

Case No. 4,318. EIGHT HUNDRED AND FIFTY-EIGHT BALES OF COTTON.  
[Blatchf. Pr. Cas. 325.]<sup>1</sup>

District Court, S. D. New York.

Jan., 1863.

PRIZE PROPERTY—LIEN FOR FREIGHT—GOVERNMENT OWNERSHIP.

1. Property captured as prize at Newbern, North Carolina, having been shipped to New York by the captor, on board of a merchant vessel, on freight, under a bill of lading, signed at the time, conditioned for its delivery at New York on payment of the freight therein stipulated, the court ordered the freight to be paid by the marshal out of the proceeds of the property in court.
2. On general principles, property captured as prize belongs in law to the government, and is chargeable with the same liabilities as if it had been owned by individuals, and had been benefited under contracts direct or implied.
3. The United States, in relation to the proprietorship of property, have, in their public capacity, like authority and remedies, and are subject to like liabilities in dealing with it, through legal agencies or otherwise, as natural persons, except, perhaps, in respect to the operation of laws of limitation, or rules resting upon usages under the law merchant.

In admiralty.

The United States and Captors v. Eight Hundred and Fifty-Eight Bales of Cotton, brought on freight from Newbern, North Carolina, to the port of New York, as prize property, on board the schooner Clifton; The Same v. One Hundred and Twenty-One Barrels of Oil, One Thousand Three Hundred and Thirty-One Barrels of Resin, Pitch, and Turpentine, and Two Hundred and Fifty-Seven Casks of Resin, transported as aforesaid on board the schooner Palmer. It being satisfactorily proved in each of the above-entitled causes that the vessels therein named were not, at the time of the lading and affreightment on board them of the merchandise above mentioned, in the employment of or under control of charter-party with the libellants, and bound to receive and transport the said merchandise from Newbern, North Carolina, to the port of New York, or any other port or place for the libellants, except by virtue of the bills of lading and affreightment executed to the.

## EIGHT HUNDRED AND FIFTY-EIGHT BALES OF COTTON.

shipper of the goods at the time, and set forth in these proceedings, and it appearing to the court that the said ladings were shipped Tindler bills of lading signed at the time, conditioned for their delivery in this port on payment of the freight therein stipulated, it is, therefore, considered that the said cargoes, notwithstanding the same were prize goods remitted to this port for the benefit of the libellants, and for the purpose of adjudication in the prize court of this district, are legally and justly subject to the payment of freight according to the terms of the said bills of lading. Wherefore, it is ordered by the court that a true computation of said freight be made and stated, and that thereupon the marshal pay the same to the claimants out of the proceeds of said goods in court, as part of the expenses and charges to which the same are legally and justly liable and subject.

BEITS, District Judge. The above order is made in the before-named suits, upon facts entirely distinct from the case of *The Undertaker's Cargo*, decided in the Massachusetts district, November 18, 1862, the vessels which transported the prize cargoes in that case being under demise to the United States, and compensated in sums in gross for the whole period of their service.

On general principles, property captured as prize belongs in law to the government (*The Dos Hermanos*, 2 Wheat. [15 U. S.] 76; *Id.*, 10 Wheat [23 U. S.] 306; 3 Phillim. Int. Law, p. 189, § 128; *The Elsebe*, 5 O. Rob. Adm. 173), and is, accordingly, chargeable with the same liabilities as if it had been owned by individuals, and had been benefited under contracts, direct or implied. Commodore Rowan, of the United States navy, the captor of this prize, was a competent agent of the United States to bind them, as owners of the property, to a fulfilment of this contract for its carriage. The United States, in relation to the proprietorship of real or personal property, have, in their public capacity, like authority and remedies, and are subject to like liabilities in dealing with it, through legal agencies, or otherwise, as natural persons, except, perhaps, in respect to the operation of laws of limitation, or rules resting upon usages under the law merchant. *U. S. v. Tingey*, 5 Pet. [30 U. S.] 115; *Same v. Bradley*, 10 Pet [35 U. S.] 343; *Same v. Bank of Metropolis*, 15 Pet [40 U. S.] 377; *Dungan v. U. S.*, 3 Wheat. [16 U. S.] 172; *Nielson v. Lagow*, 12 How. [53 U. S.] 98; *U. S. v. Barker*, 12 Wheat [25 U. S.] 559; *Same v. Bank of U. S.*, 5 How. [46 U. S.] 382. The order to the marshal to pay the applicants the amount of freight due in the above suits will be entered as above indicated.

<sup>1</sup> [Reported by Samuel Blatchford, Esq.]