

**Maley Vs. Shattuck**

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**SooperKanoon Citation :** [sooperkanoon.com/78388](http://sooperkanoon.com/78388)

**Court :** US Supreme Court

**Decided On :** 1806

**Appeal No. :** 7 U.S. 458

**Appellant :** Maley

**Respondent :** Shattuck

**Judgement :**

Maley v. Shattuck - 7 U.S. 458 (1806)

U.S. Supreme Court Maley v. Shattuck, 7 U.S. 3 Cranch 458 458 (1806)

**Maley v. Shattuck**

**7 U.S. (3 Cranch) 458**

*APPEAL FROM THE CIRCUIT*

*COURT OF PENNSYLVANIA*

## **SYLLABUS**

The commander of a United States ship of war, if he seizes a vessel on the high seas without probable cause, is liable to make restitution in value, with damages and costs, even although the vessel is taken out of his possession by a superior

force, and the owner is not bound to resort to the recaptor, but may abandon and hold the original captor liable for the whole loss.

A foreign sentence of condemnation as good prize is not conclusive evidence that the legal title to the property was not in a subject of a neutral nation. Such sentences are only conclusive evidence of their own correctness, and leave the title of the property condemned open to investigation.

The commander of an armed vessel of the United States has a right to stop vessels on the high seas for examination.

A charge for expenses of soliciting from the United States compensation for the illegal capture, is not a proper charge against the captors; nor is the charge of "a premium of insurance, no premium having been paid, admissible."

The outfits of the captured vessel, and the sum advanced to the crew, are proper items in the estimate of damages.

On 20 August, 1804, Jared Shattuck exhibited his libel in the District Court of the United States for the District of Pennsylvania, in the following form:

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"To the honorable Richard Peters, Esq., Judge of the District Court of the United States in and for the District of Pennsylvania."

"The libel of Jared Shattuck, merchant, most respectfully showeth,"

"That your libellant, being a subject of his Majesty, the King of Denmark, sometime in or about the beginning of the month of May in the year of our Lord 1800, at St. Thomas, one of his said Majesty's West India islands, loaded a certain schooner or vessel called the *Mercator*, being an unarmed merchantman, fitted out at St. Thomas aforesaid, for trade only, and being then and there *bona fide* the property of your libellant, with a cargo of merchandise, consisting of provisions, wines, and dry goods, for the sole and *bona fide* account of your libellant, said

cargo amounting to \$13,920, or thereabouts, on a voyage to Jacmel and Port Republican, in the Island of St. Domingo, which he consigned to Toussaint Lucas, also a Danish subject, then and there master of the said schooner *Mercator*, who was instructed by your libellant to dispose of the said cargo at Jacmel or Port Republican aforesaid, to the best advantage, for account of your libellant, invest the proceeds in coffee of good quality, and return therewith to the said Island of St. Thomas. And your libellant further saith that on or about 6 May, the said Toussaint Lucas sailed in the said schooner from the said Island of St. Thomas, upon the said voyage for Jacmel and Port Republican, having on board the said cargo, and also a private adventure belonging to the said Toussaint Lucas, together with all such necessary papers and documents, for ascertaining the property and neutrality of the said vessel and her cargo, as are usually carried by vessels belonging to Danish subjects, and proceeded on his said voyage until on or about 14 May, when, in endeavoring to enter the said port of Jacmel, the said schooner *Mercator* was met with by a certain schooner, called the *Experiment*, a public armed vessel belonging to the government of the United States of America, and commanded by William Maley, a lieutenant in the Navy of the said United States, who unlawfully, and in violation of the law of nations, took possession of the said schooner *Mercator* and put

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on board of her a prize master and four seamen, who carried the said schooner *Mercator* and her cargo, to places unknown to your libellant. And so it is, may it please Your Honor, that neither the said William Maley nor any person or persons acting under him have brought the said schooner *Mercator* or her cargo, to legal adjudication in any court of the United States having admiralty jurisdiction."

"To the end, therefore, that complete justice may be done to your libellant in the premises, may it please Your Honor to direct a monition to issue out of this honorable court, directed to said William Maley, Esq., commanding him forthwith to proceed in due form in this honorable court against the said schooner *Mercator*, and her cargo in order to obtain a legal adjudication of the same in due course of admiralty proceedings, or in default thereof to appear before Your Honor at such

time and place as to Your Honor shall seem fit to answer your libellant in the premises and show cause why, by the said honorable court's final sentence and decree, he shall not be adjudged to make restitution in value and pay to your libellant the whole amount of his loss aforesaid, with full damages and costs, and that such further justice may be done to your libellant in the premises as to this honorable court shall ever seem meet, and your libellant shall ever pray, &c.;"

"PETER S. DUPONCEAU, for libellant"

To this libel, Maley appeared, and filed the protest following:

"To the honorable Richard Peters, Esq., Judge of the District Court of the United States in and for the District of Pennsylvania."

"The protest of William Maley, Esq. late commander of the schooner *Experiment*, a public armed vessel of the United States of America, appearing here in court to avoid all and all manner of contempt, contumacy, and

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default under this his protest against the libel filed by Jared Shattuck, merchant."

"This protestant, saving and reserving to himself all and all manner of exception to the manifest uncertainties, imperfections, and insufficiencies in the said libel contained and protesting that he ought not in any wise to be required to appear thereto or to proceed against the schooner *Mercator* and her cargo as is therein prayed, nevertheless, for the reasons aforesaid and as cause why the said libel should be dismissed without further appearance or answer, avers, propounds and says:"

"That true it is that the said protestant, while commanding the said schooner *Experiment*, a public armed vessel of the United States of America, under a lawful commission and authority from the government of the said United States of America, did on or about 15 May, 1800, meet on the high seas and take possession of the said schooner called the *Mercator*, in the said libel mentioned, and put on board an officer and four seamen. But this protestant denies that by so

doing he acted unlawfully and in violation of the law of nations, for he avers, propounds, and says that since the passing of the act of the said United States of America entitled 'An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof,' and before the said 15 May, 1800 -- that is to say on the day of \_\_\_\_ in the year 1799 -- the said schooner called the *Mercator*, being an American registered vessel owned, hired and employed by a person or persons resident within the said United States or by citizens thereof resident elsewhere, sailed and departed from the port of Baltimore, within the said United States, and at the time of her being met and taken possession of by this protestant as aforesaid, and before her return within the said United States was proceeding directly, or from some intermediate port or place to Jacmel, a port or place within the Island of St. Domingo, within the territory or dependencies of the French Republic. And this protestant further avers, propounds, and says that at the time of his meeting and taking possession of the said schooner *Mercator* as aforesaid, she was steering a direct course for the said port of Jacmel, and not for Port-au-Prince, whereas, the letter of instructions

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from the said Jared Shattuck, the libellant, and all the other papers exhibited to this protestant, by Toussaint Lucas, the master of the said schooner *Mercator*, or found on board thereof, falsely, fraudulently, and colorably represented and declared, among other things, that the said schooner was bound on a voyage from the Island of St. Thomas to Port-au-Prince, a place then in the power and possession of the British troops, and not within the territory or dependencies of the French Republic."

"And this protestant further avers, propounds, and says that at the time of his meeting and taking possession of the said schooner *Mercator* as aforesaid, the master thereof appeared to be a Frenchman (although this protestant has since heard, but does not admit, that he is an Italian), and the crew consisted chiefly of Portuguese and Italians, nor was there then nor at any time before or since exhibited to this protestant any burgher's brief or briefs or other evidence whatsoever that the said master or crew or any part thereof had become burghers

of the said Island of St. Thomas or were otherwise naturalized subjects of the King of Denmark, without which this protestant avers that the said master and crew could not lawfully command and navigate a Danish vessel according to the laws and usages of Denmark."

"And this protestant further avers, propounds, and says that the said Jared Shattuck, the libellant, alleging himself to be the owner of the said schooner *Mercator* and her cargo, and to be a burgher of the Island of St. Thomas (neither of which allegations is admitted by this protestant), was born in the State of Connecticut, one of the United States aforesaid, nor did it satisfactorily appear to this protestant (considering the many other proofs and causes of suspicion to the contrary) at the time of his meeting and taking possession of the said schooner *Mercator* as aforesaid, nor has it so appeared at any time since, that the said Jared Shattuck, the libellant, had by any lawful act of expatriation or otherwise at any time become a subject or citizen of any other government or nation and ceased to be a citizen of the said United States, owing fidelity and allegiance thereunto, but admitting it to be true that the said Jared Shattuck, the libellant, was an inhabitant of the said Island of St. Thomas, this protestant did then and does still verily believe that the said Jared Shattuck had repaired to the

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said Island of St. Thomas or remained there for the purpose of carrying on an illicit and clandestine commerce with ports and places within the territory and dependencies of the French Republic during the hostilities which were then waged between the United States and the French Republic, and also between the King of Great Britain and the said French Republic."

"And this protestant further avers, propounds, and says that believing, from all the appearances, circumstances, and reasonable and just causes of suspicion hereinbefore averred and propounded touching the original American character of the said schooner *Mercator*, the voyage on which she was actually proceeding, the false destination declared and represented in the said letter of instructions, and other papers exhibited and found on board, the description of the master and

crew, and the birthplace and original allegiance of the said Jared Shattuck, the libellant, that the said schooner *Mercator* was a registered vessel of the said United States, voluntarily carried or suffered to proceed to a French port or place as aforesaid, and to be employed as aforesaid, contrary to the intent and in defiance of the prohibitions of the said act of the Congress of the United States entitled 'An act further to suspend the commercial intercourse between the United States and France and the dependencies thereof.'

"This protestant, in obedience to the said act of Congress and to his official instructions, took possession of the said schooner as aforesaid with a view to such further examination and proceedings as the law of nations and the laws of the United States should warrant, justify, and require. But this protestant avers that such possession was taken lawfully, upon the just and reasonable causes, motives, and designs aforesaid, and with the utmost care, caution, and solicitude that the said schooner *Mercator* and her cargo should thereby suffer no injury, damage, or spoliation, and that the real national character, and the real commercial objects of the said schooner *Mercator*, of her pretended owner, and of the said master and crew while prosecuting her said voyage should be more fully examined and satisfactorily ascertained without any unnecessary detention or delay, this protestant, at the time of placing on board of the said schooner *Mercator* an officer and four seamen as aforesaid, did not remove nor take therefrom the said master and crew of the said schooner *Mercator* or any of

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them nor remove, take away, cancel, or destroy any of the papers and documents of said schooner *Mercator* and her cargo, but ordered the officer so put on board of the said schooner, having on board her said master and crew and all the documents and papers of the said schooner and cargo, to make the best of his way to Cape Francois, there to deliver all his letters to Silas Talbot, Esq. then commodore and commander of the public vessels of the said United States upon that station, and to wait the orders of the said Silas Talbot, with express instructions also to pay particular attention to everything belonging to the said schooner *Mercator* and her cargo, seeing that nothing should go to waste, and to

deliver the said schooner to the said master thereof, if the said Silas Talbot, commodore and commander as aforesaid, should clear her."

"And this respondent further avers, propounds, and says that in a short time not exceeding the space of six hours or thereabouts after the said schooner *Mercator* had parted from the said schooner *Experiment*, destined for Cape Francois as aforesaid under the orders aforesaid, the said schooner *Mercator* was captured on the high seas as prize, by a British private armed vessel of war called the *General Simcoe*, commanded by Joseph Duval, who thereupon forcibly took the said schooner *Mercator* and her cargo from and out of the possession, care, custody, and control as well of the said master and crew of the said schooner *Mercator* as of the said officer and men who had been put on board of her as aforesaid by this protestant, and who were thereupon taken out of and removed from the said schooner *Mercator* into and on board of the said British privateer, and he said schooner *Mercator* and her cargo, sent to the Island of Jamaica under the charge of a prize master and men belonging to the said British privateer without the assent, connivance, assistance, negligence, or fault whatsoever of this protestant or of the officer and men whom he had put on board of the said schooner *Mercator* as aforesaid for the causes and with the intentions aforesaid."

"And this protestant further avers, propounds, and says that the said schooner *Mercator* and cargo, being so, as aforesaid, captured on the high seas as prize and sent to the said Island of Jamaica by the said British privateer, a libel, in due form of law was exhibited and filed by the said captors in the court of vice-admiralty, lawfully established in the said

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Island of Jamaica (being a court of competent jurisdiction in all matters of prize) alleging and charging that the said schooner *Mercator* and cargo were the property of France or of the King of Spain, or of some person or persons being subjects of France or of the King of Spain, or inhabiting within some of the territories of France, or of the King of Spain, and were good and lawful prize, inasmuch as hostility and war then notoriously subsisted between the King of

Great Britain, on the one part, and the said French Republic and the King of Spain, on the other part, and thereupon the said captors, in their said libel, prayed that the said schooner *Mercator* and her cargo might be adjudged lawful prize and be confiscated and condemned."

"And this protestant further avers, propounds, and says that notwithstanding the denial of the said Jared Shattuck in his said libel contained, he, the said Jared Shattuck, received speedy and full notice that the said schooner *Mercator* and her cargo were captured as prize and sent into the said Island of Jamaica as aforesaid, and there prosecuted by the said captors as prize in manner aforesaid, and thereupon a claim was exhibited and a defense made by and for the said Jared Shattuck, the alleged owner of the said schooner *Mercator* and her cargo. And upon hearing of the parties, by their respective advocates, and upon examining all the ship's papers and documents, together with other evidence and proofs in the cause, the judge of the said court of vice-admiralty was pleased to adjudge and decree that the said schooner *Mercator* and her general cargo were good and lawful prize, and did therefore adjudge, order, and decree that the same be condemned and confiscated to the use of the said captors, &c.; From which sentence the said Jared Shattuck, the libellant, prayed leave to appeal, which was granted. But this protestant avers that this appeal has not been duly prosecuted by the said Jared Shattuck, but has been altogether waived and abandoned."

"And this protestant further avers, &c.;, that at the time of the capture of the said schooner and cargo by the British privateer as aforesaid and at the time of the libel and of the condemnation and of the appeal as aforesaid, peace and amity notoriously subsisted between the United States of America and the King of Great Britain and the King of Denmark, and also between

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the said King of Great Britain and the said King of Denmark and their respective citizens and subjects, and therefore this protestant avers that if the allegations contained in the libel of the said Jared Shattuck had been true, sentence of condemnation and confiscation as prize could not and would not have been

pronounced as aforesaid against the said schooner *Mercator* and her cargo by the said court of vice-admiralty, having competent jurisdiction upon all matters of prize as aforesaid, and therein proceeding according to the law of nations and the faith of treaties."

"Wherefore this protestant prays that the said libel may be dismissed with costs, &c.;"

"A. J. DALLAS, for the protestant"

The replication of Shattuck, was as follows:

"To the honorable Richard Peters, Esq., Judge of the District Court of the United States in and for the District of Pennsylvania."

"In the case of the schooner *Mercator* and her cargo, Toussaint Lucas, master."

"The replication of Jared Shattuck, late owner of the said schooner *Mercator*, and her cargo to the protest of William Maley, Esq., late commander of the public armed schooner of the United States *Experiment*. "

"This replicant, not confessing or acknowledging any of the facts, matters, and things by the said William Maley in and by his said protest set forth, propounded, and alleged, and also saving and reserving to himself all and all manner of exception to the manifold uncertainties and insufficiencies in the said protest contained and to the informality thereof, and protesting on his part that the said William Maley ought to have appeared absolutely, and not under protest and made direct answer upon oath or affirmation to the charges in this replicant's libel contained or to so much thereof as he has been advised to be material for him to reply unto, doth aver, allege, propound, and say that this replicant was born in the

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State of Connecticut in the year 1774, and when he was between fifteen and sixteen years of age, *viz.*, about the end of 1789 or beginning of 1790, the United States being then at peace with all the world, he migrated to the Island of St.

Thomas, one of the dominions of the King of Denmark and Norway, with a view to settle and establish his permanent residence in that island. That he served his apprenticeship there with a mercantile house for about six years, and from his first arrival, has constantly and permanently resided and now continues to reside there. That on 10 April, 1797, the United States being still at peace with all the world, he became a naturalized Danish subject and burgher of the island, and shortly afterwards intermarried with an inhabitant of that place, by whom he has several children, all living in that island. That he did acquire and now holds real estate there, and is there permanently settled and established and carries on the trade and business of a merchant."

The replication then goes on to deny that he went or remained there for the purpose of illicit trade. It avers that during the war between France and Great Britain, which terminated by the Treaty of Amiens, he was largely concerned in trade at and from St. Thomas to foreign ports, and had a number of vessels navigating under the Danish flag in the West-India seas. That several of his vessels were taken as well by British as French cruisers, carried into their respective islands, and there acquitted, and his neutral character, and that of his property, was acknowledged by the tribunals of both nations.

That in May, 1800, he loaded the *Mercator*, as mentioned in his libel, and sent her on a voyage to St. Domingo, consigned to the said Toussaint Lucas, who was also a *bona fide* subject. That the original destination of the vessel was for Port-au-Prince, alias Port Republican, a place then in the power and under the dominion of the negro general Toussaint, not of the British troops, as stated in Maley's protest. That at that time commerce was lawfully carried on between the United States and ports of St. Domingo, which were in the power of general Toussaint. That on 3 May, 1800, he gave

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written instructions to Lucas to proceed with his vessel to Port-au-Prince, but as she was ready to sail, he was informed that the forces of general Toussaint had taken Jacmel from General Rigaud, who held for the French Republic. That

Jacmel is a port of the Island of St. Domingo, which lies between the Island of St. Thomas and Port-au-Prince, and is in the way between the former and the latter. That the distance from Jacmel to Port-au-Prince is by land only between thirty and forty miles, but by sea upwards of one hundred leagues. That conceiving it to be advantageous to try the market at Jacmel before proceeding to Port-au-Prince, he gave verbal directions to Lucas for that purpose.

It denies that anything false or colorable was intended, and that any of the *Mercator's* papers were false or colorable, and that he gave any orders to Lucas to deny or conceal his intention of going into Jacmel.

It admits that after the passage of the act of Congress, "further to suspend," &c.;, and before 15 May, 1800, the *Mercator* was an American registered vessel, owned by a citizen of the United States and sailed from Baltimore, but denies that when taken by Maley, she was navigating contrary to the laws of the United States.

It avers that on 26 November, 1799, he purchased her *bona fide* at St. Thomas for the sum of \$8,500 dollars, which he had actually paid and took a bill of sale, which was on board at the time of her capture. That from the day of purchase until her capture, he was *bona fide* the sole owner, and that no other person had any interest in her or her cargo. That almost the whole shipping of the Island of St. Thomas consists of vessels built in the United States and in the Island of Bermuda, and brought to the former island for sale.

That at the time of her capture, the *Mercator* was navigated as a *bona fide* Danish vessel, and had on board every paper and document which the law required to prove her neutrality, and especially that she had, 1st, the King's passport, in the usual form; 2d, the certificate of measurement; 3d, her muster-roll, or official list of her crew; 4th, the bill of sale; 5th, the burgher's

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brief of her captain, Toussaint Lucas; 6th, her clearance; 7th, the invoice and bill of lading of her cargo duly attested, as to the ownership and neutrality thereof; 8th,

the captain's instructions or sailing orders, and 9th, a certificate, upon oath, of several respectable merchants of the island attesting the fact of Schattuck's citizenship and residence in the island. That the crew consisted of eleven persons, viz., the master, the mate, seven seamen, the cook and a boy, who were all by birth Italian or Portuguese. That the master was a native of Leghorn, in Tuscany, was a Danish subject, and had resided seven years in St. Thomas. That very few Danish seamen are to be had in the Danish Islands, and that, except the officers of government, there are very few Danes in the Islands of St. Thomas and St. Croix, the inhabitants being chiefly native English and Americans, with some French and other foreigners.

It denies that by the laws of Denmark, a vessel cannot be lawfully navigated by others than Danish or naturalized Danish sailors, and avers that the crew may be subjects of any nation whatever, provided that in time of war, not more than one-third thereof be native subjects of one or other of the belligerent powers. It denies of one or other of the *Mercator* were subjects of any of the belligerent nations, and that at the time of her capture there was any reasonable cause of suspicion that she was an American vessel carrying on an illicit trade. It submits to the court whether Maley had a right, by the law of nations, to arrest a vessel on the high seas sailing under the protection of his Danish Majesty's royal passport under pretense of a violation of a municipal law of the United States.

It suggests that Maley acted *mala fide*, and offers to prove that he was in the habit of violating the law of nations and the instructions of his government with respect to neutral vessels and property, and that he was dismissed from the service of the United States principally on that account.

With respect to the capture by the British privateer, it admits that the *Mercator* was so captured while under the protection of the United States and its national

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flag, but does not admit that it was without the connivance or fault of Maley or the officer whom he put on board. It admits the condemnation as prize, but avers that

it was the duty of the officer and men to have resisted the capture and to have demanded of the court of vice-admiralty at Jamaica restitution of the vessel and cargo on the ground that the same had been unlawfully and in violation of the respect due to the national vessels of the United States, and to the flag thereof, taken from the possession and from under the protection of the commander of one of the public vessels of war of the United States.

It admits that Lucas filed a claim for the vessel and cargo before the vice-admiralty court at Jamaica and that they were condemned as prize, but alleges that the sentence of condemnation was contrary to the evidence. It admits also that an appeal was entered, and exhibits an exemplification of the proceedings. It denies that Lucas was bound to exhibit a claim or to appeal from the condemnation, and that Shattuck was bound to prosecute the appeal, but avers that the whole should have been done by or in behalf of the United States, to whom alone the vessel and cargo would legally have been restored as having been taken from their possession and from under its protection.

It avers that Shattuck, as soon as he received notice of the capture and condemnation, gave information thereof to the Governor General of the Danish West India Islands, and to Richard Soderstrom, charged with the consular functions for the King of Denmark in the United States, who communicated the information without loss of time to the government of the United States and claimed reparation. That the government of the United States expressed a wish that the appeal should be prosecuted, in compliance with which Shattuck without delay forwarded the necessary papers to England, but when they arrived he was informed by his proctors that it was useless to prosecute the appeal because the prize money had been distributed, and the prize agent had died insolvent.

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It denies that the vessel and cargo would not have been condemned if they had been really and *bona fide* neutral property, and avers that they really were such as stated in his libel, and does not admit that he is precluded by the sentence of

the court of vice-admiralty of Jamaica from showing the same.

It concludes

"That for aught that has been said and alleged by the said William Maley in his protest aforesaid, this replicant ought not to be precluded from obtaining the benefit of the prayer of his said libel; he therefore prays that the said William Maley may, by the interlocutory decree of this honorable court, be ordered to appear absolutely and without protest before Your Honor, so that further justice may be done by this honorable court in the premises, as to right shall appertain."

"JARED SHATTUCK"

"Jared Shattuck, being duly sworn according to law, on his oath doth say that all and singular the facts, matters, and things by him in the foregoing replication stated, as far as they relate to his own acts and matters within his own knowledge, are true, and inasmuch as the same relate to the acts of others, he verily believes them to be true."

"JARED SHATTUCK"

"Sworn before me 26 May, 1804."

"RICHARD PETERS"

The rejoinder of Maley was as follows:

"This rejoinant saving and reserving to himself all and all manner of exception to the manifold uncertainties and insufficiencies in the said replication contained, and not confessing or acknowledging any of the facts, matters, and things by the said Jared Shattuck in and by his said replication set forth and alleged, but denying the same, saith that the facts in this rejoinant's protest set forth are true and sufficient to excuse him

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from further appearance and answer to the libel of the said Jared Shattuck."

"A. J. DALLAS, for WILLIAM MALEY"

Whereupon it was adjudged, ordered and decreed that the libel be dismissed with costs.

From which decree Shattuck appealed to the circuit court.

Upon the appeal, the circuit court, being of opinion that the appellant was entitled to restitution with damages and costs, reversed and decree of the district court, overruled and rejected the protest of Maley, and ordered him to appear absolutely without protest before the district court, to whom the cause was remitted for further proceedings.

In the district court, upon the remission of the cause, the following entry was made:

"And now, to-wit, this 9 August, 1805, the said William Maley, by Alexander James Dallas, his proctor aforesaid, having appeared absolutely as aforesaid, comes here into court, and for answer to the libel of the said Jared Shattuck, propounds and says that the facts by this respondent in his said protest set forth are true, and to the intent that justice may be done in the premises, this respondent prays that the said Jared Shattuck may be called upon to declare on his solemn oath to whom and when and in what manner he paid for the said vessel called the *Mercator*, and whether the original American owner hath any interest therein or in the restitution in value by the said libel prayed for, and whether any correspondence, and what, took place between the said Jared Shattuck and the captain of the said vessel or any other person after she was carried into Jamaica, and whether any correspondence

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and what took place between the said Jared Shattuck and any persons, and whom, relative to the prosecution of an appeal from the decree of condemnation in Jamaica, and whether the said Jared Shattuck made any and what application and when, to the American government, relative to the capture of the said vessel by

this respondent, as aforesaid. . . . "

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

In this case, each party has appealed from the sentence of the circuit court. Maley complains of that sentence because it subjects him to damages and costs for the value of the *Mercator* and her cargo, first captured by him and afterwards taken out of his possession by a British privateer, and because also some items are admitted into the account, taken for the purpose of ascertaining the sum for which he is liable which ought to be excluded from it. Shattuck complains of the sentence because he was not allowed by the circuit court all the items contained in the report, to the whole of which he thinks himself entitled.

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In discussing the right of Shattuck to compensation for the *Mercator* and her cargo, the first question which presents itself is was that vessel and cargo really his property?

Without reciting the various documents filed in the cause, it will be admitted that they demonstrate the affirmative of this question unless the Court be precluded from looking into them by the sentence in Jamaica condemning the ship and cargo as lawful prize.

On the conclusiveness of the sentence of a foreign court of admiralty it is not intended now to decide. For the present, therefore, such sentence will be considered as conclusive to the same extent which is allowed to it in the courts of Great Britain. But in those courts it has never been supposed to evidence more than its own correctness; it has consequently never been supposed to establish any particular fact, without which the sentence may have been rightly pronounced. If then, in the present case, the *Mercator*, with her cargo, may have been condemned as prize, although in fact they were both known to be the property of a neutral, the sentence of condemnation does not negative the averment that they

both belonged to Jared Shattuck.

It is well known that a vessel libeled as enemy's property is condemned as prize if she act in such manner as to forfeit the protection to which she is entitled by her neutral character. If, for example, a search be resisted or an attempt be made to enter a blockaded port, the laws of war, as exercised by belligerents, authorize a condemnation as enemy's property, however clearly it may be proved that the vessel is, in truth, the vessel of a friend. Of consequence, this sentence, being only conclusive as to its own correctness, leaves the fact of real title open to investigation. This positive impediment to inquiry being removed, no doubt upon the subject can be entertained.

It being proved that the *Mercator* and her cargo belonged to Jared Shattuck, who, though born in the United States, had removed to the Island of St. Thomas,

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and had acquired all the commercial rights of his domicile before the occurrence of those circumstances which occasioned the acts of Congress, under which this seizure is alleged to have been made, the case of the *Charming Betsey* determines that the vessel and cargo were not liable to forfeiture under those acts.

It remains, then, to inquire whether the *Mercator* appeared under such circumstances of suspicion as to justify her seizure.

On this point, too, the authority of the *Charming Betsey* appears to be decisive. In each case, the vessel was built in America, and had been recently sold to a person born in the United States, who had become a Danish burgher before the rupture between this country and France, and both cases present the same circumstances of suspicion, derived from the practice of the island to cover American as Danish property.

The points of dissimilitude are that in the *Charming Betsey*, the captain and crew were of a description to give greater suspicion than the captain and crew of the *Mercator*, and in the *Charming Betsey* was found a *proces verbal*, which stated

facts unfavorable to that vessel, whereas no similar paper was found in the *Mercator*. The only circumstance of suspicion attending the *Mercator*, which did not belong to the *Charming Betsey*, is that she was bound to Port-au-Prince, and was taken entering the port of Jacmel. This circumstance appears to be sufficiently accounted for, but if it was not, the Court can perceive in it no evidence of her being American property which can weigh against the testimony offered by the papers that she was Danish. The documents on this point which were thought decisive in the case of the *Charming Betsey*, exist in this case also. The information of the captain, uncontradicted by any of his crew in this case, as in that, is corroborated and confirmed by the documents on board the vessel.

The only paper, the absence of which could be important, was an authenticated burgher's brief proving the captain to have been a Danish subject. How far

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the absence of this paper might have justified a suspicion in a belligerent that she was enemy property, so as to excuse from damages for capture and detention, according to the usages of belligerents, the court will not undertake to determine; but it was a casualty which is not sufficient to justify a suspicion that the vessel was American. The burgher's brief is stated to have been in possession of the captain, but is supposed not to have been produced, and consequently it could have no influence on Lieutenant Maley. However this may be, no inquiry respecting it was made, and he does not appear to have suggested any difficulty on that ground.

Unquestionably Lieutenant Maley had a right to stop and to search the *Mercator*, and to exercise his judgment on the propriety of detaining her; but, in the exercise of that judgment, he appears to have come to a decision not warranted by the testimony presented to him. The circumstances of suspicion arising in the case, were not sufficiently strong to justify the seizure which was made.

But it is obvious that Lieutenant Maley suspected the *Mercator* to be a French, not an American, vessel.

In his answer he says that he mistook the captain for a Frenchman; in his letter of instructions, he speaks of the vessel as a prize; and in the protest of the American prize master, she is denominated "a French prize." From these circumstances combined, it is supposed to be sufficiently apparent that the mistake committed by Lieutenant Maley was in supposing the *Mercator* to be a French vessel liable to capture under the laws of the United States.

The argument of the Attorney General that Lieutenant Maley is not liable for this loss because it was produced by a superior force which it was not in his power to resist would have great weight if the circumstances under which the *Mercator* appeared had been such as to justify her seizure. But the Court is not of that opinion, and consequently that argument loses its application to this case.

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Neither is it conceived that the failure of Shattuck to appeal in time destroys his claim on Lieutenant Maley. He had certainly a right to abandon if he chose to do so, and to resort to the captor for damages.

In the opinion given in the circuit court that the libellant was entitled to compensation for the *Mercator* and her cargo, this Court can perceive no error, but in so much of the report of the commissioner appointed to adjust the account as is affirmed, some unimportant inaccuracies appear.

In its circumstances, this case so strongly resembles that of the *Charming Betsey* that the Court will be governed by the rule there laid down. In pursuance of that rule, the rejection of the premium for insurance, that premium not having been paid, is approved; but the rejection of the claim for outfits of the vessel, and the necessary advance to the crew is disapproved. Although the general terms used in the case of the *Charming Betsey* would seem to exclude this item from the account, yet the particular question was not under the consideration of the court, and it is conceived to stand on the same principles with the premium of insurance if actually paid, which was expressly allowed. But this claim is nearly balanced by two items in the account which were admitted, as this Court thinks, improperly.

One is the charge of \$540 for the expense of soliciting compensation from the United States. The Court can perceive no reason for charging this expense to Lieutenant Maley.

The other is the charge of \$326.12, the account of Ross & Hall, for expenses in England.

Had the appeal been prosecuted in time by Shattuck, it is scarcely possible to doubt but that the sentence of the court in Jamaica would have been reversed, in which case it would have been reasonable that the expense of the prosecution should have been paid by Lieutenant Maley. But as it was not prosecuted in time, in consequence of which the proceeds of the vessel and

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cargo were lost, it is not conceived that Lieutenant Maley ought to be charged with the costs of a subsequent ineffectual attempt, not made at his instance, to repair the original neglect.

What may be the claim of Shattuck on the government of the United States for this sum is not for this Court to inquire, but his claim against Lieutenant Maley is not admitted.

This Court affirms so much of the sentence of the circuit court, as awards compensation for the *Mercator* and her cargo, to the libellant, and approves of the sentence on the report of the commissioners, except as to that part which rejects the claim for advances for the outfits of the vessel, and the wages of the crew, and which admits the charges of \$540, on account of the expenses attending the application to the government of the United States, and of \$326.12, on account of expenses attendant on the ineffectual attempt which was made to prosecute an appeal in England. In these respects, the account is to be reformed, for which purpose, so much of the sentence of the circuit court, as respects this part of the subject, is

*Reversed, and the case is remanded to the circuit court to be further proceeded in as to justice shall appertain.*

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