

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.

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which the supercargo was directed to remit the proceeds of the cargo, in bills of exchange or government bills, to the shipper's correspondents in Liverpool; and moreover to sell the vessel at Lisbon, if an advantageous sale could be made, and remit the proceeds to England. It appeared from the evidence in the cause, that such remittances in bills of exchange were common among merchants.

The captors claimed condemnation of the vessel and cargo, 1. Because of the British protection or license. 2. Because the remittances were directed to be made in England, in bills of exchange. The district and circuit courts both decided, that *neither the vessel nor cargo were liable to condemnation; but allowed the captors their expenses.¹ [*446 From the decree of the circuit court, both parties appealed.

Swann, for the claimants.—The opinions delivered in the cases of *The Aurora* and *The Julia* may, perhaps, upon first view, be considered as deciding the present case: but upon a closer examination, it will be found that the facts in this case differ materially from those which appeared in the two former. In the first place, in the case of *The Aurora*, there was an intent to supply the enemy; there was an intent to trade with the enemy: there was a direct violation of the act of congress of 6th July 1812: but here, there was no such violation. The license, in this case, was merely to trade with the neutral ports of Spain and Portugal. The present case differs from that of *The Julia*, inasmuch as the claim here is for the cargo only, and the license is for the vessel; whereas, there, the license extended as well to the cargo as the vessel.

But these papers do not, in fact, import a license: they only intimate an intended forbearance, on the part of Great Britain, to molest a lawful trade to Spain and Portugal. Here was no sailing under the protection of Great Britain. Again, this license, as it is called, was purchased as an article of commerce, from a private individual; not from Admiral Sawyer, nor from Mr. Allen: it is only a copy of Admiral Sawyer's letter, certified by Allen. The obtaining such a copy of the letter was not unlawful. Besides, there is no evidence that Admiral Sawyer ever gave the directions mentioned in his letter, to the commanders of the squadron under his command, not to molest American vessels laden and bound as therein described. Indeed, his power to give such instructions does not appear: and if further proof be allowed, we can prove that licenses of this description were, in fact, disregarded in other cases.

**Dexter*, contrà.—In answer to the argument, that the license in this case related to the vessel only, while the claim is for the cargo [*447 alone, it may be observed, that the owners of the cargo were the owners of the license, which ought, therefore, to be considered as extending to the cargo as well as to the vessel. The license was undoubtedly intended as a protection. The voyage was clearly undertaken in furtherance of the views of the British government, as expressed in Admiral Sawyer's letter annexed to the pass: and I understand the ground of the decision in the case of *The Aurora* to be, that she sailed under the protection, and in furtherance of the views, of the enemy.

¹ For the opinion of Judge DAVIS in the district court, see Fisher's Prize Cases 69.

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But if the court should not consider the sailing under the license sufficient cause of condemnation, we contend, that this was also a case of indirect trade with the enemy ; inasmuch as the proceeds of the cargo were directed by the owner to be remitted from Lisbon to Liverpool, in bills of exchange.

Swann, in reply.—Buying a bill of exchange on England is not trading with the enemy. A man may, in an enemy country, purchase a ship from a neutral. *The Countess of Lauderdale*, 4 Rob. 232, 283. Sailing under an enemy's pass, without trading with the enemy, is no cause of condemnation. There was not, in this case, such a subserviency to the views of the enemy, as ought to subject the property in question to the sentence prayed for by the captors. It is certainly lawful for the enemy to relax the rights of war : he may lawfully declare that he will suffer certain vessels to pass : and we conceive, that if those vessels sail under the faith of such a declaration, it is no cause of condemnation. The enemy might have declared, that he would not capture any vessel navigated wholly by Boston seamen ; but surely our government would not condemn a vessel for sailing under the faith of such a declaration.

*448] *Wednesday, March 16th, 1814. (Absent, Marshall, Ch. J.) WASHINGTON, J., delivered the opinion of the court :—This vessel was the property of Samuel G. Griffith, an American citizen. On or about the 24th of September 1812, she sailed, with a cargo of flour and bread, from Baltimore to Lisbon ; and on her voyage thither, was captured, on the 15th of October following, by the privateer brig *Thorn*, and brought into the district of Massachusetts, where she and her cargo were libelled as being enemies' property.

The brig was claimed by the master, in behalf of Griffith, and the cargo, by the supercargo, as belonging to the said Griffith, and other shippers, being American merchants of Baltimore. Among the papers found on board of this vessel, at the time of the capture, was a letter from Admiral Sawyer, dated the 5th of August 1812, addressed to Andrew Allen, jun., as British consul for the states of Massachusetts, New Hampshire, Rhode Island and Connecticut, which states, that, being aware of the importance of insuring a constant supply of flour and other dry provisions to Spain and Portugal, and to the West Indies, he should give directions to the commanders of his majesty's squadron under his command, not to molest American vessels, unarmed, and so laden, *bonâ fide* bound to Portuguese or Spanish ports, whose papers should be accompanied with a certified copy of that letter, under the consular seal of the said Allen ; also a letter from the said Allen, dated 15th September 1812, addressed to all the officers of his majesty's ships of war, or privateers belonging to subjects of his majesty, reciting that it is of vital importance to continue a full and regular supply of flour and other dry provisions to the ports of Spain and Portugal, or their colonies, and that, in consequence thereof, it has been thought expedient by his majesty's government, that every degree of protection and encouragement should be given to American vessels so laden, and bound to the ports of Spain and Portugal, or their colonies, and that, in furtherance of these views of his majesty's government, Admiral Sawyer had directed to him a letter, dated the 5th of August 1812 (a copy of which is annexed),

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with instructions to furnish American vessels, so laden and destined, *with a copy of his letter certified under his, the said Allen's, consular seal, which documents are intended to serve as a perfect safe-guard and protection to such vessel in the prosecution of her voyage; and that, in compliance with such instructions, he has granted to the American brig Hiram, whereof John B. Barker is master, now lying in the port of Baltimore, and laden with flour and bread, bound *bonâ fide* to Lisbon, a copy of the said Admiral Sawyer's letter, certified under his consular seal, requesting all officers of his majesty's ships of war, or of private armed vessels belonging to subjects of his majesty, not to offer any molestation to the said vessel, but, on the contrary, to grant her all proper assistance and protection on her passage to Lisbon, and on her return from thence to her port of departure, laden with salt, or in ballast only.

Under an order calling upon the different claimants to give further proof relative to the British license found on board the brig, when and where it was obtained, of whom, and by whom, and on what terms, and, generally, relative to all facts and circumstances concerning the procurement of the same, William Hartshorn made an affidavit, stating that he purchased for Mr. Griffith, the owner of the vessel, in September 1812, from John R. Waddy, of Virginia, but then in Baltimore, a citizen of the United States, a license to protect a vessel laden with provisions and bound to Lisbon, from capture by British cruizers, for which he was to pay one dollar per barrel for what the vessel would carry, payable, \$500 in cash, and the balance on the safe arrival of the vessel at Lisbon: that the said license was in blank, for inserting the names of any vessel and master: and that the blanks in the said license were filled up in his presence. This witness, as well as others, states that these licenses form an article of traffic in market, as much so as flour.

The vessel and cargo were acquitted in the district court, and a *pro formâ* decree of affirmance made in the circuit court; from which decree, an appeal to this court was taken.

In the case of *The Julia*, decided at this court, it was laid down in general terms, "that the 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 [*450 confiscation as prize of war;" and as explanatory of the general reasons for that opinion, a reference was made to the opinion of the learned judge who decided that case in the circuit court. It is contended by the counsel for the claimants, that the facts in this case differ so materially from those which appear in the case of *The Julia*, that the principles of law which ruled that case are inapplicable to this, and, consequently, ought not to govern the decision of the court upon it.

There certainly are some differences in the two cases; and these were considered sufficiently strong by the district judge who acquitted this vessel and cargo, to condemn the *Julia* and her cargo. The important circumstance which appears to have influenced the decision of the district judge in that case, was, that the license contemplated the means of insuring a constant supply of dry provisions to the allied armies in Spain and Portugal, and consequently, an unlawful connection with the enemy to supply his armies, and a subserviency to the interests of that enemy. In this case, nc

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such views are expressed in the license of Admiral Sawyer; yet the court must be wilfully blind, not to see that this was, in reality, the object of Admiral Sawyer and of Mr. Allen, and that it must have been so understood by those who sailed under this license.

In both cases, the allied armies were to be supplied, not by sales made directly to their agents (for this is not required by either), but by carrying supplies to the Peninsula, which would indirectly come to their use. The license, as well as the letter of Allen accompanying it, points out the great importance of such supplies being sent to Spain and Portugal; and the latter adds, that, in furtherance of these views of his majesty's government, he had been directed by Admiral Sawyer to furnish a copy of his letter to vessels so laden and destined. Can it be said, that an American citizen, sailing under the protection of papers professing such to be the views of the British *451] government, does not act in such a manner as to subserve *the views and interests of the enemy? Upon the whole, the court is of opinion, that there is no substantial difference between this case and that of *The Julia*; and that this is fully within the principle laid down by this court in deciding that case, and the reasoning to which it refers.

It was stated on the behalf of the claimants of the cargo, that they ought not to be affected by the illegal act of the owner of the vessel, in sailing under the protection of this license. It is a sufficient answer to this argument, to observe, that, in this case, the court must presume that the license was known to the owners of the cargo, if it was not the joint property of all. It is inconceivable, that the owner of the vessel should expend about \$1600 for the protection of a cargo, in which it appears he was not largely concerned, without communicating such an advantage to his shippers, and even requiring some reimbursement, either by demanding higher freight, or compensation in some other way. But what is conclusive on this point, is, that an order for further proof in relation to this license was made, and yet no affidavit or proof is offered by any of the owners, denying a knowledge of these documents being on board. The decree must be reversed, and the vessel and cargo condemned to the captors as prize of war.

Decree reversed.

The JOSEPH, SARGENT, Master.

Prize.—Hostile trade.

Case of hostile trade. Not excused by the necessity of obtaining funds to pay the expenses of the ship; nor by the opinion of an American minister, expressed to the master, that by undertaking the voyage, he would violate no law of the United States.

If an American vessel be captured on a circuitous voyage to the United States, in a former part of which voyage, she had been guilty of conduct subjecting her to confiscation, though at the time of capture, she is committing no illegal act, she must be condemned.

Where the *termini* of a voyage are already fixed, the continuity of such voyage cannot be broken, by a voluntary deviation of the master, for the purpose of carrying on an intermediate trade. A capture as prize of war may lawfully be made within the territorial limits of the United States, at any place below low-water mark.

The Joseph, 1 Gallis. 545, affirmed.

This was the case of a vessel, the Joseph, owned by American citizens, captured by the privateer Fame, on the 16th of July 1813. The Joseph sailed from Boston, with a cargo on freight, on or about the 6th of April