

The Thomas Gibbons

The Thomas Gibbons

SooperKanoon Citation : sooperkanoon.com/78644

Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 421

Appellant : The Thomas Gibbons

Judgement :

The Thomas Gibbons - 12 U.S. 421 (1814)

U.S. Supreme Court The Thomas Gibbons, 12 U.S. 8 Cranch 421 421 (1814)

The Thomas Gibbons

12 U.S. (8 Cranch) 421

APPEAL FROM THE DECREE OF THE CIRCUIT

COURT FOR THE DISTRICT OF GEORGIA

SYLLABUS

Under the eighth section of the Prize Act of June 26, 1812, the President had full authority to issue the instruction of 28 August, 1812.

The commissions of the privateers of the United States may be qualified and retained by the instructions of the President.

A shipment, made even after a knowledge of the war, is to be considered as having been made in consequence of the repeal of the orders in council if made within so early a period thereafter as would leave a reasonable presumption that the knowledge of that repeal would induce a suspension of hostilities on the part of the United States.

By the mere act of illicit intercourse, the property of a citizen is not divested *ipso facto*; it is only liable to be condemned as enemy property or as adhering to the enemy if rightfully captured during the voyage.

The President's instruction of 28 August, 1812, was meant to protect all British merchandise on board an American ship, without any exception on account of British proprietary interest.

The ship *Thomas Gibbons* sailed from Liverpool for Savannah, on 16 August, 1812, was captured on 12 October following on the high seas, off Tybee Lighthouse, and, the same day, brought into the port of Savannah as prize to the privateer *Atas*.

The ship and cargo were under the protection of a special license, dated 21 July, 1812, and conceived in the usual terms of the document usually denominated the Sidmouth license, except that in this instance the protection was extended to the return voyage back to Liverpool, there to discharge the cargo and receive freight if it should be found not to be allowable for the vessel and cargo to enter the ports of the United States.

The clearance from Liverpool, 13 August, 1812, mentioned the ship as being released in consequence of her license from an embargo laid on American vessels.

The cargo, shipped at Liverpool by sundry British merchants, was consigned to sundry commercial houses at Savannah and was claimed by the respective consignees -- by some in their own behalf and by others in behalf of their correspondents in the interior.

From the evidence introduced into the cause it appeared that part of the goods, although expressed to be on account and risk of the consignees, was shipped without previous orders or authority; that some of them were shipped under general orders (transmitted in time of peace) to ship goods; others under particular orders given during the operation of the orders in council and the nonintercourse act, such as to ship "when the trade opened," "at a proper season," "as soon as it was legal to ship to the United States," &c.;, and lastly that some of them were shipped with an understanding that they were to become the property of the citizen consignee upon arriving at the port of destination.

Page 12 U. S. 422

The commission of the *Atas* was granted on 24 September, 1812, and was accompanied by a copy of the President's instruction to privateers of 28 August, 1812, by which the public and private armed vessels of the United States are directed not to interrupt

"any vessels belonging to citizens of the United States coming from British ports to the United States laden with British merchandise in consequence of the alleged repeal of the British orders in council. "

Page 12 U. S. 426

STORY, J. delivered the opinion of the Court.

Page 12 U. S. 427

The ship *Thomas Gibbons*, laden with a cargo of British manufactures on account of British and American merchants, sailed from Liverpool in Great Britain on 16 August, 1812, bound for Savannah, in Georgia, and was captured on the 12th of the ensuing October on the high seas off Tybee Lighthouse by the private armed vessel *Atas*, Thomas M. Newhall, commander, and, on the same day brought into Savannah as prize of war. The ship sailed from Liverpool under the protection of a special license, dated 21 July 1812, granted by Lord Sidmouth, by

order of the privy council, whereby the ship and cargo were protected from British capture not only on the voyage to the United States, but also on the return voyage to Liverpool in case the master should not be permitted to land the cargo in the United States, and the master was further allowed, in case of return, to receive his freight and proceed in ballast to any port not blockaded.

The commission of the *Atas* was granted on 24 September, 1812, accompanied by a copy of the President's instruction of 28 August, 1812.

A libel was filed in the District Court of Georgia, upon which regular proceedings were had against the ship as prize of war. The respondents interposed their claims, and the district attorney also interposed a claim in behalf of the United States. At the hearing, the district court dismissed the libel of the captors, and upon appeal the decree was affirmed in the circuit court.

The principal question which has been moved at bar is whether the capture of the ship was lawful, and that depends upon the authority of the President to issue that instruction and upon the true construction of it if rightfully issued.

As to the authority of the President, we do not think it necessary to consider how far he would be entitled, in his character of commander in chief of the army and navy of the United States, independent of any statute provision, to issue instructions for the government and direction of privateers. That question would deserve grave consideration, and we should not be disposed to entertain the discussion of it unless it become unavoidable. In the

Page 12 U. S. 428

case at bar, no decision on the point is necessary, because we are all of opinion that under the eighth section of the Prize Act of 1812, ch. 107, the President had full authority to issue the instruction of 28 August. That section provides that the President shall be authorized "to establish and order suitable instructions for the better governing and directing the conduct" of private armed vessels commissioned under the act, their officers and crews. The language of this provision is very general, and in our opinion it is entitled to a liberal construction,

both upon the manifest intent of the legislature and the ground of public policy.

It has been argued that privateers acquire by their commissions a general right of capture under the prize acts which it is not in the President's power to remove or restrain while the commission is in force, that therefore his right to issue instructions must be construed as subordinate to the general authority derived from the commission, and that in this view his instructions should extend only to the internal organization, discipline, and conduct of privateers.

We cannot, on mature deliberation, yield assent to this argument. It is very clear that the President has, under the prize act, power to grant, annul, and revoke, at his pleasure, the commissions of privateers, and by the act declaring war he is authorized to issue the commission in such form as he shall deem fit. The right of capture is entirely derived from the law. It is not an absolute vested right which cannot be taken away or modified by law. It is a limited right which is subject to all the restraints which the legislature has imposed, and is to be exercised in the manner which its wisdom has prescribed. The commission, therefore, is to be taken in its general terms, with reference to the laws under which it emanates, and as containing within itself all the qualifications and restrictions which the acts giving it existence have prescribed. In this view, the commission is qualified and restrained by the power of the President to issue instructions. The privateer takes it subject to such power, and contracts to act in obedience to all the instructions which the President may lawfully promulgate.

Public policy also would confirm this construction.

Page 12 U. S. 429

It has been the great object of every maritime nation to restrain and regulate the conduct of its privateers. They are watched with great anxiety and vigilance, because they may often involve the nation, by irregularities of conduct, in serious controversies not only with public enemies, but also with neutrals and allies. If a power did not exist to restrain their operations in war, the public faith might be violated, cartels and flags of truce might be disregarded, and endless

embarrassments arise in the negotiations with foreign powers. Considerations of this weight and importance are not lightly to be disregarded, and when the language of the act is so broad and comprehensive, we should not feel at liberty to narrow or weaken its force by a construction not pressed by the letter, or the spirit, or the policy of the clause. On the whole, we are all of opinion that the instruction of the President of 28 August is within the authority delegated to him by the prize act.

But it is argued that, admitting its legal validity, this instruction cannot protect the ship and cargo from capture as prize of war, because the cargo was shipped after a full knowledge of the war, and not "in consequence of the alleged repeal of the British orders in council."

We are of a different opinion. We think that a shipment made even after a knowledge of the war may well be deemed to have been made in consequence of the repeal of the orders in council, if made within so early a period as would leave a reasonable presumption that the knowledge of that repeal would induce a suspension of hostilities on the part of the United States. Congress has evidently acted upon this principle, and has itself fixed the time (15 September, 1812) before which shipments might be reasonably made upon the faith of that presumption. Act of 2 January, 1813, ch. 149. We are not inclined to hold a less liberal construction in favor of the acts of individuals proceeding from a confidence in the avowed intentions of the government.

It is further argued that the ship was not within the description of vessels intended by the instruction to be exempted from capture, because she was engaged in an illicit intercourse with the enemy under an enemy passport, and therefore was *quasi*- enemy property. We

Page 12 U. S. 430

cannot assent to this argument. The vessels exempted from capture are "vessels belonging to citizens of the United States coming from British ports to the United States." The ship in this case was duly documented as an American, was coming

to the United States and from a British port. How can it be possible to bring a case more perfectly within the terms of the description? The argument proceeds upon the supposition that by the mere act of illicit intercourse, the property of an American citizen becomes divested *ipso facto*; but in point of law this is not the operation of the rule. The property is only liable to be condemned as enemy property, or as adhering to the enemy, if rightfully captured during the voyage. But it has never been supposed that the documentary character of the ship itself, or the character of the owner, were completely changed for every other purpose. It is sufficient, however, in our opinion, that no such distinction as that assumed in the argument is to be found in the instruction itself, and we therefore hold the case within the natural and ordinary import of the language.

It is further argued that, at all events, the property intended to be protected by the instruction from capture was American property, and not British property, and therefore that as to the latter the capture was rightful. This is a question of some difficulty, but on full consideration, a majority of the Court is of opinion that the instruction meant to protect all British merchandise on board an American ship, without any exception on account of British proprietary interest. It was supposed that British as well as American merchants might, upon the repeal of the orders in council, be induced to make shipments upon the faith that such repeal would suspend the further operations of hostilities. The government meant to reserve to itself the ultimate disposal of such property in order that it might restore or condemn it, as public policy or the national interests might require. This construction is supported and confirmed by the Act of Congress of 13 July, 1813, ch. 10, which, after relinquishing all the right and title of the United States to the property of British subjects captured on the high seas and shipped from British ports since the declaration of war, expressly excepts such property as had been captured in violation

Page 12 U. S. 431

of the President's instruction of 28 August, 1812. In giving this construction, therefore, we are satisfied that we conform to the import of the language of the instruction, and do not contravene any policy avowed by the government itself.

On the whole, we are of opinion that the decree of the circuit court dismissing the libel of the captors, ought to be

Affirmed, and that the cause should be remanded to the circuit court for further proceedings as between the United States and the claimants.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com