

Distribution of
prize money,
&c.

1800, ch. 33.

Recaptures of
property of citi-
zens, &c. to be
restored on pay-
ment of salvage.

Distribution
of salvage.

be made; and on due condemnation had, shall be distributed according to any written agreement which shall be made between them; and if there be no such agreement, then one moiety to the owners, and the other moiety to the officers and crew, to be distributed between the officers and crew as nearly as may be, according to the rules prescribed for the distribution of prize money, by the act entitled "An act for the better government of the navy of the United States," passed the twenty-third day of April, one thousand eight hundred. (a)

SEC. 5. *And be it further enacted*, That all vessels, goods and effects, the property of any citizen of the United States, or of persons resident within and under the protection of the United States, or of persons permanently resident within and under the protection of any foreign prince, government or state, in amity with the United States, which shall have been captured by the enemy and which shall be recaptured by vessels commissioned as aforesaid, shall be restored to the lawful owners, upon payment by them respectively, of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court having competent jurisdiction, according to the nature of each case, agreeably to the provisions heretofore established by law. And such salvage shall be distributed among the owners, officers and crews of the vessels commissioned as aforesaid, and making such recaptures according to any written agreement which shall be between them; and in case of no such agreement, then in the same manner and upon the principles herein before provided in case of capture. (b)

(a) The prize act of June 26th, 1812, chap. 107, operates as a grant from the United States to the captors, of all property rightfully captured by commissioned privateers, as prize of war. The *Sally*, 8 Cranch, 382; 3 Cond. Rep. 177.

Prize money must be distributed according to some written agreement of the parties, otherwise it is distributable according to the 4th sec. of the prize act of the 26th of June, 1812, chap. 107. A parol agreement as to distribution is void. The *Dash*, 1 Mason's C. C. R. 4.

If the shipping articles omit to state the shares, to which some of the officers and crew are entitled, they are still entitled to claim their shares under the prize act. *Ibid.*

A parol assignment of a share in prizes is void. *Ibid.*

All captures, made by non-commissioned captors, are made for the government: and since the provisions in the prize acts as to the distribution of prize proceeds, are confined to public and private armed vessels, cruising under regular commissions; the only claim which can be sustained by such non-commissioned captors must be in the nature of salvage, for bringing in and preserving the property. The *Dos Hermanos*, 10 Wheat. 306; 6 Cond. Rep. 109.

The commander of a squadron, to whose command a ship of war is attached, and under whose orders she sails, is entitled to the flag-twentieth of all prizes made by such ship, although the other part of the squadron may never have sailed on the cruise, in consequence of a blockade by a superior force. *Decatur v. Chew*, 1 Gallis. C. C. R. 506.

To deprive such commander of his flag-twentieth, on account of his having left his station, under the sixth section of the act of April 23d, 1800, chap. 33, it is indispensable that some local station should have been assigned him. *Ibid.*

Where no grant is made, all captures made under the authority of the executive, inure to the use of the government. The *Emulous*, 1 Gallis. C. C. R. 563.

As between public ships, the rule for the distribution of prizes is settled by the seventh article of the sixth section in the act of April 23d, 1800, chap. 33, which provides that, in cases of joint capture, the capturing ships shall share "according to the number of men and guns on board each ship in sight." The *Despatch*, 2 Gallis. C. C. R. 1.

As to privateers, no statute regulation exists, and therefore their claims are settled by the general law of relative strength, which is to be measured by the number of men on board each ship. *Ibid.*

(b) *Salvage in Prize Causes*.—On a recapture of a vessel by a neutral vessel, no claim for salvage can arise, for the recapture was a hostile act, not justified by the situation of the nation to which the recapturing vessel belongs, in relation to that from the possession of which the vessel recaptured was taken. The degree of service rendered in such a case, is precisely the same as if it had been rendered by a belligerent; yet, the rights accruing from the recapture are different, because no right can accrue from an act which was unlawful. *Talbot v. Seeman*, 1 Cranch, 1; 1 Cond. Rep. 229.

When a belligerent permits her cruisers to capture neutral vessels, and carry them in for adjudication, and thus subjects such vessels to perils, almost equal to those of absolute capture, salvage for a recapture of such a neutral vessel will be allowed. *Ibid.*

American property recaptured, was restored on payment of salvage; the libel having prayed a condemnation as prize, and no salvage having been claimed. The question of salvage is incident to the question of prize. The *Adeline*, 9 Cranch, 244; 3 Cond. Rep. 397.

A merchant ship, the property of subjects of the king of Great Britain, was captured on the high seas by a French squadron, a prize master and crew put on board of her, and she remained in company with the captors upwards of twenty-four hours, when she was left by the prize master and the crew; frequent