

Case No. 15,270. UNITED STATES V. GUINET ET AL.
[2 Dall. 321;¹ Whart St. Tr. 93.]

Circuit Court, D. Pennsylvania.

May 11, 1795.

BREACH OF NEUTRALITY LAWS—EVIDENCE.

- [1. The conversion of a merchant ship into a vessel of war, with intent to commit hostilities against a friendly nation, is an original fitting out of a vessel with such intent, within the meaning of the act of congress.]
- [2. On a prosecution for fitting out a vessel to cruise against a friendly nation, there was evidence that defendant, who claimed to be merely an interpreter for the owner, carried orders from the latter to the ship carpenter, told the pilot at what time guns should be taken on board his boat, to be carried to the vessel, and had in his possession an account stating charges for supplies of cannon, ball, muskets, and commissions for services, and that the whole matter was conducted in a secret and mysterious manner. *Held*, that this justified a finding that he was actually concerned in the fitting out of the vessel.]

[In the circuit court of the United States of America in and for the Pennsylvania district of the middle circuit. The grand in-quest of the United States of America for the Pennsylvania district upon their respective oaths and affirmations do present: That John Etienne Guinet, late of the city of Philadelphia, yeoman, and John Baptist Le Maitre, late of the same, yeoman, on the first day of December, in the year of our Lord one thousand seven hundred and ninety-four, within the port of Philadelphia, being a port of the United States, to wit, in the said district of Pennsylvania, knowingly and unlawfully were concerned in furnishing, fitting out, and arming a certain ship or vessel called Les Jumeaux, then lying and being within the port aforesaid, to wit, by advising, superintending, and directing the furnishing, fitting out, and arming the same, and by advancing money to pay in part for the said furnishing, fitting out and arming the same, with intent that the same ship or vessel should be employed in the service of the French republic, being a foreign state, with whom the said United States are and then were at peace, to cruise and commit hostilities upon the subjects and property of the king of Great Britain, being a foreign prince, with whom the United States are and then were at peace, and on the subjects, citizens, and property of other foreign princes and states with whom the said United States are and then were at peace, to the evil example of others in like cases offending against the form of the act of the congress of the said United States in such case made and provided, and against the constitution, peace, and dignity of the said United States. W. Rawle, Atty. of the U. S. for Pa. District]²

This was an indictment against Etienne Guinet and John Baptist Le Maitre, for a misdemeanor in fitting out and arming Les Jumeaux (The Twins) in the port of Philadelphia, to be employed in the service of the republic of France, against Great Britain, both powers being at peace with the United States. The act on which the indictment was founded

[1 Stat 383] contained the following sections: “Sec. 3. And be it further enacted and declared, that if any person shall, within any of the ports, harbours, bays, rivers, or other waters of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every such person, so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned, at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars, and the term of imprisonment shall not exceed three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunitions, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of any person who shall give information of the offence, and the other half to the use of the United States. Sec. 4. And be it further enacted and declared, that if any person shall, within the territory or jurisdiction of the United States, encrease or augment, or procure to be encreased or augmented, or

shall be knowingly concerned in encreasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser or armed vessel in the service of a foreign prince or state, or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the United States are at peace, by adding to the number or size of guns of such vessel prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court, in which the conviction shall be had, so as that such fine shall not exceed one thousand dollars, nor the term of imprisonment be more than one year." The indictment was brought upon the 3d section. Guinet only was apprehended; and, being arraigned, he pleaded not guilty.

The material facts that appeared in evidence, upon trial, were these: Les Jumeaux entered at the port of Philadelphia, in the month of—, laden with sugar and coffee, from Port-au-Prince; and on her arrival she mounted four guns and two swivels. The vessel, it seemed, had originally been a British cutter, employed in the trade to the coast of Guinea; and had ten port-holes on each side, though only four were actually open, at the time of her arrival, to accommodate the four guns, then mounted. Soon after, a Frenchman applied to a ship-carpenter to repair the vessel, which was in a very rotten state; and, after some difficulty, a bargain for that purpose was struck; but the carpenter declared he would only open the number of ports (twenty) which were pierced when she came into port; and in all other respects fit her for a merchant-ship. At the time of repairing her, she was owned in shares by Le Maitre, the original owner, and seven other Frenchmen. The twenty ports being opened, and the other repairs of the vessel proceeding rapidly, the government instituted an enquiry into the subject, in order to ascertain the nature and design of her equipments. On examination, the master warden found the vessel in great forwardness, her twenty ports open, her upper deck changed, &c. and four iron guns on carriages, with two swivels, were lying on the adjoining wharf. He, therefore, desired the carpenter to desist from working any further on the vessel, and made a report on the subject, to the secretary at war; who directed, that all the recent equipments of a warlike nature should be dismantled, and the vessel restored to the state in which she was when she arrived. The master warden, accordingly, caused the port-holes to be shut up, and even refused to allow any ringbolts to be fixed in the vessel. A few days before she left the port a witness said he saw four guns in her hatch-way; the carpenter who repaired her said she carried with her from the wharf, the four guns and two swivels that she had brought in; and, according to the customhouse entry, she sailed from the city in ballast, having nothing in her hold but provisions, water-casks, and wood for the ship's use. It had been said, at one time, that she was to carry flour; at another time that she was to

carry passengers; and Guinet had told the ship carpenter that she would be advertised on freight She sailed in the middle of the day, and some of the workmen went down in her as far as League-Island. It appeared, likewise, that she came to, at Wilmington; that an apprentice to the pilot on board of her, was left behind in order to carry on some guns, cordage, and bedding; that accordingly, he, in company with his master, (who had returned from Wilmington, after-piloting the vessel thither) two or three-Frenchmen that belonged to the vessel, and two black boys, carried and delivered on board, three or four carriage guns; that the witness (who did not go on board) saw no appearance of other guns, which he could have done, though it was dark, had there been port-holes and the guns run out; that the pilot boat returned to Philadelphia the same night, for the purpose of carrying to the ship some of her crew, and two or three hogsheads; that the hogsheads were put on board the pilot-boat the next day, and being there opened were found to be filled with a number of little kegs, the contents of which were unknown; that at the same time twenty or thirty muskets, a number of lanterns, cans, &c. were put on board; that the whole of this transaction took place in the night time, between 10 and 11 o'clock; and that, during the same night, the pilot-boat, with three or four Frenchmen on board, pushed from the wharf, and sailed down to Wilmington, where the vessel still lay; that the things brought in the pilot-boat being put on board the ship, she got under weigh and proceeded to Reedy-Island; that there were then between thirty and forty persons on board; that the witness could not perceive that she had any guns or gun carriages on deck, though this might be owing to its being dark: that the vessel dropt down to New-Castle; and the pilot-boat was again sent to-Philadelphia, by order of an officer (as it would seem) belonging to the vessel, who met the witness there, and between 9 and 10 o'clock at night put one or two trunks and a large box on board the pilot-boat at South-street wharf; that there were then lying on the wharf six guns without carriages, which Guinet told the witness he must take on board the pilot-boat, at 12 o'clock at night; that the masts were so weak, that the witness was at first afraid to undertake it; that he went however, to borrow a runner and tackle from an adjoining sloop; that Guinet concluded to postpone heaving the guns into-the boat till the next evening; and in the intermediate time the marshall seized the

guns and boat, and apprehended the parties.

This was the amount of the general evidence relating to the equipment of the vessel, and the evidence particularly pointed against the defendant, Guinet, was to the following effect: While the vessel was repairing, Guinet was seen frequently attending the people at work; and the master warden, before whom he had attended with the owner, understood that he acted in the character of an interpreter, as the owner could not speak English. The ship-carpenter did not see Guinet till the bargain was struck, and the repairs were considerably advanced; that afterwards when the owner came, which was generally twice a day, he spoke so little English, that Guinet used to translate for him, and on all occasions act as his interpreter; that Guinet sometimes brought orders from the owner to the carpenter; that he never assumed any right of ownership himself, but, on the contrary, once complained to the carpenter, that the owners had not given him so much as a hat for interpreting. In opposition, however, to the idea of his being merely an interpreter, it was proved, that when the marshall seized the pilot-boat, Guinet claimed one of the trunks on board, and declared, that the guns lying on the wharf belonged to him, he having, as he alledged, purchased them, to sell again as merchandize. A runner and tackle was sent on board while the pilot-boat was in the marshall's custody, but it has never been claimed. Guinet denied before the judge, on his examination, that he knew any thing more of the pilot-boat, than that she was going to New-Castle, and he had put his baggage on board to send thither; but the pilot's apprentice being confronted with him, insisted that he was the person who had ordered the six cannon to be taken on board, and that he was acquainted with the transaction. When, likewise, Guinet was apprehended, two papers were found in his possession: one of them was an account, stated in his own hand writing, between Le Maitre and himself, in which were charges for supplying musquets, ball, and cannon; for monies advanced at sundry times on account of the equipments; and for commissions and attendance in superintending the repairs and outfit of the vessel. The other paper was a letter from Messrs. Mendenhall & Co. of Wilmington, to Guinet, dated the 20th of December, 1794, containing the following passage: "Your favor per post is come to hand. We think it not possible to get any 41b. shot, or any other size here. We think it probable, that we can let one of our boats go down with the things for the ship; they have taken the water casks on board already. The account shall be ready against you call." The deputy collector proved the manifest of the sloop Farmer, which brought up six guns, consigned from Mendenhall & Co. to Guinet; and Guinet acknowledged before the judge, that the guns lying at South-street wharf were those that had been so consigned to him.

Mr. Levy, for defendant. This is the first prosecution that has occurred since an act of congress was passed on the subject. Before the act was passed, an important and interesting controversy had arisen between the executive of the federal government, and the French minister; in the course of which the latter contended, that, if not by the general

law of nations, at least by positive compact, the French republic was entitled to repair and equip vessels of war in the ports of the United States; since the treaty, by making it expressly unlawful for the others, had, by necessary implication, made it lawful for her. Treaty, art. 22. As a branch of this controversy, it had, likewise, been insisted, that an American citizen had a right to enter into the service of the French republic; and the position certainly received some countenance, from the refusal of a grand jury in Boston to find bills of indictment against persons who had acted in that manner, and from the acquittal of Gideon Hemphield by a Philadelphia jury. These interpretations and proceedings were, however, disapproved by our executive; who, on the first point, contrary to the avowed sense of the great mass of the people, construed the 22d article of the treaty, to be merely an exclusion of other belligerent nations from the privilege of equipping in our ports, and not a permission to France; and this diversity of sentiment between the government and the citizens, finally produced the act of congress now in question. The section on which this prosecution is founded is, indeed, a severe and penal one; but, in proportion to the rigor of the punishment, will a conscientious jury require the degree of proof to be. It contemplates four descriptions of offence: (1) To fit out and arm, or attempt to fit out and arm. (2) To procure to be fitted out and armed. (3) To be concerned, knowingly, in furnishing, fitting out, or arming any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon a nation at peace with the United States. And (4) To issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the intent that she may be so employed. Two facts, then, are essential to justify a conviction: (1) The vessel must have been fitted out and armed within the port of Philadelphia; and (2) the defendant must, at least, have been knowingly concerned in her equipment.

1. With respect to the first fact, there is no direct proof that the vessel sailed with more guns than she brought with her; and the mere intention to arm and equip her is not criminal. Nor even if cannon, arms and ammunition had been put on board, does it follow, as a necessary consequence, that it

was intended to arm her as a vessel of war in the service of France, to cruise against the friends of America. There is no evidence of such cruising; nor of the design (whether as passengers or mariners) with which the thirty or forty persons were on board the vessel; and military stores may lawfully be sold here, or be exported to foreign countries by American citizens: the act is only punishable when the armament and stores are applied to the use of the vessel in which they are shipped. But the most that can possibly be inferred from the evidence, is an augmentation of the force of the vessel, as she arrived here with guns actually mounted; and then the indictment should have been founded on the 4th, instead of the 3d section, of the act. There is a great difference, in the language and penalties of the two sections, which undoubtedly arose from the very different nature of the cases, to which they respectively apply. For, it is neither so offensive in itself, nor so dangerous to the peace of the nation, that a vessel already armed should add something to its force, as that a vessel should originally be constructed and equipped within our ports, for the purposes of war. Hence, therefore, the bare attempt in the latter case is made criminal; but in the former the unlawful act must be consummated. The words of the 4th section refer to ships of war, cruisers, or other armed vessels: all the writers on the subject state, that there are four kinds of armed vessels, three with commissions, and one without commission, to wit—vessels of war, privateers, letters of marque, and all other armed vessels; and this vessel must be included in the last description, not being embraced by the others.

2. With respect to the second essential fact, there is not sufficient evidence to shew, that the defendant was knowingly concerned in the illegal outfit of the vessel. He acted only as an interpreter; which, notwithstanding the generality of the word, concerned, cannot fairly be included in the definition of an offence, that calls for proof of a serious intention to furnish and outfit the vessel. There was no crime in being owner of the guns at South-street wharf; and the object in ordering them to be put on board the pilot-boat does not appear. The transaction with Mendenhall & Co. rather proves that the guns were not intended for this vessel, as it would have been easier, more expeditious, and safer, in that case, to send them on board from Wilmington, with the water-casks, and other articles, which were actually sent by them. The account found in the defendant's possession, relates to the disbursements of a factor for his principal:—It is not shewn how it arose; whether before or after the articles were received; and after a vessel illegally equipped has sailed, it cannot be an offence within the act, to pay drafts in discharge of the tradesmen's bills. Presumptions unfavorable to innocence, ought not to be encouraged in a case so highly penal.

Mr. Rawle, Dist. Atty., entered into a description of the principles and advantages of an honorable neutrality; and relied upon the good-sense and patriotism of the jury, to prevent their being seduced by a retrospective view of the popular prejudices that had

formerly prevailed. He then contended (1) that the offence had been committed; (2) that the defendant was knowingly concerned in committing it; and (3) that the indictment was founded on the proper section of the act of congress.

(1) There is evidence, that the vessel sailed from the wharf with the guns that she brought into port: that four other guns with military stores were afterwards put on board of her, and that she had a crew of thirty or forty persons. It is arming a vessel, when arms are put on board, she being on her passage; and it cannot be material, that those arms should be arranged in a particular manner. As to the design of the equipment, there is no proof of an actual cruise; but the jury will decide, whether it was any other than that charged in the indictment. There is no attempt to prove that she had a cargo, or carried passengers; on the contrary, it is in evidence that she sailed in ballast; and the subdivisions of interest in the vessel are in the nature of all ownership of privateers.

(2) The defendant was knowingly concerned. As furnishing arms, knowing them to be designed for an unlawful purpose, constitutes the crime; and as an interpreter was the necessary instrument on the occasion; even if the defendant had appeared in no other character, this would have been sufficient to convict him. But he was not merely an interpreter;—he appears to have interfered on various other occasions; and his account is conclusive evidence of a confidential and important agency in accomplishing the illegal outfit of the vessel. It might afford some color of defence, to say, that he only attempted to send the cannon on board from South-street wharf, if this account did not demonstrate that he was concerned in the equipment from the beginning. There is nothing to justify an idea, that it arose from paying drafts, after the vessel had sailed; but on the contrary several items are for money advanced; and the charge for commissions, &c. has relation to the very moment of commencing the repairs. The agency proved by the account is corroborated by the purchase of cannon from Mendenhall & Co. which is evidently connected with the general plan for equipping this vessel.

(3) The indictment is well laid; the 2d section is the only one to which the case is applicable. The 4th section refers only to the augmentation of the force of the vessel, which on her arrival in our ports, was, in fact, a vessel of war, either public or private. If, therefore, a man of war or privateer adds

to the number or size of her guns, or makes any equipment solely applicable to war, it is an offence against this section. But if a vessel, having guns on board, and yet being neither a man of war, nor a privateer, enters our ports, she cannot legally be equipped for the purposes of war. Without this construction, the act of congress would be nugatory; as it might be evaded by bringing a single gun in the vessel. In the present case, it appears that *Les Jumeaux* had been employed in the Guinea-trade; that she arrived here with a cargo of sugar and cotton; and being converted from a merchant vessel, carrying a few guns for self defence, into a privateer armed for hostilities, it is clearly an original outfit within the meaning of the law. The distinction is justified by this further consideration, that the 3d section makes arming the vessel, with intent to employ her in hostilities, the offence; whereas the 4th section refers nothing to the intent with which the force of the vessel is augmented, as it only contemplates the case of vessels originally fitted for war by the nation to which they belong.

PATERSON, Circuit Justice. This is an indictment against John Etienne Guinet, for being, knowingly, concerned in furnishing, fitting out, and arming *Les Jumeaux*, in the port and river Delaware, with intent that she should be employed in the service of the French republic, to cruise, or commit hostilities, upon the subjects of Great Britain, with whom the United States are at peace; and it is the province of the jury to enquire, whether the proof exhibited on the trial, has fully maintained the charge contained in the indictment

Much has been said upon the construction of the 3d and 4th sections of the act of congress; but the court is clearly of opinion, that the 3d section was meant to include all cases of vessels, armed within our ports by one of the belligerent powers, to act as cruisers against another belligerent power in peace with the United States. Converting a ship from her original destination, with intent to commit hostilities; or in other words, converting a merchant ship into a vessel of war, must be deemed an original outfit; for the act would, otherwise, become nugatory and inoperative. It is the conversion from the peaceable use, to the warlike purpose, that constitutes the offence. The vessel in question arrived in this port, with a cargo of coffee and sugar, from the West-Indies; and so appears to have been employed by her owner with a view to merchandize, and not with a view to war. The enquiry, therefore, is limited to this consideration, whether, after her arrival, she was fitted out, in order to cruise against any foreign nation, being at peace with the United States. It is true, she left the wharf with only four guns, the number that she had brought into the port; but it is equally true, that when she had dropped to some distance below, she took on board three or four guns more, a number of muskets, water-casks, &c; and, it is manifest, that other guns, were ready to be sent to her by the pilot-boat. These circumstances clearly prove a conversion from the original commercial design of the vessel, to a design of cruising against the enemies of France, and of course against a nation at peace with the United States, since the United States are at peace with the whole world: Nor can it be

reasonably contended that the articles thus put on board the vessel were articles of merchandize; for, if that had been the case, they would have been mentioned in her manifest, on clearing out of the port, whereas it is expressly, stated that she sailed in ballast. If they were not to be used for merchandize, the inference is inevitable that they were to be used for war. No man would proclaim on the house-top, that he intended to fit out a privateer; the intention must be collected from all the circumstances of the transaction, which the jury will investigate, and on which they must decide. But if they are of opinion that it was intended to convert this vessel from a merchant ship into a cruiser, every man who was knowingly concerned in doing so is guilty, in the contemplation of the law.

It will only, then, be necessary to ascertain how far the defendant was knowingly concerned; for, though he were concerned, if he did not act with a knowledge of the real object, he would be innocent. It has been alleged in his defence that he was merely an interpreter; and if in fact he had appeared in that character alone, we should not have thought it a sufficient ground for conviction. But the jury will collect from the other parts of the transaction, whether this is not used as a mask to cover his efficient agency in the equipment of the vessel. He carried orders from the owner to the ship carpenter; he told the pilot boy at what time the guns should be taken on board his boat, to be carried to the ship; the account found in his possession states charges for supplies of cannon, ball, muskets, and commissions for services; and the whole is conducted in a secret and mysterious manner, under the shade of night. Would he have acted this part as a mere interpreter? If it had been fair mercantile business, involving nothing repugnant to our laws, would it have been so much a work of darkness? This alone casts a gloom over the transaction, that will impress every just and ingenuous mind with an idea of fraud and delinquency. If the defendant has been concerned in the offence, there is no doubt that it is effected as far as it was in his power to complete it The illegal outfit of the vessel was accomplished? and that an additional number of cannon-was not sent to augment her force was not owing to his respect to the laws, but to the vigilance of the public police.

Upon the whole, the jury will consider the

indictment; and give such a verdict as shall comport with evidence and law.

Verdict, guilty.

¹ [Reported by A. J. Dallas, Esq.]

² [From Whart. St Tr. 93.]