

The Adeline

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Appellant : The Adeline

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The Adeline - 13 U.S. 244 (1815)

U.S. Supreme Court The Adeline, 13 U.S. 9 Cranch 244 244 (1815)

The Adeline

13 U.S. (9 Cranch) 244

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF NEW YORK

SYLLABUS

American property recaptured may be restored on payment of salvage, although the libel prays condemnation of it as prize of war, and does not claim salvage. Salvage is an incident to the question of prize.

A test affidavit ought to state that the property, at the time of shipment and also at the time of capture, did belong and will, if restored, belong to the claimant, but an irregularity in this respect is not fatal.

A test affidavit by an agent is not sufficient if the principal be within the country and within a reasonable distance from the court. But if test affidavits liable to such objections have been acquiesced in by the parties in the courts below, the objections will not prevail in this Court.

By the Act of 3 March, 1800, one-sixth part only is allowed to a privateer for salvage upon the recapture of the cargo on board a private armed vessel of the United States, although one-half be allowed for the recapture of the vessel.

The property of persons domiciled in France (whether they be Americans, Frenchmen, or foreigners) is good prize if recaptured after being twenty-four hours in possession of the enemy, that being the rule adopted in the French tribunals.

Further proof will be allowed by this Court where the national character and proprietary interest of goods recaptured do not distinctly appear.

Property unclaimed will be decreed as good prize.

Where merits clearly appear on the record, it is the settled practice in admiralty proceedings not to dismiss the libel, but to allow the party to assert his rights in a new allegation.

No proceedings can be more unlike than those in the common law and in the admiralty. In prize causes, in an especial manner, the allegations, the proofs, and the proceedings are in general modeled on the civil law, with such additions and alterations as the practice of nations and the rights of belligerents and neutrals unavoidably impose.

The court of prize is emphatically a court of the law of nations, and it takes neither its character nor its rules from the mere municipal regulations of any country.

In cases of mere civil salvage, it may be fit and proper that the libel should distinctly allege and claim salvage, though not indispensable.

In cases of military salvage, the party may, if he please, adopt a similar proceeding, but it is by no means necessary, and would in most cases be highly inexpedient. Recaptures are emphatically cases of prize, for the definition of prize goods is that they are goods taken on the high seas *jure belli* out of the hands of the enemy.

Where the principal is without the country or resides at a great distance from the court, the admission of a claim and test affidavit by his agent is the common course of the admiralty. But where the principal is within a reasonable distance, something more than a formal affidavit by his agent is expected; at least the supplementary oath of the principal so to the facts should be tendered.

The American letter of marque, schooner *Adeline*, sailed from Bourdeaux for the United States with a cargo owned in part by citizens of the United States and

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in part by French subjects. On 14 March, 1814, she was captured in the bay of Biscay by a British squadron, who put a prize crew on board and ordered her for Gibraltar. After being six days in the possession of the British she was recaptured, near Gibraltar, by the American privateer *Expedition*, who put a crew on board and ordered her for the United States where she arrived and was libeled, with her cargo, by the recaptors, in the District Court at New York, as prize of war. The vessel was claimed by citizens of the United States residing therein as was also part of her cargo.

Another part of the cargo was claimed by French subjects resident in the United States; another part by French subjects, resident in France; another part by citizens of the United States, resident in France; another part by French subjects whose residence was not stated; another part by citizens of the United States, whose residence was not stated; and another part by "alien friends," without stating of what nation or where resident. Some of the claims stated the property, at

the time of capture to belong to the persons therein mentioned, and did not state to whom it belonged at the time of shipment.

The district court condemned as good prize all the property owned by Frenchmen and other persons resident in France, and all the property of those persons whose residence was not stated, and restored all the property belonging to persons resident in the United States upon payment of one-sixth for salvage. The vessel was restored by consent of parties on payment of one-half for salvage. The sentence was affirmed *pro forma* by consent in the circuit court.

The recaptors appealed as to the rate of salvage, which they contended ought to have been one-half, and those claimants whose property was condemned also appealed.

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STORY, J. delivered the opinion of the Court as follows:

The American letter of marque, schooner *Adeline*, with a valuable cargo on board, was captured on her voyage from Bordeaux to New York, on or about 14 March, 1814, by a British squadron, and on or about the 19th of the same month, was recaptured by the American privateer *Expedition*, James Clayton, commander, and brought into New York for adjudication. Prize proceedings were immediately instituted against the vessel and cargo as enemy property, and various claims were interposed in behalf of American and French merchants. Upon the hearing of the cause, the district court decreed a restoration of all the property of American citizens and other persons resident in the United States, upon the payment of one sixth of the value as salvage, and condemned all the property of French subjects and of American citizens domiciled in France, and of all others whose residence remained unexplained, as good and lawful prize to the captors. From the former part of the decree the captors appealed, and from the latter part the claimants appealed to the circuit court; and from an affirmance *pro forma* for the decree in that court, the parties have appealed to this Court. It does not appear in the record that any decree was pronounced in respect to the vessel,

and it is therefore probable, as intimated by counsel, that she has been restored on a compromise between the parties interested.

Before we proceed to the consideration of the principal questions which have been argued, it will be proper to notice several objections to the regularity of the allegations, proceedings and proofs in the cause.

It is in the first place asserted on behalf of the claimants

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that if this should turn out not to be a case of enemy property, but of salvage merely (as most certainly as to some of the claims it must be held to be), the recaptors can take nothing by the present libel, because it proceeds upon the mere footing of the property being prize of war. And it is likened to the case of a declaration at common law, where the party can only recover *secundum allegata et probata*, and if no count hit the precise case, the party must be nonsuited.

If, indeed, there were anything in this objection, it cannot in any beneficial manner avail the claimants. The most that could result would be that the cause would be remanded to the circuit court with directions to allow an amendment of the libel. Where merits clearly appear on the record, it is the settled practice in admiralty proceedings not to dismiss the libel, but to allow the party to assert his rights in a new allegation. This practice, so consonant with equity and sound principle, has been deliberately adopted by this Court on former occasions. After all, therefore, the claimants would, in the language of an eminent civilian, but change postures on an uneasy bed.

But we are all of opinion that there is nothing in this objection. No proceedings can be more unlike than those in the courts of common law and in the admiralty. In prize causes, in an especial manner, the allegations, the proofs and the proceedings are in general modeled upon the civil law, with such additions and alterations as the practice of nations and the rights of belligerents and neutrals unavoidably impose. The court of prize is emphatically a court of the law of nations, and it takes neither its character nor its rules from the mere municipal

regulations of any country.

In cases of mere civil salvage, it may be fit and proper that the libel should distinctly allege and claim salvage, though we do not mean to assert that even in such cases it is indispensable. In cases of military salvage, also, the party may if he please, adopt a similar proceeding. But it is by no means necessary, and in most cases would be highly inexpedient. Recaptures are emphatically cases of prize, for the definition of prize goods is that they are goods taken on the high seas

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jure belli out of the hands of the enemy. When so taken, the captors have an undoubted right to proceed against them as belligerent property in a court of prize, for in no other way and in no other court can the questions presented on a capture *jure belli* be properly or effectually examined. The very circumstance that it is found in the possession of the enemy affords *prima facie* evidence that it is his property. It may have previously possessed a neutral or friendly character, but if the property has been changed by a sentence of condemnation or by such possession as nations recognize as firm and effectual, the neutral or friendly owner is forever ousted of his right.

It depends altogether upon future proceedings, upon the examinations taken in preparatory and the documents on board, upon the verity of the claims, and the diligence and good faith of the claimants, and upon the principles of international law, comity and reciprocity whether a restoration can be decreed or not. How can these questions be decided unless the customary proceedings of prize are instituted and enforced? How can it be known whether all the documents on board be not colorable and false or whether the conduct of the claimant be not unneutral or fraudulent unless the truth is drawn from the parties entrusted with the property for the voyage by the trying force of the standing interrogatories and the test affidavits? The very case before us presents a strong illustration of the propriety of these proceedings. There is a large shipment on board which, on the bill of lading, purports to be the property of an American claimant, yet the claimant himself expressly swears that it is the sole property of the French shipper. What the

consequences are of that fact will be presently seen.

The court, then, has a legitimate jurisdiction over the property as prize, and, having it, will exert its authority over all the incidents. It will decree a restoration of the whole or of a part; it will decree it absolutely, or burdened with salvage, as the circumstances of the case may require; and whether the salvage be held a portion of the thing itself or a mere lien upon it or a condition annexed to its restitution, it is an incident to the principal question of prize, and within

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the scope of the regular prize allegation. If, therefore, the case stood upon principle alone, we should not doubt as to the sufficiency of the libel for this purpose; but it has also the clear support of the practice of the admiralty. *The Aquila*, 1 Rob. 37; *The Franklin*, 4 Rob. 147; *The Jonge Lambert*, 5 Rob. 54, note.

Another objection urged on behalf of the captors is to the sufficiency of the claims and test affidavits. It is asserted, and truly, that the goods are not alleged, in the claim or affidavits, to have belonged to the claimants at the time of shipment; it is only alleged that they so belonged at the time of capture. Regularly the test affidavit should state that the property, at the time of shipment and also at the time of capture, did belong, and will, if restored, belong to the claimant, but an irregularity of this nature has never been supposed to be fatal. It might, in a case of doubt or suspicion or in a case calling for the application of the doctrine as to the legal effect of changes of property *in transitu*, have justified an order for further proof, or in cases of gross negligence or pregnant fraud have drawn upon the party more severe consequences. But in ordinary cases it is not deemed to work any serious consequences; in this instance it probably passed unnoticed in the courts below, where if the blot had been hit, it might have been instantaneously removed by an amendment. Another irregularity undoubtedly was that the test affidavits were put in on behalf of many of the claimants by their agents, although the principals were resident in the United States and within the reasonable reach of the court. Where the principal is without the country or resides

at a great distance from the court, the admission of a claim and test affidavit by his agent is the common course of the admiralty. But where the principal is within a reasonable distance, something more than a formal affidavit by his agent is expected. At least the suppletory oath of the principal as to the facts should be tendered, for otherwise its absence might produce unfavorable suspicions. If indeed the principal might always withdraw himself from the view of the court and shelter his pretensions behind the affidavit of an innocent or ignorant agent, there would be no end to the impositions practiced upon the court. The court expects, in proper cases, something more than the mere formal test

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affidavit of an agent, who may swear truly and yet, from his want of knowledge, be the dupe of cunning and fraud. It is not meant to assert that any such imputations belong to the present case. This irregularity, like the former, probably passed in silence, and it would be highly injurious if an objection of this sort should now prevail when all parties have hitherto acquiesced in its immateriality.

We are now led to the principal question in this cause -- *viz.*, what rate of salvage is to be allowed to the recaptors? This depends upon the true construction of the Salvage Act of Congress of 3 March, 1800, ch. 14. That act provides that, upon the recapture of any vessel (other than a vessel of war or privateer) or of any goods belonging to any persons resident within or under the protection of the United States, the same, if recaptured by a private vessel of the United States, shall be restored on payment of one-sixth part of the value of the vessel or goods, and if the vessel, so recaptured shall appear to have been set forth and armed as a vessel of war before such capture or afterwards, then upon a salvage of one-half of the true value of such vessel of war.

It is argued in behalf of the recaptors that, the *Adeline* being an armed vessel, they are entitled to a moiety of the value of the cargo as well as of the vessel, either upon an equitable construction of the statute or upon general principles as a case not within the purview of the statute.

We are all, however, of a different opinion. The statute is expressed in clear and unambiguous terms. It does not give the salvage of one-sixth part of the value upon goods, the cargo of an unarmed vessel, but it gives it upon any goods recaptured, without any reference to the vehicle or vessel in which they are found. We cannot interpose a limitation or qualification upon the terms which the legislature has not itself imposed, and if there be ground for higher salvage in cases of armed vessels, either upon public policy or principle, such considerations must be addressed with effect to another tribunal. This decision affirms the decree of the circuit courts as to the claims of all the parties domiciled in the United States.

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As to the claims of the parties domiciled in France, whether natives or Americans or other foreigners, their rights depend altogether upon the law of France as to recaptures, for by the act of Congress as well as by the general law in cases of recapture, the rule of reciprocity is to be applied. If France would restore in a like case, then are we bound to restore; if otherwise, then the whole property must be condemned to the recaptors. It appears that by the law of France in cases of recapture, after the property has been 24 hours in possession of the enemy, the whole property is adjudged good prize to the recaptors, whether it belonged to her subjects, to her allies, or to neutrals. We are bound, therefore, in this case to apply the same rule, and as the property in this case was recaptured after it had been in possession of the enemy more than 24 hours, it must, so far as it belonged to persons domiciled in France, be condemned to the captors, and the decree of the circuit court as to them must be affirmed.

As to the claims of the other persons whose national character and proprietary interest do not distinctly appear, considering all the circumstances, we shall direct further proof to be made on both points. As indeed the master has not been able to swear directly to the proprietary interest of the cargo, but simply says that the goods were, as he presumes and believes, the property of the shippers or the consignees, perhaps in strictness further proof might have been required in the

courts below as to the whole cargo. It was not, however, moved for there by the captors, and as we are satisfied in relation to the claims which we shall restore, it would be useless now to make such a general order.

Upon these principles, the property embraced in the claims by and in behalf of Alexis Gardere, of William Weaver and Isaac Levis jointly, and of William Weaver alone, of Andrew Byerly, of George I Brown and William Hollins, of Peter A. Karthous, of William Bayard, Harman Leroy, James McEvers and Isaac Iselm, of William Hood, of Theophilus De Cost, of John Dubany, of Messrs. John B. Fonsatt & Co. of Edward Smith, James Wood and Samuel W. Jones, of Victor Ardaillan, of Lewis Chastant, of Lewis Labat, of Benjamin Rich, of Nathaniel Richards, Nayah Taylor and Gustavus Upson, of

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Ferdinand Hurxthal must be restored on payment of the salvage of one-sixth part of the value. The property embraced in the claims on behalf of Peter Boue, Jr., of R. Henry, of P. Doussault, of William Johnston and James Dowling, of G. Brousse, must be condemned to the captors.

The remaining claims must stand for further proof. And as to the property unclaimed, it must be condemned as good and lawful prize to the captors.

The decree of the circuit court is to be reformed so as to be in conformity with this decision.