

Ex Parte Hitz

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Court : US Supreme Court

Decided On : May-05-1884

Appeal No. : 111 U.S. 766

Appellant : Ex Parte Hitz

Judgement :

Ex Parte Hitz - 111 U.S. 766 (1884)

U.S. Supreme Court Ex Parte Hitz, 111 U.S. 766 (1884)

Ex Parte Hitz

Original

Argued March 4-5, 1884

Decided May 5, 1884

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ORIGINAL

SYLLABUS

A writ of certiorari when applied for by a defendant is not a writ of right but discretionary with the court.

On an application by a person indicted for an offense committed while President of a national bank against the provisions of § 5209 for certiorari to bring up the indictment on the ground that when the alleged offense was committed, he was a political agent of a foreign government, the application was refused when it appeared that his own government had requested his resignation prior to the finding of the indictment, although it was not actually given till subsequent thereto, and that the political department of the government of the United States had refused him the privilege of free entry of goods usually accorded to a diplomatic representative.

This was an application by Mr. John Hitz for a writ of certiorari, commanding the Supreme Court of the District of Columbia

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to certify to this Court an indictment and the proceedings thereunder against him in that court on the ground that when the indictment was filed and when the offenses therein charged were committed, he was the diplomatic representative of the Swiss Confederation, duly accredited to and received and recognized by the United States under the title of political agent. The indictment was filed on the seventeenth of June, 1881.

From the return which has been made to the rule to show cause, it appears that the indictment is for an offense against the provisions of § 5209 of the Revised Statutes, alleged to have been committed by Mr. Hitz while and as president of the German-American National Bank of Washington. It also appears that he was for many years the consul general of the Swiss Confederation within the United States, and that on the 28th of February, 1868, he was accredited to the United States by the same government as political agent. On the 30th of May, 1881, he was requested by the Swiss Confederation to resign both these offices, and this he did on the 15th of June. On the 20th of June, his resignations were accepted.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court. He stated the facts in the foregoing language and continued:

Precisely what the relations of Mr. Hitz to the United States were as political agent of the Swiss Confederation we have not been advised, and on application to the Department of State, made on the suggestion of the court by the counsel in this proceeding, we are informed that the records of the department show nothing upon this subject except a letter from him under date of March 30, 1868, enclosing his letter of credence and soliciting an interview with the Secretary of State for its formal presentation, the answer of Secretary Seward according such an interview, and fixing the 2d of April as the time, and a letter from Secretary Fish to Mr. Hitz, under date of June 28, 1870, informing him that he

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(the Secretary) did not find, in his relations to the United States, any ground for continuing the privilege to him of a free entry of goods imported for his use.

Under these circumstances, as the writ of certiorari, when applied for by a defendant, is not a writ of right, but discretionary with the court (Bac.Ab. Certiorari A), we deny this application, leaving the parties to such remedies as they may be entitled to elsewhere, or under any other form of proceeding.

Petition dismissed.