

Case of Schooner Harmony
sentenced by Judge Crook
Equation of Term by W. O. Bell

The City Gazette.

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HALIFAX, March 27.

THE case of the schooner *ECONOMY*, having been considered as highly interesting and it being the wish to have a particular report of it, we have published the following note, with which we have been obligingly favored.]

THE case of the *ECONOMY* Holmes, master, which was decided on the 4th March, 1812, in the Court of Vice Admiralty, at Halifax. The counsel for the captors, was R. J. UNIACKE, Esq. the King's Advocate, and for the claimant JAMES STEWART, Esq. the King's Solicitor General. Judgment was given by Dr. CROOK, to the following purport:—

This capture was made by the *Liverpool Packet*, a private armed sch'r of Liverpool, in this Province, on the 17th Nov. 1812. The master has given in a claim on behalf of himself, and of *John G. Ladd*, of Alexandria, both citizens and subjects of the United States of America, as the sole owners and proprietors of the brigantine; and on behalf of *William Ladd*, of Boston, the owner and proprietor of the cargo, as the sole property of an American citizen. The cargo is claimed as consisting of flour, corn, and rye. But it appears from the manifest that there were also six barrels of cigars. The vessel cleared out at Alexandria, for Boston, and is alleged to have been destined for the port of Halifax.

This case has been twice argued. At the first hearing it was the wish of counsel, in which the court concurred, that it should be argued, and decided, if possible, without bringing forward any question as to the validity of the licence.

In that stage of the cause, there were two questions principally made by the King's Advocate, arising upon the facts alleged. It appeared that the licence, upon which all the claimants case depended, was not produced, or made known to the captors, at the time of seizure, and did not make their appearance till the master had been separated from his vessel, and had been at Boston. I agree with the King's Advocate, and can hardly think that this is a sufficient compliance with the condition of the licence, which directed that "the party should take care that the licence should be always kept on board the said vessel with the cargo." The plain object of this clause must have been that the licence should be always on board ready to be produced, and that it should have been communicated to such persons as had a lawful right to demand it, and particularly to British cruisers. It could answer no purpose to keep it conceal-

ed. *De non apparentibus et non existentibus eadem est ratio.* But the non appearance of this paper, when it ought to have been exhibited, and when its being exhibited was probably the reason that the vessel was seized, renders very doubtful the fact of its being on board at all. By this alleged suppression the claimants case labors under considerable difficulties as to the evidence necessary to establish so material a fact.

The first and clearest proof that the licence was on board, would have been supplied by the immediate production of it; a very inferior degree of evidence is now offered in lieu of it: namely the mere oath of the master, after he has been separated from his ship, and has been in the United States—and it is a mode of proof highly objectionable, inasmuch as it would open the door to the greatest frauds. It was admitted by the counsel for the claimants that this evidence was not sufficient to entitle them to restitution, and it was prayed that they might be suffered to bring further proof. But the Court could not accede to the offer, in that stage of the cause, because it would have admitted, that every question of law which could arise upon the facts alleged, was decided in their favor, and that to ascertain the particular facts was all that was required to entitle them to restitution. It was to decide without question or argument, their competence to claim, and the validity of the licence, the most important features in the case.

There was another question of fact which affected the very foundation of the claims, but which stood much upon the same footing. It was properly argued by the King's Advocate, that very strong doubts might be entertained upon the evidence, whether the vessel was really bound to Halifax, or not. No inference against it could be drawn from the destination expressed in the ostensible papers, because the vessel could not clear out for a British port. But none of the papers which expressed a destination to Halifax, were found on board the vessel, or produced to the Captain. In strictness of law, these papers are not admissible, as evidence in the first instance, and have been introduced only by the consent of the captors. Being so introduced, and not till after the master had been at Boston, very little credit can be attached to them. On the other hand the mate swears that her voyage commenced at Boston, that she sailed from thence to Alexandria, where she discharged her cargo, and took on board the present cargo, which was to be delivered to *William Ladd*, at Boston. But the vessel was steering for Boston at the time of capture, and had never altered her course. Arguments likewise were deduced from the entries in the Log-Book, from the winds, and the courses the vessel steered, that such must have been her destination. But as this depends upon points of navigation, which the court cannot take upon it to decide, it would refer them if necessary, to persons properly qualified by their knowledge of the sea, for their report upon it. That such was the destination, is not in itself improbable. It is well known that the Northern States of America are supplied with the articles, which compose this cargo from the Southern ports. Licences for importing them into Halifax, would afford a com-

plete protection to this coasting trade, from British cruisers, because the voyages, in both cases, are always in a Northern direction, which might suit either destination. That they are employed to cover the coasting trade of the United States, or for other fraudulent purposes, is evident, because of above one hundred licences which have been granted within the last eight months, not more than 20 have found their way, with cargoes of corn and provisions into the port of Halifax. The destination therefore requires further proof, which could not be then admitted for the reasons above stated. Some other points were likewise discussed, which were immediately connected with the licence itself, and related to its effects, application and transferable quality. It seemed unavoidable therefore, under all the circumstances to enter upon the consideration of the licence itself; the court directed a second argument, and it has now to give its decision upon the whole case.

The claimants are avowedly alien enemies, and are therefore incapable of appearing as parties in a British Court of Justice, unless their disability is removed by an exercise of his Majesty's undoubted prerogative of extending any of the privileges of the state of peace, to the subjects of countries at war with this country. This exemption from the general rule of law, is claimed by these persons upon a licence granted by the Gov. of the province in these words:

By his Excellency Lieutenant General Sir John Coape Sherbrooke, Knight of the Most Hon. Order of Bath, Lieut. Gov. and Commander in Chief, in and over his Majesty's province of Nova Scotia and its Dependencies, Vice-Admiral of the same, &c. &c. &c.

To Messrs. W. K. REYNOLDS & Co. Merchants. Greeting:

BY virtue of the Power and Authority in me vested, I do by these presents, by and with the advice & consent of his M^s. Council for this Province, authorize and licence you, the said Wm. K. Reynolds & Co. of Halifax, merchants, to import and bring into the port of Halifax, from any port of the United States of America, in any ship or vessel, a cargo of flour, meal, corn, or provisions of any kind, and also pitch, tar, and turpentine, taking care that this licence shall be always kept on board the said vessel with the cargo, and also taking care to enter the same cargo at his Majesty's Custom-House at Halifax, and to deposit this licence in the said Custom-House when the said entry shall be made at Halifax.

Given under my Hand and Seal at Arms, at Halifax, this 5th day of September, 1812, in the 52d year of His Majesty's reign.

J. C. SHERBROOKE.
By His Excellency's Command,
H. H. COGSWELL, Dep'y Sec'y.

THE Captains and Commanders of His Majesty's ships and vessels on this station are hereby required not to molest the vessel having this licence on board while in the prosecution of her voyage.

H. SAWYER, Vice Admiral.

This licence as extending to vessels of every description, is in opposition to the system of navigation laws, and as protecting the property of an enemy is contrary to the established max-

ims of law. The navigation laws can only be dispensed with by the same authority by which they were created, namely the British Parliament, and there is no power either in the Crown or in any persons appointed by it, to grant exemptions from their operations. His Majesty by his prerogative may allow an enemy to trade with his dominions. Upon these respective authorities, must this licence depend for its efficacy.

The original act of Parliament upon which this licence is founded is the 49th Geo. III. c. 49, which has been continued by 52d Geo. III. c. 20, to the 25th March, 1815. It enacts "that it shall be lawful, in any ship or vessel in any manner owned or navigated, to import into and export from any port or ports within the Province of Nova-Scotia or New-Brunswick, which shall be especially appointed for that purpose by his Majesty, by Order in Council, any goods or commodities which his Majesty, by Order in Council shall specially authorize and allow." By virtue of the powers vested in his Majesty by this act, his Royal Highness the Prince Regent; by an order in Council, upon the 8th of April 1812, was pleased to order, that "during the continuance of the said acts, until further order made thereon it shall be lawful in any ship or vessel except a vessel belonging to France, to export from the port of Halifax, to any port belonging to the United States from which British vessels are excluded," certain articles there described, and, "also to import into the port of Halifax, from any of the said ports, wheat and grain of any kind, bread, biscuit and flour, pitch, tar and turpentine, such articles being of the growth produce or manufacture of the said States."

It is not alleged that the licence, which bears date upon the 5th of Sept. 1812, at the time when it was granted had any other validity than what is derived from this Order in Council. Since that Order extended only to bread, biscuit and flour, pitch, tar and Turpentine, the other articles specified in the licence, meal, and corn, unless the word corn should be supposed to be synonymous with grain, and provisions of any kind, are not comprehended under the Order in Council, and their importation being against Acts of Parliament, no permission could legally be granted to that effect. But although the licence could afford no protection than those in the Order in Council, yet I am not absolutely prepared to say that the extending of it to those illegal articles would render it void as to the other articles which might lawfully be imported: or that the importation of cigars, or tobacco, tho' unlawful, and though those articles are liable to confiscation, would deprive the parties of the benefit of their licence, or of other privileges to which they are intitled, as to the other articles.

[The remainder in our next.]

Archibald R. Henderson

IS extremely sorry to be under the necessity of requesting those persons indebted to the Estate of GEORGE M'CALL or Firm of M'CALL & HENDERSON, to call and settle them without delay, otherwise he will be compelled, though very reluctantly, to put them into the hands of an Attorney to collect without discrimination.

St. John, N. B. June 25, 1812.