

## The Grand Sachem.

sold, certain prize cargoes, captured by Captains Talbot and Ballard, under the circumstances stated in the case of *Talbot v. Jansen* (*anx*, 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.

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## \*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.<sup>1</sup>

*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

<sup>1</sup> *The Amiable Nancy*, 3 Wheat. 546; *The Invincible*, 2 Gallis, 29.

## The Grand Sachem.

prize, on the high seas, an American brig called the Grand Sachem, commanded by Ebenezer Baldwin, and owned by the defendant in error. At the time of taking possession of the brig, a sum of \$9993 was removed from her into the privateer, a prize-master and several mariners were put on board of her, and they were directed to steer for Charleston. Just, however, as they hove in sight of the lighthouse, the *Terpsichore*, a British frigate, captured the privateer, and gave chase to the prize: whereupon, the prize-master ran her into shoal water, and there she was abandoned by all on board, except a sailor, originally belonging to her crew, and a passenger. In a short time, she drove on shore, was scuttled and plundered. When the marshal came, with process against the brig, she was in the joint possession of the custom-house officers, and the privateers-men; the latter of whom prevented the execution of the process. The *Industry* and her cargo were then attached by the libellant, and an agreement was entered into between the parties, that they should be sold, and the proceeds paid into court, to abide the issue of the suit.

On the evidence, it appeared, that the Grand Sachem had been engaged in a smuggling trade at New Orleans, the Spanish Main, &c., and for the purpose of carrying it on, she had procured a register in the name of a Spanish subject, and sailed under Spanish colors. Besides other suspicious circumstances, she had on board, at the time of her capture, a variety of accounts \*describing her as Spanish property; and a trunk containing her papers (among which, it was alleged, there was a Spanish register) [\*333 had been collusively delivered up to the owner, the defendant in error, by one of the sailors. The money removed from her, and taken in the privateer, by the British frigate, had been condemned in Jamaica.

The district court pronounced a decree, in favor of the libellant, for the sum of \$33,329.87 (the full value of the Grand Sachem and her cargo), with interest at ten per cent. from the 8th of August 1795, the day of capture; declared "that the proceeds of the ship *Industry* and her cargo, attached in this cause, be held answerable to that amount;" and directed that the defendant in error should enter into a stipulation to account to the plaintiffs in error for the money condemned as prize to the British frigate, or any part of it, that he might recover, as neutral property. This decree was affirmed in the circuit court, and thereupon, the present writ of error was instituted.

The case was considered in four points of view: 1st. Whether there was sufficient probable cause for seizing and bringing the Grand Sachem into port for further examination, and adjudication? 2d. Whether, if there was such sufficient cause, the captors can, at all, be made liable for the consequent injury and loss? 3d. Whether, if the immediate captors, who ran the vessel into shoal water, and scuttled her, are responsible, that responsibility can be devolved on the owners of the privateer, who had not authorized nor contributed to the misconduct? And 4th. Whether the *Industry* and her cargo could, before condemnation, be attached, and made liable in this suit, as the property of the captors?<sup>1</sup>

The first and second points were argued, at the last term, by *Dallas* and *Reed* (of South Carolina), for the plaintiffs in error, and by *Pringle* (of South Carolina), for the defendant: and the third and fourth points were

<sup>1</sup> See *Manro v. Almeida*, 10 Wheat. 487.

The Grand Sachem.

argued at the present term, by the same counsel, for the plaintiffs in error, and by *Ingersoll* and *Lewis*, for the defendant.

THE COURT delivered, at different times, the following opinions :

On the first point, that there was a sufficient probable cause for seizing and bringing the Grand Sachem into port.

On the second point, that the right of seizing and bringing in a vessel for further examination, does not authorize or excuse any spoliation or damage done to the property ; but that the captors proceed at their peril, and are liable for all the consequent injury and loss.<sup>1</sup>

On the third point, that the owners of the privateer are responsible for [the conduct of their agents, the officers and crew, \*to all the world ; \*335] and that the measure of such responsibility is the full value of the property injured or destroyed. (a)

On the fourth point, that whatever might, originally, have been the irregularity in attaching the *Industry* and her cargo, it is completely obviated, since the captors had a power to sell the prize ; and by their own agreement, they have consented that the proceeds of the sale should abide the issue of the present suit.

The decree of the circuit court affirmed.

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## AUGUST TERM, 1796.

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### RULES.

ORDERED, That when process at common law, or in equity, shall issue against a state, the same shall be served on the governor, or chief executive magistrate and attorney-general of such state.

ORDERED, That process of *subpoena* issuing out of this court in any suit in equity, shall be served on the defendant, sixty days before the return-day of the said process : And further, that if the defendant, on such service of the *subpoena*, shall not appear at the return-day contained therein, the complainant shall be at liberty to proceed *ex parte*.

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(a) CHASE and IREDELL, Justices, agreed that the owners were responsible, but differed as to the extent, observing that the privateers-men were justifiable in abandoning, to save themselves from captivity, but that the removal of the money into the privateer, and the subsequent scuttling of the brig, were unlawful acts.

<sup>1</sup> See The Invincible, 2 Gallis. 40.