

The Caledonian.

some important error had been committed. In this particular case, the court is well satisfied, both with the amount of salvage decreed by the circuit court, and with the mode of distribution; and the decree is, therefore, affirmed, with costs.

Decree affirmed.

A question afterwards arose, upon a claim of the ship-owners for freight, &c.

February 26th. JOHNSON, Justice, delivered the opinion of the court.— In this case, the attention of the court has been particularly called to the claim interposed by the ship-owners, for freight and average.

This court, as at present advised, are very well satisfied, that no freight was earned, and that average may have been justly claimed. But in the case then depending, the circuit court could not have awarded either of those demands. The question is *inter alios*. There was no pretext for claiming *100] either, as against the salvors; and the ship-owners ought to *have pursued their rights by libel, or petition by way of libel, against the portion of the proceeds of the cargo which was adjudged to the shippers. These parties were entitled to be heard upon such a claim, and could only be called upon to answer, in that mode. But the ship-owners are not yet too late to pursue their remedy. The proceeds are still in the possession of the law, and may be subjected to any maritime claim or lien in the court below.

Claim rejected.

The CALEDONIAN: DICKEY, Claimant.

Seizure.

A vessel and cargo, which is liable to capture as enemy's property, or for sailing under the pass or license of the enemy, or for trading with the enemy, may be seized, after her arrival in a port of the United States, and condemned as prize of war; the *delictum* is not purged by the termination of the voyage.

Any citizen may seize any property forfeited to the use of the government, either by the municipal law, or as prize of war, in order to enforce the forfeiture, and it depends upon the government, whether it will act upon the seizure; if it proceeds to enforce the forfeiture by legal process, this is a sufficient confirmation of the seizure.

February 3d, 1819. APPEAL from the Circuit Court of Rhode Island. *101] This cause was argued by *D. B. Ogden*, for *the appellant and claimant, (a) and by the *Attorney-General*, for the United States. (b)

February 16th. STORY, Justice, delivered the opinion of the court.— This is the case of an American ship, which sailed from Charleston, South Carolina, with a cargo of rice, bound to Lisbon, about the 28th of May 1813, under the protection of a British license. In the course of the voyage, the ship was captured by a British frigate, and sent into Bermuda for adjudication. Upon trial, she was acquitted, and her cargo being prohibited from exportation, was afterwards sold by the agent of the claimant, at Bermuda,

(a) He cited *The Nelly*, note to *The Hoop*, 1 Rob. 219; *The Two Friends*, Id. 283; *The Thomas Gibbons*, 8 Cranch 421, to show, that the vessel could not be seized as prize, after her arrival in port, nor by a non-commissioned seizer.

(b) Citing *The Ariadne*, 2 Wheat. 143.

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and the proceeds were remitted for his use. The ship sailed from Bermuda for the United States, in November 1813, and upon her arrival at Newport, in Rhode Island, was seized by the collector of that port, as forfeited to the United States. The libel contains four articles propounding the causes of forfeiture; first, for the ship's having on board and using a British license; secondly, for the ship's being engaged in trade with the enemy; and, thirdly and fourthly, for using a British license, contrary to the act of congress of the 2d of August 1813, ch. 56, prohibiting the use of British licenses.

It is unnecessary to consider the last two articles, *which are [*102 founded upon statutable prohibitions, because it is clear, that the two preceding articles, founded on the general law of prize, are sufficient to justify a condemnation *jure belli*, the proof of the facts being most clearly established.

The only questions which can arise in the case, are, whether the ship was liable to seizure for the asserted forfeiture, after her arrival in port; and, if so, whether the collector had authority to make the seizure. And we are clearly of opinion, in favor of the United States, on both points. It is not necessary, to enable the government to enforce condemnation in this case, that there should be a capture on the high seas. By the general law of war, every American ship, sailing under the pass or license of the enemy, or trading with the enemy, is deemed to be an enemy's ship, and forfeited as prize. If captured on the high seas, by a commissioned vessel, the property may be condemned to the captors, as enemy's property; if captured by an uncommissioned ship, the capture is still valid, and the property must be condemned to the United States. But the right of the government to the forfeiture, is not founded on the capture; it arises from its general authority to seize all enemies' property, coming into our ports, during war: and also from its authority to enforce a forfeiture against its own citizens, whenever the property comes within its reach. If, indeed, the mere arrival in port would purge away the forfeiture, it would afford the utmost impunity to persons engaged in illegal traffic, during war, for in most instances, the government *would have no means of ascertaining the offence, until [*103 after such arrival.

In respect to the other point, it is a general rule, that any person may seize any property forfeited to the use of the government, either by the municipal law, or by the law of prize, for the purpose of enforcing the forfeiture. And it depends upon the government itself, whether it will act upon the seizure. If it adopts the acts of the party, and proceeds to enforce the forfeiture by legal process, this is a sufficient recognition and confirmation of the seizure, and is of equal validity in law, with an original authority given to the party to make the seizure. The confirmation acts retroactively, and is equivalent to a command.

Decree affirmed, with costs.