at Baltimore; and in the affidavit made by Mr. Campbell, during the present term, there is such a full and distinct history given of this whole transaction, founded upon original letters and bills of exchange, that it is impossible to harbor one moment's doubt, that the five chests of merchandise claimed by Mr. Penniman, did, at the time of shipment, and long before, belong to him. To this affidavit is also annexed the original letter and invoice which he received by the St. Lawrence, which must dissipate every doubt on the question, if any had previously existed. Where so strong a case is made out, the court is willing to impute to accident or mistake the non-production of these papers below. Perhaps, Mr. Penniman thought he did sufficient, in stating they were in his possession. Certain it is, he could have no motive for suppressing papers which would have established so conclusively his title to the merchandise which he claimed. The court, therefore, allows him until next term, to make proof, by affidavit and the production of documents, of his right to the property claimed, at the time of its shipment at Liverpool; and the same indulgence is allowed to the captors.

In regard to the claim of McGregor to a part of the cargo, there is also some difference between his case and that of many others of the claimants. He swears positively to his interest, but that no invoice was delivered to him by the shippers, Ogden, Richards & Selden. Ogden also swears to the interest of Mr. McGregor. Perhaps, this testimony is sufficient to satisfy a court, as it did satisfy the district court, that the property really belonged to Mr. McGregor. But if that be the case, other questions will arise, of too much importance to be decided on the last day of the term, and when the court is not full. Whether an American citizen has a right to withdraw his funds from the country of a belligerent, after a war; or, if he have, whether he have a right to charter a vessel for that purpose; and, if he may go thus far, whether he may bring British *goods, on freight, to this country, [*444 without affecting thereby the safety of his own goods; are questions which the court does not now decide, and will, therefore, suspend, at present, giving any final opinion on the claim of Mr. McGregor to a part of the cargo; who, in the meantime, is also at liberty to make further proof on the same points with Mr. Penniman; the captors having the same right.

It may be well doubted, whether Mr. Ogden and Mr. McGregor have

The Hiram.

any title to the *St. Lawrence* : but whether she belong to them or to Messrs. Dickey and Thompson, her fate seems necessarily involved in the decision of *The Rapid*, which was made this term. She went to England, since the war, and is taken, bringing a cargo from that country. If the whole of the cargo had belonged to Mr. McGregor, or any other American returning with his property to the United States, the court means not to say, whether it would or would not have been cause of forfeiture : but when we find but a small portion of the cargo in that predicament, there can be no escape for her. The *St. Lawrence* was certainly guilty of trading with the enemy ; and being taken on her way from one of his ports to the United States, she is liable, on that ground, to be confiscated as prize of war, to whomever she might belong at the time.

Upon the whole, the sentence of the circuit court is affirmed in all its parts, with costs ; except so far as it condemned those portions of the cargo which were claimed by Mr. Penniman and Mr. McGregor, respecting which this court will advise until the next term.¹

The HIRAM, BARKER, Master.

Enemy's license.

Sailing on a voyage, under the license and passport of protection of the enemy, in furtherance of his views or interests, constitutes such an act of illegality, as subjects the ship and cargo to condemnation as prize of war.

Sailing with a cargo of provisions to the port of a neutral, who is the ally of our enemy, in his war with another power, is such a furtherance of the views of our enemy.

The *Hiram*, Fisher's Pr. Cas. 69, reversed.

THIS was a case of capture, as prize, by the private armed brig *Thorn*, duly commissioned by the president of the United States, and commanded by Asa Hooper, Esq.

*The *Hiram*, owned by Samuel G. Griffith, an American citizen, *445] sailed from Baltimore, on or about the 24th of September 1812, with a cargo of flour and bread, on a voyage to Lisbon. She was captured on the 15th of October following, and sent into Marblehead, in the district of Massachusetts, for adjudication. She was libelled in the district court for the said district, by the captors. The vessel was claimed by Barker, the master, in behalf of Samuel G. Griffith ; and the cargo by the supercargo, in behalf of said Griffith and various other shippers, American merchants, at Baltimore.

Among the papers found on board the *Hiram*, at the time of her capture, were certain papers commonly called a British license or protection, being a certified copy of a letter from Admiral Sawyer to Andrew Allen, Esq. late British consul at Boston, and an additional letter of safe-conduct from Mr. Allen. It appeared from the evidence, that this license was purchased from a citizen of the United States, and that a part of it was not filled up at the time of the purchase ; and that such licenses were a common article of sale in Baltimore and other places.

There was also found on board, the owner's letter of instructions, in

¹ For a further decision on this claim, see 9 Cr. 120.