

THE goods, on freight, to this country, without affecting  
 ST. LAW thereby the safety of his own goods; are questions  
 RENICE, which the Court does not now decide, and will therefore  
 WEBB, suspend, at present, giving any final opinion on the  
 MASTER. claim of Mr. M<sup>c</sup>Gregor to a part of the cargo; who,  
 \_\_\_\_\_ in the mean time, is also at liberty to make further  
 proof on the same points with Mr. Penniman;—the cap-  
 tors having the same right.

It may be well doubted whether Mr. Ogden and Mr. M<sup>c</sup>Gregor have any title to the *St. Lawrence*: but whether she belong to them or to Messrs. Dickey and Thompson, her fate seems necessarily involved in the decision of the *Rapid*, which was made this term. She went to England since the war, and is taken bringing a cargo from that country. If the whole of the cargo had belonged to Mr. M<sup>c</sup>Gregor, or any other American returning with his property to the United States, the Court means not to say whether it would or would not have been cause of forfeiture: but when we find but a small portion of the cargo in that predicament, there can be no escape for her. The *St. Lawrence* was certainly guilty of trading with the enemy; and, being taken on her way from one of his ports to the United States, she is liable, on that ground, to be confiscated as prize of war, to whomever she might belong at the time.

Upon the whole, the sentence of the Circuit Court is affirmed in all its parts, with costs; except so far as it condemned those portions of the cargo which were claimed by Mr. Penniman and Mr. M<sup>c</sup>Gregor, respecting which this Court will advise until the next term.

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THE HIRAM, BARKEP, MASTER.

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Sailing on a voyage under the license and passport of protection of  
 THIS was a case of capture, as prize, by the private armed brig *Thorn*, duly commissioned by the president of the United States, and commanded by Asa Hooper, Esq.

The Hiram, owned by Samuel G. Griffith, an American citizen, sailed from Baltimore on or about the 24th of September, 1812, with a cargo of flour and bread, on a voyage to Lisbon. She was captured on the 15th of October following, and sent into Marblehead, in the district of Massachusetts, for adjudication. She was libelled in the district Court for the said district, by the captors. The vessel was claimed by Barker, the master, in behalf of Samuel G. Griffith; and the cargo by the supercargo, in behalf of said Griffith and various other shippers, American merchants at Baltimore.

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the enemy, in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to condemnation as prize of war.

Among the papers found on board the Hiram, at the time of her capture, were certain papers commonly called a British license or protection, being a certified copy of a letter from admiral Sawyer to Andrew Allen, esq. late British consul at Boston, and an additional letter of safe conduct from Mr. Allen. It appeared from the evidence, that this license was purchased from a citizen of the United States, and that a part of it was not filled up at the time of the purchase; and that such licenses were a common article of sale in Baltimore and other places.

Sailing with a cargo of provisions to the port of a neutral, who is the ally of our enemy in his war with another power, is such a furtherance of the views of our enemy.

There was also found on board, the owner's letter of instructions, in which the supercargo was directed to remit the proceeds of the cargo in bills of exchange or government bills to the shipper's correspondents in Liverpool; and moreover to sell the vessel at Lisbon, if an advantageous sale could be made, and remit the proceeds to England.

It appeared from the evidence in the cause, that such remittances in bills of exchange were common among mercantants.

The captors claimed condemnation of the vessel and cargo,

1. Because of the British protection or license.
2. Because the remittances were directed to be made in England in bills of exchange.

The district and Circuit Courts both decided that

THE neither the vessel nor cargo were liable to condemna-  
 HIRAM, tion; but allowed the captors their expenses. From  
 BARKER. the decree of the Circuit Court both parties appealed.  
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————— SWANN, for Claimants.

The opinions delivered in the cases of the *Aurora* and the *Julia* may, perhaps, upon first view, be considered as deciding the present case: but upon a closer examination, it will be found that the facts in this case differ materially from those which appeared in the two former.

In the first place, in the case of the *Aurora*, there was an intent to supply the enemy—there was an intent to trade with the enemy: there was a direct violation of the act of congress of 6th July, 1812: but here, there was no such violation. The license, in this case, was merely to trade with the neutral ports of Spain and Portugal. The present case differs from that of the *Julia*, inasmuch as the claim here is for the *cargo* only, and the license is for the *vessel*; whereas there, the license extended as well to the cargo as the vessel.

But these papers do not, in fact, import a license: they only intimate an intended forbearance, on the part of Great Britain, to molest a lawful trade to Spain and Portugal. Here was no sailing under the protection of Great Britain.

Again, this license, as it is called, was purchased as an article of commerce, from a private individual; not from admiral Sawyer nor from Mr. Allen: it is only a copy of admiral Sawyer's letter certified by Allen. The obtaining such a copy of the letter was not unlawful.

Besides, there is no evidence that admiral Sawyer ever gave the directions, mentioned in his letter, to the commanders of the squadron under his command, not to molest American vessels laden and bound as therein described. Indeed, his power to give such instructions does not appear: and if further proof be allowed, we can prove that licenses of this description were, in fact, disregarded in other cases.

**DEXTER, *contra.***

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In answer to the argument, that the license in this case related to the vessel only, while the claim is for the cargo alone, it may be observed, that the owners of the cargo were the owners of the license, which ought therefore to be considered as extending to the cargo as well as to the vessel. The license was undoubtedly intended as a protection. The voyage was clearly undertaken in furtherance of the views of the British government, as expressed in admiral Sawyer's letter annexed to the pass: and I understand the ground of the decision in the case of the *Aurora* to be, that she sailed under the protection, and in furtherance of the views, of the enemy.

But if the Court should not consider the sailing under the license sufficient cause of condemnation, we contend that this was also a case of indirect trade with the enemy; inasmuch as the proceeds of the cargo were directed by the owner to be remitted from Lisbon to Liverpool in bills of exchange.

**SWANN, *in reply.***

Buying a bill of exchange on England is not trading with the enemy. A man may, in an enemy country, purchase a ship from a neutral. *3 Rob. 232, 283, the Countess of Lauderdale.* Sailing under an enemy's pass, without trading with the enemy, is no cause of condemnation.

There was not, in this case, such a subserviency to the views of the enemy, as ought to subject the property in question to the sentence prayed for by the captors. It is certainly lawful for the enemy to relax the rights of war: he may lawfully declare that he will suffer certain vessels to pass: and we conceive that if those vessels sail under the faith of such a declaration, it is no cause of condemnation. The enemy might have declared that he would not capture any vessel navigated wholly by Boston seamen; but surely our government would not condemn a vessel for sailing under the faith of such a declaration.

THE *Wednesday, March 16th. Absent... MARSHALL, Ch. J.*  
 HIRAM,  
 BARKER WASHINGTON, J. delivered the opinion of the Court.  
 MASTER

This vessel was the property of Samuel G. Griffith, an American citizen. On or about the 24th of September, 1812, she sailed, with a cargo of flour and bread, from Baltimore to Lisbon; and on her voyage thither, was captured, on the 15th of October following, by the privateer brig Thorn, and brought into the district of Massachusetts, where she and her cargo were labelled as being enemies' property.

The brig was claimed by the master, in behalf of Griffith, and the cargo by the supercargo, as belonging to the said Griffith, and other shippers, being American merchants of Baltimore. Among the papers found on board of this vessel at the time of the capture, was a letter from admiral Sawyer, dated the 5th of August, 1812, addressed to Andrew Allen, junr. as British consul for the states of Massachusetts, New Hampshire, Rhode Island and Connecticut, which states, that, being aware of the importance of ensuring a constant supply of flour and other dry provisions to Spain and Portugal, and to the West Indies, he should give directions to the commanders of his majesty's squadron under his command, not to molest American vessels unarmed and so laden, *bona fide* bound to Portuguese and Spanish ports, whose papers should be accompanied with a certified copy of that letter under the consular seal of the said Allen; also a letter from the said Allen, dated 15th September, 1812, addressed to all the officers of his majesty's ships of war, or privateers belonging to subjects of his majesty, reciting that it is of vital importance to continue a full and regular supply of flour and other dry provisions to the ports of Spain and Portugal, or their colonies, and that, in consequence thereof, it has been thought expedient by his majesty's government that every degree of protection and encouragement should be given to American vessels so laden, and bound to the ports of Spain and Portugal or their colonies, and that, in furtherance of these views of his majesty's government, admiral Sawyer had directed to him a letter dated the 5th of August, 1812, (a copy of which is annexed,) with instructions to furnish American vessels so laden and des-

fined, with a copy of his letter certified under his, the  
 said Allen's, consular seal, which documents are intended  
 to serve as a perfect safe-guard and protection to such  
 vessel in the prosecution of her voyage; and that, in  
 compliance with such instructions, he has granted to the  
 American brig *Hiram*, whereof *John B. Barker* is master,  
 now lying in the port of Baltimore, and laden with  
 flour and bread, bound *bona fide* to Lisbon, a copy of the  
 said admiral Sawyer's letter certified under his consular  
 seal, requesting all officers of his majesty's ships of war,  
 or of private armed vessels belonging to subjects of his  
 majesty, not to offer any molestation to the said vessel,  
 but, on the contrary, to grant her all proper assistance  
 and protection on her passage to Lisbon, and on her return  
 from thence to her port of departure, laden with  
 salt or in ballast only.

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Under an order calling upon the different Claimants  
 to give further proof relative to the British license found  
 on board the brig, when and where it was obtained, of  
 whom, and by whom, and on what terms, and, generally,  
 relative to all facts and circumstances concerning  
 the procurement of the same, William Hartshorn made  
 an affidavit stating that he purchased for Mr. Griffith,  
 the owner of the vessel, in September, 1812, from John  
 R. Waddy, of Virginia, but then in Baltimore, a citizen  
 of the United States, a license to protect a vessel laden  
 with provisions and bound to Lisbon, from capture by  
 British cruizers, for which he was to pay one dollar per  
 barrel for what the vessel would carry, payable \$500 in  
 cash, and the balance on the safe arrival of the vessel  
 at Lisbon: that the said license was in blank, for in-  
 serting the names of any vessel and master: and that the  
 blanks in the said license were filled up in his presence.  
 This witness, as well as others, states that these licenses  
 form an article of traffic in market, as much so as flour.

The vessel and cargo were acquitted in the District  
 Court, and a *pro forma* decree of affirmance made in the  
 Circuit Court; from which decree an appeal to this  
 Court was taken.

In the case of the *Julia*, decided at this Court, it was  
 laid down in general terms, "that the sailing on a voy-  
 age under the license and passport of protection of the  
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**THE** enemy, in furtherance of his views or interests, consti-  
**HIRAM,** tutes such an act of illegality as subjects the ship and  
**BARBER,** cargo to confiscation as prize of war;" and, as explan-  
**MASTER.** atory of the general reasons for that opinion, a reference  
 was made to the opinion of the learned judge who decid-  
 ed that case in the Circuit Court.

It is contended by the counsel for the Claimants, that the facts in this case differ so materially from those which appear in the case of the *Julia*, that the principles of law which ruled that case are inapplicable to this, and, consequently, ought not to govern the decision of the Court upon it.

There certainly are some differences in the two cases; and these were considered sufficiently strong by the district judge who acquitted this vessel and cargo, to condemn the *Julia* and her cargo.

The important circumstance which appears to have influenced the decision of the district judge in that case, was, that the license contemplated the means of ensuring a *constant supply of dry provisions to the allied armies in Spain and Portugal*, and, consequently, an unlawful connexion with the enemy to supply his armies, and a subser- viency to the interests of that enemy. In this case, no such views are expressed in the license of admiral Sawyer; yet the Court must be wilfully blind not to see that this was, in reality, the object of admiral Sawyer and of Mr. Allen, and that it must have been so understood by those who sailed under this license.

In both cases, the allied armies were to be supplied, not by sales made directly to their agents, (for this is not required by either,) but by carrying supplies to the Peninsula, which would indirectly come to their use. The license, as well as the letter of Allen accompanying it, points out the great importance of such supplies being sent to Spain and Portugal; and the latter adds, that, in furtherance of these views of his majesty's government, he had been directed by admiral Sawyer to furnish a copy of his letter to vessels so laden and destined. Can it be said that an American citizen, sailing under the protection of papers professing such to be the views of the British government, does not act in such a manner as to sub-

serve the views and interests of the enemy? Upon the whole, the Court is of opinion that there is no substantial difference between this case and that of the *Julia*; and that this is fully within the principle laid down by this Court in deciding that case, and the reasoning to which it refers.

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It was stated, on the behalf of the Claimants of the cargo, that they ought not to be affected by the illegal act of the owner of the vessel in sailing under the protection of this license. It is a sufficient answer to this argument to observe, that, in this case, the Court must presume that the license was known to the owners of the cargo, if it was not the joint property of all. It is inconceivable that the owner of the vessel should expend about \$1600 for the protection of a cargo in which it appears he was not largely concerned, without communicating such an advantage to his shippers, and even requiring some reimbursement, either by demanding higher freight, or compensation in some other way. But what is conclusive on this point, is, that an order for further proof in relation to this license was made, and yet no affidavit or proof is offered by any of the owners, denying a knowledge of these documents being on board.

The decree must be reversed, and the vessel and cargo condemned to the captors as prize of war.

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THE JOSEPH, SARGEANT, MASTER.

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THIS was the case of a vessel, the *Joseph*, owned by American citizens, captured by the privateer *Fame* on the 16th of July, 1813. The *Joseph* sailed from Boston with a cargo on freight, on or about the 6th of 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 the 30th of June following, with another cargo, of mahogany, taken in at Hull, sailed for St. Petersburg under the protection of a British license, granted on the 8th of June, 1812, authorizing

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