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NATIONAL INTELLIGENCER.

On Tuesday last Chief Justice MARSHALL delivered the following opinion of the Supreme Court of the U. States, in the case of **SILAS TALBOT, Captain of the United States Ship "War," vs. The "Amelia."**

PER CURIAM.
HANS FREDRICK SEAMAN, claimant of the Ship "Amelia," her cargo, apparel and furniture.

THIS is a writ of error to a decree of the circuit court for the district of New-York, by which the decree of the district court of that date, referring the ship *Amelia* to her owners on the payment of one half for salvage, was reversed, and a decree rendered, directing the liberation of the vessel without salvage.

The facts agreed by the parties, and the pleadings in the cause, present the following case:

The fate of the case is concisely this: The ship *Amelia* sailed from Calcutta in Bengal, in April, 1799, loaded with a cargo of the product and manufacture of that country, and was bound to Hamburg. On the 13th September she was captured by the French national corvette *La Diligente*, commanded by L. J. Dabois; who took out the captain, part of the crew, and took out the papers of the *Amelia*, and gave a prize-master and French flags on board her, ordered her to St. Domingo, to be judged according to the laws of war. On the 13th of September, she was re-captured by Captain Talbot, commander of the *Constitution*, who ordered her into New-York for adjudication.

At the time of the re-capture, the *Amelia* had eight iron cannon, and eight wooden guns, with which she left Calcutta. From the ship's papers, and other testimony, it appeared, that she was the property of Chazpar Rouge, a citizen and merchant of Hamburg; and it was conceded by the counsel below, that France and Hamburg were not in a state of hostility with each other, and that Hamburg was to be considered as neutral between the present belligerent powers.

The district court of New-York, before whom the cause first came, decreed one half of the gross amount of the ship and cargo as salvage to the re-captors. The circuit court of New-York reversed this decree, from which reversal, the re-captors appealed to this court.

Mr. Bayard and Mr. Ingersoll, for the plaintiff in error, and Mr. Dallas, Mr. Levy, and Mr. Mason, for the defendants.

The *Amelia* was libelled as a French vessel, and the libellant prays that she may be condemned as prize or, if referred to any person entitled to her as the former cargo, that such restitution should be made on paying salvage. The claimant answers Hans Frederick Seaman, declares the neutral character of the vessel, and claims her on behalf of the owners.

The questions growing out of these facts, and to be decided by the court, are—

1. Is Capt. Talbot, the plaintiff in error, entitled to any, and if so, to what amount, in the case which has been stated?

2. Is salvage a compensation for actual service rendered to the property charged with it?

3. Is it demandable of right for vessels saved from privateers, or from the enemy?

In order, however, to support the demands, two circumstances must concur.

1st. The taking must be lawful.

2d. There must be a meritorious service rendered to the re-captured.

1st. The taking must be lawful—for no claim can be maintained in a court of justice, founded on an act in itself tortious. On a re-capture, therefore, made by a neutral power, no claim for salvage can arise, because the act of retaking is a hostile act, not justified by the situation of the nation in which the vessel making the recapture belongs, in relation to that from the possession of which such re-captured vessel was taken. The degree of service rendered the re-taken vessel is precisely the same as if it had been recaptured by a belligerent

power, the goods belonging to the re-captor are not goods, because no right can accrue from an act in itself unlawful.

In order then to decide on the rights of Capt. Talbot, it becomes necessary to examine the relative situation of the United States and France at the date of the re-capture.

The whole power of war being, by the constitution of the United States, vested in Congress, it is not to be presumed that the acts of that body can alone be referred to as guides in questions of property. It is not denied, nor in the course of the argument has it been denied, that Congress may authorize general hostilities, in which case the general law will apply to our situation or partial hostilities, in which case the laws of war, as they actually apply to our situation, are to be applied.

To determine then the real situation of America in regard to France, the acts of Congress are to be inspected.

The first act on this subject, passed on the 23rd of May, 1798, and is entitled "An act more effectually to protect the commerce and coast of the United States."

This act authorizes any armed vessel of the United States to capture any armed vessel falling under the authority, or protection of authority, of the republic of France, which shall have committed depredations on vessels belonging to the citizens of the United States, or which shall be found hovering on the coasts for the purpose of committing such depredations. It also authorizes the re-capture of vessels belonging to the citizens of the United States.

On the 25th of June, 1798, an act was passed "to authorize the defence of the merchant vessels of the United States against French privateers."

This act empowers merchant vessels owned wholly by citizens of the United States, to defend themselves against any attack which may be made on them by the commander or crew of any armed vessel falling under French colours, or aiding, or pretending to act, by or under the authority of such republic; and to capture any such vessels, or to recapture any re-capture of merchant vessels belonging to the citizens of the United States.

By the 2d section, such armed vessel is to be brought in and confined for the use of the owners and capture.

By the same section, re-captured vessels belonging to the citizens of the United States are to be restored, they paying for salvage one eighth part, for more than one half, of the value of such vessel and cargo.

On the 28th of June, an act passed "to amend the act more effectually to protect the commerce and coast of the United States."

This act authorizes the condemnation of vessels brought in under the first act, with their cargoes, excepting only from such condemnation the goods of any citizen or person resident within the United States, which shall have been before taken by the crew of such captured vessel.

The second section provides, that whenever any vessel or goods, the property of any citizen of the United States, or person resident therein, shall be re-captured, the vessel shall be restored, they paying one eighth part of the value, free from all deductions.

On the 9th of July another law was enacted, further to protect the commerce of the United States.

This act authorizes the public armed vessels of the United States to take any armed French vessel found on the high seas, which directs such armed vessel, with her apparel, guns, &c. and the goods and effects found on board, being French property, to be condemned as French prize.

The same power of capture is extended to private armed vessels, and to any vessel of any citizen of the United States, or person residing therein, shall be restored, they paying for salvage no less than one eighth, nor more than one half, of the value of such re-capture, without any deductions.

The 7th section of the act for the government of the navy, passed the 2d of

March, 1799, enacts—"That for the ships and goods belonging to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, if retaken from the enemy within twenty-four hours, the owners are to allow one eighth part of the whole value for salvage, & if they have remained above ninety-six hours in possession of the enemy, one half is to be allowed."

On the 2d of March 1800, Congress passed "an act providing for salvage in cases of re-capture." This law regulates the salvage to be paid when any vessel or goods, which shall be taken as prize, or otherwise, shall appear to have before belonged to any person or persons permanently resident within the territory and under the protection of any foreign prince, government or state, in amity with the United States, and to have been taken by an enemy of the United States, or by authority, or pretence of authority, from any prince, government or state, which declares its attachment to the United States, or shall authorize defence or reprisals."

These are the laws of the United States, which declare the situation in regard to France, and which regulate what is to accrue on re-captures made in consequence of that situation.

A neutral armed vessel which has been captured, and which is commanded and manned by Frenchmen, whether found cruising on the high seas, or falling directly for a French port, does not come within the description of the vessel which the law authorizes an American ship of war to capture, unless she be considered *ad hoc* as a French vessel.

Very little can be entertained but that a vessel thus circumstanced, encountering an American unarmed merchantman, or one which should be armed, but of inferior force, would as readily capture such merchant vessel, as she had failed immediately from the ports of France. On direct and declared object of the war then, which was the protection of the American commerce, would as certainly require the capture of such a vessel, as of others more determinately specified. But the rights of a neutral, which the government of the United States cannot be considered as having disregarded, intervene; and the vessel certainly is not, strictly speaking, a French vessel.

If the *Amelia* was a French vessel on the 15th of September 1799, a French vessel within the description of the act of Congress, could her capture be lawful?

It is, I believe, a universal principle, which applies to those engaged in a partial as well as those engaged in a general war, that where there is probable cause to believe the vessel met with at sea, is in the condition of one liable to capture, it is lawful to take her, and subject her to the condemnation of the courts.

The *Amelia* was an armed vessel commanded and manned by Frenchmen. It does not appear that there was evidence enough to ascertain her character. It is not then, to be taken, nor have the claims questioned, but that there was probable cause to bring her in for adjudication.

The recapture then was lawful.

But it has been insisted that the re-capture was only lawful in consequence of the doubtful character of the *Amelia*, and that no right of salvage can accrue from an act which was founded in mistake, and which is only justified by the difficulty of avoiding error, arising from the doubtful circumstances of the case.

The opinion of the court is, that had the character of the *Amelia* been completely ascertained by Capt. Talbot, yet as she was an armed vessel under French authority, and in a condition to annoy the American commerce, it was lawful to render her incapable of mischief. To have taken out the arms or crew, was as little authorized by the construction of the acts of Congress, as to have taken her for the claimants' use, or to have taken possession of the vessel herself.

It has, I believe, been practised in the course of the present war, and, if not, is certainly very practicable, to man a private

and cruise with her for a considerable time without sending her in for condemnation. The property of such vessels would not strictly speaking be changed, so as become a French vessel, and yet it would probably have been a great departure from the real intent of Congress, to have permitted such vessel to cruise unimpeded. An armed ship under these circumstances might have attacked one of the public vessels of the United States. The acts which have been recited explicitly authorize the capture of such vessel to committing hostilities, by a private armed ship, but not by one belonging to the public. To suppose that a capture under an American commerce, might in the other unlawful; or to suppose that even in the limited date of hostilities in which we were placed, two vessels armed and manned by the enemy, and equally cruising on American commerce, might the one be lawfully captured, while the other, though an actual ally, could not; or if captured that the act could only be justified from the probable cause of capture furnished by appearance; would be to attribute a capriciousness to our legislation on the subject of war, which is no way proper when considered.

There must then be accidents growing out of these acts of hostility specifically authorized, which is a fair construction of the acts which authorize like-wise.

If by the laws of Congress on this subject, that body shall appear to have legislated upon a perfect conviction that the date of war in which this country was engaged, was such as to authorize re-captures generally from the enemy; or if one part of the system shall be innocently founded on the other, the latter part, it would have considerable weight in rendering certain what might before have been doubtful.

Upon a critical investigation of the acts of Congress it will appear, that the right of re-capture is expressly given in no single instance, but that of a vessel or goods belonging to a citizen of the United States. If the capture of a vessel or goods of salvage is regulated, as if the right to it existed previous to the regulation.

Although no right of re-capture is given in terms for such vessels and goods belonging to persons residing within the United States not being citizens, yet an act, passed so early as the 28th of June 1798, declares, that vessels and goods of this description, when re-captured, shall be restored on paying salvage; thereby plainly indicating that such re-capture was sufficiently warranted by law to be the foundation of a claim for salvage.

If the recapture of vessels of one description, not expressly authorized by the very terms of the act of Congress, be yet a rightful act, recognized by Congress as the foundation of a claim for salvage, which claim Congress proposes to regulate, then it would seem that other recaptures from the same enemy are equally rightful; and where the claim they afford for salvage has not been regulated by Congress, such claim must be determined by the principles of general law.

In this situation remained the re-capture of vessels of one description, as at war with France, until the act of the 2d of March 1799, which regulates the salvage demandable from them. Neither by that act, nor by any previous act, was a power given in terms to a merchant vessel, which that re-capture was an incident which unavoidably grew out of the state of war. On the capture of a French vessel, having with her as a prize, the vessel of such description, the prize was inevitably re-captured. On the idea that the recapture was lawful and that it was a foundation on which the right to salvage could stand, Congress, in the act of the 2d of March 1799, declared what the amount of that salvage should be.

The expression of this act is by no means explicit. If it extends to neutrals then it governs this case; if otherwise, the law of nations, as it respects neutrals, governs the same ground with the law respecting a belligerent, prior to the passage of the act of the 2d of March 1799. Thus it continued until the 2d of March 1800,