

## The Sally.

ificates of survey, where the purchaser takes it subject to the risk of its containing less than it specifies.

Mary Frazer or the complainants can be considered in no other view, than mere volunteers *malá fide*, and of course, not entitled to the aid of a court of equity. It seems, as a necessary consequence, if the claimants are not entitled to the surplus land, they are not to compensation in either of the other modes contended for. Where there is no right, there can be no claim to compensation sustained.

Decree affirmed, with costs.

\*The SALLY, PORTER, Master.

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*Prize.*

Property engaged in an illicit intercourse with the enemy, to be condemned to the captors, not to the United States.

A municipal forfeiture, under the laws of the United States, is absorbed in the more general operation of the law of war.

The prize act of 26th June 1812, operates as a grant from the United States to the captors, of all property rightfully captured by commissioned privateers, as prize of war.

THIS was an appeal from the decree of the Circuit Court for the district of Massachusetts. The facts of the case were as follows :

The brig Sally, John Porter, master, was captured by the privateer Jefferson, John Kehew, commander, July 7th, 1812, as prize, and sent into the port of Salem, in the district of Massachusetts, for adjudication. The Sally, at the time of her capture, had on board a coaster's manifest, and a permission from the collector of the port of Passamaquoddy, dated July 7th, 1812, to proceed to Boston. From the manifest, her cargo purported to be one box of hones, and one box of furs. She had on board, also, about four thousand bushels of salt.

The Sally was licensed and enrolled for the coasting trade, at New London, June 6th, 1812, upon the oath of John Patterson, of the city of New York, who swore that he was the agent of James Mavor, of New York, the owner. Patterson was on board at the time of capture. Upon the return of the monition in the district court, Patterson claimed the brig for Mavor, and Edward Monroe claimed the salt for himself and Lemuel P. Grosvenor, of Boston. The affidavit of claim of Monroe did not state where the salt was taken on board, nor for what reason it was not mentioned in the manifest. Patterson, Porter, the master, and the crew, upon the preparatory examinations, swore that the salt was put on board the brig at Robinstown and Eastport, in the district of Maine. Among the papers found on board the Sally, was a permission to land her cargo of 60 tons of cordage and 50 bolts of duck, from the deputy-collector of the port of Passamaquoddy, dated June 20th, 1812.

\*There was also found on board, a letter to Messrs. Monroe & Grosvenor, Boston, dated Eastport, July 7th, 1812, signed "L. P. G.," [\*383 covering a bill of lading of the salt. In this letter, it is said, "I am sorry to say that no clearance of the salt can be obtained on board the brig ; I have however dispatched her, with a clearance of two small packages of John Brewer, consigned to us, and leave you to manage ; it will, at least, be as well as the other goods sent ; and I am hourly expecting a seizure to pay for

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sundry prizes taken from St. Andrews." Again, "A protection can be had, for any vessel bound here with provisions, from the English admiral, &c." St. Andrews is a small town in New Brunswick, a province belonging to Great Britain. In the manifest of the Sally, the two small packages above mentioned are consigned to Monroe & Grosvenor, Boston.

The captors produced witnesses in the district court, who proved that the Sally discharged, at St. Andrews, her cargo of cordage, after the 1st July 1812, and took in there the salt.

The vessel and cargo were condemned, in the district court, to the captors, and an appeal entered by the claimants. In the circuit court, the decree was affirmed, and Monroe & Grosvenor appealed to this court. A claim was interposed by the United States, as for a forfeiture under the non-intercourse act. On the above statement (and upon the argument in the case of *The Rapid*, ante, p. 155), the case was submitted.

Tuesday, March 5th, 1814. (Absent, Marshall, Ch. J.) STORY, J., delivered the opinion of the court.

This case cannot be distinguished from that of *The Rapid*. It was there decided, that property engaged in an illicit intercourse with the enemy, is \*384] liable to confiscation \*as prize of war, and the only remaining question now before us, is, to whom it shall be condemned—to the captors, or to the United States?

By the general law of prize, property engaged in an illegal intercourse with the enemy, is deemed enemy property. It is of no consequence, whether it belong to an ally or to a citizen; the illegal traffic stamps it with the hostile character, and attaches to it all the penal consequences of enemy ownership. In conformity with this rule, it has been solemnly adjudged, by the same course of decisions which has established the illegality of the intercourse, that the property engaged therein must be condemned as prize to the captors, and not to the crown. This principle has been fully recognised by Sir WILLIAM SCOTT, in *The Nelly*, 1 Rob. 219; and indeed, seems never to have admitted a serious doubt.

But a claim is interposed by the United States, claiming a priority of right to the property in question, upon the ground of an antecedent forfeiture to the United States, by a violation of the non-intercourse act (of March 1st, 1809, § 5, 2 U. S. Stat. 529), the goods having been put on board at a British port, with an intent to import the same into the United States. We are all of opinion, that this claim ought not to prevail. The municipal forfeiture under the non-intercourse act, was absorbed in the more general operation of the law of war. The property of an enemy seems hardly to be within the purview of mere municipal regulations; but is confiscable under the *jus gentium*.

But even if the doctrine were otherwise, which we do not admit, we are all satisfied, that the prize act of 26th June 1812, ch. 107, operates as a grant from the United States of all property rightfully captured by commissioned privateers, as prize of war. The language of the 4th, 6th and 14th sections is decisive. The decree of the circuit court, condemning the vessel and cargo to the captors, is affirmed.

Decree affirmed.