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lief on the part of the defendants in view of the other evidence in the cause.

The eighth, ninth, and twelfth errors are founded upon the refusal of the court to instruct the jury that the Merchants' Bank was bound by an alleged settlement of the controversy, if they believed certain evidence which does not appear upon the bill of exceptions, namely, to the effect that the president of the Merchants' Bank, on the day after the presentation of the check sued on, in a conversation with Hutchinson, acceded to his view of the subject and allowed Sherman's note as part payment of the check. It appears that the court granted the two former instructions prayed for, with this qualification, namely, *provided* the loan was originally made between the defendant and the Merchants' Bank, and not with Sherman, or that the proceeds went to the benefit of the bank as part of its assets or property. As the bank went into bankruptcy within forty-eight hours after this supposed settlement, the qualification was probably not an unreasonable one. But as the bill of exceptions before us does not contain a particle of evidence on the subject, it is unnecessary to decide this question.

These being all the errors assigned, the judgment must be

AFFIRMED.

THE NUESTRA SEÑORA DE REGLA.

1. In prize cases, wherever it appears that notice of appeal or of intention to appeal to this court was filed with the clerk of the District Court within thirty days next after the final decree therein, an appeal will be allowed to this court whenever the purposes of justice require it.
2. Counsel fees before a commissioner on the settlement of damages on an award of restitution, disallowed as excessive and unwarranted.
3. A Spanish-owned vessel on her way from New York to Havana put in distress, by leave of the admiral commanding the squadron, into Port Royal, S. C., then in rebellion, and blockaded by a government fleet, and was there seized as prize of war and used by the government. . . . She was afterwards condemned as prize, but ordered to be restored. She never was restored. Damages for her seizure, detention, and value being

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awarded. *Held*, that clearly she was not lawful prize of war or subject of capture; and that her owners were entitled to fair indemnity, though it might be well doubted whether the case was not more properly a subject for diplomatic adjustment than for determination by the courts.

APPEAL from the District Court for the Southern District of New York.

The steamer *Nuestra Señora de Regla*, then recently built in New York for a Spanish corporation doing business in Cuba, and owned by it, was on her way, November, 1861, to Havana. On her voyage thither, being in distress and want of coal, she put into Port Royal, near Charleston, S. C. (then in rebellion against the United States, and blockaded by a government squadron), under permission of the admiral in command. She was here seized November 29th, 1861, as prize of war, and used by the government till June, 1862, when she was brought to New York and condemned in prize. On the 20th of June, however, in the following year (the United States in the meantime using the vessel), a decree of restitution was ordered. The vessel, however, never was restored. The case being referred to a commissioner to ascertain the damages for the seizure and detention, he made a report on the 10th of May, 1871, in which he awarded—

For the use of the vessel from November 29th, 1861, up to and including June 20th, 1863, being 568 days, with interest at the rate of six per cent. per annum to the date of his report,	\$167,370 66 $\frac{2}{3}$
For expenses and services of claimant's agent in remaining with and attending to said vessel,	5,680 00
For counsel fees in defending the proceedings,	5,000 00
For the value of the vessel when she shall have been restored, at the rate of six per cent., with interest,	36,833 33 $\frac{1}{3}$
Total,	\$214,884 00

Several exceptions (not necessary to be specified, as they were not passed on by this court) were taken to this report by the government, but on the 28th of October, 1871, the exceptions were overruled and the report confirmed, and final judgment rendered against the libellants and captors for said sum, together with \$6086.84, interest thereon from

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the date of the report to the date of this decree, the sum as finally decreed amounting, in all, to \$220,970.84.

On the 7th of November, 1871, the United States filed with the clerk of the District Court at New York, notice that the libellant "appeals to the Supreme Court of the United States from the decree made in the said action on the 28th of October, 1871," and the case was now here, and a notice of the appeal served by copy on the proctor for the claimants, on the 17th of the same month. On the 17th of February, 1872, the appeal was allowed by Mr. Justice Swayne, of the Supreme Court, at Washington, and the claimants cited to appear before said court on the 21st of March, 1872.

The questions were argued in this court:

1st. Whether the court had jurisdiction?

2d. If it had, how the case stood on merits?

Mr. G. H. Williams, Attorney-General, and Mr. C. H. Hill, Assistant Attorney-General, for the appellants; Mr. W. M. Evarts and C. Donohue, contra.

The CHIEF JUSTICE delivered the opinion of the court.

In prize cases, wherever it appears that notice of appeal, or of intention to appeal, to this court was filed with the clerk of the District Court within thirty days next after the final decree therein, an appeal will be allowed to this court whenever the purposes of justice require it. An appeal is accordingly allowed in this case, under the second section of the act of March 3d, 1873, making appropriations for the naval service, and for other purposes.

The decree of the District Court included the sum of \$5000, for counsel fees. We think that the amount was greatly excessive, and the allowance of counsel fees wholly unwarranted.

It is clear that the vessel was not lawful prize of war or subject of capture, and the corporation which owned her is doubtless entitled to fair indemnity for the losses sustained by the seizure and employment of the vessel; but it may be

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well doubted whether it is not more properly a subject of diplomatic adjustment than of determination by the courts.

For the errors in the decree already indicated, it is REVERSED, and the cause is

REMANDED FOR FURTHER PROCEEDINGS.

BRANSON *v.* WIRTH.

The government, as appeared by the *exemplification* of the record of a patent, had granted, January 10th, 1818, to A. the northeast quarter of a certain tract of land, in pursuance confessedly of a warrant and location upon *that* quarter; the exemplification of the record of the patent, however, showing that eight years after the date of the patent a "memorandum" had been made [by whom did not appear] on this record, that the patent itself was issued for the *southeast* quarter. The government had confessedly issued a patent to Z. for this *southeast* quarter on the 7th of January, 1818; that is to say, three days before the date of the patent to A., for whatever corner the patent to A. really was. In 1819 A. conveyed to B. the *southeast* corner, describing it as the quarter which had been granted by patent to him, January 10th, 1818. In 1824 B. conveyed to C., describing the land as the *southeast* corner. In 1825 C. conveyed to D.; and in 1829 D. conveyed to E., the deeds of both these last describing the land as the *southeast* corner; but the latter deed not being put on record. In 1827 a private act of Congress was passed authorizing the legal representative or assignee of A. to register with the register of the proper land office any unappropriated quarter-section, &c., "in lieu of the quarter-section patented to the said A. on the 10th of January, 1818, which had been previously patented to Z.;" and in pursuance of this act E. did, in 1838, enter another lot.

In 1843, on an assumption that the government had conveyed away its title to it, the *northeast* quarter was sold under the laws of Illinois for State taxes and bought by O. And in 1868, on an assumption that the title was still in the government, the same quarter was patented by the United States to P.

On a suit by P. against O., *Held*—

1st. On a supposition that the patent was given for the *northeast* quarter, that there was no estoppel shown either by the deeds from A. to E., both inclusive, or by the act of Congress (it being a private act), or by E.'s selection of a new lot which prevented the defendants from showing the truth of the case, to wit, that the patent was for the *northeast* quarter.