fraudulent invoice, they were within the letter of the law, and ought to be condemned. Besides, it does not appear that the higher invoice was according to the actual cost.

Swann, contrà.—The lower invoice was probably what the goods cost the consignor, who manufactured them. The higher invoice was what such goods were then selling for at that place.

But even if a fraud was contemplated, it was not carried into effect. No entry was made, nor attempted to be made, by the consignee, upon the false invoice. It was made upon the true invoice, and in conformity with the directions of the collector.

In this case, we hope there will be no certificate of probable cause. The conduct of the consignee has been fair and honorable in every respect. A doubt concerning the construction of a law is not "a reasonable cause of seizure."

MARSHALL, Ch. J., delivered the opinion of the court, to the following effect :—The court thinks this case too plain to admit of argument, or to require deliberation. It is not within even the letter of the law, and it is certainly not within its spirit. The law did not intend to punish the intention, but the attempt to defraud the revenue.

*313] *But as the construction of the law was liable to some question, the court will suffer the certificate of probable cause to remain as it is. A doubt as to the true construction of the law, is as reasonable a cause for seizure, as a doubt respecting the fact.

Sentence affirmed.

HIMELY *v.* ROSE.

Auditors' report.—Interest on decree.

It is not necessary to take exceptions to the report of auditors, if the errors appear upon the face of the report.

If the property, ordered to be restored, be sold, interest is not to be paid, of course.

THIS was an appeal from so much of the final sentence of the Circuit Court for the district of South Carolina, rendered upon the mandate from this court issued upon the reversal of the former sentence of that court (4 Cr. 292), as affirmed the report of auditors appointed by the court "to inquire and report whether any, and if any, what deductions are to be allowed for freight, insurance and other expenses which would have been incurred by the owners in bringing the cargo into the United States, and also to ascertain and report the interest to be paid by the claimant to the appellant," so far as that report allowed interest to the appellant, and disallowed the expense of insurance to the claimant.

This court, in reversing the former sentence of the circuit court, decreed as follows : That the Sarah and her cargo "ought to be restored to the original owners, subject to those charges of freight, insurance and other expenses which would have been incurred by the owners in bringing the cargo into the United States ; which equitable deductions the defendants are at liberty to show in the circuit court. This court is, therefore, of opinion, that the sentence of the circuit court of South Carolina ought to be re-

versed, and the cause be remanded to that court, in order that a final decree may be made therein conformable to this opinion."

*Upon receiving the mandate from this court, to carry its sentence of reversal into effect, the circuit court directed a reference to auditors in the terms above stated; and the auditors reported "that the claimant is not entitled to any insurance, but that he ought to be allowed freight on the cargo, at the rate of one cent per pound, for such of it as was in bags, and one and a half cent per pound, for such of it as was in casks, and also the sum of $500 for expenses incidental to the landing, wharfage, storage, &c., of the cargo, which sums being deducted from the amount of the decree, the claimant must pay the appellant two years' interest on the residue, at the rate of 7 per cent. per annum." [*314

Martin and *Jones*, for Himely, the appellant.—After the express mandate of this court, directing the allowance of freight and insurance, the court below ought not to have referred it to auditors to say whether anything should be allowed for insurance.

The mandate was silent as to interest; indeed, as the proceeding was *in rem*, and the decree for restitution, interest could not have been given.

LIVINGSTON, J.—Can this court take notice of these errors in the report, if no exception were taken in the court below?

Martin.—There were no particular items to which an exception was necessary. The error appears palpably upon the face of the proceedings. And this court, in the case of *Murray* v. *The Charming Betsy* (2 Cr. 124), decided, that exceptions are not necessary, if the error appear upon the face of the report itself. Besides, on an appeal from a sentence of a court of admiralty, the question of fact is opened as well as the question of law.

MARSHALL, Ch. J.—Nothing is before this court but what is subsequent to the mandate.

**Martin.*—The auditors have allowed nothing for the expenses of the cargo at St. Jago de Cuba: Himely was as much entitled to those expenses, under the decree of this court, as to those incurred in this country. [*315

C. Lee, contrà.—There were no exceptions to the report in the court below. It was there regularly confirmed by that court, whose decree ought to be confirmed in this, unless the directions of the mandate have been counteracted in one or both the particulars of which the appellant complains. The mandate left the claim of insurance open, to be adjusted in the circuit court, and unless insurance was proved to have been actually made, nothing should be allowed on that account. It is now to be presumed, and taken as an admitted fact, that no insurance was made by the appellant.

The interest was properly allowed, unless good reason can be shown, in equity, why it should not be paid. According to modern usage, in commercial controversies, interest is deemed an inseparable incident to the principal debt, the payment whereof is wrongfully delayed. This being the general rule, and the mandate being silent, the allowance of interest is unobjectionable. As the claimant was to have the benefit of equitable deductions, he

ought to be subjected to equitable charges. He has had the use of the money, and the other party has lost the interest of it.

The freight and other charges, as well as the value of the cargo, having been amicably arranged by the parties, and there being no appeal as to them, they are not now to be the subject of inquiry or decision.

Upon the question of interest, Mr. Lee cited *Hills* v. *Ross*, 3 Dall. 332, and *Crawford* v. *Willing and Morris*, 4 Ibid. 289.

*316] *March 10th, 1809. MARSHALL, Ch. J., delivered the opinion of the court, as follows:—A decree having been formerly rendered in this cause, the court is now to determine whether that decree has been executed, according to its true intent and meaning.

That decree directed "the cargo of the Sarah to be restored to the original owners, subject to those charges of freight, insurance and other expenses which would have been incurred by them, in bringing the cargo into the United States." In carrying this decree into execution, an allowance has been made for freight, and for expenses incurred at the port of importation; but no allowance has been made for expenses at the port of lading, nor for insurance. The appellants, too, were charged with interest on the money into which the cargo had been converted. No exception having been taken to this report, it is now liable to those exceptions only which appear on its face.

So far as respects freight, and the expenses at the port of entry and delivery, the report must be considered as correct; but in those items of the claim which were disallowed, the error, if it be one, is apparent on the face of the proceedings, and may, therefore, be corrected.

The court has not considered the appellants as infected by the marine trespass committed by the captors of the Sarah and her cargo. Their operations commence with their purchase at St. Jago de Cuba; and the decree designed, and is thought to have been so expressed, as to charge the owners with all the expenses which they would have incurred, had they *317] made the purchase themselves. Had they *done so, they must have incurred some expenses at the port of lading. Among these is certainly not to be estimated the price of the cargo; but any expense necessarily attendant upon the transaction, such as putting the cargo on board, may properly, under this decree, be charged to the owners.

It is obvious, too, that the owners, or the underwriters, if they represent the owners, had they been the purchasers, must have insured the vessel and cargo from St. Jago de Cuba to the United States, or must themselves have stood insurers; in which latter case, the risk is deemed equal to the insurance. The decree, therefore, formerly rendered by this court, is understood to have entitled the appellants to insurance.

The question of interest is more doubtful; but this court is of opinion, that the appellants ought not to be charged with interest. Restitution of the cargo was awarded. The property having been sold, the money proceeding from the sales is substituted for the specific articles. If this money remains in possession of the court, it carries no interest; if it be in the hands of an individual, it may bear interest, or otherwise, as the court shall direct. But it is not supposed, that the party to whom restitution is awarded, receives interest in such case, unless it be decreed by the court. This

court did not decree interest; nor would interest have been decreed, in this case, had the particular fact of the sale been brought before them.

The circumstances of the case were such as to restrain the court from inserting in its decree anything which might increase its severity. The loss was heavy; and it fell, unavoidably, on one of two innocent parties. The court was not inclined to add to its weight, by giving interest in the nature of damages. The allowance of interest, therefore, in the court below is overruled. The sentence of the circuit court is reversed.

*Johnson, J.—When the mandate of this court was receeived in the court below, auditors were nominated, by consent, to report what would be the usual mercantile allowance between the parties; and to state an account accordingly. Those auditors reported against the allowance of insurance, and in favor of interest. The supposition that the expense of transportation was not allowed, I am convinced, must be incorrect; for insurance and interest were the subject of the only two exceptions taken to their report. Upon hearing argument on these two exceptions, the court affirmed their report upon both these points, and I have since heard no reason to alter the opinion which I entertained on the argument below. [*318

It is contended, that the mandate of this court was peremptory as to the allowance of insurance, and did not sanction the charge of interest. The words of the mandate, so far as relates to these points, are the following: "subject to those charges for freight, insurance and other expenses, which would have been incurred by the owners in bringing the cargo into the United States; which equitable deductions the defendants are at liberty to show to the circuit court," &c. These words imperatively require two things; viz., that the deductions, to be allowed to Himely, should be equitable in their nature, and should be shown to the court. Upon what ground could an allowance for insurance have been deemed just or equitable? It could only have been upon Himely's having actually paid an insurance, which he was at liberty to show, or upon his having himself incurred that risk which would have been covered by insurance. The fact was admitted, that he had not insured, and as to having incurred any risk himself, I cannot understand, in what possible view he could have incurred a risk, when this court has decided, that if the property had been lost, he would have lost nothing. It was not the property of Himely, it was the property of Rose; had it been sunk in the ocean, it would not have been the loss of Himely, it would have *been the loss of Rose; there can be no reason, then, why Rose, who ran all the risk, should be adjudged to pay an insurance to Himely, who incurred no risk: but such is the effect of deducting it from the sum to be paid to Rose. After deciding that the property was not changed, that it still continued in Rose, and was never vested in Himely, I feel confused by the inquiry, on what possible ground the allowance for insurance can be sanctioned. [*319

With regard to interest, the question is not so clear, but the difficulty does not arise upon the abstract equity of the charge. In equity, interest goes with the principal, as the fruit with the tree. Rose is now to be considered as the rightful owner of the property, and ought to have had the possession and use of it, during the existence of this contest. But Himely, having given stipulation bonds, was, by the order of the district court, ad-

mitted to the possession and use of it, added it to his capital, traded upon it, and made such profits and advantages of it as his skill or ingenuity suggested. Rose, in the meantime, was kept out of the use of it, and lost those emoluments and mercantile advantages which might have resulted from the use of it. It was not a case in which the property is locked up in a warehouse, or the proceeds thereof deposited in the hands of the register of this court, but a case in which the goods were, in fact, converted into money, by the effect of the stipulation bond, and the use of it given to Himely, to the prejudice of Rose: there could, therefore, be no radical objection to the charge, on the ground of equity. Had the mandate issued to restore to the party a flock of sheep, or stock, or bonds bearing interest, it is presumed, that it would have been construed to authorize the delivery of their natural or artificial increase, without any express words to carry them.

But it is said, that the mandate does not expressly authorize this allowance. This is true; but it must be recollected that the mandate of this court enjoins the allowance of equitable deductions. Now a variety of
*320] deductions *may be, in the abstract, equitable, but may lose that character by its being made to appear that ample compensation has been already made for them. It was in this light that the court below sustained the charge of interest: because, having had the usufruct of the property concerning which those charges on his part, which merited the denomination of equitable deductions, were incurred, it appeared to the court, in fact, that he had been compensated in part for those advances by the use of the money. If this court had not made use of the terms equitable deductions, that court probably would not have thought itself sanctioned in doing what appeared so equitable between the parties.

March 15th. *Martin* and *Jones*, for the appellant, moved to open the principal decree; and stated, that they were prepared to show that this court had been misinformed as to the law of St. Domingo. That they had further *arrêtes*, or ordinances of the French government, explanatory of that upon which the sentence was founded; and showing that the seizure of the property was the exercise of a belligerent, not of a municipal right.

They contended, that while the property remained out of the jurisdiction of the United States, it was lost to the libellants, and that Himely was entitled to a compensation for bringing it within their reach. That he ought to be reimbursed, at least, what he paid for the property.

C. Lee, contrà.—The appeal as to the execution of the mandate, gives no right to open the original decree.

No further order was taken in consequence of the motion.

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*321] *Welsh *v.* Mandeville & Jamesson.

Citation.

This court will not compel a cause to be heard, unless the citation be served thirty days before the first day of the term.

Youngs, for the defendant in error, objected to the hearing of the cause at this term, the citation not having been served thirty days before the first