

Case No. 3,432.  
Bee, 152.]<sup>1</sup>

CROSS V. THE DOLPHIN.

District Court, D. South Carolina.

Feb. 28, 1800.

RECAPTURED VESSEL—ASCERTAINMENT OF SALVAGE.

In case of recapture by a public vessel of war, the salvage can only be ascertained by sale of the recaptured property, unless both parties consent to an appraisement.

In this case salvage was decreed, and a sale of the vessel ordered. Claimant's counsel requested the court to direct an appraisement instead of a sale. The judge said that he had carefully examined the different acts of congress relative to captures and recaptures, and that they made an evident distinction between captures by a private vessel, and those of a public vessel of war, as was the present case. In the former instance, the court might direct the prize to be delivered over to the captors, or to be sold. In the latter, there is no discretion; the vessel taken must be sold. These distinctions, he said, were applicable to the question of salvage, and must guide him on this occasion; he should, therefore, adhere to the original decree, unless both parties would agree that appraisement should be substituted for sale. In such case, he did not doubt the power of the court to concur; and would order a sale of such parts of the cargo as might be sufficient to pay expenses and salvage. Accordingly, the following order was made: "The agents for the recaptors, and also the agent for the owners of the brig Dolphin, having, in open court, consented to fix the valuation of said brig and her cargo by appraisement, in order to ascertain the amount of one eighth part for salvage, ordered and decreed that A, B, C, D, &c., or any three of them, be appraisers for the above purpose; and that they make a return of the value of said brig and her cargo, on oath, under their hands and seals, into the office of the registrar of this court, within ten days. That the marshal sell at public auction, after the usual notice, such part of the cargo of said brig as will amount to one eighth of the value thereof, to be paid for salvage, free of deduction; together with all costs and expenses of this suit, and all other charges incident to the sale. That the marshal pay said amount of one eighth part to the agents for the officers and crew of the frigate John Adams; and after payment of costs and expenses, that he restore the said brig and the remainder of her cargo to the agent of the owners."

<sup>1</sup> [Reported by Hon. Thomas Bee, District Judge.]