



HIGH COURT of ERRORS and  
APPEALS, of *Pennsylvania*.

September Sessions, 1784.

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TALBOT *qui tam*, &c. *versus* THE COMMANDERS  
and OWNERS of three Brigs.\*

THIS was an appeal from a decree in the *Admiralty* on the following case:—*Silas Talbot*, commander of the armed sloop *Argo*, belonging to, and in the service of these States, duly commissioned, sailed from *New-London*, in the State of *Connecticut*, the twenty-ninth of *August*, 1779, on a cruise. On the sixth of *September*, after an engagement of three hours, he took as prize upon the High Seas, an armed Letter of Marque vessel, called the *Betsy*, of two hundred tons burthen, with a valuable cargo, belonging to subjects of *Great-Britain*, not being inhabitants of *Bermuda*, and bound for *New-York*, then in possession of the *British* naval and land forces. He took the commander and eleven of the people out of the prize, leaving three in her, and put on board a Prize-master and eleven other hands, with instructions to proceed to *New-London*. The firing was heard, and the engagement for more than an hour seen by persons on board three Letter of Marque Brigs that had lately sailed from *Philadelphia*. During the engagement the *Betsy* was perceived from the three Brigs, bearing towards them. Her surrender was also seen from on board them. The prize-master in obedience to his instructions, proceeded on his voyage in company with the *Argo* for *New-London*. Some time after the three Brigs were

\* For the decree in the *Admiralty* in this case, and the evidence upon which it was principally founded, I beg leave to refer the Reader to a small volume of Reports of Cases in the *Admiralty of Pennsylvania*, published by the Honorable *Francis Hopkinson, Esquire*, the Judge of that Court; and printed by *Bohson* in *Philadelphia*. In this book will, likewise, be found several important decisions upon questions of *Hypothecation*.

1784. were discerned from on board the *Betsy*. Towards evening they created the *Argo* and *Betsy*. The next day, early in the morning, the prize being in tow of the *Argo*, the three Brigs were seen from on board the Prize and the *Argo*, chasing them. The Brigs approached fast under *British* colours. Captain *Talbot* finding it impracticable for the prize to escape, with a trumpet hailed her, directing the prize-master to throw off the rope, and lye too with the prize, until the three Brigs should come up with her, adding, that he with the *Argo* would run a little to leeward and lye too also—and that if the brigs should prove to be *American*, the prize-master should endeavour to obtain permission for the prize to come down by herself and inform him of the brigs being friends. In a short time the brigs came up, and from one or two of them under *British* colours, the *Betsy* was fired at twice, she then bearing *British* colours reversed, according to the custom of prizes, and being in the latitude of 39 degrees 4 minutes, and the longitude of 71 degrees 24 minutes. When first hailed, the people on board the *Betsy* answered, she was from *Montserrat*. Persons from two of the brigs, one of which had fired at the *Betsy*, boarded her. Among these was *W. D.* from the last mentioned brig. The commander of this brig was informed by the prize-master on board the *Betsy*, that she was a prize to the *Argo*, commanded by Captain *Talbot*; that the vessel then in sight was the *Argo*; that he was put on board the *Betsy* as prize master by Captain *Talbot*; he shewed him his written instructions as such; but, said the *Betsy* had been taken three days before. *W. D.* from on board the *Betsy* told the said commander, that the prize-master denied having seen the brigs the day before, or that she was then captured; but from every circumstance, and from the report of one of her *English* sailors, he was convinced, she was the same vessel seen engaged the day before. On board the brig, to the commander of which this information was given, were a boatswain and sail-maker, who had been taken by Captain *Talbot* about ten days before in a vessel from *London*, and sent by him prisoners to *Philadelphia*, and shipped there. One of the persons put into the *Betsy* by Captain *Talbot*, knowing them, mentioned this fact in conversation on board the said brig, to *W. D.* The person thus put on board by Captain *Talbot* also said, that the *Betsy* had been taken three days before. The papers on board the *Betsy* were examined by *W. D.* in behalf of the three brigs, and the number of names specified in the *English* papers, was found to correspond with the number of persons then on board. From these papers it appeared, that she was a *British* vessel bound from *Montserrat* to *New-York*. *W. D.* made several other examinations on board the *Betsy* on behalf of the three brigs, and in the course of them was informed by a seaman who belonged to her while possessed by the *British*, that she was taken the day before. This sailor also said, she sailed from *Montserrat*. Before *W. D.* left *Philadelphia*, he had heard in the coffee-house there, a few days before he sailed, that the *Argo* a *New-England* privateer had taken the

the *Dublin* cutter, fitted out full of men of war's men. While these examinations were made, the two other brigs chased the *Argo*, under all sail, upon which Captain *Talbot*, concluding they must have been *British* cruisers, made sail before the wind, and soon left them. The commanders of the three brigs took the prize-master and hands out of the *Betsy*, who were carried to *Spain*, except one or two of the least considerable, and also took out of her two cannon, small arms, powder, ball, two coils of cordage, and some other articles. They then put a person on board her as prize-master, and men from each of the brigs, with written orders, dated the 7th of *September* 1779, and signed by them all, directing him to "take charge of her as prize to the brigs *Achilles*, *Patty* and *Hibernia*; carry her into *Delaware*, *Chesapeake*, *Egg-Harbour* or *Boston*, but to get her if possible into *Delaware*, *Chesapeake*, or *Egg-Harbour*, for fear of the sloop *Argo's* falling in with her, begging him to stand to the southward that night, and strive hard for *Philadelphia*." These orders were signed on board the brig, the commander of which had directed the examinations before mentioned on board the *Betsy*. The *Betsy* sailed off close by the wind to the southward, was afterwards retaken, carried into *New-York*, and restored to the former owners. On the 17th of *September*, 1779, Congress resolved, "that in consideration of the distinguished merit of Colonel *Silas Talbot*, a commission of Captain in the navy be given him, and that the marine committee be directed to provide a proper vessel for him as soon as possible." On the first of *March*, 1780, Congress resolved, "that any interest The United States may have in the capture of the *Betsy* by the sloop *Argo*, Captain *Silas Talbot*, be relinquished to the said Captain, and the officers, seamen, and marines, under his command at the time of the capture." On the 13th of *March*, 1780, Captain *Talbot*, quitam, &c. filed his bill in the Court of Admiralty for this State, against the three brigs, their owners and commanders. Process issued accordingly. On the 27th the owners came severally before the Court, and entered into stipulations for the performance of the decree. *August* 29th, a Plea to the jurisdiction filed, "for that in cases of damages to be assessed or recovered to make satisfaction for a wrong or trespass to person or property, the prosecutions ought to be in Courts of Common Law." Replication, "that the cause of action was within the jurisdiction of the Admiralty." Plea dismissed, *Respondeant Ouster* awarded, and plea of *Not Guilty* filed. *July* 19th, 1783, decree, that the Libellants have and recover of the Respondents £. 12,791. 5. 0. with Costs, and on the 22d the Respondents appeal.

The cause was ably argued on several days, and now, at an adjourned session, held the 14th of *January* 1785, the PRESIDENT delivered the resolution of the Court.

DICKENSON, PRESIDENT:—There are two principal questions concerning jurisdiction in this cause.

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*First.* Whether the Court of Admiralty for this State had jurisdiction?

*Second.* Whether this Court has jurisdiction!

The first has been sub-divided into these *secondary* questions:

*First.* Could the Court of Admiralty for this State take cognizance as an *Instance* Court, supposing this cause not to be a cause of *Prize*?

*Second.* Did that Court take cognizance as a *Prize* Court?

It is acknowledged by the Council for the Appellants, that if this is not a cause of *Prize*, the Court of Admiralty might take cognizance as an *Instance* Court, it being now settled that damages may be assessed in the Admiralty—if it was not for an objection arising from the Act of Assembly for regulating and establishing Admiralty jurisdiction in this State. By that Act the judge of the Admiralty shall “have cognizance of all controversies, suits, and pleas of maritime jurisdiction, *not cognizable at the common law*, and thereupon shall decree as the maritime law, the law of nations, and the laws of this Commonwealth shall require.” The objection made, is, that the present controversy is *cognizable at common law*.

It is manifest from this Act, that in framing it, the legislature took into consideration the *English* statutes relating to things done upon the High seas, and particularly the statutes of the 13th of *Richard* the *second*, ch. 3, and 5, and the 2d of *Henry* the *fourth*, ch. 11. by which, “Admirals and their deputies are prohibited from meddling with any thing done within the realm of *England*, but only with things done upon the seas, according to that which hath been duly used in the time of *Edward* the *third*,” and it is “declared, that the Court of the Admiral hath no manner of conu- sance, power, or jurisdiction of any contract, plea or quarrel, or of any other thing done or rising within the bodies of counties except in cases of death or *Mayheme* done in great ships being in the main stream of rivers beneath the \* points of the same.”

It is clear even from these cautions against encroachments of the Admiralty upon the Courts of common law, and from the well-known dispute mentioned in *Cook's 4th Inst.* that the jurisdiction of that court, as to “things done upon the sea,” is acknowledged to be *proper*: and, that as to *them* the jurisdiction of the common law courts was *not proper*, but only acquired by a *Fiction* in sup- posing them to have been done in the same county, when they were not. *4 Inst.* 134 to 143. *3 Blackst.* 43, 106, &c. *Fortescue de Laudibus* 67. *et in notis.* The common law courts had a great advantage. They used it. There was no superior Court to *prohibit* them. They went beyond the “*Credo quia impossibile est*,” for they upon certain suggestions, *without* “*believing*,” them, but *knowing* them to be both *false* and *impossible*, assumed jurisdiction; and would not

\* Doctor *Zouch*, in his “*Jurisdiction of the Admiralty*,” p. 25. urges strong reasons against this construction; and in *Queen's Reports*, p. 122 it is said by the Court, that the statute of the 13th of *Richard* the 2d, is misprinted in the translator's mislook bridges for points, that is to say the Lands. &c.

not permit *evident truth* to be regarded. With such laboured ingenuity has the jurisdiction of common law courts, as to acts upon the High Seas, been sustained, to the great mortification of Sir *Thomas Rydlye* and other learned Civilians, \* the former, with much commendation from the rest, very gravely undertaking to prove, that a ship could not sail in *Cheapside* in the city of *London*,† the place usually assigned in suggestions, as the scene of naval transactions.

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Yet, notwithstanding these statutes, mariners have in *England* been allowed to sue for wages in the Admiralty, upon contracts made there within the body of a county, "against the statute *expressly*," as was held by the Judges, when that great man, Lord Chief Justice *Holt*, presided in the King's Bench. *Salk* 33. The reasons were, that the remedy was *easier*, because they could join in the suit, and *better*, because the ship would be answerable.

In the present case, the owners, masters and sailors of the three brigs could not be jointly sued at common law. If they could not, what a multiplicity of actions must be brought. Supposing the owners, commander and men of the *Argo* could join in a suit at common law, one of them might destroy the action by a ‡ release. The vessels are not liable in the same manner at common law, as they are in a Court of Admiralty.

If the Court of Admiralty for this State cannot take cognizance of things which courts of common law may draw into their cognizance, it seems to have been nugatory in the legislature to have given that Court any other jurisdiction than in cases of *Prize*; for even in the case of wages, justly a favourite object of Admiralty jurisdiction, mariners may sue for them at common law.

It appears to have been the intention of the legislature, that justice should be done in the easiest and best manner, and that by the words "not cognizable at common law," should be understood, "not properly cognizable at common law."

The next *secondary* question is so connected with the definition of a *cause of Prize*, and the treating of that subject introduces so many CONSIDERATIONS CONCERNING RELATIVE CIRCUMSTANCES IN THESE STATES, AND THE LAW OF NATIONS, and these again are so COMBINED WITH ENQUIRIES AS TO THE JURISDICTION OF THIS COURT, that they cannot be conveniently, at least, not easily separated. We will at present therefore pass to the second *principal* question, reserving till that shall be discussed, what peculiarly relates to the question we now leave.

This State has all the powers of Independent Sovereignty by the Declaration of *Independence* on the 4th of *July*, 1776, except what were resigned by the subsequent *Consederation* dated the 9th of *July*, 1778, but not completed by final ratification until the *first* of *March*, 1781.

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\* *Fictio*, est in recerta, ejus quod est possibile, adversus veritatem, pro veritate a jure facta assumptio. Doctor *Godolphin's* view of Admiralty Jurisdiction, p. 84.

† *Zouch*, p. 131. *God* p. 105. 3, *Blackstone*, 107.

‡ *Lev.* 355.

1784. By the Confederation, *The United States* are vested, among other things, with the "sole and exclusive power of establishing rules for deciding in all cases what captures on land and water shall be legal, and in what manner Prizes taken by Land or Naval Forces in the service of *The United States* shall be divided or appropriated; of granting Letters of Marque and Reprizal in times of peace; appointing Courts for the trial of Piracies and Felonies committed on the High Seas, and establishing Courts for receiving and determining finally appeals in all cases of Captures."

Such a Court was established by the title of "The Court of Appeals in cases of Capture." Acts of Congress, *May 24, 1780*. By the commission, the Judges are "to hear, try and determine all appeals from the Courts of Admiralty in the States respectively, in cases of capture, which now are, or hereafter may be duly entered and made in any of the said States." Acts of Congress, *February 2d, 1780*.

It was resolved by Congress, *May 24th, 1780*, "that all matters respecting appeals in cases of capture, now depending before Congress or the Commissioners of Appeals, consisting of members of Congress, be referred to the newly erected Court of Appeals to be there adjudged and determined according to Law."

It is necessary to enquire, what is the reasonable and legal meaning of the words of the Confederation, and of Congress in their several acts relative to this subject, for that is the true meaning.

Thus we shall be led into a construction, by which the positive words may be properly and justly modified.

What are the foundations of such a construction here? *First*—The Council for the Respondent, are themselves compelled to qualify the generality of the expression, "establishing Courts for receiving and determining finally, appeals in all cases of captures," by adding, *as prize*. The addition is indispensably necessary; for without it, the words would comprehend every kind of taking, on land and water, in peace and war. Having been obliged to go so far, in qualifying the extent of the original expression, we are under the same necessity of explaining the terms of qualification themselves; and certainly we have the same right, founded on reason and law, to explain them, that we had to introduce them. In doing this we shall find, *Secondly*—That "captures, as prize, by citizens of *The United States*, may be carried into foreign countries, and be legally proceeded against in the Courts of Admiralty there; and therefore it is to be inferred that the Confederation intended only such captures," brought *infra præsidia* of *The United States*. That this was the intention thereof, further appears, as *Thirdly*—Congress, in the commission and resolution before mentioned, have shewn their sense of the words "Cases of Captures," by using them in reference to appeals "in cases of capture, which then were duly entered and depending," as well as to future cases; but none were "then entered and depending," except where the "Captures" were brought *infra præsidia* of *The United States*. This sense of Congress, will  
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appear still more plain from their several following resolutions, prior to the Confederation; which were in force at the time of the capture made by Captain *Talbot*, and which were the ground-work of the ninth section of the Confederation, "November 25, 1775—That it be recommended to the several Legislatures, as soon as possible to erect Courts of Justice, or give Jurisdiction to the Courts now in being, to determine concerning captures to be made.—If the capture be made on open sea, the prosecution shall be in the Court of such colony as the captor may find most convenient; provided, that nothing in this resolution, shall be construed so as to enable the captor to remove his prize from any colony competent to determine concerning the seizure, after he shall have carried the vessel so seized, within any harbour of the same. That in all cases an appeal shall be allowed to Congress, or persons appointed by them.—That when vessels are fitted out by private persons, the captures made, shall be to the use of the owners. December 5. That in cases of re-captures, the re-captors shall retain for salvage, according to the time, &c. March 23, 1776. That all vessels and goods belonging to inhabitants of *Great-Britain*, taken on the high seas, by armed vessels of private persons, and commissioned, being libelled and prosecuted in any Court erected for trial of maritime affairs in any of the colonies, shall be deemed and adjudged to be lawful prize.—Vessels and goods taken near the shores of a colony, by the people, or a detachment of the army, shall be deemed lawful prize, and condemned in the Court of Admiralty of that colony.—Commissions to be obtained, and bonds to be given for observance of instructions from Congress: Instructions to the Commanders of private vessels of war: You shall bring such vessels, &c. as you shall take, to some convenient port of the United Colonies, that proceedings may thereupon be had in due form, before the Courts which are or shall be there appointed to hear and determine causes civil and maritime.—You shall bring one or two of the principal persons of the vessel, as soon as may be, to the Judge of such Court to be examined, and deliver to the said Judge all papers, &c.—You shall keep and preserve every vessel, &c. by you taken, until they shall, by sentence of a Court properly authorized, be adjudged lawful prizes, not breaking bulk, nor suffering such a thing to be done." Fourthly—By the maritime law of nations, the appropriation of jurisdiction to a particular Court of Admiralty, depends upon the capture being *infra præsidia*, 3 *Blackstone*, 108. that law regarding proceedings *in rem*, the acquittal or condemnation of the ship or goods. Answer of the *British* Court, to the memorial delivered by order of the King of *Prussia*, *Expédition des motifs*. 11. 12. Mod. 143. It would be injurious to nations if it was otherwise; for it would cause competition of jurisdictions, and would occasion frauds. The usual method is simple and fair. Fifthly—The articles in the treaties of *The United States* with *France*, the *United Netherlands* and *Sweden*, with relation to prizes, refer to the cases of prizes *confiscated into the ports* of the contracting powers, relying

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relying on cautions against malversations and contraventions to be given by commanders of private vessels of war, rules and regulations for deciding the legality of prizes, and trials in Courts of Admiralty generally. *Sixthly*—An authority to “establish rules for deciding in all cases, what captures on land or water shall be legal, and Courts for receiving and determining finally, appeals in all cases of captures,” as prize, brought *infra præsidia* of *The United States*, together with the other powers vested in Congress, will sufficiently obviate the mischiefs apprehended from the irregularities of citizens of *Confederated America* upon the high seas.

*Foreigners* are protected by the confederation, from the irregularities mentioned; for, Congress can, “exclusively, appoint Courts for the trial of piracies and felonies committed on the high seas,” and can send out a naval force to cruise for and seize the offenders. If the Respondent was a *Frenchman*, and the decree goes against him, he could not justly complain; for he instituted his suit in an *American Court*. If the appellants were *Frenchmen*, and the decree goes against them, they could not justly complain, for they took, without battle, by force and violence, from a friend and ally, that which in their sight, according to their own allegations and proofs, he had before fought for and captured, and afterwards voluntarily put themselves within the jurisdiction, precinct, and power of an *American Court*. What are the sentiments of learned authors, treating of the law of nations, upon such an occasion? “*Quæ ab hostibus capiuntur, statim capientium fiunt*; which is to be understood, *when the battle is over*. *Voel*, and many writers he refers to, maintain with great strength, *per solam occupationem dominium prædæ hostibus acquiri*. One argument used to prove it, is, that *the instant* the captor has got *possession*, no friend, fellow-soldier, or ally, can take it from him, because it would be *a violation of his property*.” Lord *Mansfield*, delivering the resolutions of the Court, in the case of *Goss and another*, against *Withers*. In either case, and in the strongest light in which the affair can be viewed, it is no more than a matter to be treated of between their Sovereign and *The United States*. 2. *Shower*, 232. *Raym.* 473. If it be said that Congress should have a legal mode of making compensation, by rectifying improper decisions against foreigners, thereby to prevent disagreeable consequences, it is a doctrine that cannot be universally admitted, for reasons too plain to be insisted on. If it be confined to acts on the high seas, *provision has been made by the Confederation, in the cases where it was judged necessary*. What the *Kings* of nations desire and stipulate for in treaties, as to transactions on the high seas, is to secure their people from being plundered by the citizens or subjects of those with whom they treat. That great point being guarded, and it is guarded here, the danger of consequences from cases that rarely occur, complicated with a variety of circumstances, and decided upon in open Courts, are not to be apprehended. When Sovereigns are determined to quarrel, they will never want pretences; but while they reverse the sacred



sacred obligations of justice and humanity, or the precious sentiments of the good and wise in their own and succeeding ages, they will not disturb the repose of the world, by violating the law of nations, upon slight claims of their subjects, or “*in re minime dubia.*” Answer of the *British Court*. 23. *Vattel*, bo. 11, ch. 4, 5, 7. Neither can *one of these States* prey upon another, without violating the Confederation, for by that, “No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by *The United States* in Congress assembled, for the defence of such State, or its trade; nor shall any State engage in any war without their consent, unless invaded by enemies, or certainly advised of an intended invasion by *Indians*: Nor grant commissions to any ships or vessels of war, nor letters of marque, or reprisal, except it be after a declaration of war by *The United States* in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, unless infested by pirates, and then only until *The United States* in Congress assembled, shall determine otherwise.” Besides, “All disputes and differences concerning *any cause whatever*, are determinable by Courts to be established under the authority of Congress.”

Let us now enquire whether the present case is *such a cause of prize* as is mentioned in the many cases quoted by the Council for the Respondent.

In what circumstances is any of those cases like this? Does it appear from any of them, that the *Prize Court in England*, would decide *such a case as this is*? Does it appear that the Courts of *Westminster-Hall*, in any action for *such a trespass as this*, would refuse to take cognizance, because the original taking was a capture *as prize*? Does it appear that they would refuse to take cognizance, under colour that the second taking was a capture *as prize*? If they should, ought any such decision to have weight with us in this case? What are the cases quoted? A justification by persons of ORIGINAL captures made by themselves, because made *as prize*. What is this case? A justification by persons of *their conduct*, after a capture made in battle, by others in their fight, under pretension of right, founded on that circumstance. If they say, the second taking was an original capture *as prize*, their assertion is falsified by *their own proofs*, that they saw the capture made by others, the day before. If they say, their proceedings were united with the original capture *as prize*, by being in fight at the time, let them take care that their pretension of right is well founded. *Comb* 367. If it is not, their proceedings are distinct from the original capture, and they are plainly Trespassers, and must abide by the consequences. We are clearly of opinion, that their pretension of right is utterly unfounded, and that the whole conduct of the Commanders and Crews of the Brigs, was cruel, unprovoked, wanton, and *malia fide*. In this very singular and extraordinary case, they have exerted themselves to disable the Respondent from proving the capture to be prize; and

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and is the sole question afterwards, to be, *prize or not*? What necessity is there for determining whether the *Betsy* was prize or not? Is it not evident from the case of *Combs*, against *the Hundred of Bradley*, in *Salkeld's Reports*, and of *Goss and another*, against *Withers*, in *Burrow*, and many other cases, that an action will lie on possession by the plaintiff? and with what peculiar force does the reason apply in this case, for the action being maintained merely on the possession? This Court, and the Court of Admiralty are competent, not only to direct proceedings, but to ascertain facts, judge of them, and the law upon them, and assess damages, as justice may require. As to the notion of *mistake* excusing, it is a *petitio principii*. The *mistake* does not appear—the *crime* does. So far from *behaving as partners* in the capture, with the *Argo*, the Commanders of the three Brigs, who saw the surrender to her, chase her off; send the *Betsy* as prize to themselves only, for a port distant from the home of the captors, and in the eye of the wind, though in a part of the sea where she was particularly exposed to dangers from the enemy, with orders to avoid certain ports, for fear of the *Argo's* falling in with her. In fact, it was not a real but a pretended capture, as prize, by them. Are we then bound, in such a case, to call it a *cause of prize* because the original taking was a capture, as prize? Or are we to refuse to call it a *trespass* though the second taking was not a capture, as prize?

How far soever, the learned Judges in *England*, have carried the justification of captures, from the circumstance of their being made as prize, yet they never have carried it as far as this case extends. That they have gone a great way is evident. In the cited case of *Vanderwoodst and others* against *Thompson*, the defendant, in an action of trespass, having a letter of *Marque*, took a vessel that made some resistance, and carried her to *Newcastle*, where she was seized by the Custom-House Officers, for having smuggled goods on board; and she was afterwards condemned in the *Exchequer*. It was contended for the plaintiff, that the capture was unlawful, because the defendant did not belong to the Custom-House, and he could not justify the seizure under the hovering act of 6 *Geo. I. ch. 11. King's ships only can seize under such circumstances*. It was held, "As there was reason to suppose that the ship was a pirate, though the *Jury* should be satisfied she was not really so, yet the action would not lie." Afterwards, "there was a motion for a new trial, which upon consideration, was denied by the Court."

If that cause was cognizable in the *Prize Court*, and if that Court determines solely by the law of nations and treaties, as is laid down by the Judges, how were other nations interested in the principle of such a decision? If it was not cognizable in the *Prize Court*, how can it be applied to the present case, in favor of the Respondent?

To proceed—If the Courts of *Westminster Hall*, in an action for such a trespass as this, should refuse to take cognizance because the criminal taking was a capture as prize, or under colour that the

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second taking was a capture *as prize*, ought any such decision to have weight *with us in this case?*—It ought not.

Such a decision must turn entirely upon the municipal law of *England*. It must be founded upon this principle governing in the cases cited by the council for the respondent; “that, of a seizure *as prize*, the *Common Law* does not take notice as a trespass.” *Le Caux and Eden*. Admit the principle. It applies not. *This* is not a *Common Law* Court. The Act of Assembly establishing this Court, makes it a “a Court of Appeals from definitive sentences or decrees of the Admiralty.” We are *therefore* a Court of Admiralty. “If the sentence of the Court of Admiralty is thought to be erroneous, there is, in every maritime country, a Superior Court of *Review*, &c. to which the parties who think themselves aggrieved, may appeal; and this Superior Court judges by the same rule which governs the Court of Admiralty, viz. the law of nations and treaties. This manner of trial and adjudication is supported, alluded to, and enforced by many treaties.” Answer of the *British* Court, &c. We are a Court of Admiralty, competent to judge by *that rule*. The act of Assembly establishing Admiralty Jurisdiction in this state, declares, that the Court shall be governed by “the law of nations.” Whatever in the law of nations relates to a Court of Admiralty, relates to this Court, *because no treaty has diverted the application*. Answer of the *British* Court, &c. *Vattel*. b. 2, ch. 7. 3 *Blackst.* 69.

Much has been said of a distinction in *England*, between the *Instance Court* and the *Prize Court*, though the powers of both are exercised by the same person; and it is urged that *only the latter* judges by the law of nations and treaties. We are told, “it is no more like a *Court of Admiralty*, than it is to any Court of *Westminster-Hall*; that the manner of proceeding is totally different; that the appeal is different—to Delegates from the Admiralty—to Commissioners consisting of Privy Councillors, from the Court of *Prize*.—That to constitute the authority of the *Prize Court*, or to call it forth in every war, a commission under the Great Seal issues, &c.”\* Such a distinction may prevail in *England*, but is it known or regarded in other nations? The words “to call it forth,” are material. It seems only a solemn, official, notification to the Admiralty, that there is a war, and that it may proceed accordingly, as a declaration of war is a notification to the people in general. But this declaration does not make the war in the one case; nor, perhaps, does the commission constitute the authority in the other. It is confessed, “that the *most antient instrument* shews a *Prize Jurisdiction* either *inherent* or by commission in the *Admiral*. It is a letter from *Edward the Third* to the King of *Portugal*.” And, “that since the reign of *Queen Elizabeth*, the *Judge of the Admiralty*, either by virtue of an *inherent* power, or the King’s commission,

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\* Lord Mansfield delivering the resolution of the Court, in the case of *Lini* against *Rodney* and another.

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or both, has *solely* exercised the jurisdiction of Prize—and that as far back as particular cases can be traced, which is for a century, the Admiralty has judged of and condemned goods taken on land, as prize, as well as goods taken on sea.” Lord Mansfield, delivering the resolution of the Court, in the case of *Lindo* against *Rodney and another*.\*

What do treaties, antient and modern, stipulate for, in order to guard against violences on the seas? A trial in the Court of Admiralty, as soon as possible, before the effects taken are in any manner to be disposed of. Why? because, by the maritime law of nations, that court judges by the law of nations and treaties. Sir George Lee, Doctor Paul, Sir Dudley Ryder, and Mr. Murray, now Lord Mansfield, in their report, which forms the principal part of the answer of the British Court, and is so celebrated by Messrs Montesquieu and Vattel, † say, “By the maritime law of nations, universally and immemorially received, there is an established method of determination, whether the capture BE, OR BE NOT, LAWFUL PRIZE. Before the ship or goods can be DISPOSED OF by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon, as prize, in a Court of Admiralty, judging by the law of nations and treaties. The proper and regular Court for these condemnations, is the Court of that state to whom the captor belongs.”

Are we then, because in *England* they call the Admiralty Court a Prize Court when it acts in a cause of prize, and it then proceeds in a different manner, with an appeal to Commissioners of the Privy Council, to reject the “universal and immemorial” compact of mankind? There was a time——when we listened to the language of her Senates and her Courts, with a partiality of veneration, as to oracles. It is past—we have assumed our station among the powers of the earth, and must attend to the voice of nations—the sentiments of the society into which we have entered.

Lord Mansfield, in the cause of *Lindo* against *Rodney and another*, said, “The end of a Prize Court is to suspend the property till condemnation; to punish every sort of misbehaviour in the captors; to restore instantly, *velis levatis*, if upon the most summary examination, there does not appear a sufficient ground; to condemn finally (if the goods really are prize) against every body, giving every body a fair opportunity of being heard:—A captor may, and must force every person interested, to defend; and every person interested, may force him to proceed to condemn without delay. *These views* cannot be answered in any Court of *Westminster-Hall*, and therefore the

\* The very great antiquity of the Court of Admiralty in *England*, and the extent of its jurisdiction, may be known from the learned *Selden's* notes on *Fortescue de Laudibus* p. 67. *Zouch* 44, &c. *Godolph.* p. 22, &c. Tho' the authority of this Court, with respect to matters in which *foreign nations* may be concerned, and particularly to captures *jure belli*, is treated of, yet no distinction is made by these authors, as to the Court of Admiralty and the Court of Prize.

† *Montesquieu's* Letters, 5 March, 1753. *Vattel*, bo. 2, ch. 7. § 24. 3. *Blackst* 70.

the Courts of *Westminster-Hall* never have attempted to take cognizance of the question—Prize or no Prize; not from the locality of being done at sea, but from their incompetence to embrace the whole of the subject.”

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“*These views* are answered” here in the Court of Admiralty, and with as good cautions as in *England*; and as far as a Court of Appeals is concerned, they can be answered in this Court as fully as in a Court of Appeals to Commissioners there.

It seems proper here, to take notice of the objection against the authority of this Court, founded on the words of the law by which it was established, prior to the completion and final ratification of the confederation. It is constituted “a Court of Appeals for reviewing, re-considering, and correcting, the definitive sentences and decrees of the Court of Admiralty, *other than in cases of capture upon the water in time of war, from the enemies of the United States &c.*”

The construction of these words depends upon the resolutions of Congress, the Confederation, and the law by which the Admiralty Jurisdiction is established, taken together. If the principles of our preceding construction are right, they apply as aptly here, and the appeal is regular. If it is not, there will be a defect of justice. The Legislature intended to give this Court an authority to receive all Appeals from the Judge of Admiralty, where they were not resigned to a Continental Court of Appeals. This was not resigned. It therefore belongs to this Court. We will endeavour to promote justice, according to the intentions of the Commonwealth, conveyed in the laws; and not demit any part of her sovereignty, unless we are convinced beyond a doubt, that it is our duty to do so.

We now return to *the last* of the *secondary* questions. Did the Court of Admiralty take cognizance as a *Prize Court*? In considering this question, a very strict attention must be had to *the proceedings* of the Court of Admiralty in this case.—That Court was also erected by an act of Assembly, prior to the completion and final ratification of the Confederation. It is, to be sure, a Court of Prize, and an Instance Court, if that mode of expression be preferred; or in other words, the Judge who has but one commission, may try causes of Prize, and other matters of Admiralty Jurisdiction. There is a difference in his proceedings for condemnation in causes of prize, and those in other cases. His stile by law is, “Judge of the Admiralty.” The reasonable and legal meaning of the 3d, 4th and 6th sections of the law under which he acts, is, that in trying a cause of prize, the vessel or goods taken, must be within his jurisdiction, precinct and power. They are these,—“That in cases of prize, capture or re-capture upon the water, from enemies, or by way of reprisal, or from pirates, the same shall be tried, adjudged, and determined, *as well as to the question whether prize or not, as to the claims of the parties interested or pretending to be interested in the same*, by the law of nations and the acts and ordinances; of Con-

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The law then goes on to direct the mode of proceeding to the condemnation, ordering, “That the Judge shall cause notice to be published immediately in some news-paper of the day appointed for the trial of *such prize*, inserting therein the name, size or burthen, and other description of the said vessel, *so taken and brought into port*, the name and sur-name of the master, the place she last sailed from, the port for which destined, and in case of a re-capture, by what ship or vessel taken, to the end that all persons concerned may appear and shew cause, if any there be, wherefore *such capture, or re-capture, goods, merchandize, or other property*, should not be condemned and adjudged to the Libellants.”

Does the present case in any manner resemble the “*cases of prize*” described in this law? Where are “*Claimants interested or pretending to be interested*?” Claimants are *voluntary* Applicants for Justice. Shall trespassers, *compelled* to answer for their wrong, cover themselves with that character? Can there be “*Claimants*,” but in a proceeding *in rem*? How would the publication before mentioned suit *such Claimants* as the appellants? Were the proceedings of the Judge in this case, *such as he constantly has observed* in cases of prize? They were not. Application was made to him for *damages*. He proceeded in that line. Here is neither libel nor process against the capture.—no motion,—“no notice” under the act of Assembly.

What could give the Judge of the Admiralty for *this state*, jurisdiction to proceed as a Court of Prize upon a capture contested *between citizens of different states*, which is the case here, rather than any Court of Admiralty in any other state, when the property captured was not within the power of his Jurisdiction? Because, it is said, some of the offending Captains and their vessels came into this port. Does the jurisdiction of a Court of Prize depend on certain offenders, with respect to the capture coming into a port? Where are the authorities of law to shew that *this circumstance* can give such jurisdiction, or, that there can be an institution of a *cause of prize, according to the maritime law of nations, for damages only*? The authorities cited, that were thought most apposite, and were most relied on by the Counsel for the Respondent, were those of *Brown and Burtin* against *Franklin*, the King’s Proctor; and of the *King* against *Broom*. But they are not in any manner applicable. In the first, the Plaintiffs, Masters of two vessels, but having no regular Letters of *Marque*, took a *French* ship, cargo and money, upon land, in the *East Indies*—they being *English* subjects, it was held, that they acquired no right by this capture, but that it was a *perquisite*

*Site of the Admiralty.* The King's Proctor, upon the usual monition, got a sentence of condemnation for the whole, in order to make them account. In brief, *they had effects in their hands*, which by the maritime law of *England*, belonged to the King or his Admiralty, and they were obliged to account for them *according to that law*. 12 Mod. 135. Lord *Mansfield* calls it a proceeding *in rem*. *Le Caux* and *Eden*, in the notes. The second case was of the same kind, and was decided on the same principles. It was further said by the Council for the Respondent, that the Court of Admiralty that *first* proceeds in such a case as the present, acquires an exclusive right of deciding upon it, in the same manner as the nation that first commences a judicial process against pirates, may pronounce sentence against them. To say no more on this comparison, it is sufficient to observe, that such a right may be attributed to the atrocity of the guilt, as the offenders are *hostes humani generis*.

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If the coming of Trespassers, or of the vessels in which they trespassed upon the high Seas, within the power of a Judge's jurisdiction, authorises him to proceed against them, to what confusion may it lead? A capture is made from an enemy; afterwards friends trespass against the prize, and arrive in different ports, the fate of the prize being unknown. They are prosecuted in one or more Courts of Admiralty. The prize at length arrives in a different port, and is libelled in a different Court of Admiralty, for condemnation in the usual manner. What contests for jurisdiction must ensue? "*Quod inconveniens est non licitum est.*"

We are unanimously of opinion, that the Judge of the Admiralty for this state, had jurisdiction in this cause, and that the appeal to us is regular. We decree, that the Respondent recover and have of the Appellant, 1,141l. 5s.4d. with costs, except those in this Court, of which each party is to pay a moiety.\*

\* See *Post. Purviance vs Angus.*