

## The Ship SOCIETÈ, MARTINSON, Master. (a)

*Prize goods.—Freight pro rata.*

If a neutral vessel be captured on her outward voyage from England to Amelia Island, carrying a hostile cargo, which is condemned, and if, by the charter-party, the outward cargo is to be carried free of freight, but the homeward cargo is to pay at a certain rate, to be ascertained by the nature of the cargo, yet the court will decree freight *pro rata itineris* of the outward cargo, to be assessed upon the principle of a *quantum meruit*.

This court will not allow a new claim to be interposed here, but will remand the cause to the circuit court, where it may be presented.

APPEAL from the sentence of the Circuit Court for the district of Georgia, affirming the decree of the district court, which allowed freight *pro rata itineris*, to the Swedish ship Societè, captured on her outward voyage \*210] \*from England to Amelia Island, with a British cargo on board, which was condemned as prize of war.

By the charter-party, the outward cargo to Amelia Island was to be carried freight free, and the homeward cargo was to pay at the rate of three pence half-penny a pound for cotton, and in the same proportion for other goods.

*Pinkney and Jones*, for the ship-owner, contended, that the freight ought to have been given according to the charter-party, and not to be ascertained by assessors as ordered in the court below.

*Swann* stated, that he wished to interpose a claim to the cargo of the ship Societè, in behalf of the officers and crews of the United States brigs Rattlesnake and Enterprize, as having been concerned in her capture; and was not certain whether this court would now receive the claim, or whether it should be presented to the court below.

THE COURT said, that it must be laid before the circuit court.

March 6th, 1815. (Absent, Todd, J.) MARSHALL, Ch. J., delivered the opinion of the court, as follows:—William Little, a naturalized citizen of the United States, entered into a charter-party with Magnus Martinson, master of the Swedish ship, called the Societè, at London, on the 10th day of November 1813, whereby the said Martinson let, and the said Little took, the said ship to freight, for the voyage, and on the terms mentioned in the charter-party. It was agreed, among other things, that the vessel should take on board a cargo, prepared for her in the Thames, and deliver it at Amelia Island, freight free. At Amelia Island, she was to take on board such return-cargo as might be tendered to her. If she could not be loaded \*211] there, she was to proceed to such port in the \*United States, as the agent of Little should direct, and there receive her cargo. There were other provisional stipulations, and it was agreed, that the freight on the return-cargo should be a sum specified in the charter-party, which exceeded what would have been paid as freight on the return-cargo alone, had it been totally unconnected with the outward voyage.

On her voyage to Amelia Island, the Societè was captured by an armed vessel of the United States, and brought into the district of Georgia, where the cargo was libelled and condemned as enemy property. A claim for

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freight was interposed by the master of the Societè, and the district judge appointed commissioners to ascertain the value of the freight on the voyage to Amelia Island, and decreed freight conformable to their report. The claimant of the cargo and the master of the ship both appealed to the circuit court, where the sentence of the district judge was, in all things, affirmed. From that sentence, an appeal was prayed to this court.

The cases already decided in this court on the question of domicil and trading with the enemy, having completely settled this case, so far as respected the claim to the cargo, that part of the sentence is affirmed without opposition.

On the part of the master, it is contended, that his right to freight ought to be measured by his charter-party, not by any estimated value of the freight on the voyage to Amelia Island. Had the charter-party contained any stipulation for freight to Amelia Island, that stipulation would unquestionably have governed the court. But the outward cargo was to be delivered freight free. So far, then, as the case is controlled by the express stipulations of the charter-party, the vessel is entitled to the whole freight on a return-cargo never taken on board, or to nothing.

The court knows of no case of capture where the \*neutral vessel has been allowed freight for a cargo not taken with her. There is [\*212 no lien on one cargo, for freight which may accrue on another. The court can perceive no principle on which a cargo to be delivered freight free, can be burdened with the freight agreed to be paid on a cargo to be afterwards taken on board. In this case, too, no sum in gross is to be paid for freight, but a sum depending on the quantity and quality of the return-cargo. As between the captor and the neutral owner, the court cannot consider this as one entire voyage, but as distinct outward and inward voyages.

If the claim to freight on the return-voyage, not commenced at the time of capture, cannot be sustained, the court perceives no other rule which could have been adopted, than that which the district court did adopt. Freight has been allowed on the whole voyage to Amelia Island as on a *quantum meruit*. The captors not having appealed, no question can arise on the propriety of having allowed the ship any freight whatever. The court, however, will say, that it is satisfied with the allowance which is made, and which is certainly an equitable one. The sentence is affirmed, with costs.

The officers of the Rattlesnake and Enterprize, armed vessels of the United States, offered a petition to this court to be permitted to claim for themselves and their crew a share of the prize in the case of the Societè; alleging that they are entitled equally with the officers and crew of the gun-boat by whom the said cargo was libelled; which petition was rejected, and the claim was not received; it being the opinion of this court, that the claim of the petitioners must be made in the circuit court, to which the cause is remanded.

Sentence affirmed.