

THE NED.

{1 Blatchf. Pr. Cas. 119.}¹

District Court, S. D. New York. March, 1862.

PRIZE—ENEMY'S PROPERTY—ACT JULY 13,
1861—CONSTITUTIONALITY.

Part of vessel condemned, under the sixth section of the act of July 13, 1861 (12 Stat. 257) as belonging to a citizen of the state in insurrection. That act is constitutional.

In admiralty.

BETTS, District Judge. The libel of information charges that the collector of this port seized the schooner Ned, her tackle, &c., as forfeited to the United States under the provisions of the act of July 13, 1861, section 6, as belonging, in whole or in part, to citizens of the United States in a state of insurrection. The libel was filed September 7, 1861. An amended libel, detailing more specifically the grounds of forfeiture, and alleging the vessel ¹²⁷³ to be the property of Ely Murray, of Wilmington, North Carolina, was filed November 12, 1861.

Elzey S. Powell intervened, September 9, 1861, by sworn claim and answer, for himself, Ely Murray and others, to the original libel, avowing that the persons named and others were in possession of the vessel at the time of the attachment thereof, and that they alone are the true and bona fide owners of the schooner. No further answer was interposed to the amended libel specifically, but all the claimants named in the former claim, of the fifth of November, 1861, filed extended answers and pleas, embodying six specific exceptions, amounting to special demurrer, and also to a general issue to the libel. The after-proceedings in the suit before this court imply that the merits of the case are submitted for decision on the pleadings, with the addition of the exemplification

of the register of the vessel offered in evidence by the district attorney. There is a technical incongruity between the language of the amended libel and the exceptions and demurrers, because, from the dates of their presentations to the court the defensive allegations seem to precede the presentation of the information demanding the forfeiture of the property. This was all well known to the counsel for both parties on the argument of the cause and the submission of the points in controversy to the consideration of the court.

Accepting the pleadings as taking effect in their due order, and that the libellants proceed for the forfeiture of the interest of Ely Murray, and remit all demands of condemnation against the interests of other part owners, it appears, from the pleadings and the certified copy of the registry found on board the vessel—

1. That at the time of her seizure she was in possession of Ely Murray and his co-claimants, as owners thereof.

2. It is alleged that she was owned in North Carolina, and that Murray was a resident of that state.

3. The information sets forth as facts all the particulars necessary to bring her within the provisions of the act of July 13, 1861.

4. The act itself, and the public acts of the government in relation to the existing Rebellion within the United States, afford judicial notice that the matter comes within the purview of that statute.

5. In the opinion of the court, the act, if valid in law, authorizes and calls for the condemnation and forfeiture of the interest of the rebel owners in the vessel, unless the statutory provisions are in violation of the constitution.

6. This court, in the case of Mary McRae, held this enactment to be within the legislative competency of congress, and enforced its provisions.

It is ordered that the exceptions to the suit be disallowed and overruled, and that the judgment be entered in favor of the libellants, forfeiting one-fourth part of the said vessel and her tackle to the United States.

The attorney of the United States having discontinued and remitted all claims in this suit for three-fourths of the value of the vessel and tackle, as belonging to loyal citizens of the United States, such amount of the proceeds is ordered to be restored to the claimants thereof.

¹ [Reported by Samuel Blatchford, Esq.]

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