

United States v. Stone, [8 F. 232 \(C.C.W.D. Tenn. 1881\)](#).

Location: Shipwreck in, and goods taken from, navigable Mississippi River at Ashport, Tennessee.

Applicable Law: [Plunder of Distressed Vessel \(18 U.S.C. § 1658\)](#)

Where Law Applies: *Plunder of Distressed Vessel*: Applies in all maritime zones subject to U.S. admiralty and maritime jurisdiction, including the exclusive economic zone and high seas. Here, the law applies in a navigable river landward of the baseline for measuring the territorial sea.

Holding:

- 1) 18 U.S.C. § 1658(a) is a single offense. The essential elements are: (1) a wrecked vessel within U.S. admiralty or maritime jurisdiction; (2) taking goods *from or belonging to* such vessel with the *knowledge* they so belong and with an *intent* to appropriate, convert, *or* destroy them by a use other than restoring them to their rightful owner.
- 2) If an individual knows the goods belong to a vessel, the taking of such goods cannot be justified by the situation in which they are found nor by any custom.
- 3) Any intent other than to restore the goods to the owner is unlawful. If a person takes or destroys property and has an unlawful intent even for a moment, either at the time of taking or afterwards, the crime is complete.
- 4) The value of the goods plundered, stolen, or destroyed is immaterial to the application of the statute.

General Facts:

The defendant, David A. Stone, was indicted for plundering and later destroying goods (bureaus, a sofa, and mattress springs) belonging to the steamboat *City of Vicksburgh*, which wrecked in the Mississippi River at Ashport, Tennessee, in July 1880. Believing some of the recovered goods to be of no value, the defendant later threw those goods back into the river. The ship owners hired a detective as a collection agent to find the missing goods and authorized the detective to institute criminal proceedings against guilty parties. The defendant testified that he told the detective he fished the goods out of the river the day after the wreck and later threw the items back into the river. The defendant further testified that he paid the detective for the goods.

Procedural Posture:

The defendant was indicted under section 5358 of the Revised Statutes of the United States (currently Plunder of Distressed Vessel (Plunder Statute), 18 U.S.C. § 1658) which states:

Every person who plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away upon any sea, or upon any reef, shoal, bank, or rocks, of the sea, or in any place

within the admiralty or maritime jurisdiction of the United States . . . shall be punished by a fine of not more than \$5,000, and be imprisoned at hard labor not less than ten years.

After argument at trial, the District Court of the Eastern District of Tennessee overruled a motion to compel the district attorney to elect on which of the counts of the indictment he would try the defendant, excluding the others. The District Court charged the jury, in part:

The object of this statute . . . is to protect all persons and property . . . within the admiralty and maritime jurisdiction of the United States, from all manner of spoliation and violence, or rapine and plunder. [The offense] is a single and distinct offence Nor is it at all material whether the goods were taken from off the wreck itself, from out the water, or while cast away upon the shore. From the moment of the wreck, or commencement of the distress, until restored to their rightful owner, the goods are within the protection of this statute, into whosoever hands they come with the knowledge that they belong to the wrecked or distressed vessel. Nor is the smallness of their value at all material. We are not authorized by the use of the word 'steal' in this section, nor other words used in describing this offence, to import into this statute from the common or statutory laws of England or the state the elements of the crime of larceny of goods upon land No specific intent is necessary to constitute this offence, and any intent is unlawful and sufficient for the guilty of the offender, except that alone of taking the goods for the purpose of restoring them to the master or other officer of the unfortunate vessel, or to their rightful owner. Nor is the time when the unlawful intent is conceived material. If the accused takes the goods with the lawful intent to preserve and restore them, and afterwards yields to the temptation of avarice or cupidity, and converts or destroys them, he violates this statute. Again, the manner of taking is wholly immaterial, whether by open force or stealth, or otherwise. The words of this statute are sweeping and comprehensive. They include all unlawful taking, whether . . . the crime at common law would be . . . piracy, robbery, larceny . . . malicious mischief . . . [or] under statutory offences, be called embezzlement, [or] breach of trust This statute is not . . . a dead letter . . . nor does ignorance of it at all excuse the crime. The lawful purpose with which [the defendant] might rescue [goods] is to keep them for restoration to the owner upon payment of his salvage dues, or, in default of agreement as to that, to libel them in the proper court The essential elements of the offence are: (1) A vessel wrecked or in distress, and within the admiralty or maritime jurisdiction of the United States; . . . (2) Taking goods either from or belonging to this vessel with a knowledge that they so belong, and an intent to appropriate, convert, or destroy them by some other use than that of restoring them to the vessel or the owners, entertained either at the time of the taking or subsequently formed and carried out by such unlawful use.

The Circuit Court of the Western District of Tennessee overruled the motion for a new trial. Of the 51 indictments found by the grand jury for plundering the wreck of the *City of Vicksburgh*, 10 were disposed of by conviction subsequent to the rulings in this case, 7 by acquittal, and 11 were dismissed by the district attorney.

Court Holding and Reasoning:

The Circuit Court's opinion¹ considered whether the lower court properly construed the statute.² Specifically, whether the District Court properly refused the jury instructions requested by the defendant defining larceny and the specific intent necessary to constitute that crime, and whether the first offense in the section (i.e., plundering, stealing, or destroying) should be broken into multiple counts or considered as a single offense.

On the first question, the Court concluded that the lower court properly refused the requested jury instructions limiting the statute to the elements of larceny, including specific intent. "[I]f congress intended to punish only [larceny] in this section it would have employed the technical language for the purpose" as it did in the two preceding sections of the Revised Statutes. The Court agreed with the principle of construction that the statute "should not be so strictly construed as to defeat the obvious intention of the legislature" and declined to restrain the statute to the elements of larceny (commonly termed 'stealing'), particularly specific intent, since the term 'stealing' is associated with the terms 'plunder' and 'destroy'.³ "Taken together, these three words comprehend any kind of taking with evil . . . or fraudulent intent . . ."

As to knowledge and intent, goods may only belong to the first finder "when they are both derelict and abandoned"⁴ such that "all hope, expectation, and intention to recover the property [is] utterly and entirely relinquished . . ."⁵ Otherwise, any right to the property "must come from

¹ The District Judge, Eli Hammond, was the first judge for the Eastern District of Tennessee. The Sixth Circuit had appellate jurisdiction, but unlike other circuits which had three circuit judges, the Sixth Circuit had only one circuit judge with two district judges to comprise the rest of the court and constitute quorum. In *U.S. v. Stone*, Judge Hammond charged the jury and authored the appellate opinion.

² The second issue addressed by the Court was whether the lower court properly admitted evidence of confession; the Court concluded that the motion to exclude the confession was properly overruled.

³ 'Destroy' "denote[s] any kind of deprivation of the owner by demolishing, making way with, or other subversion of his property." *Id.* at 249.

⁴ *Id.* at 244, citing *Wyman v. Hurlbut*, 12 Ohio 81 (1843) (sic).

⁵ *Wyman v. Hurlbut*, 12 Ohio at 87. In *Wyman*, the jury found the vessel and money at issue to be derelict property and abandoned by the owner. *Wyman v. Hurlbut*, 12 Ohio at 85-86. The Court noted that the term 'derelict' "in its strict maritime sense [does] not imply that the owner was divested of all right in the property." *Id.* at 87. However, when the jury found the vessel and money to be both 'derelict' and 'abandoned' by the owner, the majority of the Ohio Supreme Court supposed the finding was intended "to be understood that all hope, expectation, and intention to recover the property were utterly and entirely relinquished . . ." *Id.* The Court found that when property is both derelict and abandoned, "it belongs to the first finder who reduces it to possession. [W]hen this conversion occur[s], the [owner is] divested of all ownership . . . and has no right to recover." *Id.* The Court in *Stone* clarified that the wreck is not derelict and abandoned if the real owner is known. *U.S. v. Stone*, 8 F. at 244. The Fourth Circuit Court of Appeals declined to extend *Wyman* in *Columbus-Am. Discovery Group v. Atl. Mut. Ins. Co.* (974 F.2d 450, 463 (4th Cir. 1992)). The Fourth Circuit highlighted that the Chief Justice of the Ohio Supreme Court in *Wyman* was "incline[d] to think the jury meant nothing more than a want of the plaintiff's pursuing active measures to reclaim his property, and not a positive relinquishment of his right. If this be the true meaning, it would change the judgment." *Id.* at 464 (quoting *Wyman v. Hurlbut*, 12 Ohio at 88). The Fourth Circuit agreed with the dissent that the jury's meaning in the use of the term 'abandoned' was unclear and agreed that abandonment must be shown by positive relinquishment of property rights rather than the cessation of recovery attempts. *Id.* The general maritime law definition of a 'derelict vessel' is a vessel abandoned at sea, whether by accident, necessity, or voluntarily, without hope of recovery or an intention of return. *Rowe v. the Brig*, 20 F.Cas 1281 (C.C.D. Mass. 1818) (Case No. 12,093). See also 67B Am. Jur. 2d § 53 (2012); 77A C.J.S. Salvage § 25 (2012); *Cromwell v. Barque Island City*, 66 U.S. 121 (1861). Later cases, in reference to recent

some claim to the property itself . . . and not . . . be solely predicated upon . . . the situation in which it is found. Nor will any usage or custom justify the taking.”⁶ If the taken property is “kept but for a moment with the unlawful intent, the crime is complete.” In *U.S. v. Pitman* ([27 F. Cas. 540 \(D. Mass. 1852\)](#)), the defendant “was a salvor, and the original taking was with that [of] lawful intent, and yet he was convicted under this statute, which manifestly applies to all cases of embezzlement and plunder by persons claiming salvage.”

The second objection to the jury’s charge was that the District Court combined the counts in the indictment that divided the offense into plunder, steal or destroy, and further upon goods taken from the wreck and those belonging to it, and that the lower court did not charge the jury to find a verdict on each separate count. The Court cited American and English authority for disregarding the unnecessary separation of a statutory offense into several counts when all acts are included in the statutory definition of the offense.⁷ The Court concluded that despite the form of indictment (charging separate counts or all in one), the verdict should be on the whole indictment, rather than separate on each count in this case. Section 9 is a single and distinct offense that might be completed by the doing of several acts; the doing of any one of the acts requires a guilty verdict.

marine casualties, specify that there must be a reasonable prospect of returning or of realizing the hope of recovery to argue non-abandonment. See *The Fairfield*, 30 F. 700 (S.D. Ga. 1887) and *The Georgiana*, 10 F. Cas. 249, No. 5355 (D. Mass. 1866). Goods floating near a ship are still in the constructive possession of the owner or the vessel. *U.S. v. Stone*, 8 F. at 244.

⁶ *Id.* at 245. The Court further stated, “I do not see how any man whose moral sensibilities are not blunted by the temptation always afforded by such disasters, whether on land or sea, and who is not wholly demoralized in the presence of the temptation, can fail to recognize the wrong in it. The duty of restoring the goods is enjoined by the oldest rules of the moral law. Deut. xxii; 1-3. Every instinct of right and fair dealing suggests their return, and this statute was enacted to enforce that duty.” *Id.* at 244-45.

⁷ *Id.* at 252. “The form of indictment given under the English statute for plundering or stealing is a single count . . .”; however, separate counts may distinguish between ‘in distress’, ‘wrecked’, and the remaining vessel dispositions. *Id.* at 253, citing Arch. Crim. Pl. (4th Am. Ed.) 214; and 2 Arch. Crim. Pl. (8th Am. Ed.) 1332. “And where the statute says the doing of this or that shall constitute the offence, the indictment may charge them all in one count, or in separate counts, at the election of the pleader.” 1 Brit. Crim. Proc. (2d Ed.) 436, 435, 434.