

The Joseph

The Joseph

SooperKanoon Citation : sooperkanoon.com/78648

Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 451

Appellant : The Joseph

Judgement :

The Joseph - 12 U.S. 451 (1814)

U.S. Supreme Court The Joseph, 12 U.S. 8 Cranch 451 451 (1814)

The Joseph

12 U.S. (8 Cranch) 451

APPEAL FROM THE CIRCUIT COURT OF

THE DISTRICT OF MASSACHUSETTS

SYLLABUS

A case of hostile trade not excused by the necessity of obtaining funds to pay the expenses of the ship nor by the opinion of an American minister, expressed to the master, that by undertaking the voyage he would violate no law of the United States.

If an American vessel be captured on a circuitous voyage to the United States, in a former part of which voyage she has been guilty of conduct subjecting her to confiscation, though at the time of capture she is committing no illegal act, she must be condemned.

Where the termini of a voyage are already fixed, the continuity of such voyage cannot be broken by a voluntary deviation of the master for the purpose of carrying on an intermediate trade.

A capture as prize of war may lawfully be made within the territorial limits of the United States at any place below water mark.

This was the case of a vessel, the *Joseph*, owned by American citizens, captured by the privateer *Fame* on 16 July, 1813. The *Joseph* sailed from Boston with a cargo on freight on or about 6 April, 1812, on a voyage to Liverpool and the north of Europe and thence directly or indirectly to the United States. She arrived in Liverpool and there discharged her cargo, and, on 30 June following, with another cargo, of mahogany, taken in at Hull, sailed for St. Petersburg under the protection of a British license granted on 8 June, 1812, authorizing

Page 12 U. S. 452

the export of mahogany to St. Petersburg, and the importation of a return cargo to England. The brig arrived at St. Petersburg, and there received news of the war between the United States and Great Britain. About 20 October, 1812, she sailed from St. Petersburg for London with a cargo of hemp and iron on freight, consigned to merchants in London, and having wintered in Sweden in the spring of 1813, she sailed, under convoy instructions from the British ship *Ranger*, for London, where she arrived and delivered her cargo. About 29 May, she sailed for the United States in ballast under a British license, and was captured on 16 July at no great distance from Boston Lighthouse. She was sent into the port of Salem for adjudication as prize.

In the District Court of Massachusetts, the claim of the owners, Messrs. Dall and Vose, was rejected and the property condemned to the United States. From this

decree the captors and claimants appealed.

In the circuit court, the property was condemned to the captors. From this decree the claimants and the United States appealed.

It was contended on the part of the claimants

1. That it was lawful, in June, 1812 (before the war), to take the license to go from England to the north of Europe and to bring back a cargo to England.
2. That the taking a freight from the north of Europe to England was from necessity to obtain funds to pay the debts of the ship, the master not having been able to sell the cargo at St. Petersburg for any price.
3. That the opinion of the minister of the United States at St. Petersburg, who told the captain of the *Joseph* that there was no law against his returning to England under the protection of his license, and who also sent dispatches by the *Joseph* to the government of the United States, though he knew of the intention to return to England and thence to the United States, was in effect a license, especially as to the claim of the United States.

Page 12 U. S. 453

4. That there was no trade with the enemy, but with neutrals only, the freight having been taken on neutral account in a neutral territory and delivered to a neutral house in Great Britain.
5. That if any offense was committed, it was completed upon the delivery of the freight in Great Britain, and that therefore the vessel was not liable to capture or seizure on that account in a subsequent voyage from Great Britain to the United States.
6. That if she was liable to seizure for having adopted the character of an enemy vessel by any act contrary to the allegiance of the owners, yet she was not to be condemned as prize to the captors, as she was voluntarily returning to the United

States and her port of discharge, and had actually arrived within the District of Massachusetts. That the capture therefore was not the occasion of her being brought in, so that if she was liable at all, even as enemies' property, the condemnation must be to the United States as a *droit* of admiralty. But

7. That the vessel was not liable to be condemned to the United States, because the declaration of war was in effect an invitation, if not a command, to the citizens of the United States abroad at the time to return home, and the law allowed a reasonable time and way to effect that return.

Page 12 U. S. 454

WASHINGTON, J. after stating the facts of the case, delivered the following opinion of the Court:

After the decision of this Court in the cases of the *Rapid* and of the ship *Alexander*, it is not to be contended that the sailing with a cargo on freight from St. Petersburg to London after a full knowledge of the war did not amount to such a trading with the enemy as to have subjected both the vessel and cargo to condemnation as prize of war had she been captured whilst proceeding on that voyage. The alleged necessity of undertaking that voyage to enable the master out of the freight to discharge his expenses at St. Petersburg, countenanced, as the master declares, by the opinion of our minister at St. Petersburg that by undertaking such a voyage he would violate no law of the United States, although these considerations, if founded in truth, present a case of peculiar hardship, yet they afford no legal excuse which it is competent to this Court to admit as the basis of its decision. See *the Hoop*, 1 Rob. *Potts V. Bell*, 8 T.R.

The counsel for the claimants seemed to be aware of the insufficiency of this ground, and applied their strength to show that the vessel was not taken *in delicto*, having finished the offensive voyage in which she was engaged at London and being captured on her return home and in ballast. It is not denied that if she be taken during the same voyage in which the offense was committed, though after it was committed, she is considered as being still *in delicto* and subject to

confiscation, but it is contended that her voyage ended at London, and that she was on her return embarked on a new voyage. This position is directly contrary to the facts in the case. The voyage was an entire one from the United States to England, thence to the north of

Page 12 U. S. 455

Europe, and thence directly or indirectly to the United States. Even admit that the outward and homeward voyages could be separated so as to render them two distinct voyages, which is not conceded, still it cannot be denied that the termini of the homeward voyage were St. Petersburg and the United States. The continuity of such a voyage cannot be broken by voluntary deviation of the master for the purpose of carrying on an intermediate trade. That the going from St. Petersburg to London was not undertaken as a new voyage is admitted by the claimants, who allege that it was undertaken as subsidiary to their voyage to the United States. It was, in short, a voyage from St. Petersburg to the United States by the way of London, and consequently the vessel, during any part of that voyage, if seized for conduct subjecting her to confiscation as prize of war, was seized *in delicto*.

Another objection relied upon by the claimants is that this vessel was captured within the territorial limits of the United States. The fact upon which this objection is raised is not clearly established one way or the other. But admit it to be as contended for by the claimants, the law is nevertheless against them. The commission granted to privateers authorized them to seize and take any British vessels found within the jurisdictional limits of the United States or elsewhere on the high seas and to bring them in for adjudication, and also to detain, seize, and take all vessels and effects, to whomsoever belonging, which shall be liable thereto according to the law of nations and the rights of the United States, as prize of war. The first instructions given by the President to the private armed vessels of the United States define the high seas, referred to in the commission, to extend to low water mark, with the exception of the space of one league, or three miles, from the shore of countries at peace with Great Britain or the United States. The general expressions of the commission, explained by these instructions and containing no exception but in relation to friendly powers, prove incontestably that

all captures as prize of war may lawfully be made within the territorial limits of the United States at any place below low water mark.

The Court is also of opinion that there is no weight

Page 12 U. S. 456

in another objection made by the claimants that this vessel was on her way and near to an American port at the time she was captured. The right of the captor to the property which he may seize as prize of war is derived under his commission, which is general and unqualified as to place and circumstances, and not from any peculiar merit which he may claim in any particular case. It is not for him to know whether a vessel which has offended against the law of nations, and is apparently destined to a port of the United States, will certainly enter the port, and certainly he is bound by no law to forego the opportunity which chance or his own vigilance may have presented to him to acquire property which, under his commission, he is authorized to appropriate to himself.

Decree affirmed.