

Ex Parte Don Ascanio Colonna

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Court : US Supreme Court

Decided On : Jan-05-1942

Appeal No. : 314 U.S. 510

Appellant : Ex Parte Don Ascanio Colonna

Judgement :

Ex parte Don Ascanio Colonna - 314 U.S. 510 (1942)

U.S. Supreme Court Ex parte Don Ascanio Colonna, 314 U.S. 510 (1942)

Ex parte Don Ascanio Colonna

No. _____, original

Decided January 5, 1942

314 U.S. 510

ON MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF

PROHIBITION AND MANDAMUS

SYLLABUS

In view of 7(b) of the Trading with the Enemy Act and of the state of war existing between this country and Italy, an application to this Court by the Italian Ambassador, praying for process looking to the release of a vessel and cargo owned by Italy from a libel proceeding in a District Court, will not be entertained. P. [314 U. S. 511](#) .

Motion for leave to file denied.

PER CURIAM.

Petitioner, the Royal Italian Ambassador, seeks leave to file in this Court a petition for writs of prohibition and mandamus, directed to the United States District Court

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for the District of New Jersey. The basis of this application is petitioner's allegation that a vessel and its cargo of oil, the subject of litigation in the District Court and now in its possession, are the property of the Italian Government, and are entitled to the benefit of Italy's sovereign immunity from suit.

After the motion was filed, there occurred, on December 11, 1941, the declaration that the United States is at war with Italy. Section 2(b) of the Trading with the Enemy Act, 40 Stat. 411, defines "enemy" to include the government of any nation with which the United States is at war. Section 7(b) contains the following provision, 40 Stat. at 417:

"Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof [which relates to patent, trademark and copyright suits]. . . *And provided further,* That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him."

This provision was inserted in the act in the light of the principle recognized by Congress and by this Court that war suspends the right of enemy plaintiffs to prosecute actions in our courts. See S.Repts. No. 111 and 113, pp. 21, 24, 65th

Cong., 1st Sess.; [Caperton v. Bowyer](#), 14 Wall. 216, [81 U. S. 236](#) ; [Hanger v. Abbott](#), 6 Wall. 532, [73 U. S. 536](#) -539; [Masterson v. Howard](#), 18 Wall. 99, [85 U. S. 105](#) ; *Porter v. Freudenberg*, 1 K.B. 857, 866-880. In view of the statute and the opinions in the cases cited, the application will not be entertained. *Cf. Rothbarth v. Herzfeld*, 179 App.Div. 865, 867-869, *aff'd*, 223 N.Y. 578, 119 N.E. 1075.

Motion for leave to file denied.

MR. JUSTICE ROBERTS took no part in the decision of this application.

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