

Ex Parte Hussein Lutfi Bey

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SooperKanoon Citation : sooperkanoon.com/93405

Court : US Supreme Court

Decided On : Jun-06-1921

Appeal No. : 256 U.S. 616

Appellant : Ex Parte Hussein Lutfi Bey

Judgement :

Ex Parte Hussein Lutfi Bey - 256 U.S. 616 (1921)

U.S. Supreme Court Ex Parte Hussein Lutfi Bey, 256 U.S. 616 (1921)

Ex Parte Hussein Lutfi Bey

No. ____, Original

Motion submitted February 28, 1921

Decided June 6, 1921

256 U.S. 616

MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF PROHIBITION

AND A WRIT OF MANDAMUS

SYLLABUS

1. The question whether a ship of a foreign government, which it uses and operates as a merchant vessel, is, within the waters of the United States, immune from process in admiralty suits to enforce claims for wharfage and supplies, and whether such immunity properly can be claimed for a ship of a government which has severed and not resumed diplomatic relation with the United States, are debatable questions. P. [256 U. S. 618](#) .

2. The granting or refusal of the writs of prohibition and mandamus to restrain and correct alleged excesses of jurisdiction by the district court in admiralty is discretionary when the jurisdiction of that court is debatable. P. [256 U. S. 619](#) .

Leave denied.

The facts are stated in the opinion, *post*, [256 U. S. 618](#) .

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This is a motion for leave to file a petition for a writ of prohibition and a writ of mandamus. The circumstances leading up to the motion can be shortly stated. The Steamship *Gul Djemal*, new in the port of New York, was arrested and is being held under process issued against her in several suits in admiralty in the district court for that district. She is a merchant ship and came from Constantinople to New York under a time charter party, for a purely commercial purpose, shortly before the suits were brought. The claims sought to be enforced in them amount to \$80,585, and are for wharfage, fuel, supplies, and other necessities furnished to the ship at Gibraltar in the course of her voyage and at New York after her arrival. Her master, Hussein Lutfi Bey, appearing specially in the suits, applied to have her released from arrest, and in support of his application alleged that she was owned, manned, and operated by the Turkish or Ottoman government, that she therefore was not subject to the court's process, and that he, as the representative and agent of that government, was her true and lawful bailee, and as such entitled to her immediate possession. The court declined to order her release, and, in the

petition now proffered, the master seeks a writ of prohibition forbidding further proceedings in the suits and a writ of mandamus commanding that the order denying his application be vacated and another entered releasing the ship. The questions involved are, first, whether the ship of a foreign government which it uses and operates as a merchant vessel is, when within the waters of the United States, immune from process in suits such as have

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been described, and secondly, whether such immunity properly can be claimed in respect of the ship of a government which has severed and not resumed diplomatic relations with the United States. Both questions are important and also new. Their proper solution is not plain, but debatable. This is frankly recognized in the brief supporting the motion.

Even in admiralty cases, a writ of prohibition goes as a matter of right only where the absence of jurisdiction is plain. Where the jurisdiction is debatable, the granting or refusal of the writ is discretionary. *In re Muir*, [254 U. S. 522](#) .

It is not plain that there is an absence of jurisdiction here, for the question is an open one, and of uncertain solution. On application to the State Department, it declined to ask the Attorney General to present to the district court a suggestion avowing that the ship belonged to the Turkish or Ottoman government and was immune from seizure. We regard the situation as one in which to refuse the writ would be a proper exercise of discretion. There are stronger reasons against granting a writ of mandamus.

Leave to file petition denied.