

The Nueva Anna.

board, and were seized as composing part of her baggage-entry, were not comprised in it. But is this made out with any reasonable certainty? On the contrary, is there any evidence whatever, on which we can come to a satisfactory conclusion, that seven trunks, which was the number entered by her as baggage, were actually landed before the seizure. What the [*192 *claimant herself considered as band-boxes, and actually represented [as such to the inspector, she now desires may be converted into trunks. Unless this can be done, which would be to disbelieve the whole evidence in the cause, there is no pretence for saying, that all the trunks entered by her as baggage, had been landed. The marks on the trunks do not furnish even a presumption in her favor, for on those landed, and on those seized, we find the same inscription, that is, "Mrs. Savage's baggage, apparel and haberdashery." In this uncertainty and confusion, which is the result of her own irregular conduct, and which it was her business, and not that of the court, to remove, she has exposed her case to very unfavorable inferences. One of the trunks landed was empty, or contained only a few books and loose papers; and yet it appears, by a cocket produced before the circuit court, that this very trunk, when taken board, was valued in London at 115*l.* sterling. What became of the goods which it then contained, is left without explanation. This forms a part of the *res gestæ*, and is a circumstance, if not of strong suspicion, at any rate, but little calculated to evince the integrity of the transaction.

Without, therefore, entering into a more minute detail of the circumstances of this case, the court is well satisfied, from the whole of the evidence, notwithstanding some little obscurity in which it is involved, that the trunks in question formed a part of the baggage entry of the claimant, and therefore, affirm the sentence of the circuit court, with costs.

Sentence affirmed.

*The NUEVA ANNA and The LIEBRE: The SPANISH CONSUL, [*193 Claimant.

Prize.—Insurgent states.

This court does not recognise the existence of any lawful court of prize at Galveston, nor of any Mexican republic or state, with power to authorize captures in war.

APPEAL from the District Court of Louisiana. These were the cases of the cargoes of two Spanish ships, captured and condemned by a pretended court of admiralty at Galveston, constituted by Commodore Aury, under the alleged authority of the Mexican republic. The goods were, after this condemnation, brought into the port of New Orleans, and there libelled by the original Spanish owners, in the district court. That court, decreed restitution to the original owners, and the captors appealed to this court.

February 26th, 1821. This cause was argued by *Hopkinson*, for the respondents and libellants; no counsel appearing for the appellant and captors.

THE COURT stated, that it did not recognise the existence of any court of admiralty, sitting at Galveston, with authority to adjudicate on captures,

The Collector.

nor had the government of the United States hitherto acknowledged the existence of any Mexican republic or state, at war with Spain ; so that the *194] court could not consider as legal, any acts done under the *flag and commission of such republic or state. But, as the record, in this case, stated the capture to have been made under the flag of Buenos Ayres, it became necessary to send back the case, in order to ascertain under what authority it was in fact made.

Sentence reversed, and cause remanded for further proceedings.

The COLLECTOR : WILMOT, Claimant.

Practice in admiralty.

In all proceedings *in rem*, on an appeal, the property follows the cause into the circuit court, and is subject to the disposition of that court ; but it does not follow the cause into the supreme court, on an appeal to that court.¹

After an appeal from the district to the circuit court, the former court can make no order respecting the property, whether it has been sold, and the proceeds paid into court, or whether it remains specifically, or its proceeds remain, in the hands of the marshal.

It is a great irregularity, for the marshal to keep the property, or the proceeds thereof, in his own hands, or to distribute the same among the parties entitled, without a special order from the court ; but such an irregularity may be cured, by the assent and ratification of all the parties interested, if there be no *mala fides*.

APPEAL from the Circuit Court of Maryland. The facts of this case were as follows : In the year 1807, the schooner Collector and cargo were libelled in the district court of the district of Maryland, as forfeited, under *195] the act of congress *prohibiting commercial intercourse with certain ports of St. Domingo. John Wilmot, the present petitioner and libellant, and the house of Tagart & Caldwell, claimed the whole property.

Pending the proceedings in the district court, the vessel and cargo were sold, under an order to "bring in the proceeds, subject to the future disposition thereof." The money, notwithstanding this order, was never paid to the clerk, nor was it ever deposited by him in any court, and the court never afterwards made any order respecting it.

The property was condemned in the district and circuit courts, which latter decree was reversed by the supreme court, in the term of February 1809, and the property libelled ordered to be restored. The mandate of the supreme court was filed below, the 11th of May following. The present libel and petition was filed in the district court, the 8th of June 1816, when a decree passed, dismissing the same, which was afterwards affirmed by the circuit court, from whose sentence this appeal was taken.

The object of the present appeal was to obtain the benefit of the decree of the supreme court, that is, restitution of the property, according to the rights of the respective claimants ; the appellant insisting on one-half of the proceeds of vessel and cargo, as joint-owner and also upon a lien on the other half, as ship's husband, for advances made beyond his proportion of

¹ The Lottawanna, 20 Wall. 201 ; Montgomery *v.* Anderson, 21 How. 386 ; Hayforth *v.* Griffith, 3 Bl. C. C. 34 ; The Grotius, 1 Gallis. 503 ; The Seneca, Gilp. 34 ; The Sunbeam, 1 Bl. Pr. Cas. 638. See The Peterhoff, Id. 620.