

The LANGDON CHEVES : LAMB, Claimant.

Seizure.

A question of fact, upon a seizure in port, as a *droit* of admiralty, for trading with the enemy, and using his license. The circumstance of the vessel having been sent into an enemy's port, for adjudication, and afterwards permitted to resume her voyage, held to raise a violent presumption, that she had a license, which the claimant not having repelled by explanatory evidence, condemnation was pronounced.

February 3d, 1819. APPEAL from the Circuit Court of Rhode Island.

*104] This cause was argued by *Hunter* and * *Wheaton*, for the appellant and claimant, (a) and by the *Attorney-General*, for the United States.

February 16th. STORY, Justice, delivered the opinion of the court.— This case differs in no essential respect, from that of the *Caledonian*. The brig sailed from the United States, on a voyage to Lisbon, with a cargo of provisions, in May 1813, and was captured by a British sloop of war, and sent into Bermuda, where she was either not proceeded against as prize, or was acquitted on trial; and after a detention of about six weeks, was permitted to resume her original voyage; and on the return-voyage from Lisbon, with a cargo of salt, was, on her arrival at Newport, on the 16th of December 1813, seized by the collector of that port, as forfeited to the United States *jure belli*, for using a British license, and trading with the enemy.

There is no positive proof, that the brig had a British license on board; but we think, that under the circumstances, there arises a violent presumption that she had such a license, and that the burden of proof to repel this presumption rests on the claimant. He has not attempted this, in the slightest degree, there being a total absence of all evidence in his favor; and therefore, as the case remains with all its original imperfections, the decree of the circuit court is affirmed, with costs.

Decree affirmed, with costs.¹

*105] * The FRIENDSCHAFT : MOREIRA, Claimant.

Prize.—Domicil.

The property of a house of trade, established in the enemy's country, is condemnable, as prize, whatever may be the personal domicil of the partners.

APPEAL from the Circuit Court of North Carolina. The shipment in this case was made on the 31st of March 1814, at London, by the house of trade of Moreira, Vieira & Machado, of that city, on account and risk of the house, to Mr. Moreira, one of the partners, who was a native of, and domiciled at, Lisbon, in the kingdom of Portugal. The shares of the two partners, Messrs. Vieira and Machado, who were domiciled in London, were condemned as prize of war in the court below, without appeal. The share of Mr. Moreira, the partner domiciled at Lisbon, was condemned in the court below; but the claimant was allowed to make further proof to be offered to

(a) They cited *The Amina*, 3 Rob. 167; *The Lisette*, 6 Id. 387; *The Joseph*, 8 Cranch 451, to show, that the *delictum* of contraband, of trading with the enemy, and navigating under his license, are all purged by the termination of the voyage.

¹ For a further decision in this case, see 2 Mason 58.

The *Freundschaft*.

this court, and to be admitted or rejected in the discretion of the court, as to his proprietary interest and connection with the house of trade in the enemy's country. On the production of the further proof, the proprietary interest of Mr. Moreira in one-third part of the goods was clearly proved, and also the fact of his personal domicil at Lisbon.

Hopkinson, for the claimant, relied upon this evidence, as sufficient to show, that the claimant was entitled to restitution of his share, on account of his personal domicil, notwithstanding his being a partner *in the house of trade established in the enemy's country. [*106

D. B. Ogden and *Wheaton*, contra, insisted, that the shipment being made by a house of trade, established in the enemy's country, for the account and risk of that house, the neutral domicil of one of the partners would not avail to save his share from condemnation as prize. *The Nancy*, claim of *Mr. Coopman*, cited in *The Vigilantia*, 1 Rob. 14, 15; *The Susa*, 2 Ibid. 255; *The Indiana*, cited in *The Portland*, 3 Ibid. 44. In the British tribunals, this principle is recognised by the highest authority known to the prize law, that of the Lords of Appeal, and if it be material (as it seems to have been intimated by this court, 9 Cranch 198), to distinguish whether the decision was pronounced before, or since our Independence, the *onus* is thrown upon the claimant, to show, that the case of *Mr. Coopman*, decided in 1798, was determined contrary to former practice or former precedents. It does, indeed, appear, that an erroneous notion had been adopted by some persons, that the domicil of the party was all that the prize court had a right to consider. But in *Coopman's case*, that notion was exploded by the Lords, and the true principle on which the cases from which it had been imbibed, were determined, was explained as applying to cases merely at the commencement of a war; whilst the rule, applicable to a neutral partner, entering into a house of trade in the enemy's country, during the war, or continuing that connection, after *a declaration of war, is developed, not as a new rule, then for the first time prescribed, but [*107 as the application of an anciently established principle. 1 Rob. 12, 14, 15.

February 25th, 1819. *STORY*, Justice, delivered the opinion of the court.—The shipment in this case was made by Moreira, Vieira & Machado, a house of trade established in London, on the account of the house, to Moreira, one of the partners in the house, who was a native of, and domiciled in, Lisbon, in the kingdom of Portugal; and the only question is, whether the share of Moreira in the shipment, is exempted from condemnation, by reason of his neutral domicil? It has been long since decided in the courts of admiralty, that the property of a house of trade, established in the enemy's country, is condemnable, as prize, whatever may be the domicil of the partners. The trade of such a house is deemed essentially a hostile trade, and the property engaged in it is, therefore, treated as enemy's property, notwithstanding the neutral domicil of any of the company. The rule, then, being inflexibly settled, we do not now feel at liberty to depart from it, whatever doubt might have been entertained, if the case were entirely new.

Decree affirmed, with costs.