interest in the assets and effects of the copartnership to the bankrupt partner, or that he ceased to be a joint owner of the same when the estate of the bankrupt partner was assigned and conveyed to the complainant below as his assignee.*

Nothing is exhibited in the record to warrant the conclusion that the copartnership was ever in fact dissolved before the decree in bankruptcy against the senior partner, and as the compromise notes were given in the name of the copartnership, the other partner remained liable for their payment.

DECREE REVERSED and the cause remanded, with directions to

DISMISS THE BILL OF COMPLAINT.

UNITED STATES v. FARRAGUT.

Captors (Admiral Farragut and others) having filed a libel in the admiralty for prizes taken below New Orleans in April, 1862, they and the government agreed to refer the cause to the "final determination and award" of A., B., and C., "the award of whom," said the agreement of reference, "shall be *final* upon all questions of *law* and fact involved, said award to be entered as a rule and decree of court in said case, with the right also of either party to appeal to the Supreme Court of the United States, *as from other decrees or judgments in prize cases*"

The arbitrators made an award, finding certain matters wholly or chiefly of fact and also certain conclusions of law, and their award was, after exceptions to it, made a decree of the court where the libel was filed.

An appeal was taken to this court.

Held as principles of law applicable to the case:

1. That there was nothing in the nature of the admiralty jurisdiction, or of an appeal in admiralty, which prevented parties in the court of admiralty, whether sitting in prize or as an instance court, from submitting their case by rule of the court to arbitration.
2. That the award in the present case was to be construed here and its effect determined by the same general principles which would govern it in a court of common law or of equity.
3. That notwithstanding the expression in the agreement of submission, that all questions of *law* in the case were to be concluded by the award,

* Harrison *v.* Sterry, 5 Cranch, 302.

the agreement was in this respect no more than a submission of all matters involved in the suit.

4. That accordingly where the award found facts, it was conclusive; where it found or announced concrete propositions of law, unmixed with facts, its mistake, if one was made, could have been corrected in the court below, and could be corrected here; that where a proposition was one of mixed law and fact, in which the error of law, if there was any, could not be distinctly shown, the parties must abide by the award.

5. That the award was also liable, like any other award, to be set aside in the court below, for such reasons as would be sufficient in other courts; as for exceeding the power conferred by the submission, for manifest mistake of law, for fraud, and for all other reasons on which awards are set aside in other courts of law or chancery.

6. *Held* accordingly further, in application of these principles:

(*a*) That on a question whether the capture was by the navy alone, or by the navy conjointly with the army, the finding that it was by the navy alone, was a finding on a point mainly of fact, and conclusive; there being no evidence of any misapprehension of law governing the arbitrators in their decision of it.

(*b*) That the names of the vessels participating in the capture, and the value of the property captured were questions of pure fact, and that the finding was final.

(*c*) That whether the property was lawful prize of war and subject to condemnation was the very matter submitted to the arbitrators to be decided by them; and that their award that it was such lawful prize and so subject to condemnation, was to be upheld unless it was shown that in making such award they had acted upon a manifest mistake of law.

(*d*) That where the award found that certain vessels named were, after capture, given up to their lawful owners, from whom they had been taken by the enemy, the award was to be taken as stating that these vessels had been the property of loyal citizens of the United States, had been seized by the enemy for their own use, and when captured from the enemy by the libellants had been restored by the military power in New Orleans to their original owners, and that on this state of facts the arbitrators held that when captured they were lawful prize and liable to condemnation as such in a prize court. But that there being nothing in the finding of the court nor in the record, nor anything suggested by counsel in argument, to show that these owners were not domiciled in the rebel States, and it being reasonably to be supposed from all that *was* known that such was the case, it wou'd, in favor of the award and decree below, be presumed that the arbitrators had evidence of that fact. *Held*, therefore, that in holding these vessels liable to capture and condemnation, and lawful prize of war, it did not appear under the decision in the *Prize Cases* (2 Black, 671), which in their second proposition adjudged that property of persons domiciled or residing within the enemy's lines was enemy property,

and liable to capture as prize of war, without regard to their sentiments of loyalty or disloyalty to the United States government, that the arbitrators violated any principle of law.

Held, however, that in awarding, as they did, the value of these vessels to the captors as prize, and in addition forty per cent. of that value for salvage, the arbitrators violated law and practice.

(*e*) That where the *award* found nothing about the return to their owners of certain other vessels, though there was some evidence (if it had been proper to go behind the award) to show that they were so delivered, but none at all as to the character of these owners for loyalty, this court could not, in the face of the award that they were lawful prize and subject to condemnation, infer that their owners were loyal men, even if it could look to the evidence to find that the vessels were delivered to them. *Held*, therefore, to be clear that there was no sufficient evidence to show that the award as to these vessels was based on any mistake of law.

APPEAL from the Supreme Court of the District of Columbia.

On the 22d of January, 1862, the city of New Orleans being then in the possession of the rebel confederacy, and access to it from the ocean by the troops of the United States being cut off by the rebel forces in Forts Jackson and St. Philip, below it; a large armament of mortars was sent to the mouth of the Mississippi, which the Western Gulf Squadron of the United States was blockading; and Flag-officer Farragut, afterwards admiral of that name, ordered to its command. These were his instructions:

"When these formidable mortars arrive, and you are completely ready, you will collect such vessels as can be spared from the blockade and proceed up the Mississippi River and reduce the defences which guard the approaches to New Orleans, when you will appear off that city and take possession of it under the guns of your squadron, and hoist the American flag therein, keeping possession until troops can be sent to you. . . . As you have expressed yourself perfectly satisfied with the force given to you, and as many more powerful vessels will be added before you can commence operations, the department and the country will require of you success."

On the 3d of February, 1862, Flag-officer Farragut sailed from Hampton Roads to assume his command. By letter

of February 10th, 1862, from the Secretary of the Navy, he was instructed that—

"The most important operation of the war is intrusted to yourself and your brave associates. . . . Eighteen thousand men are being sent to the gulf to co-operate in the movements, which will give to the armies of the United States full possession of the ports within the limits of your command. You will, however, carry out your instructions with regard to the Mississippi and Mobile without any delay, beyond that imposed upon you by your own careful preparation. *A division from Ship Island will probably be ready to occupy the forts that will fall into your hands.*"

A land force of 18,000 men, under Major-General Butler, destined to co-operate with the navy in the attack on New Orleans, was dispatched from Fortress Monroe, and entered the Mississippi about the middle of April, landing on Ship Island there, and putting itself into relations with Admiral Farragut.

General Butler, when leaving Fortress Monroe, received orders by which the army under him was to await the reduction of the enemy's works by the navy, and then, after their capture, in case a reduction and capture was made, the army was to put and leave in them a sufficient garrison to render them secure; but in case the navy failed to reduce the works, then a co-operative movement by the united forces—land and naval—was to commence; the army, covered by the navy, to make its approaches and carry them by assault.

All preparations being made, the fleet commenced the bombardment of Fort Jackson on the 16th of March, which bombardment lasted until April 24th, 1862. At half-past three o'clock on the morning of that day, the fleet, in two divisions, moved up the river, and, aided by the mortar fleet, ran past and between Forts St. Philip and Jackson, placed on the east and west sides of it, under a fire described by Farragut "such as the world had rarely seen."

After passing the forts the fleet, on the morning of the

25th, proceeded to New Orleans, attacked the forts immediately around the city for its defence, reduced them, and demanded the surrender of the city on that day in the name of the United States.

General Butler in the meantime, in accordance with an agreement which he had previously made with Flag-officer Farragut before the bombardment began, rowing seven miles to get a good footing, landed 3000 men at the quarantine station (Sable Island). He then threw a body of them across the Mississippi and hemmed in the forts. That night the garrison of Fort Jackson mutinied against their officers, and a majority of them surrendered to the government pickets; and on the next day the officers also surrendered, and the government troops were put and left in the forts. He then followed Flag-officer Farragut up the river, and with 2000 men took possession of New Orleans.

Such at least was one part—the historical *proscenium* as it may be called—of the case; though the evidence adduced in the record of this particular suit, while establishing *it*, in the main, may or may not have considerably modified it as to the degrees in which the army and the navy shared in the conquest. Whether it did or did not was one of the questions raised and disputed about by counsel, and the reporter states what he has stated chiefly to lead in and make more intelligible what follows.

The result of the reduction of the forts was the capture of a large number of vessels, coal, and other property.

All this property was appraised at the time by a board of officers duly appointed for that purpose. But there being no District Court for the Eastern District of Louisiana open at that time, and much of the property being river steamers unfit to be sent to sea, and much of it necessarily used by the army and navy of the United States in their further operations in the gulf and the river Mississippi, none of it was sent in to be condemed as prize at the time of the capture.

Congress, accordingly, on the 3d of March, 1869, passed an act with the following title and enactment:

Statement of the case.

"*An Act relating to captures made by Admiral Farragut's fleet in the Mississippi River in May*, 1862.*

"*Be it enacted, &c.*, That the vessels attached to or connected with Admiral Farragut's fleet in the river Mississippi, which participated in the opening of that river, and which resulted in the capture of New Orleans in the month of May, 1862, and which by law would have been entitled to prize-money in the captures made by said vessels, shall be now entitled to the benefits of the prize laws in the same manner as they would have been had the District Court for the Eastern District of Louisiana been then open, and the captures made by said vessels had been libelled therein; and any court of the United States having admiralty jurisdiction may take and have cognizance of all cases arising out of said captures, and the same proceedings shall be had therein as in other cases of prize.

"SECTION 2. *And be it further enacted*, That the shares in such captures awarded to the officers and men entitled to prize shall be paid out of the Treasury of the United States."

In pursuance of this statute Admiral Farragut, on behalf of himself and the officers and crews of his fleet, filed his libel in the Supreme Court of the District of Columbia, on the 26th April, 1869, against thirty-six sailing vessels of different kinds, or steamers, including the ships Metropolis, Farwell, Milan, the barkantine Ocean Eagle, the bark George Alban, and the steamer Sallie Robinson, of the aggregate value, as alleged, of $116,500.

Five steamers, to wit, the Diana, the Ceres, the Tennessee, the McRae, and the Iberville, valued, as alleged, at $613,520.

[The steamer McRae (of the value as alleged of $96,000), the libel averred had been "sent up with paroled prisoners to New Orleans, but not being properly cared for by the Confederate officers having her in charge, was sunk."]

Five Confederate vessels, then in process of construction.

The following steamers, St. Charles, Time and Tide, Louisiana Belle, Empire Parish, St. Maurice, and Morning

* 15 Stat. at Large, 336.

Light, appraised in the aggregate at $64,000, and which steamers, among others, the libel alleged belonged to the Confederate authorities or citizens of the Confederate States, and after being captured were delivered over to the United States, and used by them in transporting their forces, munitions of war, &c.

Sixteen thousand tons of coal worth $20 a ton.

The libel alleged the capture by Farragut's fleet, *jure belli*, of all these thirty-six vessels, as also of the coal; and setting forth their value, prayed a monition, and that all might be held to be prize of war, and that a decree might be passed directing their value to be distributed among the officers and crews of the Western Gulf Squadron, as to law and justice might appertain.

The Treasury Department having informed the District Attorney of the United States at Washington, that it was very questionable whether the captures mentioned in the libel were prize of war, and that it was desired to have this question, besides questions of fact arising in the cases, fully and fairly tried, directed him to take such steps as upon consultation with a gentleman named (Mr. Corwine), who had been retained as special counsel of the government, it might be deemed necessary to take to protect the interests of the government. So far as the reporter could gather things from a confused record, one ground of the question suggested by the Treasury Department, whether the vessels libelled were prize of war, *jure belli*, was an idea that the captures had been made in a greater or less degree by the aid of the army; it was also of the impression that in asking for so large a sum of prize-money as it did, the libellants were disregarding the statutory rule which gave them so large a sum only when the capturing force was inferior to that opposing it.

However, whatever was the ground of its action, the United States, both by the attorney for the District of Columbia and by special counsel employed in the case, appeared and defended the suit, and such proceedings were had that by a written agreement between the United States

on one side, and the libellant on the other, the whole controversy was submitted to three arbitrators, whose award, or that of a major part of them, should by rule of the court be entered as its decree. It was signed by the counsel for Farragut, by the special counsel of the United States, the Attorney-General, the Secretary of the Treasury, and the Secretary of the Navy.

This agreement, after reciting the pendency of the suit which we have just mentioned, and another by the same libellant against the United States, which was not found in the record, but is supposed to have related to the same subject-matter, proceeds as follows:

"Now, for the more speedy and economical adjustment of said controversies, it is agreed between the libellants and the United States that these causes shall be referred to the final determination and award of Henry W. Paine, Esq., of Boston, and Thomas J. Durant, Esq., of Washington, and Gustavus V. Fox, Esq., late Assistant Secretary of the Navy, mutually chosen on the part of the libellants and the United States, *the award of whom, or the greater part of whom, shall be final upon all questions of law and fact involved in these causes;* said award to be entered as a rule and decree of court in said cases in said Supreme Court, with due right of either party to take evidence, as in other like cases, within thirty days from this date; and *with the right also of either party to appeal to the Supreme Court of the United States as from other decrees or judgments in prize cases.*"

In due time the arbitrators made their unanimous award, the substance of which is as follows:

1. That the capture was not a conjoint operation of the army and navy of the United States.

2. That forty-two vessels, whose names were given, participated in the capture.

3. That twenty-nine vessels, whose names were also given, and which included the vessels already mentioned by name, were captured, and also five vessels of war in process of construction on the docks in the Mississippi River, and sixteen thousand tons of coal.

4. That the value of each of these vessels separately, and

of the coal and unfinished vessels was such and such a sum, which the award specified, the aggregate being $966,120.

5. That all this property was lawful prize of war, and lawfully subject to condemnation as such.

6. That in the engagement which resulted in the capture of those ships, the entire force of the enemy was superior to the force of the United States ships and vessels so engaged.

9. That of the above-mentioned captured vessels, the McRae was wholly lost and destroyed, having been used as a cartel by the United States, and sunk in the river opposite New Orleans, within four days after her capture.

10. That the ships Metropolis, Farwell, and Milan, the barkantine Ocean Eagle, the bark George Alban, and the steamer Sallie Robinson, whose aggregate value was $116,500, were, after capture, given up to the legal owners, from whom they had been taken by the enemy.

The award allowed the captors the value of these vessels, and $46,600 for military salvage due thereon, and closed by giving to the libellants the whole value of all these vessels, $966,120, and the $46,600 salvage just mentioned.

The award, it will be noted, said nothing about any other vessels than those mentioned in the tenth paragraph having been given up to the owners of them, though there was some evidence in the record which tended to prove the bare fact that the steamers St. Charles, Time and Tide, Louisiana Belle, Empire Parish, St. Maurice, and Morning Light had been given up to their owners; but who the owners were, where they resided, or anything else about them did not appear in the said evidence.

This award having come into the court below, it was excepted to by the United States, and a motion soon made to set it aside; the following being the grounds of the exception and motion:

"1st. That the finding that the capture was not a conjoint operation of the army and navy of the United States, is not warranted by the law and the facts, but is expressly contrary to the law and the facts.

"2d. That the finding of the value of the vessels alleged to

have been captured, is without warrant of law, and wholly unsupported by evidence.

"3d. That the finding that the property alleged to have been captured was 'lawful prize of war, and lawful subject of condemnation as such,' is erroneous and wholly unsupported by the law and facts.

"4th. That the finding that the force of the enemy was superior to the forces of the United States ships and vessels engaged in the alleged capture, is erroneous and wholly at variance with and unsupported by the law and the facts.

"5th. That the finding that the steamer McRae was lost after that she was alleged to have been captured, and while she was being used as cartel by the United States, is erroneous and not supported by the law and the facts. The evidence shows that the McRae belonged to the United States prior to her use and when she was used by the rebels, and that she was recaptured from them by the naval forces of the United States on the occasion referred to in the award, and that she was not prize of war. At most it was but a recapture.

"6th. That it is erroneous, and not warranted by law, to allow military salvage, as against the United States, for the alleged recapture of the vessels set out in paragraph ten of the award. Such property was not recaptured by the libellant and those he represents."

The court refused to set the award aside, and on the contrary made it the decree of the court. From that decree the United States took this appeal.

After the case came into this court the Attorney-General dismissed the appeal as to the sixteen thousand tons of coal, the five vessels of war in process of construction, and five other vessels, namely, the Diana, the Ceres, the Tennessee, the McRae, and the Iberville, covering $613,520 of the decree, and this sum has been distributed among the captors.

The record, as it came to this court, was a very confused one. It was composed, a considerable part of it, of evidence in the cause; some of it received by stipulation, some of it documentary, and more—the most of it, indeed—by depositions. Whether any part of this was before the arbitrators, or what part of it, or what other testimony, if any,

was before them, the confused state of the document rendered it impossible for any one to know.

Mr. G. H. Williams, Attorney-General, and Mr. R. M. Corwine, special counsel, for the United States.

The first question is, What is brought up by the appeal?

The "appeal," reserved by the agreement to refer, is from the judgment or decree of the Supreme Court of the District of Columbia.

The award was of no avail until it was entered as a rule or decree of that court, and from that rule (*i. e.*, judgment) or decree the appeal might be taken.

Such appeal is to be as from other decrees or judgments *in prize cases.*

Now, in decrees in prize cases all pleadings, together with the report of the arbitrators, go up with the appeal,* and the proceedings in all respects are governed by the Rules of Practice in Admiralty.

By Rule 44, in admiralty, power is given the court to refer any matter in dispute to one or more commissioners; and such commissioners shall have and possess all the powers of masters in chancery. So that, if the parties had not agreed, the court might have referred the cause to arbitrators. But here the parties did agree, and the court adopted the selection of arbitrators, and their form of submission, and referred the cause.

The 44th Rule, as we have said, confers upon commissioners the powers of masters in chancery, and the rule, as laid down in 2d Daniell's Chancery Practice,† is that the master must report *all the evidence* for the inspection of the court. Evidence improperly rejected by the master may be examined in court.‡

Such an appeal as was here made from the decree below, brings then the case here to be tried *de novo*, without reference to the proceedings of the arbitrators, and, in fact, as if

* See Rule 52 of the Supreme Court of the United States in Admiralty.

† Page 1498. ‡ Fuller *v.* Wheelock, 10 Pickering, 135.

no reference had been made. The decree was vacated by the appeal.

[The learned counsel then, on an assumption that all questions of fact were open to examination at this bar, went into an examination of the evidence; inferring, on such examination, that in several particulars of fact—including the degree in which the army shared in the conquest—the conclusions of the arbitrators were not well made, and that really, on a perfectly true view of the case, nothing was due to the libellants at all.]

Reverting, however, in a larger degree to matters of law, and admitting, for argument's sake, that the evidence cannot be gone into:

The decree of the court below finds that the ships Metropolis, Milan, Farwell, the barkantine Ocean Eagle, the bark George Alban, and the steamer Sallie Robinson, were, after capture, "given up to the loyal owners from whom they had been taken by the enemy."

Upon these facts, the existence of the *right of postliminy* in the said owners at the time of the recapture of their property by our forces may fairly be assumed.

That right entitled the owners to a restoration of their property by the captors; while, on the other hand, the captors became entitled to military salvage, for which they had a lien upon the property, but that was the only interest they had in it.

The claim of the captors for military salvage might have been enforced by proceedings *in personam* as well as *in rem;* and this shows that the liability therefor, so far as it constituted a personal charge, rested upon the owners. The captors could certainly have no ground for asserting a claim against the government on account of salvage, unless, perhaps, the property or its proceeds had been appropriated by the government after the capture, which was not the case. And the proceeding in the court below being *virtually* but the prosecution of a claim against the government, the allowance of military salvage to the promoters of that proceeding, in respect of the property referred to, was improper.

It appears also, from the record, that the steamers St. Charles, Time and Tide, Louisiana Belle, Empire Parish, St. Maurice, and Morning Light, were restored to their owners. The *presumption* is, though there may be no specific evidence to that effect, that the restoration of this property was due to the fact that the owners thereof were loyal to and under the protection of the government. If so, then the right of postliminy existed in their favor, and the only interest the captors really had in the property was a salvage right, which, for reasons already stated, cannot be made the subject of claim against the government in this proceeding. The allowance made by the court below, in respect of this property, should therefore be wholly excluded.

It is accordingly submitted that at the very least the decree of the court below ought to be modified in the following particulars:

1. The amount allowed by the court as the value of the ships Metropolis, Farwell, Milan, the barkantine Ocean Eagle, the bark George Alban, and the steamer Sallie Robinson, should be stricken out, ...	$116,500
2. The amount allowed by the court as military salvage on the same vessels should also be stricken out, ...	46,600
3. The amount allowed by the court as the value of the steamers St. Charles, Time and Tide, Louisiana Belle, Empire Parish, St. Maurice, and Morning Light, should also be stricken out,	64,600
Amounting in the aggregate to	$227,700

Mr. B. F. Butler, for Admiral Farragut and his officers and men; Mr. Hubley Ashton, for Admiral Porter; Mr. Nathaniel Wilson, for Rear-Admiral Bailey, contended that under the terms of the submission which made the award of the arbitrators final, not only on questions of fact but on "questions of law" also, it was doubtful if anything at all could be considered in this court; that certainly the ordinary rule which made such an award conclusive as to matter of fact, prevented a consideration of the case *de novo* as on appeals in admiralty.

The learned counsel, however, examined the evidence fully, seeking to show that on it, as in matter of law, the award was perfectly just.

Opinion of the court.

Mr. Justice MILLER delivered the opinion of the court.

The first and most important question arising in the argument of the case before us, respects the validity of the award and its effect in limiting the field of investigation of this court on appeal.

On the one hand it is maintained that the provision which gives to either party the right to appeal to this court, as from other decrees or judgments in prize cases, in effect nullifies the award here and opens the entire case upon all the pleadings and evidence in the record as though no award had been made. On the other, it is argued that the clause which declares the award final upon all questions of law and fact involved in the cause, forbids any inquiry here into any question of law or fact passed on by the arbitrators.

As regards the first proposition, it is unreasonable to suppose that parties to a suit in court, referring the whole subject to arbitrators with an agreement that the award shall be final and become the decree of the court, intended to leave the whole case open after the award as though none had been made.

The provision for an appeal to this court was undoubtedly to negative the possible inference that such appeal was forbidden by the clause making the award final in all questions of law and of fact arising in this case.

It is to be observed that the appeal is not and could not be from the award, but from the decree of the court below. That court would deal with the award in the same manner that awards in other courts could be dealt with.

There is nothing in the nature of the admiralty jurisdiction, or of an appeal in admiralty, as counsel seem to suppose, which would prevent parties in that court, whether sitting in prize or as an instance court, from submitting their case by rule of the court to arbitration, or which varies the effect to be given to such award from that to be given to it in any other court, either in the court below or on appeal. This award is to be construed here and its effect determined by the same general principles which would govern it in a court of common law or of equity.

Nor do we conceive, notwithstanding the expression in the agreement of submission, that all questions of law in the case are concluded by the award. In this respect it is no more than a submission of all matters involved in the suit.

Where the award finds facts it is conclusive, where it finds or announces concrete propositions of law, unmixed with facts, its mistake, if one is made, could have been corrected in the court below, and can be corrected here. Where a proposition is one of mixed law and fact, in which the error of law, if there be one, cannot be distinctly shown, the parties must abide by the award.

The award was also liable, like any other award, to be set aside in the court below, for such reasons as are sufficient in other courts. For exceeding the power conferred by the submission, for manifest mistake of law, for fraud, and for all the reasons on which awards are set aside in courts of law or chancery. A motion was made in that court to set aside the award on the following grounds:

1st. The finding that the capture was not a conjoint operation of the army and navy of the United States is not warranted by the law and the facts, but is expressly contrary to the law and the facts.

2d. The finding of the value of the vessels alleged to have been captured is without warrant of law and wholly unsupported by evidence.

3d. The finding that the property alleged to have been captured was "lawful prize of war, and lawful subject of condemnation as such," is erroneous and wholly unsupported by the law and facts.

4th. The finding that the force of the enemy was superior to the forces of the United States ships and vessels engaged in the alleged capture, is erroneous and wholly at variance with and unsupported by the law and the facts.

5th. The finding that the steamer McRea was lost after that she was alleged to have been captured, and while she was being used as cartel by the United States, is erroneous and not supported by the law and the facts. The evidence shows that the McRea belonged to the United States prior

to her use and when she was used by the rebels, and that she was recaptured from them by the naval forces of the United States on the occasion referred to in the award, and that she was not prize of war. At most it was but a recapture.

6th. It is erroneous, and not warranted by law, to allow military salvage, as against the United States, for the alleged recapture of the vessels set out in paragraph No. 10 of the award. Such property was not recaptured by the libellant and those he represents.

A glance at these grounds will show that all of them, except the last, is an attempt to reopen the questions submitted to the arbitrators, because they had decided erroneously questions of pure fact, or of law and fact, in which the former was so mingled with the latter as to be inseparable.

Applying these principles to the case before us, we think we are bound by the first statement of the award, that the capture was not a conjoint operation of the army and navy. There is no evidence here of any misapprehension of the law governing that question, and it must obviously have been one mainly of fact, and the award is, therefore, conclusive.

So also the names of the vessels participating in the capture, of the vessels and other property captured, and the value of that property, are all questions exclusively of fact which the arbitrators had a right to find, were bound to find, and the finding is a finality. The finding that all this property was lawful prize of war and subject to condemnation as such, was the very thing submitted to them for their decision, and unless it can be shown that in making this award they have acted upon a manifest mistake of law, the award must be upheld. Does this appear? Having found the capture, the property captured, the names and character of the vessels engaged in it, and the nature of the capture, the only other question open was the character of the captured property.

Was it liable to capture as prize for any of the reasons which make property liable to the law of prize? Was it

contraband of war? Had it been engaged in violating or attempting to violate a blockade? Was it enemy property? If it was captured with any or all of these characteristics it was lawful prize, and subject to condemnation, and whether it was or not was clearly matter to be decided by the arbitrators, and unless they violated some principle of law in deciding it, which this court can see, the award must be confirmed.

The Attorney-General insists that it sufficiently appears from the record that the ships Metropolis, Farwell, Milan, the barkantine Ocean Eagle, the bark George Alban, and the steamer Sallie Robinson, of the value of $116,500; and the steamers St. Charles, Time and Tide, Louisiana Belle, Empire Parish, St. Maurice, and Morning Light, of the value of $64,000, were not lawful prize or subjects of condemnation. The foundation of the argument is that these vessels were owned by loyal citizens, and were on that account delivered up to their owners by the military authorities after their capture. As regards the six vessels last named, the award is totally silent as to their being delivered to the owners, or as to the loyalty of those owners.

There is some evidence in the record, if we could go behind the award, to show that they were delivered to their owners, but none whatever as to the character of these owners for loyalty. We cannot, in the face of the award that they were lawful prize and subject to condemnation, infer that their owners were loyal men, if we could look to the evidence to find that the vessels were delivered to them.

It is, therefore, clear that there is no sufficient evidence to show that the award as to these vessels was based on any mistake of law.

The six vessels first named stand on a different ground. As to them, the tenth finding of the award is, that they "were after capture given up to their lawful loyal owners, from whom they had been taken by the enemy."

On this point we understand the award as stating that these vessels had been the property of loyal citizens of the United States, had been seized by the enemy for their own

use, and when captured from the enemy by the libellants had been restored by the military power in New Orleans to their original owners, and that on this state of facts the arbitrators hold that when captured they were lawful prize and liable to condemnation as such in a prize court. Unless the fact that the original owners were loyal to the government of the United States is of itself sufficient to exempt these vessels from the law of prize, the award of the court must be sustained. If the owners resided on that side of the line of bayonets spoken of in the *Prize Cases** which adhered to the Union, then they were not liable to condemnation as prize, for their owners could have interposed a claim in the prize court, and on payment of salvage their property would have been restored to them. But if their owners resided on the other side of that line, were themselves citizens of and domiciled in States declared by the President's proclamation to be in insurrection, then their property captured in naval warfare was lawful prize, and subject to condemnation. The loyalty of the owners made no difference in this regard. This whole subject was exhaustively examined in the *Prize Cases*, and the second proposition established by the opinion, commencing at page 671, 2 Black, is that property of persons domiciled or residing within the enemy's lines was enemy property, and liable to capture as prize of war, without regard to their sentiments of loyalty or disloyalty to the United States government. This was sustained on the ground that all such property, being capable of use in aid of the enemy, was liable to capture for the purpose of crippling his resources. And one vessel and some personal property was condemned as prize in that case, because owned by citizens of Richmond, though no disloyal acts were charged or proved against them.

This rule was acted on by this court in all cases which came within it (and there were several) growing out of the same civil war. The rule is vindicated by the fact that these very vessels were seized and were in use by the public forces

* 2 Black, 674.

of the enemy at the time they were captured, and their capture was a deadly blow at their power to carry on the war.

There is nothing in the finding of the court, nor in the record, nor is it suggested by counsel in argument, to show that these owners were not domiciled in the rebel States. It would be reasonably supposed from all that *is* known, that such was the case; and in favor of the award and decree below it will be presumed that the arbitrators had evidence of that fact.

It does not appear, therefore, that in holding these vessels liable to capture and condemnation, and lawful prize of war, the arbitrators violated any principle of law.

But it is quite clear that in awarding the value of these vessels to the captors as prize, and in addition forty per cent. of that value for salvage, they did violate law and justice.

This is too apparent to need argument, and is seen on the face of the award; and the decree of the Supreme Court of the District as to the $46,600 awarded as salvage is REVERSED, and in all other particulars it is affirmed, and the case is REMANDED to the Supreme Court of the District of Columbia, with directions to reform its decree in this particular, and for such further proceeding as may be necessary, in conformity with this opinion.

REVERSED AND REMANDED ACCORDINGLY.

FOX *v.* SEAL.

1. Under the joint resolution of the legislature of Pennsylvania, passed January 21st, 1843, and which declares that "it shall not be lawful for any company incorporated by the laws of the Commonwealth and empowered to construct any railroad, canal, or other public internal improvement, while the debts thereof, incurred by the said company to contractors, laborers, and workmen employed in the construction or repair of said improvements remain unpaid, to execute a general or partial mortgage, or other transfer of the real or personal estate of the said company, so as to defeat, postpone, endanger, or