

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  
\*335] the conduct of their agents, the officers and crew, \*to all the world ; 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.