

THE ST. JOHN.

[2 Spr. 266.]¹

District Court, D. Massachusetts.

Feb., 1864.

PRIZE—PARTICIPATION—SIGNAL DISTANCE.

In admiralty.

R. H. Dana, Jr., U. S. Atty., for all the vessels.

SPRAGUE, District Judge. This steamer was captured at about eight o'clock in the morning of the 18th April last, by the United States steamer Stettin, under the command of Acting Master Beers, at Bull's Bay, in an attempt to break blockade. The vessel and cargo have been condemned, and the question is upon the distribution of proceeds.

The flag-ship *New Ironsides* and the *Powhattan*, *Housatonic*, *Paul Jones*, *Flag*, *Lodona*, and *America*, of the blockading squadron off Charleston, claim to share in the proceeds. The principal ground of their claim, viz., co-operation in the common enterprise of blockading, without regard to being within signal distance, has been disallowed by this court, upon full consideration, in the case of *The Cherokee* [Case No. 2,640], and re-affirmed in the more recent case of *The Aries* [Id. 529]. The only actual captor in the present case was the *Stettin*, and no vessels can participate with her in the proceeds, unless they were within signal distance.

The capture took place in the daytime, so that no question arises as to the seeing of rockets, lanterns, or Coston lights. The nearest vessel was the *Flag*. No one states her distance at less than twelve or fourteen miles. Captain Strong, her commander, admits that he could not see the *Stettin*, still less make out signals from her by flags, if she had used any, and that he was not within signal distance, unless the being able

to hear guns of certain calibre at that distance would make him so. Now, the Stettin, in the chase, fired as many as eight guns, the largest she had on board; yet none of them were heard by the Flag. Without undertaking to decide that a system of exchanging communications by guns cannot be established, of such a character as to entitle all vessels within its reach to share in a prize with the actual captors, it is enough to repeat what I decided in the case of *The Aries* [supra], that the orders respecting guns and rockets in force in the squadron off Charleston do not amount to such a system; and to add that, in this case, the Flag was not near enough to hear such guns as the Stettin had, in the then state of the wind and weather.

The claim of the Flag to participate in proceeds must be disallowed. The claims of the other vessels of the squadron fall with it, as they were still farther off than the Flag. The decree will divide the net proceeds between the United States and the steamer Stettin.

¹ [Reported by Hon. Richard H. Dana, Jr., and here reprinted by permission.]

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