

manded to the Court of the United States for the District of Louisiana, with directions to allow the libel to be amended, and to take such further proceedings in the said cause, as law and justice may require.

1823.

The Sarah.

[INSTANCE COURT. JURISDICTION.]

The SARAH. HAZARD, *Claimant.*

In cases of seizures made *on land* under the revenue laws, the District Court proceeds as a Court of common law, according to the course of the Exchequer on informations *in rem*, and the trial of issues of fact is to be by jury; but in cases of seizures *on waters navigable from the sea by vessels of ten or more tons burthen*, it proceeds as an Instance Court of Admiralty, by libel, and the trial is to be by the Court.

A libel charging the seizure to have been made *on water*, when in fact it was made *on land*, will not support a verdict, and judgment or sentence thereon; but must be amended or dismissed. The two jurisdictions, and the proceedings under them, are to be kept entirely distinct.

APPEAL from the District Court of Louisiana. This was a libel of information in the Court below, against 422 casks of wine, imported in the brig Sarah, and afterwards seized at New-Orleans, alleging a forfeiture to the United States by a false entry in the office of the collector of the port of New-York, made for the benefit of drawback, on re-exportation, and stating, that the seizure was made on waters navigable from the sea by vessels

1823. of ten or more tons burthen. In the progress of the cause, it appeared, that the seizure was in fact made on land; which fact was suggested to the Court by the claimant's proctor, who moved, that the cause should be tried by a jury. The Court, accordingly, directed a jury, which was sworn, and found a verdict for the United States. On this *verdict*, a *sentence* of condemnation was pronounced by the Court; and the cause was brought to this Court by *appeal* on the part of the claimant.

March 1st. Mr. **D. B. Ogden**, for the appellant, argued, that the decree must be reversed, on account of the multiplied irregularities in the proceedings. It was, in the words of the Judiciary Act of 1789, c. 20. s. 9. "a civil cause of Admiralty and maritime jurisdiction," according to the allegation of the libel, which stated the seizure to be on water. But it afterwards assumed the shape of an Exchequer cause, and the trial was by jury, upon which the Court rendered, not a *judgment*, but a *sentence* of condemnation. The District Court is both a Court of Admiralty, and a Court of common law. In the former branch of its jurisdiction, it proceeds as an Instance Court, by a libel *in rem*, which is to be tried by the Court;^a in the latter, it proceeds, in revenue causes, by an information *in rem*, which is to be tried by the jury.

^a The Vengeance, 3 *Dall. Rep.* 297. The Sally of Norfolk, 2 *Cranch's Rep.* 406. The Betsey, 4 *Cranch's Rep.* 443. Wheat-lan v. United States, 7 *Cranch's Rep.* 112. The Samuel, 1 *Wheat. Rep.* 9.

The two jurisdictions, and the proceedings under each, are to be kept entirely distinct. One consequence of blending them together is apparent. Where the seizure is on water, the claimant has a right to further proof in this Court, under certain circumstances; which he will be entirely deprived of, if the proceedings are to be according to the course of the common law, as the facts could not be reviewed by writ of error.

1823.
The Sarah.

The *Attorney General*, contra, insisted, that a *libel* and an *information* were convertible terms. This was a libel of information, on which, as the seizure was on land, the party had a right to a trial by jury. That right was secured by the constitution, in all cases at common law, where the value in controversy exceeds twenty dollars; and in such cases, the facts tried by a jury cannot be re-examined, otherwise than according to the course of the common law.^a Here an attempt is made to re-examine them by an *appeal*, and the cause may be dismissed from this Court on that ground. Supposing the proceeding, however, to have been according to the course of the civil law, there is nothing to prevent the Instance Court of Admiralty from trying facts by a jury, in the same manner as the Court of Chancery directs an issue. The *judices selecti*, of ancient Rome, were a sort of jury, who acted under the superintendance of the *prætor*, as his assessors in the determination of questions of fact.

a Amendments, art. 7.

1823. Mr. Chief Justice MARSHALL delivered the opinion of the Court, and, after stating the case, proceeded as follows :

March 4th.

The Sarah. By the act constituting the judicial system of the United States, the District Courts are Courts both of common law and admiralty jurisdiction. In the trial of all cases of seizure, on land, the Court sits as a Court of common law. In cases of seizure made on waters navigable by vessels of ten tons burthen and upwards, the Court sits as a Court of Admiralty. In all cases at common law, the trial must be by jury. In cases of admiralty and maritime jurisdiction, it has been settled, in the cases of the *Vengeance*, (reported in 3 *Dallas' Rep.* 297.) the *Sally*, (in 2 *Cranch's Rep.* 406.) and the *Betsy and Charlotte*, (in 4 *Cranch's Rep.* 443.) that the trial is to be by the Court.

Although the two jurisdictions are vested in the same tribunal, they are as distinct from each other as if they were vested in different tribunals, and can no more be blended, than a Court of Chancery with a Court of common law.

The Court for the Louisiana District, was sitting as a Court of Admiralty; and when it was shown that the seizure was made on land, its jurisdiction ceased. The libel ought to have been dismissed, or amended, by charging that the seizure was made on land.

The direction of a jury, in a case where the libel charged a seizure on water, was irregular; and any proceeding of the Court, as a Court of Admiralty, after the fact that the seizure was made on land

appeared, would have been a proceeding without jurisdiction.

The Court felt some disposition to consider this empannelling of a jury, at the instance of the claimants, as amounting to a consent that the libel should stand amended; but, on reflection, that idea was rejected.

If this is considered as a case at common law, it would be necessary to dismiss this appeal, because the judgment could not be brought before this Court but by writ of error. If it be considered as a case of admiralty jurisdiction, the sentence ought to be reversed, because it could not be pronounced by a Court of Admiralty, on a seizure made on land.

As the libel charges a seizure on water, it is thought most advisable to reverse all the proceedings to the libel, and to remand the cause to the District Court, for farther proceedings, with directions to permit the libel to be amended.

DECREE. This cause came on to be heard on the transcript of the record of the District Court of Louisiana, and was argued by counsel. On consideration whereof, it is DECREED and ORDERED, that the sentence of the District Court for the District of Louisiana, condemning the said 422 casks of wine as forfeited to the United States, be, and the same hereby is reversed and annulled. And it is further DECREED and ORDERED, that the cause be remanded to the said District Court of Louisiana, with directions to allow the libel in this case to be amended, and to take such farther pro-

1823.

The Sarah.

1823. *eedings in the said cause as law and justice may require.*^a

The Sarah.

^a It is stated in the *Life of Sir Leoline Jenkins*, vol. 1. p. lxxxvii. that the Admiralty in England had an original inherent jurisdiction of seizures for a breach of the navigation laws. See also his charge at the Admiralty Sessions for the cinque ports. (*Id.* p. xcv. *et seq.*) Charge at the Old Bailey Sessions. Again, Sir L. Jenkins says: "Nor is there any thing granted to the Lord Admiral in this commission, but what he was possessed of long before those commissions grounded upon the statute of piracy were known; for, by the inquisition taken at Queenborough, 49 *Edw. III.* and by the statutes of the Black Book in the Admiralty, much ancienter than that inquisition, *the transporting of prohibited goods particularly*, and so of other offences, was to be inquired of, and tried before the Lord Admiral; and in the articles usually given in charge at the Admiralty Sessions of England, to this day, the inquiry after transporters of prohibited goods is given in charge to the jury," &c. (*Id.* vol. 2. p. 746.) So, also, he says, in a letter to Sir Thomas Exton, July 2, 1675, "the course would be the same in every other case; for instance, *in carrying prohibited goods*, such as would confiscate the ship, where the judgment" (jurisdiction) "remains in the Admiralty, as some you know do this day, though such judgments, in many cases, have been of late transferred to other Courts by act of Parliament." (*Id.* vol. 2. p. 708.) But Sir James Marriot says, in the case of the *Columbia*, in 1782, that "the Court of Admiralty derives no jurisdiction in cases of revenue, (appropriated by the common law to the Court of Exchequer,) from the patent of its Judge, or the ancient jurisdiction of the crown in the person of its Lord High Admiral. The first statute which places judgment of revenue in the plantations with the Courts of Admiralty, is the 12th of Charles II." (2 *Bro. Civ. & Adm. Law*, 492. Note 3.) But in Great-Britain, all appeals from the colonial Vice-Admiralty Courts in those causes, are to the High Court of Admiralty, and not to the privy council, which is the appellate tribunal in other plantation causes. This point was determined in 1754, in the case of the *Vrow Dorothea*, before the High Court of Delegates, which was an appeal from the Vice-Admiralty Judge of South Carolina, to

the High Court of Admiralty, and thence to the Delegates. The appellate jurisdiction was contested, upon the ground, that prosecutions for the breach of the navigation, and other revenue laws, were not, in their nature, causes civil and maritime, and under the ordinary jurisdiction of the Court of Admiralty, but that it was a jurisdiction specially given to the Vice-Admiralty Courts by stat. 7 and 8 Wm. III. c. 22. s. 6. which did not take any notice of the appellate jurisdiction of the High Court of Admiralty in such cases. The objection, however, was overruled by the Delegates, and the determination has since received the unanimous concurrence of all the common law Judges, on a reference to them from the privy council. (2 Rob. 246.) Whether this jurisdiction of the colonial Courts of Vice-Admiralty over seizures for a breach of the revenue laws was a part of the original Admiralty jurisdiction, inherent in those Courts, or was derived from the statutes of Charles II. and William III., it is certain, that it was uniformly exercised by those Courts in this country before the revolution; and such seizures upon water were very early determined by this Court to be "cases of Admiralty and maritime jurisdiction," within the meaning of those terms, as used in the constitution. But revenue seizures made on land have been uniformly left to their natural forum, and to their appropriate proceeding, which is an exchequer information *in rem*. These informations are not to be confounded with criminal informations at common law, or with an information of debt, which is the king's action of debt. They are civil proceedings *in rem*, and may be amended in the District Court where they are commenced, or in the Circuit Court upon appeal. (Anonymous, 1 *Gallis. Rep.* 22.) But if merits appear in this Court, and an amendment is wanted to make the allegations correspond to the proof, the amendment will not be made by this Court, but the cause will be remanded, with directions to permit an amendment, and for further proceedings. (The Edward, *ante*, Vol. I. p. 261—264. The Caroline, 7 *Cranck's Rep.* 496. 500. The Anne, *id.* 570.)

1823.

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