

**The Friendschaft**

**The Friendschaft**

**SooperKanoon Citation :** [sooperkanoon.com/78779](http://sooperkanoon.com/78779)

**Court :** US Supreme Court

**Decided On :** 1818

**Appeal No. :** 16 U.S. 14

**Appellant :** The Friendschaft

**Judgement :**

The Friendschaft - 16 U.S. 14 (1818)

U.S. Supreme Court The Friendschaft, 16 U.S. 14 (1818)

**The Friendschaft**

**16 U.S. 14\***

*APPEAL FROM THE CIRCUIT COURT FOR*

*THE DISTRICT OF NORTH CAROLINA*

## **SYLLABUS**

Informal and imperfect proceedings in the district court corrected and explained in the circuit court.

A bill of lading consigning the goods to a neutral but unaccompanied by an invoice or letter of advice, is not sufficient evidence to entitle the claimant to restitution, but

is sufficient to lay a foundation for the introduction of further proof.

The fact of invoices and letters of advice not being found on board, may induce a suspicion that papers have been spoliated. But even if it were proved that an enemy master, carrying a cargo chiefly hostile, had thrown papers overboard, a neutral claimant to whom no fraud is imputable ought not thereby to be precluded from further proof.

The native character does not revert, by a mere return to his native country of a merchant who is domiciled in a neutral country at the time of capture, who afterwards leaves his commercial establishment in the neutral country to be conducted by his clerks in his absence, who visits his native country merely on mercantile business and intends to return to his adopted country. Under these circumstances the neutral domicile still continues.

British subjects resident in Portugal, though entitled to great privileges, do not retain their native character, but acquire that of the country where they reside and carry on their trade.

Page 16 U. S. 15

The brig *Freundschaft* was captured on a voyage from London to Lisbon by the privateer *Herald* and brought into Cape Fear in North Carolina, where the vessel and cargo were libeled in July, 1814, as prize of war. The commercial agent of his Royal Highness the Prince Regent of Portugal interposed a claim to several packages, parts of the said cargo, on behalf of the respective owners, whom he averred to be Portuguese subjects and merchants residing in Portugal. The cargo consisted of many different shipments. Most of them were accompanied with bills of lading directing a delivery to shipper or order. Of these a few were specially endorsed. Generally, however, they were without endorsements or with blank endorsements only. A few shipments were accompanied with bills of lading deliverable to persons in Lisbon especially named in the bills. Very few were accompanied with letters or invoices. These, it was alleged in the claim, had probably been sent by the regular packet.

In August, 1814, the district court pronounced its

Page 16 U. S. 16

sentence condemning as prize of war "all that part of the cargo for which no claim had been put in" and

"all that part of the cargo which was shipped, as evidence by bills of lading, either without endorsement or with blank endorsements, and not accompanied by letter or invoice, *viz.*, \_\_\_\_\_,"

and that part appearing by the bill of lading to consist of forty bales of goods shipped by Moreira, Vieira, and Machado. Further proof was ordered with respect to the residue of the cargo and the vessel.

From this sentence the claimants appealed to the circuit court. That court, in May, 1815, dismissed so much of the appeal as respected the brig, and that part of the cargo in respect to which further proof was ordered, as having been improvidently allowed before a final sentence, and affirmed the residue of the decree except in regard to the forty bales shipped by Moreira, Vieira, and Machado, with respect to which further proof was directed to establish the right of Francis Jose Moreira to restitution of one-third part thereof.

In April, 1816, further proof was exhibited to the district court in support of the claim for the parts of the cargo comprehended in the bills of lading numbered 108, 109, 141, 122, and 118, which bills being deliverable to merchants residing in Lisbon, whose names were expressed therein, were not endorsed. The further proof was deemed sufficient, and restitution was ordered. The vessel and the residue of the cargo were condemned as prize of war.

From so much of this sentence as awarded restitution

Page 16 U. S. 17

the captors appealed, and in May, 1816, the circuit court decreed as follows:

"This court being of opinion that the former sentence of the district court, affirmed by the sentence of this court rendered in May term in the year 1815, having been left imperfect by omitting to recite the particular claims intended to be involved in the condemnation pronounced in the district court in terms of general description, and being also of opinion that the words"

"all that part of the cargo which was shipped as evidenced, by bills of lading, either without endorsement, or with blank endorsements, and not accompanied with letter or invoice"

"could be intended for those bills only which were to shipper or order, and not to those addressed to consignees named in the bill itself, is of opinion that there is no error in the sentence of the district court, and doth affirm the same."

From this decree the captors appealed to this Court. On the interposition of this appeal, the circuit court ordered that Joseph Winn, a British born subject, resident in Portugal, in whose behalf a claim was filed to No. 118, should be permitted to offer further proof to the Supreme Court, to be admitted or rejected by that Court.

Page 16 U. S. 45

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court, and after stating effects, proceeded as follows:

The appellants contend, 1st., that the sentence pronounced by the district court in August, 1814, which was affirmed by the circuit court in May, 1815, condemned finally, the packages for which a decree of restitution was afterwards made, and that the subsequent proceedings were irregular, and in a case not before the court. 2dly, that upon the merits, further proof ought not to have been ordered and a condemnation ought to have taken place.

On the first point, it is contended that these goods, having been comprehended in invoices not endorsed nor accompanied with letters of advice, are within the very terms of the sentence of condemnation, and must consequently be considered as condemned.

The principle on which this argument was overruled in the court below is to be found in its sentence. The district court, in its decree of 1814, did not intend to confine its description of the property condemned to the general terms used in that decree, but did intend to enumerate the particular bills to

Page 16 U. S. 46

which those terms should apply. This is conclusively proved by reference to the subsequent intended enumeration, which is followed by a blank, obviously left for that enumeration. Had the enumeration been inserted as was intended, the particular specification would undoubtedly have controlled the general description which refers to it. The unintentional and accidental omission to fill this blank leaves the decree imperfect in a very essential point, and if the case and the whole context of the decree can satisfactorily supply this defect, it ought to be supplied. This Court is of opinion that no doubt can be entertained respecting the bills with which the district court intended to fill up the blank. The condemnation of shipments evidenced by bills of lading, with blank endorsements or without endorsement, could apply to those only which required endorsement or which were in a situation to admit of it. These were the bills which were made deliverable to shipper or to the order of the shipper. Bills addressed to a merchant residing in Lisbon could not be endorsed by such merchant until the vessel carrying them should arrive at Lisbon. Consequently such bills could not be in the view of the judge when condemning goods, because the bills of lading were not endorsed, and, had he completed his decree, such bills could have been inserted in it. No conceivable reason exists for admitting to further proof the case of a shipment, evidenced by a bill of lading, made deliverable to shipper or order and endorsed to a merchant residing in Lisbon and at the same time condemning, without admitting to further proof, the same

Page 16 U. S. 47

shipment, if evidenced by a bill of lading, made deliverable in the first instance to the Lisbon merchant. No. 108, for example, is made deliverable at Lisbon to Segnior Jose Ramos de Fonseca, and is consequently not endorsed. It is

contended that these goods are not condemned. But had the bill been made deliverable, to shipper or order and endorsed to Segnior Jose Ramos de Fonseca, further proof would have been admitted.

Nothing but absolute necessity could sustain a construction so obviously absurd. This Court is unanimously of opinion that justice ought not to be diverted from its plain course by circumstances so susceptible of explanation that error is impossible, and that when the decree was returned to the District Court of North Carolina with the blank unfilled, that court did right in considering the specification intended to have been inserted, and for which the blank was left, as a substantive and essential part of the decree, still capable of being supplied, and in acting upon and explaining the decree as if that specification had been originally inserted.

This impediment being removed, the cause will be considered on its merits.

It is contended, with great earnestness that further proof ought not to have been ordered and that the goods which have been restored ought to have been condemned as prize of war. In support of this proposition, the captors, by their counsel, insist that the rights of belligerents would be sacrificed should a mere bill of lading consigning the goods to a neutral,

Page 16 U. S. 48

unaccompanied by letter of advice or invoice, let in the neutral claimant to further proof.

It is not pretended that such a bill would of itself justify an order for restitution, but it certainly gives the person to whom it is addressed a right to receive the goods and lays the foundation for proof that the property is in him. It cannot be believed that, admitting further proof in the absence of an invoice or letter of advice endangers the fair rights of belligerents. These papers are so easily prepared that no fraudulent case would be without them. It is not to be credited that a shipper in London, consigning his own goods to a merchant in Lisbon with the intention of passing them on a belligerent cruiser as neutral, would omit to furnish a letter of advice and invoice adapted to the occasion. There might be double papers, but it

is not to be imagined that papers so easily framed would not be prepared in a case of intended deception.

It is unquestionably extraordinary that the same vessel which carries the goods should not also carry invoices and letters of advice. But the inference which the counsel for the captors would draw from this fact does not seem to be warranted by it. It might induce a suspicion that papers had been thrown overboard, but in the total absence of evidence that this fact had occurred, the Court would not be justified in coming positively to such a conclusion. Between London and Lisbon, where the voyage is short and the packets regular, the bills of lading and invoices might be sent by regular conveyances. But were it even admitted that a belligerent master carrying a

Page 16 U. S. 49

cargo chiefly belligerent had thrown papers overboard, this fact ought not to preclude a neutral claimant, to whom no fraud is imputable, from exhibiting proof of property. In the case before the Court, no attempt was made to disguise any part of the cargo. By far the greater portion of it was confessedly British, and was condemned without a claim. The whole transaction with respect to the cargo is plain and open, and was, in the opinion of this Court, a clear case for further proof.

The further proof in the claims 108, 109, 141, and 122 consists of affidavits to the proprietary interest of the claimants; of copies of letters, in some instances ordering the goods, and in others advising of their shipment; and of copies of invoices -- all properly authenticated. This proof was satisfactory, and the order for restitution made upon it was the necessary consequence of its admission.

Page 16 U. S. 50

In the claim to No. 118, made for Joseph Winn, the further proof was not so conclusive. It consisted of the affidavit of the claimant to his proprietary interest, and to his character as a domiciled Portuguese subject residing and carrying on trade in Lisbon. The affidavit was made in London on 29 June, 1815, but states

the claimant to have been at his fixed place of residence in Lisbon, at the time of the capture, where he had resided for several years preceding that event, and where he continued until 12 June, 1814, when he left

Page 16 U. S. 51

Lisbon for Bordeaux, and has since arrived in London on mercantile business. That he is still a domiciled subject of Portugal, intending to return to Lisbon, where his commercial establishment is maintained and his business carried on by his clerks until his return. To a copy of this affidavit is annexed that of Duncan McAndrew, his clerk, made in Lisbon, who verifies all the facts stated in it.

This property was also restored by the sentence of the district court, and affirmed in the circuit court. On an appeal's being prayed, the circuit court made an order allowing this claimant to take further proof to be offered to this Court. The proof offered under this order consists of a special affidavit of one of the shippers of sworn copies of letters ordering the shipment and of the invoice of the articles shipped.

This claim not having been attended, when the sentence of restitution was made, with any suspicious circumstances other than the absence of papers which have since been supplied and which was probably the result solely of inadvertence, this Court is of opinion that the further proof now offered ought to be received. It certainly dissipates every doubt respecting the proprietary interest. The only question made upon it respects the neutral character of the claimant.

It has been urged that his native character easily reverts, and that by returning to his native country, the claimant has become a reintegrated British subject.

Page 16 U. S. 52

But his commercial establishment in Lisbon still remains; his mercantile affairs are conducted in his absence by his clerks; he was himself in Lisbon at the time of the capture; he has come to London merely on mercantile business, and intends returning to Lisbon. Under these circumstances, his Portuguese domicile still

continues.

But it is contended that the connection between Britain and Portugal retains the British character, and the counsel for the captors has enumerated the privileges of Englishmen in that country.

These privileges are certainly very great, but without giving them a minute and separate examination it may be said generally that they do not confound the British and Portuguese character. They do not identify the two nations with each other or effect those principles on which in other cases a merchant acquires the character of the nation in which he resides and carries on his trade. If a British merchant residing in Portugal retains his British character when Britain is at war and Portugal at peace, he would also retain that character when Portugal is at war and Britain at peace. This no belligerent could tolerate. Its effect would be to neutralize the whole commerce of Portugal and give it perfect security.

*Sentence affirmed.*

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**