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ed States, and therefore make a proceeding against them either impossible or very inconvenient and expensive, as witnesses would have to be taken into some other perhaps remote district. Nor would an informer be likely, for an offence committed in one district, to hunt up and prosecute the owner or owners in some other district, or in several districts. I know of no law, and none was cited, giving the United States a lien on any property for a fine or penalty. No case has been cited, and I know of none, wherein it has been held that the United States have such lien. If the case be likened to that of a foreign attachment, then the attachment first served holds the property, although the United States may be a party. In this case the property was first seized by the interveners. If it be likened to the case of an execution, the same principle prevails and governs. If it be like the case of several liens held by different persons, then in general, the oldest lien will have precedence. Here the claimant had a lien and the United States had no lien.

The case of a vessel declared by act of congress to be forfeited for certain violations of law—and there are many such—is somewhat analogous to the present case, but much stronger in favor of the United States; in the case at bar there is neither forfeiture nor lien. There is in the other case, not only a penalty, and the vessel declared liable, but the vessel is declared forfeited to the United States. The act of congress of December 31, 1792 [1 Stat. 287], declares that if a false oath be taken in order to procure the registry of a vessel, the vessel or its value shall be forfeited. The United States filed a libel and seized the Anthony Mangin, as forfeited under this act. After the offence was committed, but before the seizure by the United States, the vessel was sold to an innocent purchaser. The purchaser interfered. The district court of the United States for the district of Maryland held his claim good—and that the forfeiture did not overreach the subsequent alienation. U. S. v. The Anthony Mangin [Case No. 14,461]. In this decision the United States acquiesced. The owner, who took the false oath, became bankrupt, and the United States brought suit against his assignee for the price or value of the vessel, it having been sold as aforesaid. The supreme court of the United States decided against this claim, and held that the United States had no claim to the vessel before seizure. The case is very like this case. There the vessel, or its value, was declared forfeited. The United States might proceed against the vessel or against the owner for the value. In this case the United States might proceed against the vessel or might proceed against the owners by suit or indictment. The supreme court held that until the United States elected to proceed against the vessel, they had no claim to it; and conse-

quently, if the vessel were sold before they so elected, the sale would be valid. U. S. v. Grundy, 3 Cranch [7 U. S.] 337. The effect of a forfeiture on the subsequent claims of material men having a lien, came before the supreme court for consideration in the case of The St. Jago de Cuba, 9 Wheat. [22 U. S.] 416, and that court expressly decided that such claims, when fair, were not overreached by a previous forfeiture, and that the same principle applied to the claims of seamen for wages, to claims for salvage, and generally to maritime contracts. The district court of the United States for Wisconsin, in the case of The Celestine [Case No. 2,541], held that the lien of material men was preferred to the claim of a bona fide purchaser without notice of the lien.

I think I might rest this case on the foregoing observations and authorities; but I will remark that if congress had intended the United States should have a lien on the vessel for the penalty, it would have been easy to say so. They have not so provided, either in this, or, I believe, in any other case. And the reasons must be obvious. Who would purchase a vessel, assist in running her, or repair or give her an outfit, if the United States could deprive them of their just claims, because of some violation of law of which they were wholly ignorant? Even if they knew of acts committed in violation of law, they could not know that the United States would ever proceed for the penalty. Or if the United States were disposed to proceed for the penalty, who could tell whether they would proceed against the vessel rather than against the owners? Such lien would not only be unjust but would be highly injurious to commerce and navigation. I think, therefore, that the United States have no lien or claim that can overreach the claim of these material men, who have now acquired title to the vessel. The claim of the St. Louis Marine Railway and Dock Company is sustained, the libel dismissed and the bond given by the claimants, canceled.

Case No. 15,569a.

UNITED STATES v. LAVERTY et al.

[3 Mart. (O. S.) 733.]

District Court, D. Louisiana. 1812.

ALIEN INHABITANTS OF TERRITORY—ADMISSION AS STATE—CITIZENSHIP.

Inhabitants of the territory of Orleans became citizens of Louisiana and of the United States by the admission of Louisiana into the Union.

[See Boyd v. State of Nebraska, 143 U. S. 135, 12 Sup. Ct. 375.]

BY THE COURT. These persons have been arrested by a warrant, issued by me, on an affidavit made by the marshal, that he believes them to be alien enemies, who have neglected or refused to obey the notification of the government respecting them.

They deny that they are alien enemies, and insist that, as they were bona fide inhabitants of the territory of Orleans at the time of its admission into the Union, they became citizens of Louisiana, and consequently citizens of the United States. It is well known, that some of these persons have been discharged by one of the judges of the state; but as the marshal and many others are seriously impressed with a belief that they are not citizens, but aliens, it has been deemed proper to obtain the opinion of the judge of the United States.

It is contended by the attorney of the United States that congress alone have power to pass laws on the subject of the naturalization of foreigners, and that, by the constitution, it is declared that the rule for their admission must be uniform. On the other hand, it is said that congress have the power to admit new states into the Union; that this power is not inconsistent with nor repugnant to the other; that the first rule well applies where individual application is made for admission, but is not restrictive of the other power to admit at once great bodies of men, or new states, into the federal Union.

The power to admit new states, is expressly given by the third section of the fourth article of the constitution. It has been frequently exercised, and on the 30th of April, 1812, Louisiana was admitted into the Union, upon the same footing with the original states. In what manner has this power been exercised with respect to other states? On the 30th of April, 1802, the inhabitants of the eastern division of the territory northwest of the Ohio were authorized to form for themselves a constitution and state government. This was done, and they were afterwards admitted into the Union. Previous to their admission, the people of that country was governed by what is commonly termed the Ohio ordinance. That the population consisted partly of citizens of the United States and partly of foreigners, may be collected from the provisions of that instrument for their government. That a great body of aliens resided among them is known to many. It is declared, that possessing a freehold of fifty acres of land, having been a citizen of one of the states, and being resident in the district,—or the like freehold, and two years' residence,—shall be necessary to qualify a man as an elector. Here there are two descriptions of persons: (1) Citizens of the United States, with a freehold and actual residence; and (2) persons not citizens, with a freehold and two years' residence. Were they not all equally inhabitants? And, in the act of admission, is there any distinction made? The inhabitants, then, who were authorized to form a state government for themselves, must have been all the real inhabitants of the country; citizens or foreigners, and, after the admission of the state into the Union, must have

equally participated in all its advantages, because, if a party only were entitled to its benefit, all the inhabitants had not formed a government for themselves. Can we, for an instant, believe that a wise, just, and liberal government, like that of the United States, would invite any portion of people, who were enjoying self-government in a considerable degree, to place themselves in a situation where they would be entirely deprived of it? I can have no doubt that all the inhabitants of the state of Ohio were admitted citizens of that state by their admission into the Union.

Let us, then, examine and discover (if possible) any difference between the case of that state and of this. Louisiana, it is said, was admitted under the treaty of Paris, by which it is stipulated, that the inhabitants shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. It is, then, contended by some, that the word "inhabitants," used in the act of February, 1811, applies solely to those who were inhabitants in 1803. On the 11th of February, 1811, congress passed an act "enabling the people of the territory of Orleans to form a state government." It commences by declaring, that the "inhabitants" of all that part of the country ceded under the name of Louisiana, shall be authorized to form for themselves a state government. It then goes on, and describes two classes of inhabitants,—First, citizens of the United States, and all persons having in other respect the legal qualifications to vote for representatives in the general assembly. Those qualifications are the same as those of Ohio,—two years' residence and a freehold, for those who are not citizens. We here find no distinction between the old inhabitant and the new; the man who has been here two years, and has fifty acres of land, let him be citizen or alien, is authorized to join in making a constitution for all the inhabitants of Louisiana. The law, then, evidently does not mean merely "the inhabitants at the date of the treaty"; and it will be found that the only question in this case is, whether congress had a right to include any others than citizens in their act of admission. I have already shown that they have exercised this right heretofore; that, in the case of the state of Ohio, it was not disputed; and it does not become us, at this time, to question it.

I shall now consider some of the arguments that have been urged by the district attorney and his colleague. Although an attempt was made to distinguish between the two classes of inhabitants (not originally citizens of the United States), yet, in truth, their arguments go as well to exclude the first as the last class. It is contended, that the only mode by which an alien can be naturalized is by

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and discover (if possible) between the case of Louisiana, it is said, by the treaty of Paris, by which the inhabitants of Louisiana were to be admitted to the Union of the United States, as soon as possible, as the principles of the federal government of all the states and territories of citizenship. It is, then, the word "inhabitants," used in the treaty of 1803, applies to the inhabitants in 1803. In 1811, congress passed an act for the people of the territory of Louisiana, declaring, that the part of the country of Louisiana, shall be admitted to be a state, and describes it as follows:—"First, citizens of Louisiana, persons having in common the qualifications to vote at a general assembly, the same as those of the people of the territory, and a free soil, and not citizens. We do not intend to include in the territory the man who has fifty acres of land, and an alien, is authorized by the constitution for all purposes. The law, then, is, that the inhabitants of Louisiana, and it will be the duty of the government in this case to include in their act of admission those who are shown that they have heretofore; that, in the case of Ohio, it was not until it became us, at this

of the arguments of the district attorney, and an attempt was made to divide the two classes of citizens of the territory, their arguments first as the last, and the only mode of naturalization is by

a compliance with the uniform rule; that this is the only constitutional mode; that the expression in the treaty, that "the inhabitants shall be admitted according to the principles of the constitution," means, according to the uniform rule required by the constitution. If so, the Creoles of Louisiana are not citizens yet, for not one of them has complied with that law. But one of the gentlemen has observed, "Here is a treaty, and treaties are paramount." I can never subscribe to the doctrine, that treaties can do away any part of the constitution. I will go as far as any one in supporting and observing them in anything not repugnant to it. If, then, the uniform system be the only constitutional one, any other must be unconstitutional, and though introduced by treaty, is void. If this were the only constitutional mode, I should tremble for the fate of the Louisianians; but, fortunately for them and for others, it is not the only one. The expression under the treaty is, that they shall be admitted according to the principles of the constitution; that is, with the consent of congress, which shall be obtained as soon as possible; and it has been since given. By this construction, every part is reconciled; and if congress, in their liberality, included others who have since settled in the country, they had a right to do so.

It is said, that the law respecting alien enemies declares, that they shall all be apprehended, unless actually naturalized; and it is contended, that the only actual naturalization is by the uniform rule. This does not follow. If it did, there is scarcely a Creole who, in case of a war with France or Spain, would not be subject to its penalties, for none of them have complied with it. The government has a right, by treaty, or by the admission of a new state, to naturalize, and such naturalization is equal to the other. Let us suppose, what is honestly believed by many, that, although the form of government changed, yet the political character of individuals remained the same; let us ask, who would compose the state? For (as the learned gentleman at the bar observed) the state does not consist of land, water and trees. It is composed of men, women and children. Some say, "The old Louisianians, and the few citizens of the United States, who have settled since the treaty." "No," say others, "the old Louisianians have not been admitted according to the uniform rule, and they have nothing to do with it, and as to the new comers, not citizens, they are out of the question." The uniform rule would unquestionably place the original citizens of the United States in a more important situation. It would give them all the power of the country. But the government of the United States intended otherwise. They called upon the actual inhabitants of the country to form a government for themselves. They promised them, if they should not disapprove of it, that all

of them should enjoy its advantages, and be members of it. Who those inhabitants were, will be a subject of strict inquiry. It has been observed, that it will be almost impossible to fix any certain rule on this subject, but it appears to me there will be no difficulty. An inhabitant is one whose domicile is here, and settled here, with an intention to become a citizen of the country. I conclude in agreeing with the judges of the late superior and state courts that by the several acts of congress, and the admission of the state of Louisiana into the Union, all the bona fide inhabitants became citizens of this state. *Desbois' Case*, 2 Mart. (La.) 285.

Prisoners discharged.

NOTE. In pursuance of this decision, a considerable number of persons, born in the dominions of the king of the United Kingdom of Great Britain and Ireland, who had resided in Louisiana, under the territorial government, ceased to be considered by the marshal as British subjects, and as liable to the restrictions imposed on alien enemies.

UNITED STATES (LAW v.). See Case No. 8,131.

Case No. 15,570.

UNITED STATES v. LAWHEAD.

[10 Chi. Leg. News, 60; 2 Cin. Law Bul. 263, 268.]

District Court, N. D. Ohio. 1877.

REGARDING THE MAILS—EVIDENCE.

Indictment [against Harvey A. Lawhead] for obstructing the passage of the United States mail. Trial to a jury and verdict of guilty.

Judge WELKER, in charging the jury, made the following points:

First. To convict the defendant, it must appear that Lundy, the carrier, was, at the time stricken down by the defendant, in charge of the mail to deliver on the train, and was there with it to deliver and receive the mail to be carried to the postoffice.

Second. That the defendant knew that he was at the depot for that purpose, as such carrier.

Third. That the passage of the mail was obstructed or retarded by the act of the defendant, and that he willfully did the act that obstructed or retarded the mail.

Fourth. The intent may be shown by the result of the act itself, under the rule that a man intends the reasonable result of his acts.

Fifth. That where the act which creates and causes the obstruction is itself unlawful, the intention to obstruct will be imputed to their author, although the attainment of other ends may have been his primary object.

Case No. 15,571.

UNITED STATES v. The LAWRENCE.

[Nowhere reported; opinion not now accessible.]