

The Amelia.

\*2. In answering the second general inquiry (to what does the true meaning of the 33d section refer?) it is proper more particularly to observe, that the 19th section clearly provides for the case of a transportation by land carriage: because it speaks of a transportation "across a state," which (as no canal is established) must be by land. If by land, it cannot involve the agency of a ship or vessel, and as the proviso of the 33d section refers to the forfeiture of a ship or vessel, and not of a wagon or stage, as it does not describe goods, generally, but a lading or cargo, on board, it is utterly inapplicable to a case of internal land carriage; and must be considered as referring only to cases of water transportation; or, in other words, to the coasting trade.

On the 15th of August, the judges briefly delivered their opinions, *seriatim*, concurring in the following result:

BY THE COURT.—The case stated comes clearly within the 19th section of the act of congress, for enrolling and licensing vessels to be employed in the coasting trade and fisheries. The provisions of the section are salutary, and were made to guard against frauds upon the revenue, in the transportation of goods of foreign growth or manufacture, across the several states. Public policy, national purposes, and the regular operations of government require, that the revenue system should be faithfully observed and strictly executed. It is obvious, that the claimant is an offender, within the purview of the 19th section. To purge the offence, he relies upon the 33d section of the same act. But it is too plain for argument, that this section cannot, by any fair and rational construction, be made to refer to the 19th section. It is inapplicable, because the objects are entirely different.

Judgment affirmed.

THE AMELIA.<sup>1</sup>

TALBOT v. The Ship AMELIA, SEEMAN, Claimant.

Salvage.

The officers and crew of a ship of war are entitled to salvage, for the recapture of an armed neutral vessel, from a foreign belligerent, by whom she had been manned with a prize crew.

ERROR from the Circuit Court of New York. It appeared on the record, that Captain Talbot, of the frigate Constitution, having recaptured the Amelia, an armed Hamburg vessel, which had been captured by a French national corvette, and ordered to St. Domingo for adjudication, brought her into the port of New York. A libel was, thereupon, filed in the district court, by the recaptor, setting forth the facts, and praying that the vessel and cargo might be condemned as prize; or that such other decree might be pronounced as the court should deem just and proper.

A claim was filed by H. F. Seeman, for Chapeau Rouge & Co., of Hamburg, the owners, insisting that the property had not been changed by the capture, and praying restitution, with damages and costs. The District Judge, Hobart, decreed one-half of the gross amount of sales of ship and cargo, \*without deduction (a sale having been made by consent), to be paid to the recaptors, in the proportions directed by the act of

<sup>1</sup> S. C. 1 Cr. 1.

## The Amelia.

congress for the government of the navy ; and the other half, deducting all costs and charges, to be paid to the claimants.

The cause was brought by appeal before the circuit court, WASHINGTON Justice, presiding, who reversed the decree of the district court, so far as it ordered payment of one-half of the gross sales to the recaptors, "considering that, as the nation to which the owners of the said ship and cargo belong, is in amity with the French republic, the ship and cargo could not, consistently with the laws of nations, be condemned by the French, as a lawful prize ; and that, therefore, no service was rendered by the Constitution, or by the commander, officers or crew thereof, by the recapture aforesaid ;" and affirmed the rest of the decree. On the decree of the circuit court, the present writ of error was instituted ; and the following statement of facts made a part of the record by consent:

"The following case is agreed upon by the parties, to be annexed to the writ of error in this cause, viz.: The ship Amelia sailed from Calcutta, in Bengal, in the month of April 1799, loaded with a cargo of the produce and manufacture of that country, consisting of cotton, sugars and dry goods in bales, bound to Hamburg. On the 6th of September, in the same year, the same was captured, whilst in the pursuit of her said voyage, by the French national corvette La Diligente, L. I. Dubois, commander, who took out her captain and part of her crew, together with most of her papers, and placed a prize-master and French sailors on board of her, ordering the prize-master to conduct her to St. Domingo, to be judged according to the laws of war. On the 15th of the same month of September, the United States ship of war, the Constitution, commanded by Silas Talbot, Esquire, the libellant, fell in with, and recaptured the Amelia, she being then in full possession of the French, and pursuing her course for St. Domingo, according to the orders received from the captain of the French corvette. At the time of the recapture, the Amelia had eight iron cannon mounted, and eight wooden guns, with which she had left Calcutta, as before stated. From such of the ship's papers as were found on board, and the testimony in the cause, the ship Amelia, and her cargo, appear to have been the property of Chapeau Rouge, a citizen of Hamburg, residing and carrying on commerce in that place. It is conceded, that the republic of France and the city of Hamburg are not in a state of hostility to each other, and that Hamburg is to be considered as neutral between the present belligerent powers. \*The Amelia and her cargo, having been sent by captain Talbot to New York, were there libelled in the district court, and such proceedings were thereupon had in that court, and the circuit court for that district, as may appear by the writ of error and return. [\*\*36

ALEXANDER HAMILTON, of counsel for plaintiff in error.

B. LIVINGSTON, of counsel for defendant in error."

The cause was argued, on the 11th, 12th and 13th of August 1800, by *Ingersoll* and *Lewis*, for the plaintiff in error ; and by *M. Levy* and *Dallas*, for the defendant in error. The general points of the discussion were these :

1st. Whether the Amelia could be considered, at the time of the recapture, as a French armed vessel, within the meaning of the act of congress, which authorizes the seizure of French armed vessels ? (1 U. S. Stat. 572.)

## The Eliza.

2d. Whether Captain Talbot was authorized to make a recapture, the *Amelia* belonging to a power, equally in amity with the United States, and with France?

3. Whether on positive statute, or general principles, a salvage was due to the recaptors, for rescuing the *Amelia* from the French?

On the 18th of August, *PATERSON*, Justice, stated, that it was the wish of the court to postpone the cause, for further argument, before a fuller bench. It was, accordingly, argued again, at Washington, in August term 1801, by *Ingersoll* and *Bayard* (of Delaware), for the plaintiff in error; and by *M. Levy, J. T. Mason* (of Maryland) and *Dallas*, for the defendant in error. And *MARSHALL*, Chief Justice, delivered the judgment of the court, "that the decree of the circuit court was correct, in reversing the decree of the district court, but not correct in decreeing the restoration of the *Amelia*, without paying salvage. This court, therefore, is of opinion, that the decree, so far as the restoration of the *Amelia* without salvage is ordered, ought to be reversed: and that the *Amelia* and her cargo ought to be restored to the claimant, on paying for salvage one-sixth part of the net value, after deducting therefrom the charges which have been incurred." (a)

\*37]

## \*The ELIZA.

*Bas*, Plaintiff in error, *v. Tingy*, Defendant in error.

*State of war.—Salvage.*

Every contention, by force, between two nations, in external matters, under authority of their respective governments, is a *public war*.

If a general war be declared, its extent and operations are only restricted and regulated by the *jus belli*, forming part of the law of nations; but if a *partial* war be waged, its extent and operation depend on our municipal laws. *CHASE, J.*

A belligerent power has a right, by the laws of nations, to search a neutral vessel; and upon suspicion of a violation of her neutral obligations, to seize and carry her into port for further examination. *Ibid.*

An American vessel, captured by a French privateer, on the 31st March 1799, and recaptured by a public armed American ship, on the 21st of April 1799, was condemned to pay salvage, under the act of congress of the 2d March 1799.

IN error from the Circuit Court for the district of Pennsylvania. On the return of the record, it appeared by a case stated, that the defendant in error had filed a libel in the district court, as commander of the public armed ship, the *Ganges*, for himself and others, against the ship *Eliza*, *John Bas*, master, her cargo, &c., in which he set forth that the said ship and cargo belonged to citizens of the United States; that they were taken on the high seas, by a French privateer, on the 31st of March 1799; and that they were retaken by the libellant, on the 21st of April following, after having been above ninety-six hours in possession of the captors. The libel prayed

(a) A full report of the arguments, on the first hearing of this cause, was prepared; but they are found so ably incorporated with the arguments on the second hearing, in *Mr. Cranch's Reports*, that it has been thought unnecessary to publish it in this volume. 1 Cr. 1.