

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.

THE
HIRAM,
BARKER,
MASTER.

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.

THE JOSEPH, SARGEANT, MASTER.

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

THE JOSEPH, the export of mahogany to St. Petersburg, and the importation of a return cargo to England. The brig arrived at St. Petersburg, and there received news of the war between the United States and Great Britain. **SAR-GEANT,** About the 20th of October, 1812, she sailed from St. Petersburg for London, with a cargo of hemp and iron

he would violate no law of the U. States. If an American vessel be captured on a circuitous voyage to the U. States, in a former part of which voyage she has been guilty of conduct subjecting her to confiscation, though at the time of capture she is committing no illegal act, she must be condemned. Where the termini of a voyage are already fixed, the continuity of such voyage cannot be broken by a voluntary deviation of the master, for the purpose of carrying on an intermediate trade. A capture as prize of war may lawfully be made within the territorial limits of the U. States, at any place below low-water mark.

on freight, consigned to merchants in London; and, having wintered in Sweden, in the spring of 1813 she sailed, under convoy instructions from the British ship *Ranger*, for London, where she arrived and delivered her cargo. About the 29th of May she sailed for the United States, in ballast, under a British license; and was captured, on the 16th of July, at no great distance from Boston light-house. She was sent into the port of Salem for adjudication, as prize.

In the District Court of Massachusetts the claim of the owners, Messrs. Dall and Vose, was rejected, and the property condemned to the United States. From this decree the captors and Claimants appealed.

In the Circuit Court the property was condemned to the captors. From this decree the Claimants and the United States appealed.

It was contended, on the part of the Claimants,

1. That it was lawful, in June, 1812, (before the war) to take the license to go from England to the north of Europe, and to bring back a cargo to England.

2. That the taking a freight from the north of Europe to England was from necessity, to obtain funds to pay the debts of the ship, the master not having been able to sell the cargo at St. Petersburg for any price.

3. That the opinion of the minister of the United States at St. Petersburg, who told the captain of the *Joseph* that there was no law against his returning to England under the protection of his license, and who also sent dispatches by the *Joseph* to the government of the United States, though he knew of the intention to return to England and thence to the United States, was, in effect, a license, especially as to the claim of the United States.

4. That there was no trade with the enemy, but with neutrals only; the freight having been taken on neutral account, in a neutral territory, and delivered to a neutral house in Great Britain.

THE
JOSEPH,
SAR-
GEANT,
MASTER.

5. That if any offence was committed, it was completed upon the delivery of the freight in Great Britain; and that therefore the vessel was not liable to capture or seizure, on that account, in a subsequent voyage from Great Britain to the United States.

6. That if she was liable to seizure for having adopted the character of an enemy vessel by any act contrary to the allegiance of the owners, yet she was not to be condemned as prize to the captors, as she was *voluntarily returning* to the United States and her port of discharge, and had actually arrived within the district of Massachusetts: That the capture, therefore, was not the occasion of her being brought in; so that if she was liable at all, even as enemies' property, the condemnation must be to the United States as a *droit of admiralty*. But,

7. That the vessel was not liable to be condemned to the United States, because the declaration of war was, in effect, an invitation, if not a command, to the citizens of the United States, abroad at the time, to return home, and the law allowed a reasonable time and way to effect that return.

PITMAN, *for the captors*, contended,

1. That the facts appearing in the case proved a trading with the enemy, which subjected the vessel to confiscation as prize.

2. That the vessel was not captured within the territorial jurisdiction of the United States: that this appeared from the preparatory examinations of the master and the mate, the first of whom stated "that he was captured in sight of Half-way-rock, off Salem harbor," which was a marine league from the shore; and the latter, "that the vessel was captured about two leagues east from Boston light-house."

THE 3. That, though the fact be admitted as contended
 JOSEPH, for by the Claimants, yet the captors were authorized
 EAR- by their commission to capture within the territorial
 GEANT, jurisdiction of the United States on the high seas,
 MASTER, which were stated in their instructions as extending to
 _____ low-water mark.

Wednesday, March 16th. Absent....MARSHALL, C. J.

WASHINGTON, J. after stating the facts of the case, delivered the following opinion of the Court:

After the decision of this Court in the cases of the *Rapid* and of the ship *Alexander*, it is not to be contended that the sailing with a cargo, on freight, from St. Petersburg to London, after a full knowledge of the war, did not amount to such a trading with the enemy as to have subjected both the vessel and cargo to condemnation as prize of war, had she been captured whilst proceeding on that voyage. The alleged necessity of undertaking that voyage to enable the master out of the freight to discharge his expenses at St. Petersburg, countenanced, as the master declares, by the opinion of our minister at St. Petersburg, that by undertaking such a voyage he would violate no law of the United States, although these considerations, if founded in truth, present a case of peculiar hardship, yet they afford no legal excuse which it is competent to this Court to admit as the basis of its decision. See the *Hoop*, 1 *Rob. Potts and Bell*, 8 *T. Rep.*

The counsel for the Claimants seemed to be aware of the insufficiency of this ground, and applied their strength to show that the vessel was not taken *in delicto*, having finished the offensive voyage in which she was engaged, at London, and being captured on her return home and in ballast. It is not denied that if she be taken during the same voyage in which the offence was committed, though after it was committed, she is considered as being still *in delicto*, and subject to confiscation; but it is contended that her voyage ended at London; and that she was, on her return, embarked on a new voyage. This position is directly contrary to the facts in the case. The voyage was an entire one from the United States to England, thence to the north of

Europe, and thence directly or indirectly to the United States. Even admit that the outward and homeward voyages could be separated, so as to render them two distinct voyages, which is not conceded, still it cannot be denied that the *termini* of the homeward voyage were St. Petersburg and the United States. The continuity of such a voyage cannot be broken by voluntary deviation of the master for the purpose of carrying on an intermediate trade. That the going from St. Petersburg to London was not undertaken as a new voyage, is admitted by the Claimants, who allege that it was undertaken as subsidiary to their voyage to the United States. It was, in short, a voyage from St. Petersburg to the United States by the way of London; and, consequently, the vessel, during any part of that voyage, if seized for conduct subjecting her to confiscation as prize of war, was seized *in delicto*.

THE
JOSEPH,
SAR-
GEANT,
MASTER.

Another objection relied upon by the Claimants, is, that this vessel was captured within the territorial limits of the United States. The fact upon which this objection is raised is not clearly established one way or the other. But admit it to be as contended for by the Claimants, the law is nevertheless against them. The commission granted to privateers authorizes them to seize and take any British vessels found within the jurisdictional limits of the United States, or elsewhere on the high seas, and to bring them in for adjudication; and also to detain, seize and take all vessels and effects, to whomsoever belonging, which shall be liable thereto according to the law of nations and the rights of the United States, as prize of war. The first instructions given by the president to the private armed vessels of the United States, define the high seas, referred to in the commission, to extend to low-water mark, with the exception of the space of one league, or three miles, from the shore of countries at peace with Great Britain or the United States. The general expressions of the commission, explained by these instructions, and containing no exception but in relation to friendly powers, prove incontestibly that all captures as prize of war may lawfully be made within the territorial limits of the United States, at any place below low-water mark.

The Court is also of opinion that there is no weight

THE in another objection made by the Claimants, that this
JOSEPH, vessel was on her way and near to an American port
SAR- at the time she was captured. The right of the captor
GEANT, to the property which he may seize as prize of war is
MASTER. derived under his commission, which is general and un-
 qualified as to place and circumstances, and not from
 any peculiar merit which he may claim in any particu-
 lar case. It is not for him to know whether a vessel
 which has offended against the law of nations, and is
 apparently destined to a port of the United States, will
 certainly enter the port: and certainly he is bound by
 no law to forego the opportunity which chance or his
 own vigilance may have presented to him to acquire
 property which, under his commission, he is authorized
 to appropriate to himself.

Decree affirmed.

THE GROTIUS, SHEAFE, MASTER.

APPEAL from the sentence of the Circuit Court
 for the district of Massachusetts.

Question as to
 the validity of
 capture; one
 man only hav-
 ing been put
 on board; the
 ship's papers
 and the naviga-
 tion of the ves-
 sel being left
 to the master.
 Further proof
 ordered.

The *Grotius*, an American ship owned by Thomas Sheafe and Charles Coffin, the Claimants, sailed from Portsmouth, New Hampshire, March 2d, 1812, on a voyage, according to the shipping paper, from Portsmouth to one or more southern ports, and from thence to one or more ports in Europe, and back to her port of discharge in the United States, and to Portsmouth, if required. She arrived at New York, and sailed from thence with a cargo for St. Petersburg, and arrived at Cronstadt on the 17th of June, 1812. The cargo was owned by American merchants, and was consigned to a house at St. Petersburg. The consignees furnished a return cargo on the credit of the outward cargo. After the return cargo was put on board, the French armies having entered Russia and threatening to approach St. Petersburg, the consignees were apprehensive that their security for the return cargo might be lost. They arrested the ship and cargo, and would not permit her to