

**The Adventure**

**The Adventure**

**SooperKanoon Citation :** [sooperkanoon.com/78626](http://sooperkanoon.com/78626)

**Court :** US Supreme Court

**Decided On :** 1814

**Appeal No. :** 12 U.S. 221

**Appellant :** The Adventure

**Judgement :**

The Adventure - 12 U.S. 221 (1814)

U.S. Supreme Court The Adventure, 12 U.S. 8 Cranch 221 221 (1814)

**The Adventure**

**12 U.S. (8 Cranch) 221**

*APPEAL FROM THE CIRCUIT COURT*

*OF THE DISTRICT OF VIRGINIA*

**SYLLABUS**

The case of a vessel and cargo belonging to a citizen of one belligerent nation captured on the high seas by a cruiser of the other belligerent, given to a neutral and by him brought into a port and libeled in a court of his own country, between which and the nation to which the vessel originally belonged war breaks out before final adjudication, is to be considered as a case of salvage, one moiety adjudged

to the libellants and the other moiety to remain subject to the future order of the court from which the appeal was brought up and to be restored to the original owner after the termination of the war unless legislative provision should previously be made for the confiscation of enemy's property found in the country at the declaration of war.

The act of bringing in the cargo, though consisting of articles the importation of which was prohibited by law, was not considered, under the peculiar circumstances of this case, as subjecting the property to forfeiture.

There is no precise rule as to the amount of salvage, nor is it in its nature reducible to rule. For it must in every case depend upon peculiar circumstances, such as peril incurred, labor sustained, value decreed, &c.;, all of which must be weighed and estimated by the court that awards the salvage. As far as the inquiries of this Court have extended, where a proportion of the thing saved has been awarded, a half has been the maximum and an eighth the minimum; below that it is usual to adjudge a compensation *in numero*. In some cases, indeed, more than a half has been awarded, but they will be found to be cases of very extraordinary merit or on articles of very small amount.

The facts of the case, as stated by JOHNSON, J. in delivering the opinion of the Court, were as follow:

The libellants were the master and crew of the American brig *Three Friends*. On 14 November, 1811, whilst on their voyage from Salem to the Brazils

Page 12 U. S. 222

with a valuable cargo on board, they were captured by the *Nymphe* and *Medusa*, French frigates, and by them the brig was plundered and burnt. On the 21st, the frigates captured the *Adventure*, a British ship laden with British goods, and after taking out a part of the cargo, made a present of the residue to the libellants. The fact of the gift is established by a writing under the hand of the captain of the *Medusa*, commander of the squadron, in which he says, "*Je donne au capitaine*", &c.;, in the language of an unqualified donation. On 23 November, they left the

squadron and arrived at Norfolk on 1 February, 1812, after a long and boisterous voyage in a large ship navigated by a very inadequate crew. On her arrival in the United States, she was libeled by the captain and crew as their property acquired under the donation of the French captor, and the United States interposed a claim for the forfeiture incurred under the nonimportation act. At the time of her arrival, peace existed between this country and Great Britain, but on 18 June following, and pending this suit, war was declared.

Page 12 U. S. 226

JOHNSON, J., after stating the facts of the case as before mentioned, delivered the opinion of the Court as follows:

The very peculiar circumstances of this case require the application of a variety of principles, and the Court has not been aided in its inquiries by that elaborate discussion which such novel cases generally elicit. But it is relieved by the reflection that the principles to which it must resort in forming its judgment are well established and lead satisfactorily to a conclusion.

The most natural mode of acquiring a definite idea of the rights of the libellants in the subject matter will be to follow it through the successive changes of circumstances by which the nature and extent of the rights of the parties were affected -- the capture, the donation, the arrival in the United States, and the state of war.

As between the belligerents, the capture undoubtedly produces a complete divesture of property. Nothing remains to the original proprietor but a mere *scintilla juris*, the *spes recuperandi*. The modern and enlightened practice of nations has subjected all such captures to the scrutiny of judicial tribunals as the only practical means of furnishing documentary evidence to accompany ships that have been captured, for the purpose of proving that the seizure was the act of sovereign authority, and not mere individual outrage. In the case of a purchase made by a neutral, Great Britain demands the production of such documentary evidence, issuing from a court of competent authority, or will dispossess the

purchaser of a ship originally British. *The Fladoyen*, 1, Rob. 114, 135. Upon the donation, therefore, whatever right might in the abstract have existed in the captor, the donee could acquire no more than what was consistent with his neutral character to take. He could be in no better situation than a prize master navigating the prize in pursuance of orders from his commander. The vessel remained liable to British capture on the whole voyage. And on her arrival in a neutral territory, the donee sank into a mere bailee for the British claimant, with those rights over the

Page 12 U. S. 227

thing in possession which the civil law gave for care and labor bestowed upon it.

The question then occurs is this a case of salvage?

On the negative of the proposition, it is contended that it is a case of forfeiture, and therefore not a case of salvage as against the United States -- that it was an unnatural act to assist the enemy in bringing the vessel *infra presidia*, or into any situation where the rights of recapture would cease, and therefore not a case of salvage as against the British claimant.

But the Court entertains an opinion unfavorable to both these objections.

This could never have been a case within the view of the legislature when passing the nonimportation act. The ship was the plank on which the shipwrecked mariner reached the shore, and although it may be urged that bringing in the cargo was not necessarily connected with their own return to their country, yet, upon reflection it will be found that this also can be excused upon very fair principles. It was their duty to adhere strictly to their neutral character, but to have cast into the sea the cargo, the property of a belligerent, would have been to do him an injury by taking away that chance of recovery subject to which they took it into their possession. Besides, bringing it into the United States did not necessarily presuppose a violation of the nonimportation laws. If it came within the description of property cast casually on our shores, as we are of opinion it did, legal provision exists for disposing of it in such a manner as would comport with the policy of our laws. At last they could but deliver it up to the hands of the government, to be reshipped by

the British claimant or otherwise appropriated under the sanction of judicial process. And such was the course that they pursued. Far from attempting any violation of the laws of the country, upon their arrival here, they deliver it up to the custody of the laws, and leave it to be disposed of under judicial sanction. The case has no one feature of an illegal importation, and cannot possibly have imputed to it the violation of law.

Page 12 U. S. 228

As to the question arising on the interest of the British claimant, it would at this time be a sufficient answer that they who have no rights in this Court cannot urge a violation of their rights against the claim of the libellants. But there is still a much more satisfactory answer: to have attempted to carry the vessel "*infra presidia*" of the enemy would, unless it could have been excused on the ground of necessity, have been an unneutral act. But when every exertion is made to bring it to a place of safety, in which the original right of the captured would revive and might be asserted, instead of aiding his enemy, it is doing an act exclusively resulting to the benefit of the English claimant.

It being determined to be a case of salvage, the next question is as to the amount to be allowed. On this subject there is no precise rule; nor is it, in its nature, reducible to rule. For it must in every case depend upon peculiar circumstances, such as peril incurred, labor sustained, value decreed, &c.;, all of which must be estimated and weighed by the court that awards the salvage. As far as our inquiries extend, when a proportion of the thing saved has been awarded, a half has been the maximum, and an eighth the minimum; below that, it is usual to adjudge a compensation *in numero*. In some cases, indeed, more than a half may have been awarded, but they will be found to be cases of very extraordinary merit or on articles of very small amount. In the present case, the account sales of the cargo was near \$16,000, and we are of opinion that the one-half of that sum will be an adequate compensation.

The next question arises on the application of the residue. On this point, the Court is led to a conclusion by the following considerations.

At the arrival of the vessel in the United States, the original British owner would unquestionably have been entitled to the balance. The state of war, however, at present, prevents his interposing a claim in the courts of this country. But as this property was found within the United States at the declaration of war, it must stand on the same footing with other British property similarly situated. Although property of that description is liable to be disposed of by the legislative

Page 12 U. S. 229

power of the country, yet until some act is passed upon the subject, it is still under the protection of the law, and may be claimed after the termination of war if not previously confiscated. We will therefore make such order respecting it as will preserve it, subject to the will of the court, to be disposed of as future circumstances shall render proper.

As to the mode of distributing the amount of the salvage, the Court has concluded to adopt an arbitrary distribution, because there exists no positive rule on that subject. It would have adopted the rules of the prize act relative to cases of salvage had the circumstances of the case admitted of its application.

*This Court orders and decrees that the decree of the Circuit Court of Virginia in this case be reversed; that the costs and charges be paid out of the proceeds of the sale; that the one-half of the balance be adjudged to the libellants, to be divided into thirteen and a half parts, three of which shall be paid to the captain, two to the supercargo, two to the chief mate, one and a half to the second mate, and one to each of the seamen. And that the balance be deposited in the Bank of Virginia, to remain subject to the future order of the circuit court.*