

Pendleton v. Wambersie.

had paid to the underwriters, at the request of the defendants, the premium of assurance, before they received notice countermanding the directions to make such payment, the right given by subsequent circumstances *to [73 the assured to demand its return from the underwriters, could not affect the claim of the plaintiffs on the defendants, for money fairly advanced by them for the use of the defendants. If the latter construction be adopted, there was still a misdirection on the part of the court. The judge ought not to have left it expressly to the jury to decide, whether notice given immediately after the change of the destination of the vessel, could be due and seasonable notice, unless it was received before the premium was advanced.

It is, however, not material to the present cause to determine whether this exception does or does not exhibit a misdirection to the jury, since we are unanimously of opinion, that for admitting a paper purporting to be the copy of a letter from Edward Carrington to Smith & Ridgeway, to go to the jury, which was not proved to be a copy, the judgment must be reversed.

Judgment reversed.

 PENDLETON & WEBB v. WAMBERSIE *et al.*
Equity jurisdiction.—Parties.

An assignee of an assignee of a copartner in a joint purchase and sale of lands, may sustain a bill in equity against the other copartners and the agent of the concern, to compel a discovery of the quantity purchased and sold, and for an account and distribution of the proceeds.

ERROR to the Circuit Court for the district of Georgia, in a suit in equity in which Pendleton & Webb were complainants, and Emanuel Wambersie, James Seagrove, and the representative of James Armstrong, Jacob Weed and Henry Osborne, were defendants.

The bill stated that Henry Osborne, Jacob Weed, James Armstrong, James Seagrove, and the complainant, John Webb, on the 22d of December 1786, entered into an agreement with each other, under seal, to procure lands on their joint account, in the state of Georgia, to an amount not exceeding 200,000 acres, at *their joint expense, and for their joint benefit. [74 That grants were obtained for about 165,000 acres. That Webb, by deed, transferred all his right to the lands and contract to John McQueen, in consideration of 400*l.* sterling, to be paid in four equal annual instalments. That McQueen, not having paid Webb, assigned his right to Pendleton, the complainant, who undertook to indemnify McQueen against Webb's demand. That Webb had never received the money due from McQueen. That Wambersie, as agent for the company, had sold 60,000 acres of the land, in Holland, at \$1.56 per acre, had received in cash \$51,000, and had made himself liable for the balance. That he had refused to pay to the complainant, Pendleton, the one-fifth of the purchase-money. That the other defendants refused to divide the residue of the lands, and to account for the profits, &c. That the lands were liable, in the hands of the purchasers, for the balance of the purchase-money, both to the complainant Webb, for the purchase-money due to him, and the complainant Pendleton, for his one-fifth of the amount of the sales. The bill sought a discovery of the amount of lands

Ex parte Bollman.

granted to the company, of the amount sold, &c., and prayed that the defendants might account, and that the lands might be charged with the balance of the purchase-money, &c.

The defendants demurred for want of equity in the bill, and the court below sustained the demurrer, and decreed that the bill be dismissed, with costs. But—

THIS COURT, without argument, overruled the demurrer, reversed the decree, and remanded the cause for further proceedings.

*75] **Ex parte* BOLLMAN and *Ex parte* SWARTWOUT.

Habeas corpus.—Treason by levying war.—Commitment.—Criminal jurisdiction.

This court has power to issue the writ of *habeas corpus ad subjiciendum*.¹

To constitute a levying of war, there must be an assemblage of persons, for the purpose of effecting, by force, a treasonable purpose. Enlistment of men to serve against the government, is not sufficient.

When war is levied, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are traitors.²

Any assemblage of men, for the purpose of revolutionizing, by force, the government established by the United States, in any of its territories, although as a step to, or the means of executing, some greater projects, amounts to levying war. The travelling of individuals to the place of rendezvous is not sufficient; but the meeting of particular bodies of men, and their marching from places of partial, to a place of general rendezvous, is such an assemblage as constitutes a levying of war.³

A person may be committed for a crime, by one magistrate, upon an affidavit made before another.

A magistrate, who is found acting as such, must be presumed to have taken the requisite oaths.

Quære? Whether, upon a motion to commit a person for treason, an affidavit, stating the substance of a letter in possession of the affiant, be admissible evidence?

The clause of the 8th section of the act of congress, "for the punishment of certain crimes against the United States" (1 U. S. Stat. 113), which provides that "the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may be first brought," applies only to offences committed on the high seas, or in some river, haven, basin or bay, not within the jurisdiction of a particular state, and not to the territories of the United States, where regular courts are established, competent to try those offences.

The word "apprehended," in that clause of the act, does not imply a legal arrest, to the exclusion of a military arrest or seizure.

C. LEE moved for a *habeas corpus* to the marshal of the District of Columbia, to bring up the body of Samuel Swartwout, who had been committed by the Circuit Court of that district, on the charge of treason against the United States; and for a *certiorari* to bring up the record of the commitment, &c.

¹ Ex parte Kearney, 7 Whart. 38; Ex parte Watkins, 3 Pet. 193; s. c. 7 Id. 568; Ex parte Milligan, 3 Wall. 2; Ex parte Yergler, 8 Id. 85; Ex parte Lange, 18 Id. 163; Ex parte Virginia, 100 U. S. 339; Ex parte Siebold, Id. 371. See Ex parte Dorr, 3 How. 103; Ex parte Metzger,

5 Id. 176; Ex parte McCardle, 6 Wall. 318.

² See Young v. United States, 97 U. S. 65; 1 Burr's Trial, 14-16; United States v. Greathouse, 2 Abb. U. S. 364.

³ United States v. Greiner, 4 Phila. 396; United States v. Greathouse, 2 Abb. U. S. 364.