

THE R. E. LEE.

{1 Lowell, 36.}<sup>1</sup>

District Court, D. Massachusetts.

Sept., 1866.

## PRIZE—JOINT CAPTORS—NAVAL SIGNALS.

Six miles is the greatest distance at which the day signals of the navy can be read, under ordinary circumstances. In this case, five miles was taken as signal distance; and the alleged joint captors were decided to have been beyond that distance.

This prize was taken by the gunboat James Adger, off Beaufort Harbor, North Carolina, on the ninth day of November, 1863, at about fifteen minutes past seven o'clock in the morning. Four vessels of the navy were lying in the harbor of Beaufort, and two of them, the Iron Age and Newbern, asserted a title as joint captors. The only question necessary to the decision of their right was, whether they were within signal distance of the James Adger at the time of the capture. The Iron Age made prompt and energetic efforts to get under weigh with her sails, but was foiled for some time by the strength of an adverse tide. As soon as possible she proceeded to sea; but it appeared that she did not reach the bar at the mouth of the harbor until a considerable time, probably more than half an hour, after the capture. Her anchorage was a mile or so above Fort Macon, and a somewhat greater distance above the bar, and near the Newbern. The other two vessels, the Viletta and Badger, were about a mile further off.

R. H. Dana, Jr., Dist. Atty., for the United States.

C. L. Woodbury, for the James Adger.

E. M. Felt, for the Iron Age and Newbern.

LOWELL, District Judge. The first question is, what was signal distance on the day and at the place of this capture. In respect to night signals, I have

lately had occasion to regret an apparently hopeless difference of opinion among naval gentlemen of skill and experience. With day signals, however, the case is otherwise. The evidence of the additional witnesses examined in the recent case of *The Cornubia* [Case No. 3,247], for use in all these cases, is much more nearly alike on this subject than on the other. The question being how far these signals can be seen and read under the most favorable circumstances: Commodore Bayley says about four miles. Captain Jenkins says, they cannot be read with certainty, in his opinion, at greater distances than from five to eight miles. ... If squarely seen by the observer, with a good glass, their colors may be defined with ease at the lesser of these distances, and probably at the maximum distance named. He afterwards mentions a particular station with which he was familiar, at which the usual distance of signalling varies from four and a half to five miles, and where, he says, they are seldom misunderstood. Captain Sands puts the distance, under the most favorable circumstances, at about six miles; and Lieutenant-Commander Quackenbush, at about five. In the case of *The Princess Royal* [Id. 11,432], in the Eastern District of Pennsylvania, to which I referred in the decision of *The Cornubia* [supra], the naval assessors reported that five miles may be considered the maximum distance at which these flags can be seen and read under ordinary circumstances. And in a case in the district court for the Southern district of Florida (*The Alice Vivian* [Case No. 197]), Judge Fraser, sitting for the judge of the district, who had a disqualifying interest, rejected the claims of two vessels, one of which was supposed to be about eight miles distant, and from which the colors, hoisted by the capturing vessel and the boat boarding the prize, were said to have been distinctly seen. The foundation of this

opinion was the evidence of experts, that signal distance by day, is between five and six miles.

The fair result of all these opinions appears to be, that six miles must be considered the greatest distance at which the day signals can be read, under what may be called ordinarily favorable circumstances. But the evidence on both sides, in this case, is quite agreed, that on the morning of the capture of the B. E. Lee the state of the atmosphere was very unfavorable for seeing objects in the direction in which the James Adger and her prize bore from the asserted joint captors. Five miles is a liberal allowance for the purposes of this case, if six miles is a fair average distance.

The judge then examined, in detail, the evidence concerning the distance of the Newbern and the Iron Age from the place of capture, and decided that it was more than five miles, in the case of each of those vessels, and pronounced for the James Adger as sole captor.

<sup>1</sup> [Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.]

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