

Case No. 5,033.
[1 Gall. 453.]¹

THE FRANCIS.

Circuit Court, D. Rhode Island.

June Term, 1813.

PRACTICE—COSTS.

As to costs to be taxed on several claims in one information, upon a remission of the forfeiture.

[This was the case of the ship Francis and cargo (Joseph Boyer, master), which was captured and libeled as enemy's property.]

In this and some other prize causes pending before the court, the captors had relinquished their rights to a considerable portion of the property found on board, and claimed by American citizens; and congress having passed an act² remitting all forfeitures under the non-importation acts,³ upon the payment of the duties, costs, and charges, a question arose as to the costs which ought to be taxed upon each claim.

The counsel for the claimants contended that the attorney for the United States was entitled, on each claim, to the sum of \$6 only; and they cited the act of 28th of February, 1799, c. 123, § 4 [1 Stat. 625], regulating his fees.

The district attorney, on the other hand, contended that he was entitled to \$17 on each claim; and, to show that such had been the general practice, he introduced certificates, &c, from the districts of Massachusetts, Connecticut, New York, and Pennsylvania; and he alleged that such had also been the practice of the district court of Rhode Island.

Mr. Robbins, Dist. Atty.

Crapo & Searle, for claimants.

STORY, Circuit Justice. These prize causes have been certified to this court by the district judge, under the act of 8th of May, 1792, c. 36 [1 Stat 275], on account of his

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having been of counsel for the United States; and I consider myself therefore as sitting, in effect, for him. On examining the act regulating fees, I confess that I was at first strongly inclined to think that, at most, \$11 only were taxable against each claim; and there is certainly weight in the argument which would confine the taxation to \$6. No judicial proceedings appear to have been had on the behalf of the United States, except the filing of an information or claim for the municipal forfeitures. The subsequent collateral proceedings of the parties were to obtain a remission of the forfeitures from the secretary of the treasury. But I am pressed with the uniformity of the practice to allow \$17; and certainly, sitting merely for the district judge, I should not feel at liberty to disturb a practice, which seems to have obtained so general a sanction. I shall therefore allow the \$17 for each claim in these causes.⁴

[NOTE. See The Francis, Cases Nos. 5,032, 5,034-5,036.]

¹ [Reported by John Gallison. Esq.]

² Act Jan. 2, 1813 [2 Stat. 789].

³ Act March 1. 1809 [2 Stat. 528]; Act March 2, 1811 [Id. 651].

⁴ See Act 22d July, 1813, c. 14 [3 Stat 19], respecting suits and costs in United States courts.