

## ARCAMBEL v. WISEMAN.

## Damages.

Counsel fees expended by the plaintiff in prosecuting his cause, cannot be allowed as part of the damages.<sup>1</sup>

THE decree of the Circuit Court for the district of Rhode Island, was affirmed in this cause, without argument, the principal question which it involved having been just decided upon the discussion of another writ of error. It appeared, however, by an estimate of the damages on which the decree was founded, and which was annexed to the record, that a charge of \$1600, for counsel's fees in the courts below, had been allowed; to which *Coxe* objected; and *Ingersoll* contended, that it might fairly be included under the idea of damages. But—

BY THE COURT.—We do not think that this charge ought to be allowed. The general practice of the United States is in opposition to it; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court, until it is changed, or modified, by statute.

There are several ways in which the charge may be expunged: but we recommend, as, perhaps, the easiest way, that the counsel for the defendant in error, should enter a *remittitur* for the amount.

A *remittitur* was accordingly entered.

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\*THE ALFRED.

## MOODIE v. The Ship ALFRED.

## Neutrality.

The sale of a vessel fitted for a privateer, to the subject of one of two belligerent powers, which the purchaser subsequently equips and furnishes in a port of his own country, is not a breach of our neutrality act.

THE allegation in this case, as supported by the evidence, was, that the privateer, which took the British prize in question, had been built in New York, with the express view of being employed as a privateer, in case the then existing controversy between Great Britain and the United States should terminate in war; that some of her equipments were calculated for war, though they were also frequently used by merchant ships; that the privateer was sent to Charleston, where she was sold to a French citizen; that she was carried by him to a French island, where she was completely armed and equipped, and furnished with a commission; and that she afterwards sailed on a cruise, during which the prize was taken, and sent into Charleston.

*Reed*, for the plaintiff in error, contended, that this was an original construction or outfit of a vessel for the purpose of war; and that if it

<sup>1</sup> *Day v. Woodworth*, 13 How. 363; *Teese v. Huntingdon*, 23 Id. 2; *Oelrichs v. Spain*, 15 Wall. 211, 230; *Whittemore v. Cutter*, 1 Gallis. 420; *Pacific Ins. Co. v. Conard*, Bald. 138; *Stimpson v. The Railroads*, 1 Wall. Jr. C. C. 164; *Blanchard Gun-stock Turning Factory v.* Warner, 1 Bl. C. C. 258; *Bancroft v. Acton*, 7 Id. 505. And see *Flanders v. Tweed*, 15 Wall. 450; *Philp v. Nock*, 17 Id. 460; *Haverstick v. Erie Gas Co.*, 29 Penn. St. 254; *Corcoran v. Judson*, 24 N. Y. 106.