

The Hiram

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Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 444

Appellant : The Hiram

Judgement :

The Hiram - 12 U.S. 444 (1814)

U.S. Supreme Court The Hiram, 12 U.S. 8 Cranch 444 444 (1814)

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12 U.S. (8 Cranch) 444

SYLLABUS

Sailing on a voyage under the license and passport or protection of the enemy in furtherance of his views or interests constitutes such an act of illegality as subjects the ship and cargo to condemnation as prize of war.

Sailing with a cargo of provisions to the port of a neutral which is the ally of our enemy in his war with another power is such a furtherance of the views of our enemy.

This was a case of capture, as prize, by the private armed brig *Thorn*, duly commissioned by the President of the United States and commanded by Asa Hooper, Esq.

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The *Hiram*, owned by Samuel G. Griffith, an American citizen, sailed from Baltimore on or about 24 September, 1912, with a cargo of flour and bread on a voyage to Lisbon. She was captured on 15 October following, and sent into Marblehead, in the District of Massachusetts, for adjudication. She was libeled in the district court for the said district by the captors. The vessel was claimed by Barker, the master, in behalf of Samuel G. Griffith, and the cargo by the supercargo in behalf of said Griffith and various other shippers, American merchants at Baltimore.

Among the papers found on board the *Hiram* at the time of her capture were certain papers commonly called a British license or protection, being a certified copy of a letter from Admiral Sawyer to Andrew Allen Esq. late British consul at Boston, and an additional letter of safe conduct from Mr. Allen. It appeared from the evidence that this license was purchased from a citizen of the United States and that a part of it was not filled up at the time of the purchase, and that such licenses were common article of sale in Baltimore and other places.

There was also found on board, the owner's letter of instructions, in which the supercargo was directed to remit the proceeds of the cargo in bills of exchange or government bills to the shipper's correspondents in Liverpool, and moreover to sell the vessel at Lisbon if an advantageous sale could be made, and remit the proceeds to England.

It appeared from the evidence in the cause that such remittances in bills of exchange were common among merchants.

The captors claimed condemnation of the vessel and cargo

1. Because of the British protection or license.

2. Because the remittances were directed to be made in England in bills of exchange.

The district and circuit courts both decided that

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neither the vessel nor cargo were liable to condemnation, but allowed the captors their expenses. From the decree of the circuit court both parties appealed.

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WASHINGTON, J. delivered the opinion of the Court.

This vessel was the property of Samuel G. Griffith, an American citizen. On or about 24 September, 1812, she sailed, with a cargo of flour and bread from Baltimore to Lisbon, and on her voyage thither was captured, on 15 October following by the privateer brig *Thorn* and brought into the District of Massachusetts, where she and her cargo were libeled as being enemies' property.

The brig was claimed by the master in behalf of Griffith, and the cargo by the supercargo as belonging to the said Griffith and other shippers, being American merchants of Baltimore. Among the papers found on board of this vessel at the time of the capture was a letter from Admiral Sawyer dated 5 August, 1812, addressed to Andrew Allen, Jr., as British consul for the States of Massachusetts, New Hampshire, Rhode Island, and Connecticut, which states that, being aware of the importance of ensuring a constant supply of flour and other dry provisions to Spain and Portugal and to the West Indies, he should give directions to the commanders of his Majesty's squadron under his command, not to molest American vessels unarmed and so laden, *bona fide* bound to Portuguese and Spanish ports, whose papers should be accompanied with a certified copy of that letter under the consular seal of the said Allen; also a letter from the said Allen dated 15 September, 1812, addressed to all the officers of his Majesty's ships of war or privateers belonging to subjects of his Majesty, reciting that it is of vital importance to continue a full and regular supply of flour and other dry provisions to

the ports of Spain and Portugal or their colonies, and that in consequence thereof it has been thought expedient by his Majesty's government that every degree of protection and encouragement should be given to American vessels so laden and bound to the ports of Spain and Portugal or their colonies, and that in furtherance of these views of his Majesty's government, Admiral Sawyer had directed to him a letter dated 5 August, 1812, a copy of which is annexed, with instructions to furnish American vessels so laden and destined

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with a copy of his letter certified under his, the said Allen's, consular seal, which documents are intended to serve as a perfect safeguard and protection to such vessel in the prosecution of her voyage, and that in compliance with such instructions, he has granted to the American brig *Hiram*, whereof John B. Barker is master, now lying in the port of Baltimore, and laden with flour and bread, bound *bona fide* to Lisbon, a copy of the said Admiral Sawyer's letter certified under his consular seal, requesting all officers of his Majesty's ships of war or of private armed vessels belonging to subjects of his Majesty not to offer any molestation to the said vessel, but, on the contrary, to grant her all proper assistance and protection on her passage to Lisbon and on her return from thence to her port of departure laden with salt or in ballast only.

Under an order calling upon the different claimants to give further proof relative to the British license found on board the brig, when and where it was obtained, of whom and by whom and on what terms, and generally relative to all facts and circumstances concerning the procurement of the same, William Hartshorn made an affidavit stating that he purchased for Mr. Griffith, the owner of the vessel, in September, 1812, from John R. Waddy, of Virginia, but then in Baltimore, a citizen of the United States, a license to protect a vessel laden with provisions and bound to Lisbon from capture by British cruisers, for which he was to pay one dollar per barrel for what the vessel would carry, payable \$500 in cash and the balance on the safe arrival of the vessel at Lisbon; that the said license was in blank, for inserting the names of any vessel and master; and that the blanks in the said license were filled up in his presence. This witness as well as others states that

these licenses form an article of traffic in market, as much so as flour.

The vessel and cargo were acquitted in the district court, and a *pro forma* decree of affirmance made in the circuit court, from which decree an appeal to this Court was taken.

In the case of the *Julia*, decided at this Court, it was laid down in general terms

"That the sailing on a voyage under the license and passport of protection of the

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enemy in furtherance of his views or interests constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war,"

and as explanatory of the general reasons for that opinion, a reference was made to the opinion of the learned judge who decided that case in the circuit court.

It is contended by the counsel for the claimants that the facts in this case differ so materially from those which appear in the case of the *Julia* that the principles of law which ruled that case are inapplicable to this, and, consequently ought not to govern the decision of the Court upon it.

There certainly are some differences in the two cases, and these were considered sufficiently strong by the district judge who acquitted this vessel and cargo to condemn the *Julia* and her cargo.

The important circumstance which appears to have influenced the decision of the district judge in that case was that the license contemplated the means of ensuring a constant supply of dry provisions to the allied armies in Spain and Portugal, and consequently an unlawful connection with the enemy to supply his armies and a subserviency to the interests of that enemy. In this case, no such views are expressed in the license of Admiral Sawyer; yet the Court must be willfully blind not to see that this was in reality the object of Admiral Sawyer and of Mr. Allen, and that it must have been so understood by those who sailed under this license.

In both cases, the allied armies were to be supplied not by sales made directly to their agents (for this is not required by either), but by carrying supplies to the Peninsula which would indirectly come to their use. The license, as well as the letter of Allen accompanying it, points out the great importance of such supplies being sent to Spain and Portugal, and the latter adds that, in furtherance of these views of his Majesty's government, he had been directed by Admiral Sawyer to furnish a copy of his letter to vessels so laden and destined. Can it be said that an American citizen, sailing under the protection of papers professing such to be the views of the British government, does not act in such a manner as to subserve

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the views and interests of the enemy? Upon the whole, the Court is of opinion that there is no substantial difference between this case and that of the *Julia*, and that this is fully within the principle laid down by this Court in deciding that case and the reasoning to which it refers.

It was stated on the behalf of the claimants of the cargo that they ought not to be affected by the illegal act of the owner of the vessel in sailing under the protection of this license. It is a sufficient answer to this argument to observe that in this case, the Court must presume that the license was known to the owners of the cargo, if it was not the joint property of all. It is inconceivable that the owner of the vessel should expend about \$1,600 for the protection of a cargo in which it appears he was not largely concerned without communicating such an advantage to his shippers and even requiring some reimbursement, either by demanding higher freight or compensation in some other way. But what is conclusive on this point is that an order for further proof in relation to this license was made, and yet no affidavit or proof is offered by any of the owners denying a knowledge of these documents' being on board.

The decree must be reversed and the vessel and cargo condemned to the captors as prize of war.

