

*AUGUST TERM, 1796.

LA VENGEANCE.

UNITED STATES *v.* LA VENGEANCE.

Admiralty jurisdiction.—Judicial notice.

An injunction to enforce the forfeiture of a vessel, for an illegal exportation of arms and ammunition, is a civil cause of admiralty and maritime jurisdiction.¹
The courts will take judicial notice of a geographical fact.²

ERROR from the Circuit Court for the district of New York. It appeared on the return of the record, that La Vengeance, a French privateer, had captured and carried into New York, a Spanish ship, called La Princessa de Asturias; and that, thereupon, Don Diego Pintardo, the owner of the prize, filed a libel in the district court, complaining of the capture; alleging that La Vengeance was illegally fitted out within the United States; and praying restitution and damages: but on a claim exhibited in behalf of the owners of the privateer, the district court dismissed the libel with costs; and upon appeal to the circuit court, that decree was affirmed. The fate of Pintardo's libel determined likewise the fate of an information, filed *ex officio* by the district attorney, claiming the privateer as a forfeiture, upon the same allegation, that she had been illegally armed and equipped in the United States, in violation of the act of congress: and in both these decisions, the parties acquiesced.

But a third proceeding had been instituted against the privateer, in which the district attorney filed, *ex officio*, an information stating "that Aquila Giles, marshal of the said district, had seized to the use of the United States, as forfeited, a certain schooner or vessel, called La Vengeance, with her tackle, apparel and furniture, the property of some person or persons to the said attorney unknown; for that certain cannons, muskets and gunpowder, to wit, two cannon, twenty muskets and fifty boxes of gunpowder were, between the *22d of May 1794, and the 22d of May 1795, (a) [*298] exported in the said schooner or vessel, from the said United States, to wit, from Sandy Hook, in the state of New Jersey (that is to say, from the city of New York, in the New York district), to a foreign country, to wit, to Port de Paix, in the island of St. Domingo, in the West Indies, contrary to the prohibitions of the act in such case made and provided," &c.: And praying judgment of forfeiture accordingly.

A claim was filed on behalf of the owners of the privateer, denying the exportation of cannon or muskets; and alleging that the gunpowder constituted part of the equipment of the Semillante, a frigate belonging to the republic of France, and had been taken from her and put on board the privateer, to be carried to Port de Paix, by order of the proper officer of

(a) The information was founded on the act of congress, passed the 22d May 1794, prohibiting, for one year ensuing, the exportation of arms and ammunition. (1 U. S Stat. 369.)

¹ The Sally, 2 Cr. 406; The Samuel, 1 Wheat. 10.

² Peyroux *v.* Howard, 7 Pet. 342.

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the said republic. It was also alleged, that the schooner, after her arrival at Port de Paix, was *bond fide* sold to one Jaques Rouge, a citizen of the French republic, in whose behalf the claim was instituted.

After argument, the district judge decreed, that the schooner should be forfeited; but upon appeal to the circuit court, the decree was reversed, and Judge CHASE certified that the judgment of reversal was founded on the following facts: "1st. That from eighteen to twenty muskets were carried in the said schooner La Vengeance, in the month of March or April 1795, from the United States of America to a foreign country, to wit, to Port de Paix, in the West Indies: but that such muskets were the private property of French passengers on board of the said schooner, carried out for their own use, and not by way of merchandise. 2d. That upwards of forty boxes of gunpowder were carried, at the same time, from the said United States, in the said schooner, to Port de Paix aforesaid: but that such gunpowder was taken from on board the Semilliante frigate, lying in the harbor of New York, was a part of her equipment, did not appear ever to have been landed in the said United States, was carried out for the use of the French republic, was delivered to the commander in chief at Port de Paix; and was not exported by way of trade or merchandise."

From this judgment of the circuit court, a writ of error was brought on behalf of the United States, the general errors were assigned, and the defendant in error pleaded *in nullo est erratum*. The issue was argued, on the 10th of August, by Lee, Attorney-General of the United States, for the plaintiff ^{*299]} in error, and by Du Ponceau, for the defendant: (a) but no exception was taken by the former, in reference to the merits of the cause.

Lee, Attorney-General.—There are two grounds on which this writ of error is to be supported: 1st. That it is a criminal cause; and therefore, it should never have been removed to the circuit court, the judgment of the district court being final in criminal causes; and 2d. That even if it could be considered as a civil suit, it is not a suit of admiralty and maritime jurisdiction; and therefore, the circuit court should have remanded it to be tried by a jury in the district court.

1st Point. All causes are either civil or criminal; and this is a criminal cause, as well on account of the manner of prosecution, as on account of the matter charged. Thus, informations are a proceeding at common law, and classed with criminal prosecutions (4 Bl. Com. 303); and the act of congress which was framed to protect the United States, at a critical moment, from a serious injury, inflicts for the offence of violating its provisions, a forfeiture of the vessel employed in exporting arms or ammunition, and a fine of \$1000. It is true, that it may be considered, in part, as a proceeding *in rem*; but still, it is a criminal proceeding. There are but two kinds of information known in England, one in the exchequer, touching matters of revenue, the other in the king's bench, touching the

(a) The case having been opened, and some general principles stated by the attorney-general, on a preceding day, the court were led to suppose that he did not mean to enter into any further discussion, and declared an opinion; but being afterwards informed, that, on account of the importance of the subject, a further argument was expected, they gave this opportunity.

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punishment of misdemeanors. 3 Bl. Com. 262. Now, the revenue of the United States is not at all concerned in this case; nor would the court of exchequer take cognisance of a similar case, in England. If, therefore, the United States do not claim La Vengeance for debt, nor as a mere exercise of arbitrary will, but on account of some offence, some crime, that has been committed; it follows, of course, that the process used to enforce the claim, must, under any denomination, be, in fact, a criminal process; and in all criminal causes, whether the trial is by a jury, or otherwise, the judgment of the district court is final. Though penal suits have sometimes been construed civil actions; it has only been done, where individuals have been concerned, and in one instance, to admit the testimony of a Quaker, on affirmation; but none of the exceptions to the general rule will reach the present case. 1 Wils. 125; 2 Str. 1227; Cowp. 382.

2d Point. The 9th section of the judicial act declares, that **“the trials of issues in fact, in the district courts, in all causes, except civil causes of admiralty and maritime jurisdiction, shall be by jury.”^{**300} If there are criminal causes of admiralty and maritime jurisdiction, they would not be within the exception, and must be tried by jury. But this criticism is not insisted upon; since, the present case cannot, in any sense, be deemed a civil suit of admiralty and maritime jurisdiction. The principles regulating admiralty and maritime jurisdiction in this country, must be such as were consistent with the common law of England, at the period of the revolution. How, then, would a similar case be considered in England? Blackstone says, “all admiralty causes must be causes arising wholly upon the sea, and not within the precincts of any county.” 3 Bl. Com. 106. And Coke had previously remarked, “that *altum mare* is out of the jurisdiction of the common law, and within the jurisdiction of the Lord Admiral.” Now, the offence here charged is that of exporting arms and ammunition out of the United States to Port de Paix. [The act itself, indeed, without the intervention of the statute, would, doubtless, have been lawful; but an act of exportation, from the force of the term, must be commenced here; and if done part on land, and part on sea, the authorities decide, that the admiralty cannot claim the jurisdiction. It is not made criminal, to receive arms and ammunition at sea, but to export them from the United States, within which the offensive act must, therefore, originate. If, then, this is not a cause of admiralty and maritime jurisdiction, though it should be allowed to be a civil cause, still, the trial ought to have been by jury. It may be proper to add, that the act of congress (§ 4) expressly adopts, in this case, the mode of prosecuting to recover the forfeitures and penalties incurred under the act for more effectually collecting the impost, &c. (passed the 4th of August 1790, § 67), which declares, that on filing a claim, “the court shall proceed to hear and determine the cause according to law;” but there is nothing in this provision that can be construed to exclude a jury trial; any more than in the form of a commission of oyer and terminer, which empowers the judges “to hear and determine,” and yet they always hear and determine, as to the facts, through the medium of a jury; nor does the mere institution of a new mode of proceeding necessarily rescind and annul every pre-existing process applicable to the same subject. If, upon the whole, there has been a mistrial, and a representation should be presented to the proper department, the forfeiture would not be allowed to enrich the treasury; but as a judicial

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question, it is more proper, that the error should be judicially corrected. The circuit court ought to have remanded the *cause to the district court, [301] taken in either of the views it exhibits: if it was a criminal cause, strictly speaking, it ought to have been remanded, because it had not been tried by a jury, and because the judgment of the district court is, in such case, definitive—if it was a civil suit, but not of admiralty or maritime jurisdiction, it ought to have been remanded, because, in such case, the issue had not been tried by jury: And in either case, whether criminal or civil this court has a superintending and efficient control over the judgments and decrees of the circuit court.

THE CHIEF JUSTICE informed the opposite counsel, that as the court did not feel any reason to change the opinion, which they had formed upon opening the cause, they would dispense with any further argument; and on the 11th of August, he pronounced the following judgment.

BY THE COURT.—We are perfectly satisfied upon the two points that have been agitated in this cause. In the first place, we think, that it is a cause of admiralty and maritime jurisdiction. The exportation of arms and ammunition is, simply, the offence; and exportation is entirely a water transaction. It appears, indeed, on the face of the libel, to have commenced at Sandy Hook; which, certainly, must have been upon the water. In the next place, we are unanimously of opinion, that it is a civil cause: it is a process of the nature of a libel *in rem*; and does not, in any degree, touch the person of the offender. In this view of the subject, it follows, of course, that no jury was necessary, as it was a civil cause; and that the appeal to the circuit court was regular, as it was a cause of admiralty and maritime jurisdiction. Therefore—

Let the decree of the circuit court be affirmed, with costs.

But on opening the court the next day, the CHIEF JUSTICE directed the words "with costs" to be stricken out of the entry, as there appeared to have been some cause for the prosecution. He observed, however, that in doing this, the court did not mean to be understood, as at all deciding the question, whether, in any case, they could award costs against the United States; but left it entirely open for future discussion.

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Damages in error.

Where a judgment or decree is affirmed, on error, there can be no award of damages, except for delay.¹

WRIT of Error to the Circuit Court for the district of Georgia, to remove the proceedings and decree in an admiralty cause. At the last term, the decree of the circuit court had been affirmed, with costs; subject to the opinion of the court, whether any and what damages shall be allowed on

¹ See R. S. § 1010, whereby it is provided, that where, upon a writ of error, judgment is affirmed in the supreme court, or a circuit court, the court shall adjudge to the respondent in error, just damages for his delay, and single

or double costs at its discretion. And see Kilbourne *v.* Savings Institution, 22 How. 503; Sutton *v.* Bancroft, 23 Id. 320; Jenkins *v.* Banning, Id. 455.