the auctioneer is to be considered as the agent of both parties, and his memorandum as a sufficient note in writing; but only denies that auctions, abstractedly considered, are note within the statute. (Ibid. 572.) There is some slight difference in the phraseology of the 4th and 17th sections of the statute, which has been made the ground of a supposed distinction, in this respect, between the sale of lands (which is included in the 4th section), and the sale of goods in the 17th. The *nisi prius* cases, of Symonds *v.* Ball (8 T. R. 151), and Walker *v.* Constable (1 Bos. & Pul. 306) seem to inculcate the doctrine, that the auctioneer writing down the name of the purchaser, is not sufficient to satisfy the statute in a sale of lands (Buckmaster *v.* Harrop, 7 Ves. 341); Lord ELDON, however, has questioned the authority of these cases in Coles *v.* Trecothick (9 Ves. 249); and in White *v.* Proctor (4 Taunt. 208), it was expressly held, that an auctioneer is, by implication, an agent duly authorized to sign a contract for lands on behalf of the highest bidder. (S. P. Emmerson *v.* Heelis, 2 Taunt. 28.) And that his writing down his name in the auction book, is a sufficient signature to satisfy the statute of frauds. (Ibid.) And whether the first-mentioned cases are to be considered as law, or not, in respect to a sale of lands, there can be no doubt, that in a sale of goods, the auctioneer writing down the name of the purchaser, is a signing by an authorized agent of the parties. But the agent must be some third person, and one of the contracting parties cannot be agent for the other. As, where the plaintiff made a note of the bargain, and the defendant overlooking him, while he was writing it, desired him to make an alteration in the price, which he accordingly did. It was contended, that the defendant, who was the party sought to be charged, had made the plaintiff his agent, for the *purpose of signing the memorandum. But Lord ELLENBOROUGH was of [*98
opinion that the agent must be some third person, and could not be either of the contracting parties; and therefore, nonsuited the plaintiff. (Wright *v.* Dannah, 2 Camp. 203. See also Bailey *v.* Ogden, 3 Johns. 399.)

The SYBIL: DANGERFIELD *et al.*, Claimants.

Salvage.

In a case of civil salvage, where, under its peculiar circumstances, the amount of salvage is discretionary, appeals should not be encouraged, upon the ground of minute distinctions of merit, nor will the court reverse the decision of an inferior court, unless it manifestly appears, that some important error has been committed.

The demand of the ship-owners for freight and general average, in such a case, is to be pursued against that portion of the proceeds of the cargo, which is adjudged to the owners of the goods, by a direct libel or petition; and not by a claim interposed in the salvage cause.

APPEAL from the Circuit Court of South Carolina. This was a case of civil salvage, in which the district court decreed a moiety of the net proceeds, as salvage, to be distributed in certain proportions among the salvors; which was reversed by the circuit court, on appeal, and one-fourth decreed as salvage, to be divided among the respective salvors, in proportions somewhat different from those ordered by the district court. The cause was submitted to this court, without argument.

February 15th, 1819. MARSHALL, Ch. J., delivered the opinion *of [*99
the court.—This is a case, in which, under its peculiar circumstances, the amount of salvage is discretionary. In such cases, it is almost impossible, that different minds, contemplating the same subject, should not form different conclusions as to the amount of salvage to be decreed, and the mode of distribution. Appeals should not be encouraged, upon the ground of minute distinctions; nor would this court choose to reverse the decision of a circuit court, in this class of cases, unless it manifestly appeared, that

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some important error had been committed. In this particular case, the court is well satisfied, both with the amount of salvage decreed by the circuit court, and with the mode of distribution; and the decree is, therefore, affirmed, with costs.

Decree affirmed.

A question afterwards arose, upon a claim of the ship-owners for freight, &c.

February 26th. JOHNSON, Justice, delivered the opinion of the court.—In this case, the attention of the court has been particularly called to the claim interposed by the ship-owners, for freight and average.

This court, as at present advised, are very well satisfied, that no freight was earned, and that average may have been justly claimed. But in the case then depending, the circuit court could not have awarded either of those demands. The question is *inter alios*. There was no pretext for claiming
*100] either, as against the salvors; and the ship-owners ought to *have pursued their rights by libel, or petition by way of libel, against the portion of the proceeds of the cargo which was adjudged to the shippers. These parties were entitled to be heard upon such a claim, and could only be called upon to answer, in that mode. But the ship-owners are not yet too late to pursue their remedy. The proceeds are still in the possession of the law, and may be subjected to any maritime claim or lien in the court below.

Claim rejected.

The CALEDONIAN: DICKEY, Claimant.

Seizure.

A vessel and cargo, which is liable to capture as enemy's property, or for sailing under the pass or license of the enemy, or for trading with the enemy, may be seized, after her arrival in a port of the United States, and condemned as prize of war; the *delictum* is not purged by the termination of the voyage.

Any citizen may seize any property forfeited to the use of the government, either by the municipal law, or as prize of war, in order to enforce the forfeiture, and it depends upon the government, whether it will act upon the seizure; if it proceeds to enforce the forfeiture by legal process, this is a sufficient confirmation of the seizure.

February 3d, 1819. APPEAL from the Circuit Court of Rhode Island.
*101] This cause was argued by *D. B. Ogden*, for *the appellant and claimant,(*a*) and by the *Attorney-General*, for the United States.(*b*)

February 16th. STORY, Justice, delivered the opinion of the court.—This is the case of an American ship, which sailed from Charleston, South Carolina, with a cargo of rice, bound to Lisbon, about the 28th of May 1813, under the protection of a British license. In the course of the voyage, the ship was captured by a British frigate, and sent into Bermuda for adjudication. Upon trial, she was acquitted, and her cargo being prohibited from exportation, was afterwards sold by the agent of the claimant, at Bermuda,

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(*a*) He cited The Nelly, note to The Hoop, 1 Rob. 219; The Two Friends, Id. 283; The Thomas Gibbons, 8 Cranch 421, to show, that the vessel could not be seized as prize, after her arrival in port, nor by a non-commissioned seizer.

(*b*) Citing The Ariadne, 2 Wheat. 143.