

Case No. 8,535.
[2 Gall. 307.]¹

THE LOUISETTA.

Circuit Court, D. Massachusetts.

Oct. Term. 1814.

PRACTICE IN ADMIRALTY—COSTS—CLAIM UNDER ATTACHMENT—CAUTION.

1. Practice as to costs and charges, where several parties intervene for separate interests.

[Cited in *The Mary Anne*, Case No. 9,195.]

2. Where a party claims under an attachment, he must file a caution in court, to hold the proceeds remaining after satisfying prior claims.

[Cited in *The Mary Anne*, Case No. 9,195.]

This vessel was seized and libelled on behalf of the United States, afterwards libelled for seamen's wages, sold on interlocutory order, and finally decreed to be restored.

Mr. Hubbard, of counsel for owners and claimants, now moved the court for a direction to the clerk to pay over the proceeds, or at least so much thereof, as would compensate him as counsel, the clerk having doubts as to his authority to pay them over, because he had understood there were attachments upon the same property, returnable to the state court. There was no evidence of any attachment made; and it appeared, upon inquiry, that the party, claiming under the attachment, had done nothing more than to file a copy of his writ with the marshal.

THE COURT said, they could not take notice of any attachment, unless a caution was filed in court; and Welsh, of counsel for the claimants under the attachment, was directed to file such a caution.

The *Louissetta* was taken into custody under the seizure by the United States in June. The libel on behalf of the seamen was served in August. The marshal had charged these libellants with the custody fees from the time the warrant on their libel was served.

Mr. Hubbard, for the owners and claimants, and Mr. Welsh, for the seamen, contended that the vessel, being already in the custody of the United States under their seizure, and there having been an appeal from the decree of the district court, so that it was necessary for the United States to retain the property in custody, this was properly a charge to the United States, and ought not to be borne, either by the owners, to whom restitution was decreed, or by the seamen.

THE COURT confirmed this reasoning, and said, the expenses must be borne by the United States, there having been probable cause, which excused the collector.

¹ [Reported by John Gallison, Esq.]