The St. Lawrence, Webb, Master; McGregor and Penniman, Claimants. (*a*)

Withdrawal of property from enemy's country.

If, upon the breaking out of a war with this country, our citizens have a right to withdraw their property from the enemy's country, it must be done within a reasonable time: eleven months after the declaration of war, is too late.[1]

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

Appeal from the sentence of the Circuit Court for the district of New Hampshire, condemning the ship St. Lawrence and cargo. All the claims in this case, except those of McGregor and Penniman for certain parts of the cargo, were settled at the last term, and with regard to these further proof was ordered. (8 Cr. 434.)

No further proof having been produced, the case was submitted to the court, without argument.

February 25th, 1815. (Absent, Todd, J.) Story, J., delivered the
*121] opinion of the court, as follows:—*The only claims in this case now remaining for the consideration of the court, are those of Mr. Penniman and McGregor. Further proof was directed, at the last term, to be made in respect to those claims; and no additional evidence having been produced, beyond that which was then disclosed to the court, the causes have been submitted for a final decision.

In respect to the claim of Mr. Penniman, the evidence is very strong that the goods were purchased, some time before the war, by his agent in Great Britain, on his sole account. They were not, however, shipped for the United States, until the latter part of May 1813.

It is not the intention of the court to express any opinion as to the right of an American citizen, on the breaking out of hostilities, to withdraw his property purchased before the war, from an enemy country. Admitting such right to exist, it is necessary that it should be exercised with due diligence, and within a reasonable time after the knowledge of hostilities. To admit a citizen to withdraw property from an enemy country, a long time after the war, under the pretence of its having been purchased before the war, would lead to the most injurious consequences, and hold out strong temptations to every species of fraudulent and illegal traffic with the enemy. To such an unlimited extent, we are all satisfied, that the right cannot exist. The present shipment was not made until more than eleven months had elapsed after war was declared; and we are all of opinion, that it was then too late for the party to make the shipment, so as to exempt him from the penalty attached to an illegal traffic with the enemy. The consequence is, that the property of Mr. Penniman must be condemned.

And this decision is fatal, also, to the claim of Mr. McGregor. Independently, indeed, of this principle, there are many circumstances in the case unfavorable to the latter gentleman. In the first place, it is not pretended, that the goods included in his claim were purchased before the war.

(*a*) February 23d, 1815. Absent Todd, Justice.

[1] See Arnold *v.* McGregor, 15 Johns. 24.

In the next place, he was the projector of the present voyage, and became, as to one moiety, the charterer or purchaser of the ship. *Nearly all the cargo consisted of goods belonging (as it must now be deemed) [*122 exclusively to British merchants. He was, therefore, engaged in an illegal traffic of the most noxious nature; a traffic not only prohibited by the law of war, but by the municipal regulations of his adopted country. His whole property, therefore, embarked in such an enterprise, must alike be infected with the taint of forfeiture. The judgment of the circuit court must, therefore, as to these claims, be affirmed with costs.

Sentence affirmed.

Drummond's Administrators *v.* Magruder & Company's Trustees. (*a*)

Evidence in equity.—Reversal.

If the execution of an important exhibit of the complainant, be not admitted by the defendant, in his answer, who calls upon the complainant to make full proof thereof, in the court below, this court will not presume, that any other proof was made, than appears in the transcript of the record.

A copy of a deed from a clerk of the court, without the certificate of the presiding judge, that the attestation of the clerk is in due form, cannot be received as evidence, in a suit in equity.

If this court reverse a decree upon a technical objection to evidence (probably not made in the court below), it will not dismiss the bill absolutely, but remand the cause to the court below for further proceedings.

This was an appeal from the decree of the Circuit Court for the Virginia district, in a suit in chancery, brought by the trustees for the creditors of W. B. Magruder & Co. against Drummond's administrators, to compel the latter to account for funds put into the hands of their intestate by W. B. Magruder & Co.

The defendants, in their answer, said they knew no such firm or copartnership as W. B. Magruder & Co.; they could not admit it, and hoped the complainants would be put to the proof thereof. They had no knowledge of the deed of trust mentioned in the bill, and hoped the complainants would be required to make ample proof thereof. That W. B. Magruder was largely in debt to their intestate, and they believed the funds put into his hands by Magruder were intended to be applied to that debt.

The only proof of the deed of trust, appearing in the transcript of the record, was a copy certified by one Gibson, who called himself clerk of Baltimore county; without any certificate from the presiding judge that *his attestation was in due form. It purported to be an assignment [*123 of personal estate only, and was not required by the laws of Maryland to be recorded.

P. B. Key, for appellants, contended, 1. That the complainants have not shown any title to call the defendants to account. 2. That on reversal, this court must dismiss the bill.

They claim as favored creditors, at the expense of Drummond, who is an equally meritorious creditor of Magruder. They have no equity to be let in to new proof to make a new case. If the court below had dismissed the bill, relief could not have been given, on a bill of review, unless new

(*a*) February 9th, 1815. Absent, Livingston, Story and Todd, Justices.