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Statement of the case.

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both when the schooner entered and when she left Calcasieu Pass, is clear.

We think, also, that both ship and cargo were rightly condemned by the District Court as enemies' property. It is claimed that both belonged to neutrals resident in New Orleans, and entitled to protection under proclamation,\* and the proof, to some extent, supports this claim; but both were liable to be condemned as enemies' property, because of the employment of the vessel in enemies' trade, and because of the attempt to violate the blockade, and to elude visitation and search by the Bainbridge. On this latter point, the language of Chief Justice Marshall, in *Malcy v. Shattuck*,† is express.

DECREE AFFIRMED.

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THE ANDROMEDA.

1. A vessel and cargo condemned as enemy property, under circumstances of suspicion,—spoliation of papers in the moment of capture being one of them as regarded the cargo, and a former enemy owner remaining in possession as master of the vessel through a whole year, and through two alleged sales to neutrals, being another, as respected the vessel,—the alleged neutral owners, moreover, who resided near the place where the vessel and cargo were libelled, handing the whole matter of claim and defence over to such former owner as their agent, and giving themselves but slight actual pains to repel the inference raised *prima facie* by the facts.
2. A libel in prize need not allege for what cause a vessel has been seized, or has become prize of war, as *ex. gr.*, whether for an attempted breach of blockade or as enemy property. It is enough if it allege generally the capture as prize of war.
3. A blockade once regularly proclaimed and established will not be held to be ineffective by continual entries in the log-book, supported by testimony of officers of the vessel seized, that the weather being clear, no blockading vessels were to be seen off the port from which the vessels sailed.

On the 20th of May, 1862, the schooner Andromeda, with a cargo of cotton and hides, was captured off the coast of

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\* The Venice, *supra*, 135.

† 3 Cranch, 488.

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Cuba by the Pursuit, a sloop-of-war of the United States. The schooner at the time was bound to Havana, on a voyage from the port of Sabine, in Texas, where she had received her cargo. Being brought into Key West, she was libelled by the District Attorney of the United States as "lawful prize of war, and subject to condemnation and forfeiture as such;" the libel, however, not stating for *what cause* she was seized, or had become "lawful prize of war," as set up in that document.

The manifest read thus:

## EXPORT MANIFEST.

*Manifest of the cargo on board the schooner Andromeda, of the burden of 229 $\frac{8}{10}$  tons, whereof J. H. Ashby is master, bound from Sabine Pass to Havana.*

Name of Shippers.	Marks and numbers.	Number of entries.	Packages or articles in bulk.	Contents or quantities.	Names of consignees.	Value at the port of exportation of domestic produce or merchandise.
Andromeda & Culmell.	Various.	597	597 bales cotton.	297,514 pounds.	Chas. Caro & Co.	\$31,000 00
Do.	F v C.	291	291 hides.	1,164 pounds.	do. do.	58 20
Total amount,	.....	..	.....	.....	.....	\$31,058 20

*The bill of lading, described Edmonson and Culmell as shippers of all the items of the cargo.*

AS TO THE OWNERSHIP OF THE CARGO libelled, as mentioned. The master of the vessel, Ashby, admitting that ninety bales of the cotton belonged to him, set up that *one hundred* belonged to a certain Culmell, "a native citizen of Denmark," and for ten years resident in Texas, where he was in trade as a partner of one Edmonson; and that the *remainder* of the cotton and all the hides belonged to Messrs. Caro & Co., merchants of Havana, to whom they were consigned. Caro & Co. were French subjects. Culmell made the same defence as to one hundred bales. Caro & Co. gave a power of attorney to the captain, to claim for them



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as theirs, all the hides and the whole cargo, with the exception of the one hundred and ninety bales; but, notwithstanding that an order for further proof was granted to allow them to exhibit proof of their ownership, they did not themselves appear at Key West, nor take any more active measures to protect their interests thus, by their answer, set up.

Ashby himself, was examined in *preparatorio*. His answers were, that "he was born in New York,—now lives in Louisiana,—owes allegiance to Louisiana and the Confederate States,—is not a citizen of the United States,—is married, and has a family in Louisiana." It appeared that he bought and took possession of the vessel in October, 1860, before the rebellion broke out; came soon afterwards to the Gulf and New Orleans, in which city he was when the war broke out, and which he left soon afterwards on the vessel (now, according to his account, sold), as master, and had been sailing since chiefly in those regions on her.

Just after the vessel hove to, and before the capturing officers from the Pursuit came on board, the steward, one Monsell, by order of Culmell, who was on board, and at the time with the captain, in the cabin, threw over a package of papers. The captain swore that he did not know what they were; the steward said, that he supposed they were newspapers. Culmell swore, that "the invoice and bills of lading of the portion of the cargo *owned by himself*, were thrown over; he did not know who threw them overboard, but he gave them to the steward on the day of the capture, with orders to have them thrown overboard."

The vessel had left Havana on the 8th of March, 1862, under the British flag, but with the American flag on board; her destination having apparently been Matamoras. Her cargo consisted of coffee, soap, oil, salt, candles, shoes, &c.; and running the blockade, legal or ineffective, then established by our Government, she arrived at Sabine, March 16th. This cargo was delivered to Messrs. Edmonson & Culmell, who received and sold it "*on account of the schooner*

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*Andromeda*;" and their account showed a large balance "due the schooner on the cargo."

AS TO THE OWNERSHIP OF THE VESSEL. The vessel was American built. Prior to the rebellion she had belonged confessedly to Ashby, her now captain, who first saw her at Bridgeport, Connecticut, in 1860. Soon after the breaking out of the war he sold her, in May, 1861, at New Orleans, according to his own sworn statement, to a certain Richard Alleyn, described in the register as "of Baltimore, in the county of Cork, Ireland, residing at the time in New Orleans," a British subject; and documents, attested by the British consul at New Orleans, one Mure, showed that various forms, indicative of a *bonâ fide* sale, had been gone through with great regularity. Alleyn sold her in March, 1862, according to the account, to a certain Gerald Thomas Watson, her now claimant. Watson was asserted to be a merchant of Havana, and, like Alleyn, a British subject. He was no doubt a British subject, but where he lived was not so plain. In one consular paper he was described as of "No. 52 Cornhill, London." *Ashby remained all the time in command of the vessel.* In reply to a question under an order allowing further proofs, he gave, under oath, a narrative, substantially as follows, showing the motives of the transfer, and the causes of his own continuing possession of her.

"*To the fourth interrogatory the witness answers:* At the time of the purchase by Alleyn, and her transfer to the English flag and register, a blockade of the port of New Orleans was expected to be laid in a few weeks. Alleyn resided in New Orleans. He intended to send the vessel to sea in order that she might not be useless property to him during the time the blockade should exist. This witness was appointed to her command by Alleyn, because he, the witness, was a person of some property, and would be responsible to Alleyn in case of a mismanagement of the vessel. On account of the blockade, no owner could expect to communicate with the vessel for a long term of time, and would have to suffer her earnings to accumulate and remain in the hands of her master. The witness, as master, sailed the



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schooner for Alleyn upon a contract, by which the witness was to have entire control and direction of the vessel; pay her entire expenses; engage her in the most profitable trade possible, and receive one-half of her earnings as a compensation,—a common rate of contract and compensation for masters sailing vessels of her class. Under this contract he sailed from New Orleans with a cargo to Matamoras, in Mexico; remained there about a month; discharged her cargo; and there being no freight for vessels there at that season he sailed in ballast to Havana, in Cuba, and endeavored to obtain freight there, but was unable to do so for three months, at the expiration of which time he obtained a cargo of sugar and molasses for New York, at low rates for freight, with which he proceeded to New York, where the schooner was seized by the Federal authorities under the allegation that she was liable to confiscation under the provisions of the act of Congress of July 18, 1861, but was soon afterwards released. The witness returned to Havana with a general cargo of merchandise, and was unable to procure another freight for a long time. The expenses of the vessel thus accumulating rapidly, and she earning nothing, induced the witness, on receiving an offer of purchase from the claimant Watson, to accept the same, which course he believed was for the interest of her owner, Alleyn. One of the conditions of the sale was, the witness should be retained in command until the new owner should find some person who would sail her at lower rates of compensation. This stipulation was attached because this witness was cut off from New Orleans by the blockade, and had no remunerative employment, and for no other reason. In accordance with the stipulation, the witness took command of the schooner, and was to receive for pay five per cent. of the entire and gross charges for freight upon cargo carried by said vessel while he remained in command."

The log-book of the vessel was put in evidence, and the entries read from March 8, 1862, to the date of her sailing from Sabine, 10th of May, and indeed till the capture. Constantly throughout the log, with entries of "the pumps now working well," or the reverse of it; how the day "came in;" and how ended "these twenty-four hours;" that the ship "kept the Sabbath" on Sundays, and "took in cotton,"

## Argument for the claimants.

“took in hides,” during the week;—“lower hold full,”—were entries like these during the time she was in the harbor of Sabine,—a port which commands a view of the ocean:

“No blockade in sight, fine weather.” “No blockading vessel off.” “No blockade off, clear weather.” “No blockade off the bar, fine and pleasant day.” “No vessel in sight, clear day, wind from south.” “Day commences with fine weather, no blockading vessels in sight.” “Saw no blockading vessels, clear, with breeze from south and southeast.” “No blockade in sight, pleasant weather.”

And Culmell and Ashby, and the steward Monsell, alike swore that they saw no blockading vessels at any time; and that the vessel had not attempted, so far as they knew of, to go in or come out of any port when it was blockaded.

Noting that Caro & Co., though of Havana, had taken no further interest in the proceeding at Key West, near to them, than to sign a power of attorney to Ashby, the District Court considered that the claim set up by or for these persons to the bulk of the cargo, “was an attempt to cover up hostile property by the use of neutral names;” and that the whole cargo, except the portions claimed by Culmell (plainly confiscable), belonged to Ashby; that Ashby, too, was owner of the vessel; of which “his all along continuing in the command, notwithstanding the alleged sale by him to Alleyn, and by Alleyn afterwards to Gerald Thomas Watson,” was a pregnant proof. That court accordingly condemned vessel and cargo. The question before this court was, whether the condemnation was warranted.

*Messrs. Gillet and Reverdy Johnson, for the claimants*, contended that there was *no sufficient* evidence to condemn either cargo or vessel in total at all. A portion of the cargo is admitted to have belonged to Culmell, and some to Ashby; but the bulk of it stood on a different footing, and should not be condemned. Nothing could be argued from the destruction of papers beyond the fact that Culmell owned a portion (which fact is admitted), and was fearful about this, *his* part, hoping to save it. Caro & Co. are not touched. There is, therefore, as to the bulk of the property, no evidence of enemy's property at all.



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As respected the vessel, the narrative given by Captain Ashby, on oath, in answer to the fourth interrogatory, was remarkably clear, and had internal indications of truth.

Moreover the libel is defective in form. It ought to specify for what offence supposed to be committed the vessel is claimed as prize of war; whether for breaking blockade or as enemies' property, or for what else? This generality of accusation belongs to no good system of law. It is "the sending of the prisoner, and not withal signifying the crime laid against him,"—a matter which we have high authority to declare "unreasonable." Besides, there was no properly maintained blockade at Sabine. No blockaders could be seen for days and days. No nation has set itself more forcibly against paper blockades than the United States. Our natural duty and permanent interests are to support the rights of neutrals. We need not enlarge on a topic which was enforced with eloquence by counsel at this term in the case of *The Circassian*.<sup>\*</sup> Our country has already given the world great lessons. In public law it remains for us to carry out the defence of neutral rights to their true dignity. This is the distinction which awaits us.

Lower views also would control this matter. We must not attempt to enforce doctrines against Great Britain and France that we are not willing to have applied to ourselves; nor while maintaining our present interest, teach instructions which will but return to plague the inventors.

*Mr. Coffey, special counsel of the United States, contra.*

The CHIEF JUSTICE delivered the opinion of the court.

It is not disputed that the cargo consisted of Texan products. Prior to shipment, then, it was enemy property.

The manifest of the cargo, found on the schooner when captured, shows that five hundred and ninety-seven bales of cotton, valued at thirty-one thousand dollars, and two hundred and ninety-one hides, valued at fifty-eight dollars and

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<sup>\*</sup> See *supra*, p. 147.

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twenty cents, were shipped at Sabine, in May, 1862, "by the Andromeda, Culmell," and consigned to Charles Caro & Co., at Havana. Of this cargo, Ashby, the master, says that ninety bales of cotton belonged to himself, and one hundred to Culmell, and that the remainder of the cotton, four hundred and seven bales, and all the hides, belonged to Caro & Co., who, he says, are neutral merchants, residing in Havana. Culmell says the same. Culmell was a rebel enemy, residing in Texas. Ashby left New Orleans in the Andromeda soon after the breaking out of the war, and from that time to the capture was in command of her, engaged in the Gulf trade, and the greater portion of the time with the rebel territory. He says of himself, that he was born in New York; lives in Louisiana; owes allegiance to Louisiana and to the Confederate States, and is not a citizen of the United States. His acts and declarations prove him a rebel enemy. There can be no question, therefore, that the cotton, when it became the property of Ashby or Culmell, or both, was enemy property. There is nothing in the record to support the statements of those persons, as to the ownership of Caro & Co. On the contrary, there is much to discredit them. There is nothing in the manifest which shows any distinction of ownership; and it is proved that a part belonged to Ashby and Culmell. The cotton and hides appear to have been purchased with the proceeds of the merchandise brought by the Andromeda to Sabine; and there is nothing before us, except the bare statement of Ashby, that the schooner was chartered by them for Matamoras, which affords the slightest indication that Caro & Co. had any interest whatever in that merchandise; while the account of sales is not with them, but with "schooner Andromeda and owners."

Besides these facts, another circumstance is of much weight. It appears from the record that Caro & Co., though residing at Havana, only a hundred miles from Key West, where the District Court was held, never appeared there during the proceedings in prize, never manifested any concern in the result beyond the mere signing of a power of



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attorney, authorizing Ashby to claim in their name. The court below very properly gave much consideration to this circumstance. In connection with the other facts mentioned, we think it fully warranted the conclusion, that no part of the cargo belonged to Caro & Co., and that the original enemy character of the whole of it remained unchanged at the time of capture.

The enemy character of the vessel is quite as clearly proved. She was originally the property of Ashby, a confessed rebel enemy, and, according to his statements, of others who, in the absence of any allegation to the contrary, must be presumed to have been, also, rebel enemies. By Ashby she was sold, as he asserts, to one Alleyn, said to have been a neutral residing in New Orleans. But there was no change of possession. Ashby remained in full and absolute control, both of her use and disposal, and afterwards sold her, under the asserted authority of Alleyn, to one Watson, alleged to have been a neutral residing in Havana. Still, however, there was no change of possession, control, or employment. There is not the slightest evidence that either of the alleged sales was real, except the unsupported statement of Ashby. That statement under the circumstances can carry no conviction with it.

The condemnation both of vessel and cargo seem to us, therefore, well warranted.

Were there any doubt, it would be removed by the destruction of papers proved to have been committed both by Ashby and Culmell, the real owners, as we think, of the schooner and her lading. Monsell, the steward, states that "after the vessel was hove to, and before the officer came aboard from the Pursuit," Culmell gave him a package of papers, which he believed to be newspapers, and told him to throw them overboard, which was done. He says, that Ashby and Culmell were in the cabin together when this direction was given. Ashby admits that the charter-party of the voyage was destroyed before the capture, and that some papers were thrown overboard, he did not know what. Culmell confesses that the invoices and bills of lading of the

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portion of the cargo owned by himself, were thrown overboard. Now, when it is remembered that the only bill of lading in the record describes all the cotton as shipped by Edmonson & Culmell, the significance of this confession becomes manifest; for if the bill of lading destroyed was, as it must have been, one of three of like tenor and date with the one found by the captors, then, if this statement be true, all the cotton was owned by Culmell. If, on the other hand, the statement be false, and the papers destroyed were other than as represented, then their destruction and the destruction of the charter-party authorize, under the circumstances, an absolute inference of enemy property, against both vessel and cargo.

We think the proof that the *Andromeda* and her cargo were liable to capture and condemnation for breach of blockade, equally clear; but, as we do not place our decision on that ground, we refrain from any remarks upon that aspect of the case.

No objection was made in argument to the sufficiency of the libel in the District Court. It would be enough to say of this objection, that the libel shows a case of prize, and that is sufficient for jurisdiction. All other exceptions are too late here. But the libel is beyond all exception. The rule is, that a libel in prize must allege generally the fact of capture as prize of war, and the libel in the record is in conformity with this rule.

The decree of the District Court must be affirmed.

NELSON, J. The proofs in the case, I think, fairly lead to the conclusion, that Ashby, the master of the *Andromeda*, was the real owner of the vessel, and that the sales by himself and others, in May, 1861, at New Orleans, to Alleyn, and by himself as attorney for Alleyn to Watson, at Havana, in March, 1862, were colorable; and, if Ashby was a resident and inhabitant of New Orleans, at the time of the capture of that port and city by our forces, on the last days of April, 1862, as seems to be assumed, there would be ground for claiming that he was entitled to the benefit and



## Syllabus.

protection of General Butler's proclamation of the 1st of May following; and, also, to the effect of that capture upon the status and property of the inhabitants of the captured city.\*

The view I have taken of the proofs in the case, do not involve these questions.

Ashby left the city of New Orleans in this vessel soon after the breaking out of the war, and before the establishment of the blockade, and has never returned to it. During all this time and down to the seizure of the vessel, 26th of May, 1862, he has been in command of it, and engaged in the Gulf trade; and the greater portion of the time with the rebel territory. In answer to the first interrogatory, in *preparatorio*, he says, "that he was born in New York; he now lives in Louisiana, and owes allegiance to Louisiana and the Confederate States; is not a citizen of the United States." In answer to the fourth interrogatory, under an order allowing further proofs, he says that he left New Orleans with the vessel anticipating a blockade, that she might not become useless property, and that he did not expect to communicate with that city while the blockade continued. The proofs, as we have seen, show how he has been engaged during all this period.

On the above ground, I agree that the vessel was properly condemned in the court below, as enemy's property; and, also, the cargo, which the court have adjudged belonged to him.

DECREE AFFIRMED.

## KUTTER v. SMITH.

1. The law imposes no obligations on a landlord to pay the tenant for buildings erected on demised premises. The innovation on the common law, that all buildings become part of the freehold, has extended no further than the right of removal while the tenant is in possession.

\* See *supra*, p. 263, The Venice; also, The Baigorry preceding case.