*Hills *et al. v.* Ross.

Admiralty practice.—Prize-agents.

A plea by one partner, on behalf of himself and his copartners, the rejoinder being signed by a proctor for all the defendants, amounts to a legal appearance for them all.

Prize-agents who receive the proceeds of sales of prize, and pay them over to the captors, without an order of court, are responsible to the owners, in case restitution be decreed, to the extent of the sums actually received by them.

This cause came again before the court (see *ante*, p. 184), and after a discussion upon the merits, it became a question, whether there had been a regular appearance of the parties to the suit below?

The libel was filed by the British consul, on behalf of Walter Ross, against Hills, May & Woodbridge (who formed a partnership in Charleston, under that firm) and John Miller. The plea was headed, "The plea of Ebenezer Hills, one of the company of Hills, May & Woodbridge, in behalf of himself and his said copartners, who are made defendants in the libel of Walter Ross;" and concluded with praying, "on the behalf aforesaid, to be dismissed, as far as respects the said Hills, May & Woodbridge." The replication regarded the plea of Hills as the plea of all the company; and the rejoinder was signed by "Joseph Clay, junior, proctor for the defendants." The decree below was against all the defendants, and the writ of error was issued out in all their names; but there was evidence on the record, that May had been in Europe, during the whole of the proceeding, and no warrant of attorney, or other authority, to appear for him, was produced.

Ingersoll contended, for the plaintiffs in error, that partners had not power to appear for each other to suits; and that, in fact, nothing appeared on the record, to show that they had done so, on the present occasion.

Tilghman, on the contrary, relied upon the rejoinder, where the proctor states himself to be employed by all the defendants; and insisted, that his authority could not be denied or examined, particularly, in this stage of the cause, and in this form of objection.(*a*)

*On the 11th of August, the Chief Justice delivered the opinion of the Court, that, in the present case, there was a sufficient legal [*332 appearance of all the defendants.

On the merits, it appeared, that the plaintiffs in error had directed to be

---

(*a*) Iredell, Justice.—The doubt is, whether, in a case like the present, one partner can authorize a proctor to appear for the whole company?

Chase, Justice.—This court cannot affirm the decree, against persons who were not before the court that pronounced it; and the record must show, that they actually did appear. A bare implication, the entitling of the plea, or a general statement, that one of the partners acts on behalf of them all, is not sufficient: for, though partners, in a course of trade, may bind each other, they cannot compel each other to appear to suits, nor undertake to represent each other in courts of law.[1] What, however, is the legal effect of an appearance by a proctor, an officer of the court, is another ground that merits consideration.

[1] In Taylor *v.* Coryell, 12 S. & R. 250, Judge Duncan says, "this is not the law of the present day, and it would be most inconvenient, if it were." "It is now held, that in an action against several partners, one may enter an appearance for the others, which may in its consequences, lead to a judgment against all."

sold, certain prize cargoes, captured by Captains Talbot and Ballard, under the circumstances stated in the case of *Talbot* v. *Jansen* (*ante*, p. 133); and that, after notice of the claims filed by the owners of the prizes, they had received and paid over the proceeds to the captors: but, in so doing, they had acted merely as commercial agents, without any share in the ownership of the privateers, nor any participation in the direction or emoluments of their illicit cruising. The principal questions, therefore, were: 1st. Whether, in point of fact, the plaintiffs had notice of the claims of the original owners of the prizes? And 2d. Whether, after paying over the proceeds of the cargoes, they were responsible to the claimants for anything, and for how much?

By the Court.—It appears, that the damages have been assessed in the courts below, in relation to the value of the goods that were captured: but the plaintiffs in error were not trespassers *ab initio;* and acting only as agents, they should be made answerable for no more than actually came into their hands. The accounts of sales are regularly collected and annexed to the record. We are, therefore, at no loss for a criterion: and we think that the decree should be so modified, as to charge them with the amount of sales, after deducting the duties on the goods, if the duties were paid by them.

The decree was in the following words.—Ordered, that the decree of the circuit court for Georgia district, pronounced on the 5th of May 1795, be reversed, so far as the same respects the said Hills, May & Woodbridge; and it is further ordered, that the said Hills, May & Woodbridge pay to the said Walter Ross, $32,090.58, the net amount of the sales of the cargo of the said ship, and $5605.12, interest thereon, from the 6th day of June 1794, to the 12th day of August 1796, making together the sum of $37,695.70, and that the said Hills, May & Woolbridge do pay the costs of suit; and a special mandate, &c.

---

*333] *The Grand Sachem.

Del Col *v.* Arnold.

Prize.

If a neutral vessel obtain a register from a belligerent power, sail under the belligerent flag, and have on board accounts describing her as belligerent property, there is probable cause for seizing her as lawful prize, and bring her in for examination.

The existence of probable cause for seizing a neutral vessel as prize, and sending her in for examination, does not exonerate the captors from liability for any injury to, or spoliation of, the property captured, if not condemned as lawful prize.[1]

Arnold *v.* Delcol, Bee 5, affirmed.

A Libel was filed in the District Court of South Carolina, by the defendant in error, against Del Col and others, the owners of a French privateer, called La Montague, and of the ship Industry and her cargo, a prize to the privateer, lying in the harbor of Charleston, which the libellant had caused to be attached.

The case appeared to be briefly this: The privateer had captured as

[1] The Amiable Nancy, 3 Wheat. 546; The Invincible, 2 Gallis. 29.