

Case No. 4,370.

THE ELLA WARLEY.

{Blatchf. Pr. Cas. 204.}¹

District Court, S. D. New York.

Aug., 1862.

PRIZE—PROPERTY TAKEN FOR THE USE OF GOVERNMENT—APPRAISAL.

1. The practice of this court is settled, that where the captors desire to take to their own use the property captured as prize, its value is to be ascertained by sworn appraisal, and deposited in court, or in the treasury, subject to the order of the court.
2. The court prefers this method to that of taking bail, and regards a sworn appraisal as a more satisfactory mode of ascertaining the value of prize property than an auction sale.

[In admiralty. The steamer Ella Warley was captured April 24, 1862, by the United States steamer Santiago de Cuba, and was libeled as prize June 4, 1862. The cause is now heard upon the prayer of the district attorney for an order that certain property found in the captured vessel, consisting of arms and munitions of war, be transferred to the captors, as representatives of and for the use of the government, on deposit of a sum fixed by sworn appraisal as the value of such property.]

BETTS, District Judge. This case embraces the exceptions raised in the last case to the authority of the court to order an appraisal of prize property, and its transfer to the libellants. The decision of that point is, accordingly, controlled by the previous case of *The Memphis* [Case No. 9,412].

A further question is made and discussed, relating to the powers of the court to act upon the final disposal of the property otherwise than by means of a judgment of forfeiture, and a sale thereof by execution. It is insisted that the claimants are entitled to have the value of the property tested and ascertained by the form of a judicial and public sale. The prerogative right of the captors to take the property seized to their own use is modified only insubserviency to the modern law of war, that, in case a judicial confiscation of it is not secured, the captors are responsible over for its value to the lawful proprietor. That responsibility may be secured to the claimant by bail, in court, for its worth, or other equivalent protection to such contingent right. The usage of this court is, to place the value in deposit in the registry of the court, or in the United States treasury, subject to the authority of the court, to be restored and paid to the Claimant in case of the acquittal of the property, in place of relying upon individual undertakings or responsibilities therefor. The court is not convinced of the greater propriety or certainty of resorting to an auction sale of property as a means of ascertaining its reasonable value, particularly when both parties stand in court alike asserting a legal ownership to it. That method may approach nearer to the worth of an article which possesses no steady mercantile value, and is subject to sudden fluctuations, under speculative excitements or emergencies, the condition of a state of peace or war, in general trade or local transactions, producing, at times, sudden

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alterations in the demand and supply. We have witnessed such changes in the progress of the present war; but the fitful state of the market at any of these periods would measure but imperfectly the worth of the commodity, as an article of trade and merchandise. Particularly, the salableness at auction may readily, by dishonest collusions, be augmented or depressed, so as to take from such a sale all just evidence of the transaction being one between vendor and purchaser, calculated to determine the value of the article between them. It appears to me that, in such a condition of things, the general judgment would confide in the honest valuation of discreet individuals, well acquainted with the subject, rather than the result of palpitating excitement at a public sale, in fixing the price which should be paid to the claimant provided the government should be proved not to be the lawful owner of the property. There is high authority in support of the expediency of an auction sale to effect that end (*The Euphrates* [Case No. 4,546]; *The Diana* [Id. 3,876], and this preference, it is understood, is concurred in by the practice of the prize court in Pennsylvania. But all the decisions must rest on the same principle,—that it is competent to the government through the agency of the courts, to take immediate possession and use of captured property, on guaranteeing, by bail or deposit at its worth, the restoration of its value to its lawful claimants. It is, therefore, a question of expediency, addressed to the sound discretion of the court whether that value shall be ascertained by auction sale, or by the appraisal of individual appraisers. In many instances, as where the prize cannot be brought into port or the public necessities compel its instant appropriation or arrest an appraisal affords the only method of fixing its value. That course has been repeatedly adopted by this court during the war, and I perceive no reasons for directing a public sale to that end, when an appraisal is feasible.

The method, therefore, of guaranteeing the interests of the claimants, through the pledge, by deposit, of a sum fixed by a sworn appraisal, I regard as superior to one by bail or collateral

security only, and to lie preferred to an auction sale, as a criterion of the worth of the property taken.

The order prayed for by the district attorney is, therefore, granted.

{NOTE. Subsequently counsel for the claimants objected to the authority of the court to appraise the property seized prior to its condemnation, but this objection was overruled in Case No. 4,371. Afterwards, it appeared that the captured vessel was in such condition as to require constant pumping and precautions to preserve her from total loss, whereupon she was ordered sold. Case No. 4,372. At a hearing on the merits the vessel and cargo were condemned by the district court (Case No. 4,37d), which decree was affirmed by the circuit court Case No. 4,374.)}

¹ [Reported by Samuel Blatchford, Esq.]