

ARCAMBEL v. WISEMAN.

Damages.

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

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

¹ *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.

Olney v. Arnold.

was tolerated as legal, it would be easy by collusion to subvert the neutrality of the United States, and involve the country in a war.

THE COURT, however, without hearing the opposite counsel, directed—
The decree to be affirmed.

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Error to a state court.—Pleading.

That the general assembly may have power to set aside the judgment of a state court, does not prevent it from being the highest court of law to which error will lie, under the act of 1789. A plea, by a collector of customs, under the fourth section of the act of 4th August 1790, that a former bond for duties was due and imposed on the 5th of November, shows ground for rejecting a bond tendered on the 7th of November, and is good, on special demurrer; it need not aver that the former bond was unsatisfied, at the time the subsequent one was tendered.

THIS was a writ of error on a judgment given in the Superior Court of judicature, court of assize and jail delivery, for the county of Providence, in the state of Rhode Island; and the case, appearing on the record, was as follows:

Olney, the plaintiff in error, was the collector of imposts for Rhode Island; Arnold, the defendant in error, was owner of the Ship Neptune; and a citizen named Dexter, as the declaration alleged, was owner of the cargo of the ship; which arrived from Surinam, at Providence, about four o'clock P. M. on the 6th of November 1792. On that day, the parties applied for a permit to land the cargo, and offered bonds to pay the duties; but the collector refused or neglected to accept the bonds and grant the permit. On the 7th of November, a second application was made for a permit, and bonds, actually executed, were tendered for the payment of the duties; but the collector again peremptorily refused to accept the bonds or to grant the permit; in consequence of which, the vessel, with the cargo on board, remained at a heavy expense, from the 6th to the 13th of November; and Arnold laid his damages at 200L.

Olney, the defendant in the court below, pleaded that by the 41st section of the act of congress, passed on the 4th of August *1790, “to provide more effectually for the collection of the duties, &c.,” it is declared, “that all duties on goods, wares and merchandise imported, shall be paid, or secured to be paid, before a permit shall be granted for landing the same;” and that “no person whose bond for the payment of duties is due and unsatisfied, shall be allowed a future credit for duties, until such bond shall be fully paid or discharged;” that on the 17th of January 1792, Arnold being indebted for duties, gave a bond for the amount, payable on the 17th of May ensuing; that on the 5th of November 1792, the term for payment of the bond was elapsed, but the same then remained unpaid and undischarged; that Arnold was the real owner of the cargo, but had fraudulently transferred it to Dexter, in order to obtain a credit at the custom-house; that though Dexter had tendered a bond on the 7th of November, it was rejected by virtue of the recited act of congress; and that a permit had been refused, until the duties of the cargo were paid, or Arnold’s old bond was discharged.

To this plea, the plaintiff below demurred, and assigned the following causes of demurrer: 1st. Because the matters contained in the plea might