

Case No. 9,184.
[1 Gall. 620.]¹

THE MARY.

Circuit Court, D. Rhode Island.

Nov. Term, 1813.²

PRIZE—ENEMY PROPERTY—KNOWLEDGE OF WAR.

A shipment made from the enemy's country after a knowledge of the war, by an American citizen, subjects the property to confiscation as prize of war.

Appeal from the district court of the United States for the district of Rhode Island.

In admiralty.

Boss & Woodward, for captors.

Searle & Crapo, for claimant.

STORY, Circuit Justice. The brig Mary and cargo were captured on the 22d of April, 1813, by the privateer Paul Jones, Captain Taylor, being then on a voyage from Waterford, in Ireland, to Newport, with a cargo of British merchandize on board. It appears in evidence and is admitted, that the brig, with her cargo on board, sailed from Bristol on the 16th of August, 1812, and having received damage at sea, put back into Waterford about five days afterwards, and remained there until the 7th of April, 1813, when she sailed, by permission of the British government, for the United States. The declaration of war was published in the London Gazette on the 26th of July, 1812, and was well known at Bristol within one or two days after. The invoices of the cargo are dated the 13th of August, 1812, and it seems the whole is insured in England; but the exact day, when the shipment was actually made, does not precisely appear. No claim is interposed for the brig; but the cargo is claimed by a Mr. Nanning I. Vischer, as administrator of a General Fisher, an English gentleman, who is said to have died in England, and whose heirs are said to reside in this country. The cargo is alleged to have been shipped, as an investment of part of the proceeds of General Fisher's estate, for the benefit of his heirs. Who these heirs are, and how they claim, is not stated.

From the evidence in the cause, which I forbear to detail, I am by no means satisfied of the verity of the facts alleged in the claim; and I think it would be very difficult to establish the title to be bona fide American. There are instructions in the letters found on board, which carry a pretty strong odor of concealed British interests, although written after knowledge of the war. At all events here is a clear trading with the public enemy after knowledge of the war; and I cannot open the case to show, that the goods were purchased and shipped before that time.

I condemn the brig and cargo, as enemies'

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property, and reverse the decree of the district court.

Affirmed as to the ship; and reversed as to the cargo, upon another point appearing upon further proof ordered. 8 Cranch [12 U. S.] 388. See The St. Lawrence [Case No. 12,232].

¹ [Reported by John Gallison, Esq.]

² [Affirmed in part and reversed in part in 8 Cranch (12 U. S.) 388.]