

## The Ariadne.

saving contained in the 22d section of the act of 1789, which is one of the points that was discussed at the bar.

\*This opinion is consistent with the case of the *United States v. Hooe* (3 Cranch 73), although from the report of that case it would seem to be otherwise. The record has been examined, from which it appears that that case came up upon an appeal, and not upon a writ of error.

The writ of error, in this case, must, therefore, be dismissed. (a)

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The ARIADNE: GODDARD *et al.*, Claimants.

*Enemy's license.*

The sailing under the enemy's license constitutes, of itself, an act of illegality, which subjects the property to confiscation, without regard to the object of the voyage or the port of destination.

APPEAL from the Circuit Court for the district of Pennsylvania. This vessel, belonging to citizens of the United States, and laden with a cargo of flour, also belonging to citizens of the same, was captured, on the 15th day of October 1812, on a voyage from Alexandria to Cadiz, with a license or passport of protection from the British admiral Sawyer. The vessel and \*144] cargo were restored in the district court; \*but on appeal, sentence of condemnation was pronounced by the circuit court, from which sentence an appeal was entered to this court.

February 14th. *G. Sullivan*, for the appellants and claimants, offered to read further proof, taken under the standing rule of the court (25th rule, Feb. term 1816).

*Woodward*, and *C. J. Ingersoll*, for the captors, denied the authority of the rule under which the further proof was taken. They argued, that the act of congress did not provide for taking depositions, to be used as further proof in prize causes, except where the course of prize practice authorizes it; that further proof is never admissible, until the cause is heard on the original evidence.

MARSHALL, Ch. J., called on the claimants' counsel to show what facts the further proof tended to establish, and stated, that if the case could be distinguished from the former determinations respecting licenses, a foundation would be laid for the admission of the depositions as further proof.

*Webster*, for the appellants and claimants, contended, that this case could be distinguished from those which had been decided. In the case of *The Julia*, 9 Cr. 181, the court had said, "We hold, 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 \*145] the ship and cargo to confiscation as prize of war; and that the facts of the present case afford irrefragable evidence of such an act of illegality." This proposition, as a doctrine of law, would be equally true, leaving out all that it contains relative to a license. A voyage prosecuted in furtherance

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(a) The cause was afterwards re-entered, by consent of parties, and continued for further proof, as if it had been removed by appeal.

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of the enemy's interests is undoubtedly illegal, and it was on this illegality of the voyage itself that the judgment of the court proceeded. The court say, they are satisfied from the facts, that the voyage was illegal. In the case now before the court, the captors insist, that the court shall shut out the facts connected with the voyage, and go merely on presumption. *The Julia* cannot be an authority for such a decision. *The Aurora*, 8 Cr. 283, was decided expressly on the grounds which had been before stated in *The Julia*, and carries the doctrine no further. In the case of *The Hiram*, 8 Cr. 444, 1 Wheat. 440, no evidence was offered on the part of the claimants, to repel the presumption arising from the license. That case then only decides, that from the possession of the license, the court may presume, until the contrary appears, that the voyage was in furtherance of the enemy's objects.

In all these cases, the court seems to have rested its decision on the ground, that the voyages, in which the vessels were engaged, were, of themselves, illegal voyages, undertaken and prosecuted for the promotion of the enemy's interests; and that \*this illegality was shown by the facts [ \*146 which the cases disclosed. But it is not understood to have decided, that it would hear no proof to make out the innocence of the voyage, notwithstanding the unfavorable inferences which might be drawn from the possession of the license. In the present case, such proof is offered, and the claimants are ready to show, that the voyage originated in no intention to further, and from its nature could not further, the objects of the enemy. It was a voyage from Baltimore to Cadiz, with flour, at a time when neither the British nor the Spanish armies drew supplies from that city. They expect to prove it to have been, in all respects, as innocent as a voyage from Baltimore to Boston with a similar cargo. Upon this application for permission to give proof, and until the court should hear the proof, the only question will be, whether, in the most innocent voyage which can be imagined, the having such a license is, *per se*, cause of confiscation; and cannot, in any case, by any evidence, admit of explanation or excuse. On this point, the claimants' counsel wish to be heard, unless the court considers itself as having recently solemnly decided the precise question. We will contend, that although the possession of such a license might create a presumption of unlawful trade, yet, like presumptions in other cases, it is capable of being repelled by proof; and that the judgment of the court must rest, after all, on the real nature and object of the voyage, as disclosed by the facts connected with it, and not on the mere terms of the passport. In a case of this sort, the court will \*not incline to hold herself bound by former decisions, beyond their clear and manifest extent. No case appears to have [ \*147 gone so far as to prevent the court from hearing proof of the lawfulness of the voyage, independent of the license, or to have decided that such proof, when full and satisfactory, should not avoid confiscation.

*Woodward* and *Ingersoll*, on the other side, were stopped by the court.

WASHINGTON, Justice, delivered the opinion of the court.—The view of the court is, that this case cannot be distinguished from those already decided. It is alleged, that the flour was not actually destined to the use of the enemy; but whether any part of it went to his use or not, is immaterial. It is, indeed, possible, that Cadiz might have fallen, without the aid of these

## The William King.

supplies ; and therefore, in fact, Great Britain and her ally may have been relieved, by these supplies, from the pressure of the war in that quarter. The court, however, in the cases alluded to, proceeded on a broader ground : all the judges who concurred in those decisions, were of opinion, that the mere sailing under an enemy's license, without regard to the object of the voyage, or the port of destination, constituted, of itself, an act of illegality, which subjected the property to confiscation. It was an attempt by one individual of a belligerent country to clothe himself with a neutral character \*148] \*by the license of the belligerent, and thus to separate himself from the common character of his own country.

Sentence affirmed.

THE WILLIAM KING : DAVIS *et al.*, Claimants.*Embargo.*

Under the embargo act of the 22d December 1807, the words "an embargo shall be laid," not only imposed upon the public officers the duty of preventing the departure of registered or sea-letter vessels, on a foreign voyage, but consequently, rendered them liable to forfeiture, under the supplementary act of the 9th of January 1808.

In such case, if the vessel be actually and *bonâ fide* carried by force to a foreign port, she is not liable to forfeiture.

The court being of opinion, under the facts and circumstances of the case, that the capture under which it was alleged the vessel was compelled to go to a foreign port, was fictitious and collusive, the decree of condemnation in the court below was affirmed.

APPEAL from the Circuit Court for the district of New York. A libel was filed against this vessel, in the district court of New York, March 1809, for a breach of the act of the 22d of December 1807, laying an embargo, and the several acts supplementary thereto, alleging, that she proceeded \*149] from Baltimore, without any clearance or permit, bound on a voyage \*to Exuma, one of the Bahama islands, where she took in a cargo of 6000 bushels of salt, with which she returned to New York.

The claimants admitted the fact of going to Exuma, and bringing away the salt, but alleged that it was from necessity ; that the brig was regularly bound to Boston, but, being captured soon after she left Hampton Roads, by a British privateer, was sent to Jamaica, where she sold the cargo of flour which she had on board, the government of that colony not allowing it to be brought off ; that she then went to Exuma.

The testimony in the case exhibited the following summary : About the middle of October 1808, the vessel arrived at Baltimore from Boston. At Baltimore, she took on board a cargo of upwards of 1600 barrels of flour, and sailed again, ostensibly for Boston, about the first of November. On reaching Hampton Roads, she stopped a few days, being, as was asserted, wind-bound. While there, a British privateer, of ten guns and twelve men, called the Ino, arrived in the Roads. On the eighth of the month, the brig put to sea, the Ino following her. On the afternoon of the same day, the Ino captured her, within ten leagues of the shore, putting a prize-master and one man on board ; the vessels then proceeded to the West Indies. During the voyage, no attempt was made by the crew either to retake the brig or to escape, though favorable opportunities were not wanting ; her crew consisted of nine persons. After a short separation from the privateer,