to him to be expedient and proper, and having exercised that discretion it is not possible to hold that the discontinuance was unlawful.

Learned counsel will hardly contend that Congress might not have discontinued that office, and our conclusion is that the same effects flow from the discontinuance in this case as if it had been directly declared by an act of Congress.

Defendant, when the post-office was discontinued, ceased to be postmaster at Kensington, because there was no longer any post-office at that place. He was never entitled to any compensation except commissions and receipts from boxes, and those sources of compensation were extinguished when the post-office was discontinued, and he lost nothing to which he was entitled.

The judgment of the Circuit Court is therefore

AFFIRMED.

THE NASSAU.

1. The jurisdiction of a court of admiralty over a vessel captured *jure belli*, is determined by the fact of capture. The filing of a libel is not necessary to create it.
2. When, under the act of Congress of the 25th March, 1862, for the better administration of the law of prize (12 Stat. at Large, 374), the prize commissioners authorized by the act certify to a District Court that a prize vessel has arrived in their district, and has been delivered into their hands, this is sufficient evidence to the court that the vessel is claimed as a prize of war and in its jurisdiction as a prize court.
3. Demands against property captured as prize of war must be adjusted in a prize court. The property arrested as prize is not attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement.
4. Whether a maritime lien for work and materials alleged to have been furnished to a vessel prior to her capture *jure belli* is lost by such capture, is a proper subject for investigation and decision by the prize court before which the captured vessel is brought for adjudication; and which the parties setting up such lien can, on presentation of their claim to that tribunal properly have decided.

Statement of the case.

5. But if such parties do not so present and ask to have it decided, the question is not properly before this court for review, in a case where the District Court has only dismissed the libel as improperly filed on its instance side.

APPEAL from the Circuit Court of the United States for the Southern District of New York; the case being thus:

On the 17th of June, 1862, Harlan, Hollingsworth & Co., a mercantile firm doing business at Wilmington, Delaware, filed a libel in admiralty, on the instance side of the District Court for the Southern District of New York, against the steamship Nassau, then in the port of New York, for repairs done to, and materials furnished for, the said vessel, in June, 1860. On the same day, in obedience to a monition properly issued, the marshal attached the vessel, and made return that she was at the time in the custody of the prize commissioners. Afterwards, on the 27th day of June, the prize commissioners certified that the steamer, an alleged prize of war, arrived at the port of New York on the 2d day of June, and was delivered into their hands, and was then in their custody. These commissioners, it may be here stated, were officers acting under the authority of an act of Congress,* which directs, that when any property captured as prize is brought into any district of the United States for adjudication, it shall be the duty of the prize commissioners to receive and keep it until by proper process of the court it shall be placed in the custody of the marshal.

A motion having been made by the district attorney, intervening for the United States, to dismiss the libel—on the ground that a vessel under arrest as prize of war was within the cognizance of the prize court, and could not be attached in a private action, and that all legal and equitable demands against her must be adjudicated in the prize court—the District Court sustained the motion, and dismissed the libel; and the Circuit Court, on appeal, affirmed the decree. The case was now brought here to review that decision; the libellants insisting that the order of dismissal was without authority of law.

* Act of 25th March, 1862, 12 Stat. at Large, 374.

Argument for the material-men.

Mr. J. T. Williams, for the appellants:

It will be readily inferred from the dates in this case—and the fact will doubtless be conceded to be so—that it was in consequence of the Rebellion, and the suspension of the authority of the Federal courts in the Southern ports, the ports between which the Nassau was doubtless plying,—that the libellants were forced to wait from June, 1860, when the repairs, which are the foundation of this suit, were made, till June, 1862, when they filed their libel, before they could pursue their claim. In the beginning of our civil war the vessel, no doubt, sailed from a Southern port, and nothing more seems to have been heard of her by these libellants who had given their labor to her until June, 1862, when she came into the port of New York, and was delivered into the hands of the "prize commissioners." The case shows that thereupon, immediately, on the 17th June, 1862, *and before any prize suit had been commenced*, or the prize commissioners had certified that she was in their hands, the libellants filed their libel in the District Court for New York, setting up *their* claim and maritime lien, and praying the usual process and sale for payment.

For the purposes of the present argument, the claim of the libellants must, of course, be taken to be just and legal, and one that would have been pronounced for, had not the libel been, at the instance of the government, summarily dismissed. The government cannot here argue that the claim was unjust or doubtful, and so *beg* the question upon a hearing of which it has deprived the party asserting the claim.

This being so, is it law—while a vessel is in the hands of prize commissioners, no otherwise than as an *alleged* prize of war—it not being shown how she came into the hands of such commissioners, nor in any respect how, or on what, the government claim is founded—that no private citizen can proceed against her in a civil action, to bring her into the District Court upon a claim confessedly legal and meritorious?

Such a proposition cannot be maintained.

Argument for the material-men.

At the time when the libellants filed their libel for repairs and materials, no libel in prize had been filed. The vessel was not within the jurisdiction of any court. Certainly, *until* a libel in prize had been filed, any one had a right to proceed against the vessel for a meritorious claim. Suppose the government had never filed a libel. How then? This libel of ours was not only filed before the government filed any of theirs, but, for aught that appears, before it had a design of filing one. Even the commissioners had not acted.

Of course, there can be no pretence of a conflict of jurisdiction. The libellants did not seek to take the vessel *out* of the jurisdiction of one court and bring her into the jurisdiction of another. They first brought her within the jurisdiction of a court having general jurisdiction, not only of their claim, but of the claims of their antagonists.

It cannot be questioned that the District Courts of the United States have concurrent jurisdiction in prize as well as in admiralty. The jurisdiction of the prize court in *England*—which is a special jurisdiction, conferred by a special commission from the Crown, and only when the exigencies of war seem to require it—extends, no doubt, *only* to cases of prize. But in this country prize courts and the courts of admiralty are blended—consolidated under one and the same statutory jurisdiction—and although the practice in prize cases varies somewhat, in some particulars, from that which obtains in admiralty cases, the jurisdiction is one and the same.

The Judiciary Act* provides that the District Courts shall "have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction;" and similar provision is made by the act of 1812, "concerning letters of marque, prize, and prize goods,"† which enacts that "the District Courts of the United States shall have exclusive original cognizance of all prizes brought into the United States, as in civil causes of admiralty and maritime jurisdiction."

* § 9.

† § 6, Stat. at Large, 761.

Argument for the material-men.

In *Glass* v. *Sloop Betsy*,* which was a decision prior to the act of 1812, the court say:

"The truth is, Admiralty is the *genus;* Instance and Prize Courts are the *species*, comprehended in the grant of admiralty jurisdiction."

We must beware, then, how we attempt to apply to our courts the dicta, or even the adjudications, of English tribunals. The foundations of the respective jurisdictions being wholly different, nothing but confusion and error can, by such attempts, ensue.

These matters being settled, we may confidently argue that no title, whether it be derived from capture as prize of war or otherwise, can be higher than that which is acquired by purchase. Whatever may be the legal altitude of the claim of the government to the vessel in question, a citizen may ask of a court that it hear him as a citizen suitor, asserting a superior prior claim to the whole, or some portion of it; and his claim, in such a case, ought not to be dismissed without a hearing.

Between a claim from purchase and a lien for repairs made in good faith, in furtherance of the public interest, in full reliance upon a universal principle of law, which has had the sanction of all nations for a thousand years—law which, unlike a contract, bends to no local interpretation, but is alike uniform and universal—there can be no essential difference.

But were it never so well settled that a *valid* prize claim overrides a lien and claim like that of the libellants, no one will pretend that an *invalid* prize claim will have the same effect. And will the court assume that this "prize claim" was valid when no fact appears upon the record to show it, and the government was not able to assert that the vessel was anything more than "an *alleged* prize of war?" Or assume that, had the libellants been permitted to do so, they would not have been able to show that this *alleged* claim was not a

* 3 Dallas, 12.

valid one? If invalid, can the government be heard to dispute the claim of the libellants?

What the libellants did in this case was in accordance with ancient practice. A vessel can be libelled by as many and as various parties and actions as a man can be sued by. Coming in as a claimant or petitioner in the suit of another is permitted only in special cases, and the practice is not favored. It was competent for the government to intervene in the suit of the libellants, and to contest the validity of their claim and lien, on whatever ground they saw fit, and, if successful, they had the field to themselves, so far as the libellants were concerned. They could probably, even in that suit, have asked for a sentence of condemnation of the vessel; or, perhaps more orderly, they should have filed a separate libel for that purpose. But the libellants had no possible way of presenting their claim to the adjudication of the court but by filing an original libel. It cannot be suggested that their situation would have been better if they had waited till after the government had filed its libel. As we have already asked, what if the government had never done so? Or how can it be said that the government had a right to file its libel first; or that, if the libellants had filed theirs after the government had filed its, a motion to dismiss would not have been granted with equal propriety?

The action of the District Court proceeded, of course, on the ground that a prize condemnation had the effect to efface all maritime liens; the court forgetting that a prize condemnation had not taken place, and that there was as yet no evidence upon which the court could pronounce such condemnation.

II. A valid claim to a vessel as prize of war, does not efface or override the claim and lien upon her, given to a material-man by the general maritime law.

The principle that a forfeiture, as prize, has no such effect upon a maritime lien given by the general maritime law, was admitted by Sir William Scott, in the *Vrow Sarah*,*

* Referred to in a note in 1 Dodson's Admiralty, p. 355–6.

also in *The Constantia*,* and claims founded on such liens were allowed, even in an English prize court. In *The Belvidere*, the same learned judge admitted that prize did not override a "positive lien upon the ship."

The Tobago, and some other cases cited upon the brief of the other side, are distinguishable.

[The learned counsel then went into a critical and very learned examination of these cases, endeavoring to distinguish them from the present.]

Mr. Ashton, Assistant Attorney-General, contra:

1. The vessel having been, at the time of the filing of the libel, in the possession of the prize commissioners, was in the custody of the law, and subject only to the orders and decrees of the *prize* court of admiralty.†

2. Whether a mere lien on property captured *jure belli* is or is not an interest sufficient to support a claim in a court of prize—a point that opposing counsel have argued so learnedly—is a question which really does not arise in the case as it now stands here. The District Court—*as an instance court of admiralty*—had no jurisdiction of the libel filed by these libellants in a case where the vessel had been captured and was plainly about to be proceeded in as prize of war. The point made need not, therefore, be replied to.

Yet we apprehend it to be clear, on the authority of American not less than of English cases,‡ that such mere lien is not maintainable on the prize side of the District Courts against the vessel, or the proceeds thereof, and hence that the order of the court below dismissing the one set up in this case, was right.

Mr. Justice DAVIS delivered the opinion of the court.

It is the practice with civilized nations, when a vessel is

* Edwards, 232.

† 1 Kent's Commentaries, 101–103, and cases cited; Act of March 25, 1862.

‡ The Eenrom, 2 Robinson, 5; The Tobago, 5 Id. 222; The Marianna, 6 Id. 24; The Frances (Thompson's Claim), 8 Cranch, 335; Id. (Irvin's Claim), Id. 418; Bolch *v.* Darrell, Bee, 74; The Mary, 9 Cranch, 126.

captured at sea as a prize of war, to bring her into some convenient port of the government of the captor for adjudication. The title is not transferred by the mere fact of capture, but it is the duty of the captor to send his prize home, in order that a judicial inquiry may be instituted to determine whether the capture was lawful, and if so to settle all intervening claims of property. Until there is a sentence of condemnation or restitution, the capture is held by the government in trust for those who, by the decree of the court, may have the ultimate right to it.

But it is argued that the libel in this case was sustainable, because no libel in prize had been filed, and until this was done any one had the right to proceed against the vessel for a meritorious claim. If this were so, it would greatly lessen, with captors, the stimulus to activity so necessary in time of war, for they could never tell how many private actions they would have to defend before they could reap the fruits of their enterprise and valor. Sound policy, as well as the law of prize, therefore, requires that all demands against captured property must be adjusted in a prize court, and that the property arrested as prize shall not be attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement.

The fact of capture determines the jurisdiction, and not the filing of a libel. When captured as prize of war the property is in the custody of the law, and remains there to await the decision of a prize court, and, if condemned, all claims to the property are by it adjusted. Any other rule would work great hardship to captors, and tend to cripple the operations of government during time of war. Under the provisions of the act of Congress for the better administration of the law of prize,* it is directed that, whenever any property captured as a prize is brought into any district of the United States for adjudication, it shall be the duty of the prize commissioners to receive it and keep it, until by

* 12 Stat. at Large, 374.

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the proper process of the court, it shall be placed in the custody of the marshal of the district.

When, therefore, in this case, the prize commissioners certified to the court below that the prize steamer Nassau had arrived in the District of New York, and was delivered into their hands, there was sufficient evidence before the court that the vessel was claimed as prize of war, and in the jurisdiction of a prize court; and the motion to dismiss this libel, filed by private parties, was properly entertained and decided.

Whether a maritime lien, like the one in this case, is lost, when the property is captured *jure belli*, would have been a proper question for investigation and decision by the prize court that condemned the Nassau, and which the libellants, on presentation to that tribunal, could have had decided.

Not having done so, the question is not before this court for review.

The decree of the Circuit Court is

AFFIRMED

UNITED STATES *v.* LE BARON.

1. When a contract is alleged by the pleadings to have been made on a certain day, it is no variance to offer in evidence a written contract which took effect on a different day.
2. If it be proved that a bond bearing date the first day of the month, did not become obligatory until the fifteenth, this is no variance, although the bond is counted on in the pleadings as a contract made on the first day of the month and bearing that date.

ERROR to the Circuit Court for the Southern District of Alabama.

This was an action of debt brought by the United States against Le Baron, surety of Beers, deputy postmaster at Mobile, on an official bond, dated *the first of July*, 1850.

The declaration set out—

"For that whereas, heretofore, to wit, *on the first day of July*, A D. 1850, at Mobile, to wit, in the State aforesaid and within