

when the legislature regulated the salvage to be paid by neutrals, re-captured from power against which the United States had authorized defence or reprisals.

This act having passed subsequent to the capture of the *Amelia*, can certainly not affect that case in so far as the quantity of salvage, or give a right to salvage which had not existed before. But if it be construed in the manner which the law already committed on the *Amelia* which Congress considered itself as having established. This act was passed at a time when no additional hostility against France could have been contemplated. It was only designed to keep up the defensive system which had before been formed, and which was deemed necessary to continue, till the negotiated peace should have a pacific termination. Accordingly there is no expression in the act extending the power of reprisals or giving it in the case of neutrals. The power is supposed to exist as an incident growing out of the state of war, and the right to salvage produced by that power is regulated in the act.

The title of a recapture subsequent to the act, no doubt is to be understood, but that salvage according to its terms would be demandable. Yet there is not a syllable in it which would warrant an idea that the right of recapture is extended by it, or did not exist before.

It must then have resulted from the passage of the laws, which commenced our general resistance to the aggressions we had long experienced and submitted to.

It is not unworthy of notice that the first regulation of the right of salvage in the case of a recapture, not expressly enumerated among the five listed acts of hostility were granted by the law, to be found in one of those acts which constitute a part of the very system of defence determined on by Congress, and the first which subjects to condemnation the prizes made by our public ships of war.

It has not escaped the consideration of the court that a legislative act, founded on a mistaken opinion of what was law, does not change the actual state of the law as to existing cases.

This principle is not shaken by the opinion now given. The court goes no further than to give the provisions in one of the recaptured acts, as extended by an explanatory act of the same system, and thus it appears to be in obedience to the well-established rules of exposition as to be necessary to found construction of the law.

An objection was made to the claim of salvage by one of the counsel for the defendant in error, unconnected with the acts of Congress, and which it is proper here to notice.

He states that to give title to salvage he means only such as have been cited under this title.

The principle is applied by Beaw to the flag case of a vessel saved by fire by throwing overboard a part of her cargo. In this case the principle is applied to the cargo, and in the case of a recapture it is unquestionably incorrect. The recaptor is fullon actuated by the sole view of saving the vessel, and in no case of the fort has the cargo ever been made.

It is then the opinion of the court on a consideration of the acts of Congress, and of the circumstances of the case, that the re-capture of the *Amelia* was lawful, and that if the claim to salvage be correct, the respects well founded, there is nothing to defeat it in the character of the original title.

It becomes then necessary to enquire—  
1. Whether there has been such a meritorious service rendered the recaptured as entitles the recaptor to salvage.

The *Amelia* was a neutral ship, captured by a belligerent, and was recaptured on her way to a French port, to be adjudged according to the laws of war.

It is stated to be the settled doctrine of the law of nations that a neutral vessel captured by a belligerent is to be discharged without paying salvage; and for this several authorities have been quoted, and many more might certainly be cited. That fact has been a general rule is not to be questioned. As little is it to be disputed that this rule is founded exclusively on the supposed safety of the neutral. It is expressly stated in the case of the *Was Onken*, cited from Robinson's reports, that the liberation of a neutral vessel rendered to him, inasmuch as that enemy would be compensated by the release of his own country, and he had carried the neutral into port to release him with costs and damages for the injurious seizure and detention. It is not unfrequent to consider and speak of

regular practice under a rule, as itself forming a rule. A regular course of decision on the text of the law, constitute rules of practice, in that which text is to be applied to all similar cases. But after the text and the rules no longer govern. So in the case of salvages. The general principle is, that salvage is only payable where meritorious service has been rendered. In the application of this principle, it has been decided that neutrals carried in a belligerent for examination, being in no danger, and not deriving any benefit, ought not therefor to be considered as having rendered any service. The principle is that without benefit, salvage is not payable; and it is merely a consequence from this principle, which depends on the fact of benefit conferred, that he who practices on his laws and its practice on this subject; let its legislation be such as to subject to condemnation all neutrals captured by its citizens, and who will fly to its benefit in consequence of a capture? In such a course of things the fate of the neutral is completely changed. So far from being safe he is in as much danger as if he were captured by his own declared enemy. A series of decisions then, and of rules founded on his supposed safety, no longer apply. Only those rules are applicable, which regulate a situation of actual danger. The act, as it has been termed, a change of principle, but a perversion of principle, by a practical application of it according to the original and good sense of the rule.

It becomes then necessary to enquire whether the laws of France were such as to have rendered the condemnation of the *Amelia* extremely probable, as to create a real and imminent danger, and her recapture by Capt. Talbot must be considered as a meritorious service entitling him to salvage.

To prove this the counsel for the plaintiff has produced a copy of the laws of the French government, and especially one of the 18th of January 1793.

Objections have been made to the reading of these decrees as being the laws of a foreign nation, which, like other facts, ought to have been proved, and to have formed a part of the case filed for the consideration of the court.

That the laws of a foreign nation apply only for the direction of a court, and are not to be noticed by the courts of other countries unless proved as facts, and that this court, with respect to facts, is limited to the statements made in the court below, cannot be questioned. The real and only question is whether the public laws of a foreign nation, on a subject of common concern to all nations, promulgated by the government of a country, can be noticed as facts by a court of admiralty of that country, or must be still further proved as facts.

The negative of this proposition has not been maintained in any of the authorities which have been adduced. On the contrary several have been quoted, (and facilities to have been the general practice) in which the public laws of a foreign nation are read as law without being proved as facts. It has been said that this is done by consent; that it is a matter of general convenience not to put parties to the trouble and expense of proving permanent and well known laws, which it is in their power to prove; and this opinion is countenanced by the case cited from Douglas. If it be correct, yet this decree having been promulgated in the United States as the law of France, by the joint act of that department which is entrusted with foreign intercourse, and of that which is invested with the powers of war, seems to assume a character of notoriety, which renders it admissible in our court.

It is therefore the opinion of the court that the decree should be read as an authentic copy of a public law of France, inasmuch as it is the law of France.

The decree ordains—  
[The first article ought to be inserted here.]  
The decree subjects to condemnation in the courts of France, a neutral vessel, taken in whole or in part, with articles the growth of England, or any of its possessions. A neutral thus circumstanced, cannot be considered as in a state of safety—his recapture therefore cannot be said to have rendered him no service. It cannot reasonably be contended that he would have been discharged in the ports of the belligerent, with costs and damages for the seizure and detention.

Let us then enquire, whether this be the situation of the *Amelia*. The first fact relates her to have sailed from Calcutta in Bengal, in April, 1793, laden with a cargo of the produce of the soil of that country. Here it is contended that the whole of Bengal may possibly not be in possession of the English, and therefore it does not appear that the cargo was within

the dominion of the decree. But to this it has been answered, that in enquiring whether the *Amelia* was in danger or not, the place of her destination, in the place of a French coast, admiralty, and determined, as such a court would have determined. Doing this, there seems to be no reason to doubt that the cargo, without enquiring whether the British territory was in power in every part of Bengal, being the produce of the product and manufacture of a possession of England, would have been considered, unless the contrary could have been proved, as being within the decree.

The next fact relied on by the defendant in error, is that the *Amelia* was sent to be adjudged according to the laws of war, and from thence it is inferred that she could not have been judged according to the decree of the 18th of January.

It is to be remembered, that there are the orders of the captor, and without a question in the language of a French cruiser, a law of his own country, furnishing a rule of conduct in time of war, will be taken as one of the laws of war.

But the 3rd and 4th facts in the statement of the plaintiff, as to her cargo, which was to have been a citizen of Hamburg, which city was not in a state of hostility with the republic of France, but was to be considered as neutral between the then belligerent nations, is not material.

It has been contended that these facts not only do not show the re-captured vessel to have been one on which the decree could operate, but also show that the decree could not pass affect there.

The whole statement taken together, amounts to nothing more than that Hamburg was a neutral city—and it is precisely against neutrals that the decree is directed. To prove, therefore, that the *Amelia* was a neutral vessel, is to prove her within the very words of the decree, and consequently to establish the reality of her danger.

Among the very elaborate arguments which have been used in this case, there were some which the court deem it proper to mention, and which are as follows.

It has been contended, that this decree might have been merely in terrorem; that it might never have been executed; and that, being in opposition to the law of nations, and the law of the most civilized states, it would have been executed.

But the court cannot presume the laws of any country to have been enacted in terrorem, nor that they will be disregarded by its judicial authority. Their obligation on their own courts must be considered as complete; and, without referring either to public notoriety, or the declarations of our own government on the subject, the decisions of the French courts must be admitted to have conformable to the rules prescribed by their government.

It has been contended that France is an ally of the United States, and that the law of the nations, and further, that if she has violated them, we ought not to violate them also, but ought to remonstrate against such misconduct.

The objection is never been controverted; but they lead to a very different result from that which they have been cited on as producing.  
The respect due to France is totally unconnected with the danger in which the vessel had placed the *Amelia*; nor is France in any manner to be affected by the decree this court may pronounce. Her interest in the vessel was terminated by the recapture, which was authorized by the state of hostility then subsisting between the two nations. From that time it has been a question only between the *Amelia* and the recaptor, with which France has nothing to do.

It is true, that a violation of the law of nations by one power does not justify its violation by another; but that remonstrance is not to be pursued, and this is the course which has been pursued. America did remonstrate, most earnestly remonstrate to France against the injuries committed on her; but remonstrance having failed, she appealed to a higher tribunal, and authorized limited hostilities. This was not violating the law of nations, but conforming to it. In the course of these limited hostilities, the *Amelia* has been recaptured, and the court now is to determine whether the conduct of France would justify a departure from the law of nations, but what is the real law in the case. This depends on the danger from which she has been saved.

Much has been said about the general conduct of France and England on the coast, and it has been urged that the conduct of the latter has been more injurious than that of the former.—That is a consideration not to be taken up in this cause. Amundersons on either, in the present case, would be considered as extremely un-

becoming the judges of this court, who have only to enquire what was the real danger in which the laws of one of the countries placed the *Amelia*, and from which she was saved, and determined.

It has been contended that an illegal commission to take, given by France, cannot authorize our vessels to spake; that we have no right by legislation, to grant salvage out of the property of a citizen of Hamburg, who might have objected to the condition of the service.

But it is not the authority given by the laws of France, which is to be considered, which is relied on as legalizing the recovery made by Capt. Talbot—it is the state of hostility between the two nations which is considered as having authorized that act.

The re-capture having been made lawfully, then the right to salvage, on general principles, depends on the service rendered. We cannot presume this service to have been unacceptable to the Hamburgers, because it has benefited him; but the re-capture must always be made without consulting the re-captured. The act is one of the incidents of the state of war, and is not to be regulated by the law of nations.

The subsequent fate of the re-captured depends on the service he has received, and on other circumstances. It gives a right to salvage, if it find there must be some service rendered.

Had Hamburg been in a state of declared war with France, the re-captured vessels of that city would be admitted to be liable to pay salvage. If a contract be made, by which the re-captured vessel, under the law, in that state of things imply it? Clearly from the benefit received, and the risk incurred. If in the actual state of war, the vessel is not in a state of hostility, the same circumstances concur, and they warrant the same result.

It is also urged that to maintain this right, the danger must be to be merely local, and that it must be imminent and of the loss certain.

That a mere speculative danger will not be sufficient to entitle a person to salvage is not to be denied. The danger must be such, that escape from other means was inevitable, can not be admitted.

As the vessel had sailed by the counsel for the defendant in error, before the capture, it means was possible, though not probable. The chances of a ship on fire might be extinguished by the crew, or by a sudden breeze, or the reefs might pull, and they might be got off by the aid of guns and tides without assistance from others. A vessel captured by an enemy might be separated from her captor, and if sailors had been taken on board, a board of officers and crew might possibly destroy them, or they might even be blown by a storm into a port of the country to which the prizes were originally bound.

It is not necessary that the loss should be inevitably certain, but it is necessary that the danger should be real and imminent. It is believed to have been the case in this case. The captured vessel was in a state of destruction, and the loss which was to be tried, condemned her as good prize to the captor. Her danger then was real and imminent. The service rendered her was an essential service, and the court is therefore of opinion that the recaptor is entitled to salvage.

The next object of enquiry is, what salvage ought to be allowed? The captors claim one half the gross value of the ship and cargo. To support this claim they rely on the act "for the government of the navy of the United States," passed the 2d of March, 1799. This act regulates the prize money to be paid to the captors, and belongs to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, re-taken from the enemy.

It is then contended that the case before the court is in the very words of the act. That the owner of the *Amelia* is a citizen of a state in amity with the United States, and that the *Amelia* was a neutral vessel. The description would have been more limited, had the intention of the act been to restrain its application to a recaptured vessel belonging to a nation engaged with the United States.

The words of the act would certainly admit of this construction. Again it is, it has been urged, and we think with great force, that the laws of the United States, in relation to the capture of neutrals, are to be construed as to infract the common principles and usages of nations, or the general doctrines of national law. If the construction contended for, be given to the act, it will be construed as to infract the law of salvage a recaptured neutral, and a recaptured belligerent vessel. Yet according to the law of nations, a neutral is generally to be restored without salvage.