

**The St. Lawrence**

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**Court :** US Supreme Court

**Decided On :** 1814

**Appeal No. :** 12 U.S. 434

**Appellant :** The St. Lawrence

**Judgement :**

The St. Lawrence - 12 U.S. 434 (1814)

U.S. Supreme Court The St. Lawrence, 12 U.S. 8 Cranch 434 434 (1814)

**The St. Lawrence**

**12 U.S. (8 Cranch) 434**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF NEW HAMPSHIRE*

## **SYLLABUS**

A vessel sailing to an enemy's country after knowledge of the war, and captured bringing from that country a cargo consisting chiefly of enemy goods, is liable to confiscation as prize of war.

Suppression of papers, where it appears to have been intentional and fraudulent and attended with other suspicious circumstances, is good cause for refusing further proof.

But where the suppression appears to be owing to accident or mistake and no other suspicious circumstances appear in the case further proof may be allowed.

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The material facts of the case were as follow:

The ship *St. Lawrence*, Silas Webb master, was captured on 20 June, 1813, by the private armed vessel *America*, and, with her cargo, libeled as prize in the District Court of New Hampshire. On the proceedings which were had there, it appeared that the *St. Lawrence*, owned by Robert Dickey of New York and Hugh Thompson of Baltimore, arrived at Liverpool from Sweden in April, 1813, with a cargo of iron and deals. In the month of May, 1813, the agent of Dickey and Thomson entered into a contract for the sale of the *St. Lawrence* with the house of Ogden, Richards & Selden of Liverpool, the contract to be ratified or disaffirmed by Dickey & Thompson and the bill of sale to be executed by them, in case of affirmance, to Andrew Ogden and James Heard of New York, or either of them. On 5 May, 1813, a license was granted by the Privy Council of Great Britain to Thomas White of London and others permitting them to export direct to the United States an enumerated cargo in the *St. Lawrence*, provided she cleared out before the last day of that month. On the 30th of May 1813, she sailed from Liverpool for the United States with the cargo specified in the license. Mr.

Alexander McGregor and his family were passengers on board.

Upon the return of the monition in the district court, Andrew Ogden interposed a claim in behalf of himself and McGregor to the ship and part of the cargo. He also claimed another part of the cargo as his sole property. He likewise interposed a claim in favor of Selah Strong and Son, of John Whitten, of the firm of Howard, Phelps & Co. -- of Abraham and George Smedes -- of Peter and Ebenezer Irving & Co. -- of Henry Van Wart -- of Irving & Smith -- of Jabez Harrison -- of Hugh R. Toler -- and of Thomas C. Butler. This claim was an affidavit of Mr. Ogden in which he swore that he had not a full knowledge of the concerns of all the persons for whom he claimed, but verily and fully believed that many of the said goods on board the *St. Lawrence* were sent in payment of debts due previous to the war to several of the persons for whom he claimed. This claim was filed on 17 August, 1813.

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William Penniman, of Baltimore, also interposed a claim for five chests of merchandise, which he swore were purchased for him by John Barnet of London prior to the war with funds which he had in England eighteen months before the declaration of war and in pursuance of orders given by him nine months previous to that event. He also swore that he had at Baltimore the original invoice of the purchase of said goods and other documentary evidence to prove the aforesaid fact.

There was also a claim of the master for two cases and five trusses of merchandise and six bolts of Russia duck.

In none of these claims was there a designation of the marks or numbers of the casks, bales, or cases which belonged to the different parties for whom the property was claimed.

The master, in answer to the 12th standing interrogatory, said that for the names of the respective laders, he referred to the bills of lading. That the goods were mostly, if not all, consigned "to order." That the goods were to be delivered to order at such place as the owners or consignees should appoint, but that he did not know what interest any of the consignees or the shipper might have in the goods.

In answer to the 16th interrogatory, the captain stated that his letter bags, two in number, had been taken possession of and sent to the custom house, and that, as to any letter he had directed to the consignees or owners, he had done what he had a right to do, and that all his other papers had been forcibly taken away.

By Mr. McGregor's answer to the 9th interrogatory, it appeared that he was interested one-half part in the ship; that his sole object in becoming interested in the ship was that of returning to the United States; that he also owned one-half of the copperas and of the earthenware on board, shipped by Ogden, Richards & Selden and, as he believed, one-half of the coal, but that as to the last article, he was not positive, no invoices of said goods having been delivered to the deponent.

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In relation to the vessel, Mr. McGregor deposed that the only document relative to the sale of the ship he believed to be a letter to the former owners from their agent requesting them to make a bill of sale transferring said ship to Andrew Ogden and James Heard, or either of them, which he gave to Andrew Ogden.

It appeared further from the examination of Mr. McGregor that he was born in Scotland, was naturalized in the United States in 1795, had lived the last seven years in Liverpool, and was returning in the *St. Lawrence* with his family to the United States.

The goods claimed by Ogden as his sole property were shipped by the house of Ogden, Richards & Selden. The two gentlemen last named resided at Liverpool.

The district court condemned the *St. Lawrence* and all the cargo, except the parts claimed by McGregor and

the master. Both parties appealed from this decree to the circuit court, where the ship and whole cargo were condemned. From this decree the claimants appealed to the Supreme Court.

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LIVINGSTON, J. after stating the facts of the case, delivered the opinion of the Court as follows:

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From the manner in which the appellants have argued this cause, it does not appear that they are very sanguine in their expectations of our reversing the decree of the circuit court on the evidence on which that court and the district court proceeded, but that their chief hope is derived from the further proof which they have it in their power to produce, provided an opportunity by afforded them for that purpose. Except as to the property claimed by Mr. Penniman and Mr. McGregor, this Court does not perceive how the circuit court could have done otherwise, upon the proof before it, than confiscate the cargo of the *St. Lawrence* as prize of war. Without meaning to decide at present on the right of an American citizen having funds in England to withdraw them after a declaration of war, or of the latitude which he may be allowed in the exercise of such a right, if it exists, we think the evidence would have justified the court in considering this property as belonging to enemies of the United States.

The *St. Lawrence* had gone to England after the war was known, and had sailed from a British port nearly one year after war had been declared. She was loaded in the country of the enemy, and by person carrying on trade there. She was furnished with a British license, which extended both to British and American property, and the bills of lading, not being in a very common form, were well calculated to excite suspicion. But these circumstances, strong as they are, might, if everything had been fair, have been so explained as to have convinced the court that the property was truly American. Was this done, or even attempted? If we look at the conduct of the master and the claimants, we find them both acting in a way which left the court no other safe conclusion but that the cargo of the *St. Lawrence* was enemy property. The captain, instead of delivering it to the captors or bringing into court the letters to the consignees, which no doubt covered invoices and bills of lading, lets us know in a way not to be misunderstood that he had delivered or sent them to the parties to whom they were addressed. Taking is examination with the usual course of business, which is to accompany every shipment with a letter, no doubt can remain that such letters were not only on board, but that they have been regularly received by the respective

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consignees, for it is not pretended by the master that they were taken from him by the captors. Here then is not only a subduction of very important papers by the master, but an acquiescence in such conduct on the part of the consignees and a continued suppression of the same papers to this day. The only proof, then, which the court had of the interest of the claimants, except of Mr. Penniman, the master, and Mr. McGregor, is in the claim of Mr. Ogden, who states that he is not acquainted with their concerns, but believes they had an interest in the cargo, without, however, attempting to designate the packages belonging to either of them. The court below therefore might fairly consider the claimants as having not only failed in making out a legal title to the property, but as concealing papers which would have shown a title elsewhere.

But if there was a defect of proof below, it is thought the claimants are entitled to time for further proof, and that if this be allowed, they will be able to show that the property in question was purchased with American funds which were in England previous to the war, and that the claimants were the true and *bona fide* owners thereof. It is certainly not a matter of course in this Court to make an order for further proof. When the parties are fully apprised of the nature of the proof which their case requires and have it in their power to produce it, an appellate court should not readily listen to such an application; but when it appears that the parties who ask this indulgence have most pertinaciously withheld from the court letters and other documentary testimony which must be supposed in this particular case to have been in their possession, they

come with a very ill grace to ask for any further time to make out their title. But if we examine the affidavits which have been made to obtain further time, we shall find them all silent as to the papers which they must have received by the *St. Lawrence*, for in not one of them is a letter of that kind or an invoice mentioned, nor do they deny that such letters or invoices were received by them. Under such circumstances, this Court thinks that it cannot, consistent with the circumspection with which such applications ought always to be received, allow the appellants time for further proof. The master's adventure, it is said, has been given up.

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Of Mr. Penniman's claim the Court thinks more favorably. In the claim which he filed personally, he not only swears that the property belongs to him, but states very particularly how and when it was purchased. He states further that the original invoice and other documentary evidence were at Baltimore, and in the affidavit made by Mr. Campbell during the present term there is such a full and distinct history given of this whole transaction, founded upon original letters and bills of exchange, that it is impossible to harbor one moment's doubt that the five chests of merchandise claimed by Mr. Penniman did, at the time of shipment and long before, belong to him. To this affidavit is also annexed the original letter and invoice which he received by the *St. Lawrence*, which must dissipate every doubt on the question, if any had previously existed. Where so strong a case is made out, the Court is willing to impute to accident or mistake the nonproduction of these papers below. Perhaps Mr. Penniman thought he did sufficient in stating they were in his possession. Certain it is he could have no motive for suppressing papers which would have established so conclusively his title to the merchandise which he claimed. The Court therefore allows him until next term to make proof by affidavit and the production of documents of his right to the property claimed at the time of its shipment at Liverpool, and the same indulgence is allowed to the captors.

In regard to the claim of McGregor to a part of the cargo, there is also some difference between his case and that of many others of the claimants. He swears positively to his interest, but that no invoice was delivered to him by the shippers, Ogden, Richards and Seldon. Ogden also swears to the interest of Mr. McGregor. Perhaps this testimony is sufficient to satisfy a court, as it did satisfy the district court, that the property really belonged to Mr. McGregor. But if that be the case, other questions will arise of too much importance to be decided on the last day of the term and when the Court is not full. Whether an American citizen has a right to withdraw his funds from the country of a belligerent after a war, or if he have, whether he have a right to charter a vessel for that purpose, and, if he may go thus far, whether he may bring British

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goods on freight to this country without affecting thereby the safety of his own goods are questions which the Court does not now decide, and will therefore suspend at present giving any final opinion on the claim of Mr. McGregor to a part of the cargo, who in the meantime is also at liberty to make further proof on the same points with Mr. Penniman, the captors having the same right.

It may be well doubted whether Mr. Ogden and Mr. McGregor have any title to the *St. Lawrence*, but whether she belong to them or to Messrs. Dickey & Thompson, her fate seems necessarily involved in the decision of the *Rapid*, which was made this term. She went to England since the war, and is taken bringing a cargo from that country. If the whole of the cargo had belonged to Mr. McGregor or any other American returning with his property to the United States, the Court means not to say whether it would or would not have been cause of forfeiture, but when we find but a small portion of the cargo in that predicament, there can be no escape for her. The *St. Lawrence* was certainly guilty of trading with the enemy, and being taken on her way from one of his ports of the United States, she is liable, on that ground to be confiscated as prize of war to whomever she might belong at the time.

Upon the whole, the sentence of the circuit court is

*Affirmed in all its parts, with costs, except so far as it condemned those portions of the cargo which were claimed by*

*Mr. Penniman and Mr. McGregor, respecting which this Court will advise until the next term.*

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