

criminating circumstances, leads irresistibly to the conclusion that he had no intention of breaking the blockade at the inception of his voyage. When he arrived off the port of San Juan on the morning of July 17th, on his regular route to St. Thomas, what does he find? Is there a "line of blockade" making it "manifestly" dangerous to enter? Is there a blockading fleet? Are there a number of vessels sufficiently near to each other to make it probable that an attempt to enter would be perilous? Is there an arch of circumvallation around the port? Some or all of these conditions must exist to make a blockade effective, and none of them are found. A single cruiser, which, as appears from her log, was 15 miles to the north and east of the Morro, was the only ship of war upon that station; a ship of no great size, but of powerful armament, and of great speed. Is a neutral vessel, which *prima facie* has the right of access to a port where for years she had been engaged in peaceful commerce, to be confiscated if, through an error of judgment, her master concluded that there was no effective blockade, and attempted to go into the port? Under the law of prize the question of the effectiveness of a blockade cannot be left to the shifting judgments of those who, on one pretext or another, may seek to evade it; and condemnation must follow if it is decided that the blockade was effective. A blockade, in its true and primitive acceptation, had nothing to do with confiscation of property. This practice had its birth in a barbarous and unenlightened age, which clothed the courts of the captor's own country with invidious powers that would be better exercised by the independent tribunals of a disinterested state. Such a penalty, harsh to the verge of ferocity, should never be imposed in any doubtful case. It would be a degradation to an honorable service, which requires no such stimulus to the performance of duty, if the courts of their country should strain the law for the purpose of rewarding the captors with the spoil of neutrals. Being of opinion that there was not an "effective blockade" of the port of San Juan within the spirit and intent of the law of nations, and that there would have been no attempt to enter if such blockade had existed, an order will be entered for the discharge of the vessel.

In re WHITE STAR TOWING CO. et al.

(District Court, S. D. Georgia. November 15, 1898.)

PRIZE PROCEEDINGS—TRANSFER OF CONDEMNED VESSEL TO ANOTHER DISTRICT FOR SALE—LIBEL FOR SALVAGE.

A vessel which, after condemnation as prize, is taken by the marshal into another district for sale, under Rev. St. § 4629, remains under the actual jurisdiction of the court wherein condemnation was had, and that court will not grant leave to a third person, who claims to have rendered salvage services to her in such other district, to libel her there to recover compensation. The remedy of the alleged salvors is either by intervention in the prize proceedings, or by direct application to the government for an allowance.

This was an application by the White Star Towing Company and others for leave to libel the prize *Adula*, in the Southern district of New York.

Cowen, Wing, Putnam & Burlingham, for petitioners.
Marion Erwin, U. S. Atty.

SPEER, District Judge. The steamship *Adula* was duly condemned at Savannah as lawful prize of war to the United States, by the United States district court for the Southern district of Georgia. She was transferred by the marshal of the Southern district of Georgia to the harbor of New York, for sale there, under the provisions of section 4629, Rev. St. U. S. While lying in the harbor, in the custody of the marshal of the Southern district of Georgia, awaiting sale, it is averred by the applicants that the *Adula* was rescued by them from the peril of a fire which consumed other shipping in the neighborhood. They ask that this court allow them to file their libel for salvage in the district court for the Southern district of New York, and to proceed against the vessel in rem in that port for the satisfaction of their claim.

It will be noted that the statute which authorizes the transfer of prize ships to other districts for sale expressly reserves the jurisdiction of the court of condemnation over the vessel. The marshal of the court of condemnation is directed "to transfer the property, and keep and sell the same in like manner as if the property were in his district; and he shall deposit the gross proceeds of the sale with the assistant treasurer nearest to the place of sale, subject to the order of the court in which the adjudication thereon is pending." Rev. St. § 4629. The jurisdiction of the court of the Southern district of Georgia over the vessel while in New York is therefore not only constructive, but actual. The officers of the court are, under the statute, in actual control of the property, and subject as completely to the orders and decrees of the court in the Southern district of Georgia as if the property was in that district. In this case, although the claimants of the vessel in the prize proceedings have appealed to the supreme court of the United States from the decree of condemnation, no supersedeas bond has been given. The vessel, then, to all intents and purposes, is property of the United States government, in control of one of its courts, and was not at the time being used as a vehicle of commerce. Therefore the court's possession of it is not like the possession of a vessel by a receiver of the court in one district which is sent out as a vehicle of commerce on the high seas into other jurisdictions. "It is well settled that no suit in rem can be maintained against the property of the United States when it would be necessary to take such property out of the possession of the government by any writ or process of the court." *The Davis*, 10 Wall. 15, a salvage case; *The Siren*, 7 Wall. 152, a collision case.

Now, if the court should grant the application of petitioners, the result of the order sought by the applicants, if they sustained their salvage case, might be quite inconvenient. The vessel attached on process from the district court for the Southern district of New York, and taken out of the possession of the officers of the court for the Southern district of Georgia, would be condemned and sold under that process, and the surplus beyond the salvage claim of the applicants would be in a different court from that in which the prize proceed-

ings were pending. When the court for the Southern district of Georgia had determined the rights of the parties, its decree would be a nullity, because it would have nothing to operate upon, and the method provided by the statute would be disarranged for the security of the fund and its distribution. It appears, therefore, that the applicants have mistaken the route which they should travel in order to obtain the remedial relief to which they may be entitled. Their remedy is either by intervention in the proceedings in the district court for the Southern district of Georgia, or by application direct to the government at Washington for reasonable compensation for such services as may have been voluntarily rendered in the emergency to the Adula they describe in their petition.

THE HUGO KELLER.

(District Court, N. D. New York. December 29, 1898.)

COLLISION—STEAM CANAL BOATS—FAILURE TO PROVIDE LOOKOUT.

The Keller, a steam canal boat, was passing eastward through the Erie Canal; pushing her consort, and having no lookout. She was preceded at a short distance by a horse boat. At a sharp bend in the canal, and while on the south or berme side, the consort collided with and injured the Clytie, which was going westward, also pushing a consort, and with a tow. The tow had not yet passed the horse boat, which compelled the Clytie to keep to the berme side of the canal, which was there about 65 feet wide. *Held*, that the Clytie was not in fault for the collision, but that the Keller was negligent in failing to provide a lookout at such a place, which would have prevented the collision, and in not keeping to the left side of the canal, in the wake of the horse boat.

This was a libel against the steam canal boat Hugo Keller for collision. On final hearing.

On the morning of May 14, 1895, at about 10 o'clock, the libellant's steam canal boat Clytie, pushing her consort the Ryan and towing two other canal boats on a 350-foot hawser, was proceeding westerly from the city of Syracuse on the Erie Canal. The boats were partially loaded. At Geddes, a short distance west from Syracuse, the canal makes a sharp turn towards the north. At this point there is a railroad bridge of the New York Central Railroad crossing the canal diagonally. On the day in question the several canal boats were moored upon the southerly or convex side of the bend. The canal is 75 or 80 feet wide at the top and about 60 feet wide at the bottom. For navigating loaded boats the canal was, therefore, about 65 feet in width. When the Clytie and Ryan had just entered this bend the steam canal boat Hugo Keller, pushing her consort the Archie Farr, appeared in sight. The Keller and the Farr were both heavily loaded and were proceeding easterly towards Syracuse. The danger signal was given from the Clytie which was answered from the Keller and each boat endeavored to stop her headway. The two forward boats came into collision, the impact being of such a character as to damage the bow of the Clytie. The Clytie prior to the time of the accident was proceeding at a speed of about a mile and a quarter per hour and the Keller was proceeding at about the same rate. Just prior to entering the bend the Clytie had met two horse boats and had passed them on the southerly or berme-bank side of the canal. The Keller upon entering the bend had also turned to the right intending to pass any boat which she might encounter there port to port. The libellant charges that the collision