

## \*THE DIANA.

## Damages.

Decree, in an instance cause, affirmed, with damages at the rate of six *per cent.* per annum, on the amount of the appraised value of the cargo (the same having been delivered to the claimant on bail), including interest from the date of the decree of condemnation in the district court.

APPEAL from the Circuit Court of South Carolina. This was an information under the non-importation laws, against the ship Diana and cargo. Condemnation was pronounced in the district and circuit courts, and the cause was brought by appeal to this court. At the last term, on the hearing, it was ordered to further proof; and the further proof not being satisfactory, the decree of the court below, was affirmed, at the present term.

February 10th, 1818. *Berrien*, for the United States, inquired, whether the damages should be computed from the date of the bond given for the appraised value of the cargo, or from the decree of the district court.

THE COURT was of opinion, that the damages should be computed at the rate of six *per centum* on the amount of the appraised value of the cargo, including interest from the date of the decree of condemnation in the district court.

Decree affirmed.

## \*The NEW YORK: TROUP, Claimant.

[\*59]

## Non-importation.—Collusion.

Libel under the non-importation acts. Alleged excuse of distress repelled. Condemnation pronounced.<sup>1</sup>

February 5th, 1818. THIS cause was argued by *D. B. Ogden*, for the appellant and claimant, and by *Hopkinson* and *Baldwin*, for the United States.(a)

(a) The latter counsel cited The Eleanor, Edwards 159, 160. In this case, Sir WILLIAM SCOTT observes, that, "real and irresistible distress must be, at all times, a sufficient passport for human beings, under any such application of human laws. But if a party is a false mendicant, if he brings into a port a ship or cargo, under a pretence which does not exist, the holding out of such a false cause fixes him with a fraudulent purpose. If he did not come in for the only purpose which the law tolerates, he has really come in for one which it prohibits, that of carrying on an interdicted commerce, in whole or in part. It is, I presume, an universal rule, that the mere coming into port, though without breaking bulk, is *prima facie* evidence of an importation. At the same time, this presumption may be rebutted; but it lies on the party to assign the other cause, and if the cause assigned turns out to be false, the first presumption necessarily takes place, and the fraudulent importation is fastened down upon him. The court put the question to the counsel, whether it was meant to be argued, that the bringing a cargo into an interdicted port, under a false pretence, was not a fraudulent importation, and it has not been denied, that it is to be so considered." "Upon the fact of importation, therefore, there can be no doubt; and consequently, the great point to which the case is reduced, is the distress which is alleged to have occasioned it. Now, it must be an urgent distress; it must be something of grave necessity; such as is spoken of in our books, where a ship is said to be driven in by stress of weather

<sup>1</sup> And see The *Aeolus*, *post*, p. 392.