

The Aurora

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Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 203

Appellant : The Aurora

Judgement :

The Aurora - 12 U.S. 203 (1814)

U.S. Supreme Court The Aurora, 12 U.S. 8 Cranch 203 203 (1814)

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12 U.S. (8 Cranch) 203

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

The acceptance and use of an enemy's license on a voyage to a neutral port, prosecuted in furtherance of the enemy's avowed objects, is illegal, and subjects vessel and cargo to confiscation.

It is not necessary, in order to subject the property to condemnation, that the person granting the license should be duly authorized to grant it, provided the person receiving it takes it with the expectation that it will protect his property from the enemy.

Sailing with an intention to further the views of the enemy is sufficient to condemn the property although that intention be frustrated by capture.

The following were the material facts of the case:

Some months after the declaration of war, the ship *Aurora*, documented as American property and owned by Thomas M. Clarke and Ebenezer Wheelright, the claimants, who are American citizens, sailed from Newburyport to Norfolk in ballast. At the latter place she took in a cargo consisting of bread, flour, corn, &c., and sailed from thence on or about 12 November, 1812, ostensibly for St. Bartholomews, a neutral island belonging to the Swedes, for which port she had obtained

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her clearance. The cargo was consigned to the supercargo of the ship. On 26 November, 1812, she was captured by the American privateer schooner *Governor Tompkins* on the high seas. At the time of capture, she was to the leeward of St. Bartholomews, and had on board a British license, which she exhibited to the captors, supposing them to be British. This license consisted of three documents:

1st. A pass for the West Indies exclusively from Andrew Allen his Britannic Majesty's consul residing at Boston, to which is annexed a copy of a letter, under the consular seal from Admiral Sawyer to Mr. Allen as follows:

"To the commanders of any of his Majesty's ships of war or of private armed ships belonging to his Majesty."

"Whereas from a consideration of the great importance of continuing a regular supply of flour and other dry provisions and lumber to the British islands in the West Indies, it has been deemed expedient by his Majesty's government that

notwithstanding the hostilities now existing between Great Britain and the United States of America, every protection and encouragement should be given to American vessels laden with flour and other dry provisions and lumber and bound to the British islands in the West Indies. And whereas in furtherance of these views of his Majesty's government, Herbert Sawyer Esq. vice admiral and commander in chief of his Majesty's squadron on the Halifax station, has directed to me a letter under date of 5 August, 1812, a copy whereof is hereunto annexed, wherein I am instructed to furnish a copy of his letter, certified under my consular seal, to every American vessel so laden and bound to the West Indies, which is designed as a perfect safeguard and protection to such vessel in the prosecution of such voyage. Now therefore, in pursuance of these instructions, I have granted to the American ship *Aurora*, William Augustus Pike, master, burden 254 47/95ths tons, now lying in the harbor of Newburyport and bound to Norfolk for a cargo of flour, corn, and other dry provisions for St. Bartholomews, the annexed document, to avail only in a direct

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voyage to the West Indies and back to the United States, requesting all the officers commanding his Majesty's ships of war or of private armed vessels belonging to subjects of his Majesty not only to suffer the said *Aurora* to pass without molestation, but also to extend to her all due assistance and protection in the prosecution of her voyage to the West Indies and in her return to the United States laden with merchandise not exceeding the net amount of her outward cargo, or in ballast only."

"Given under my hand and seal of office this first day of October, 1812."

"ANDREW ALLEN, Jr. [SEAL]"

"His Majesty's consul"

To the above pass was annexed the following copy of a letter from Admiral Sawyer certified under the consular seal, and alluded to in the above document.

"His Majesty's ship *Centurion* "

"At Halifax, 5 August, 1812"

"SIR,"

"I have fully considered that part of your letter of the 18th ultimo, which relates to the means of ensuring a constant supply of flour and other dry provisions to Spain and Portugal and to the West India islands, and being aware of the importance of the subject, concur in the proposition you have made."

"I shall therefore give directions to the commanders of his Majesty's squadron under my command not to molest American vessels so laden, and unarmed, *bona fide* bound to British, Portuguese, or Spanish ports, whose papers shall be accompanied with a certified copy of this letter under the consular seal."

"I have the honor to be, sir,"

"Your most obedient humble servant,"

"H. SAWYER, Vice-Admiral"

"Andrew Allen Esq."

"British Consul Boston "

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"Office of his Britannic Majesty's Consul"

"I, Andrew Allen, Jr., his Britannic Majesty's consul for the States of Massachusetts, New Hampshire, Rhode Island and Connecticut, do hereby certify that the annexed paper is a true copy of a letter addressed to me by H. Sawyer Esq., vice-admiral and commander in chief of his Majesty's squadron on the Halifax station."

"Given under my hand and seal of office, at Boston in the State of Massachusetts, this first day of October, in the year of our Lord, one thousand eight hundred and twelve."

"ANDREW ALLEN, Jr. [SEAL.]"

2d. The following certificate of the Consul:

"Office of his Britannic Majesty's Consul"

"I, Andrew Allen, Jr., his Britannic Majesty's consul for the States of Massachusetts, New Hampshire, Rhode Island, and Connecticut, do hereby certify that the ship *Aurora*, Wm. Augustus Pike, being bound to St. Bartholomews (on account of the existing law of the United States, which prevents her return to the United States from a British port) contemplates fulfilling the object comprised in the accompanying license from H. Sawyer Esq., Vice-Admiral and Commander in Chief on the Halifax station, through a neutral port in alliance with Great Britain."

"Given under my hand and seal of office at Boston, in the State of Massachusetts, this second day of October in the year of our Lord, one thousand eight hundred and twelve."

"ANDREW ALLEN, Jr. [SEAL]"

3d. The following general pass for the West Indies.

"Office of his Britannic Majesty's Consul"

"I, Andrew Allen, Jr., his Britannic Majesty's consul for the States of Massachusetts, New Hampshire,

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Rhode Island, and Connecticut, request all officers commanding his Majesty's ships of war, of private armed ships belonging to subjects of his Majesty, to permit the American ship *Aurora*, William Augustus Pike, master, now lying in the harbor of Newburyport, and furnished with a protection from Vice-Admiral Sawyer for the

purpose of carrying flour, corn, lumber, and other necessary provisions to the West Indies and proceeding to Norfolk in ballast for a cargo, to pass without molestation."

"Given under my hand and seal of office, at Boston in the State of Massachusetts this first day of October, in the year of our Lord, one thousand eight hundred and twelve."

"ANDREW ALLEN, Jr. [SEAL]"

The *Aurora* was carried into Newport, Rhode Island, and there libeled. The circuit court of that district condemned vessel and cargo as prize to the captors, from which sentence the claimants appealed to this Court.

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LIVINGSTON, J. delivered the opinion of the Court.

The ship *Aurora* and cargo, owned by the claimants, who are American citizens and documented as American property, were captured on 26 November 1812, by the private armed ship *Governor Tompkins* on an ostensible destination for St. Bartholomews. From the documents on board and the preparatory examinations, it appears that the ship sailed from Newburyport to Norfolk in ballast, took in her present cargo, consisting of bread, flour, corn., &c.;, at the latter place, and sailed from thence on the voyage on which she was captured on or about 12 November, 1812. The cargo was consigned to the supercargo of the ship, and the destination thereof upon the ships papers, supported by the preparatory examinations, was St. Bartholomews, for which island the ship obtained her clearance. At the time of capture, she was to the leeward of that island, and certain passports or protections from the agents of the British government were found on board, which are familiarly known by the title of British licenses, which documents are as follows: [See the statement at the beginning of the report of this case].

Two questions have been made at bar:

1. Whether the acceptance and use of an enemy's license or passport of protection on a voyage performed in furtherance of the enemy's avowed objects be illegal, so as to affect the property with confiscation.

2. If so, whether there is anything in the present case to exempt it from the general principle.

The first point having just been decided in the affirmative in the *Julia*, it only remains to inquire whether there be anything in this case to exempt it from the general principle.

In the opinion of a majority of the Court, it is not easy to discriminate between these cases. Both of the vessels

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had licenses or passports of the same character and substantially for the same purpose, except only that the object of the *Julia* was to supply the allied armies in Portugal, and the original intention of the *Aurora* was to go the British West Indies. It is by no means clear that this destination was ever changed, but admitting that, from an apprehension of seizure in case of her returning to the United States after touching at a British port, she in fact sailed on a voyage to St. Bartholomews, this can make no substantial difference in her favor. Her object in going there was equally criminal, and subserved the views of the enemy nearly if not quite as well as if her cargo had been landed in a British island; of the real design of the voyage there can remain no doubt, for it abundantly appears from the license itself that the professed object of Admiral Sawyer at least, in granting it, was to obtain a supply of provisions for the enemy, and the Court will not easily lend its ear to a suggestion that notwithstanding the *Aurora* was found with a British protection on board, of so obnoxious a character, yet her owners intended to deceive the enemy, either by going to a port not mentioned in it or by disposing of her cargo in a way that would not have promoted his views. Without meaning to say that such conduct may under no circumstances whatever be explained, the Court thinks that there is no proof in this case, to show that it was not the intention

of the claimants to carry into effect the original understanding between them and Mr. Allen. For although the destination to St. Bartholomews be conceded, it is evident that Mr. Allen who acted as British consul, supposed the views of Admiral Sawyer might be answered as well in that as in any other way; nor is it clear, as was said at bar, that the documents which were received from Mr. Allen which varied more in form than in substance from the admiral's passport, would not have protected her against British capture on a voyage to that island. The protection of Admiral Sawyer extended to unarmed American vessels laden with dry provisions and *bona fide* bound to British, Portuguese, or Spanish ports. The only modification or extension introduced by Mr. Allen was a permission to go to a Swedish island, equally neutral with Spain and Portugal, in the vicinity of the British possessions. Whether all or any of these papers would have saved the *Aurora* from confiscation in a British court of admiralty this Court is not bound

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to assert; it is sufficient if that were the reasonable expectation of the parties, as it certainly was, and it is more than probable that such expectation would have been realized, considering the very important advantage which the enemy was to derive from them. In case of capture, there can be no doubt that the claimants would have interposed these very papers, which are now supposed to have emanated from unauthorized agents, and probably with success, as a shield against forfeiture. Why then should they be permitted to allege here that they would have been ineffectual for that purpose?

It is also insisted that in this case no illicit intercourse had actually taken place; that the whole offense, if any, consisted in intention, and that if a capture had not intervened, there was still a *locus poenitentiae*, and no one can say that even a project of going to St. Bartholomews might not have been abandoned. In this reasoning the Court does not concur, but is of opinion that the moment the *Aurora* started on the voyage for St. Bartholomews, with the license in question and a cargo of provisions, she rendered herself liable to capture by the public and private armed ships of the United States, who were not bound to lay by and see how she would conduct herself during the voyage, the consequence of which would be that

no right of capture would exist until all chance of making it were at an end.

Judgment affirmed.

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