State Gazette of North-Carolina.

EDENTON: PRINTED BY JAMES WILLS.

VOL. XII. THURSDAY, NOVEMBER 2, 1797. NUMBER 615.

From the (BOSTON) CENTINEL.

MR. RUSSELL,

THE decision in the following case in the Court of King's Bench, in *England*, by Lord KENYON, involves American property to a very great amount;—a great part of the vessels which have been carried into *France*, being insured in *London*. It is a mortifying circumstance, that the merchants of the *United States*, should not have recollected, that in the 25th article of the treaty of *Commerce* between the *United States* and *France*, it is stipulated, that when either of the contracting parties are at war, the vessels of the other shall be furnished with passports and sea-letters, the particular form of which is added to the treaty—as their neglect is likely to lose them much property, if not involve the tranquility of their country.

Yours, MERCATOR.

LAW INTELLIGENCE.

COURT *of* KING'S BENCH, *July* 24, 1797.

Hearsay, &c. vs. Swanson.

This was an action upon a policy of Insurance to recover the subscription on a ship bound from Lisbon to London, in the course of which voyage she was captured by the enemy.

Mr. *Law* stated the case on the part of the Plaintiff. He said, that the action was brought upon the policy underwritten on the ship Commerce, which sailed on the 14th of March, from Lisbon. On the 17th she was visited by a French ship; her papers being examined, she was allowed to proceed; but she had not proceeded long before she was taken a second time and carried into l'Orient, and was totally lost to the owner, she being condemned, together with her cargo, as prize to the enemy. The only question would be, whether she was or was not an American vessel? If she was, she was entitled to all the rights of neutral nations, and as such came under the rule of law as a subject of insurance, and the underwriters were liable for the loss.—In order to shew that she was an American vessel, it would appear before the jury that the Captain had his letter of neutralization on board and a Register of the United States of America, dated in 1791. He understood it was to be contended that the Register was not renewed within three years, and that therefore it was void. He found no such provision in the laws of America; besides, this ship had been in a situation to renew her Register in America. It was an American vessel, built of American materials, and as fully entitled to the protection of neutrality as any vessel could be. He really did not know what the points were on which the Defendants rested their case; if they had any, it was enough for his client in this action that the ship was an American ship, built of American materials, and that the Captain was an American subject by virtue of naturalization; that he and the ship were captured by the enemy, and the ship and cargo condemned as prize to the enemy. All these points were sufficient to entitle the Plaintiff to recover the subscription money, which was 100l.

Mr. *Antonio Callize* said he was commander of the ship Commerce, in March last. That he sailed on the 8th of March from Lisbon. That he was a native of Venice, naturalized in America. That he had letters of naturalization, but the French took them from him when the ship was captured. These documents never were returned to him. That on the 17th of March, he was taken by the French while on his voyage from Lisbon to London. He was released on the 21st, but taken again and carried to l'Orient, when the French took from him all his papers. That he had an American vessel before this which he exchanged for this. The papers belonging to both were on board this, and the French took them all, and never returned him any. That he was made prisoner at l'Orient, and that while he was in confinement a person came to him, saying, he was authorized by the officers of the Province to give him a paper, which he produced in court, which paper contained the sentence of condemnation of the ship Commerce, as prize to the French Republic.

Mr. *Erskine* stated for the Defendant, who was his own fruiterer, and who was interested in the voyage in question; and in the course of the market of these articles there was a great fluctuation, particularly in time of war; when a number of vessels came home together, the price of the market fell. In the interval before the coming of convoy to protect another fleet from the same place the price of the market fell again.—It was, therefore, of great advantage in this trade to bring over cargoes previous to the general arrival of the ships under convoy. But if any person wished to run over a ship without convoy, the premium was unusually high, and such as trade would hardly bear, and therefore a great number of ships were employed as neutral, because the underwriters will underwrite them at a lower premium. Such vessels as that which was now in question, were picked up by merchants, and they were pretended to be neutral.—This Captain, who had stated himself to be a Venetian, might as well have lent his vessel to the Doge of Venice to wed the Adriatic as to call upon the Defendant to answer in this action.—It was stated that the only question would be in this case whether the vessel was or was not an American vessel entitled to the protection of neutrality? That certainly was the question; in discussing which it would not be sufficient to shew that she was built with American timber. It ought to be shewn that she was a vessel entitled to all the benefits of neutrality, and that she was free from capture by the laws of war. It was not the delivery of any paper by the assured to the underwriter, that constituted evidence in such a case as this. It ought to be made manifest, that the ship was not made a lawful prize, because if she was not lawfully made prize, he admitted that the underwriter was liable; for the assured in such a case as this could not warrant that injustice should not be done by a belligerent nation to the ships of neutral powers. But upon the authority of a case decided by Lord *Mansfield*, it was clear that if the vessel was not entitled to the benefits of neutrality, the underwriter could not be liable for any loss occasioned by her capture, that indeed was the established principle of the law. He quoted also the opinion delivered by Lord *Kenyon* in a recent case, in which his Lordship had said it down as a rule, that a ship might be condemned, because she had no sufficient documents on board to prove her neutrality. The question in this case was to be governed very much by the treaty between the two nations, America and France, and that part which related to this question, was the 25th article. By this article, it was required that evidence should be given of the neutrality, that there should be a sea letter and passport, and the name of the commander of the ship, shewing, that really and truly the ship was neutral. The ship must have been recalled within a year, and her certificate renewed if returned within a year. The passport was also to be signed by the President of the United States. Now we should see whether the condemnation of this ship proceeded upon any collateral points, or whether she was a regular prize to the French Republic, according to the laws of war and the rights of nations, as subsisting between America and France.

Here he read the sentence of the Admiralty Court at l'Orient, by which it was stated that the vessel called the [illegible], Antonio Callize commander, was a pretended American vessel, that the papers produced were not of the proper form, that the Captain had not the sea letter required; that the Captain confessed he had sailed without the sea letter and the passport; and the judgment of that court pronounced upon the whole matter, that the Commerce had no right to shew American colours, and therefore she was condemned as a lawful prize to the French Republic. Having done this, Mr. *Erskine* said, he apprehended he had done enough to shew, that the underwriter must be released from all the consequences of the capture of this vessel, and that the Plaintiff had no right to recover in this action.

Mr. *Bowman* proved the translation produced was a correct translation of the sentence of the court of Admiralty at l'Orient.

Mr. *Law* on behalf of the Plaintiff, suggested, that there was no evidence that this was the sentence of the court at l'Orient. The witness had only said it was brought to him by a person who said he came from authority; there was nothing to shew that this was not an assumed authority. That the seal of the court ought to have been proved, &c.

Lord *Kenyon* said, that as to proving the seal of the court, or of any corporate body, he was quite sure that no such thing was ever done, he never heard of such a thing being done in his life. A seal of any court, or of any Corporation, always proved itself. As to the other objection, that there was no proof that the person who brought the document to the witness, while in prison, had any authority, he thought he was bound to take that authority for granted. If he required better proof of that fact, he might require an impossibility. And as to the decision of the Court of Admiralty in France, he was bound also to take it for granted that it was correct. Courts of Admiralty regarded each other's decisions every where; they pervaded every part of the civilized world, at least he hoped so, for they were founded upon one general principle of justice. These points should be saved, so that Mr. *Law* might bring the matter before the court, if he desired it, but his Lordship thought himself bound to take all these proceedings as regular, and therefore he ordered them to be read.

The policy of insurance was also read.

Lord *Kenyon* said, he was of opinion against the Plaintiff in this action. The policy itself amounted to a warrant, that the vessel was an American vessel, and that it was within the protection of France.

Mr. *Law* said, that upon the face of this sentence, they had stated the law of America entirely, and not their own law.

Lord *Kenyon* said, he really did not see that. They applied law to the fact. This was a sentence of the court of Admiralty, deciding on the rights of all the parties. There certainly was no ambiguity here. There were stated certain requisites to entitle this ship to the protection of an American vessel.—They were enumerated. It was stated that these requisites were not complied with; that the Captain had not the passport, and sea-letter, and that he had no right to shew American colours, and therefore concluded that the ship was a lawful prize. It was essential to us to pay attention to the decisions of their courts of Admiralty, for they always paid attention to ours; and we had much more of these cases than they had. It was essential to all the commercial nations of the earth to pay attention to the decision of each other's courts of Admiralty. Indeed he never heard of any complaints against them, except once from the King of Prussia, who said, "he did not understand that four lawyers should decide any case; that four cannon were much better." His Lordship said he was clearly of opinion that the Plaintiff ought not to recover in this action. If Mr. *Law* thought that opinion was wrong, he might bring the question before the court upon a motion for a new trial; his Lordship added that he wished the motion to be made, for he always wished that his opinion should be reviewed.

The Plaintiff was nonsuited.

From the FARMER'S WEEKLY MUSEUM.

From the DESK OF BERI HESDIN.

"OWE NO MAN ANY THING.

BUT says the man of trade—"credit is the life of business." The man of much splendor also exclaims—"it is the support of elegance, taste and *fashion*; and if we owe no man any thing—what will become of our elegant buildings; and to whom would belong our wares and merchandize?" To him, who earned them by early rising and at the sweat of his brow.

"I don't like the text, sir, and it is nothing less than sedition to preach it"—whistles through his pipes one, who carries a barber's shop on his head, and a pedlar's wares at his heels. Poor simpling, Beri Hesdin pities thee, and the spirit of charity bids him turn from thee and pass on to his labours. "Every man must get a living"—and he will get a living, says the preacher—(*Tarlet* is dead and Beri Hesdin will use as many ifs as he pleases)—if he works by the rule of honesty, squares his labors by conscience, and *settles accounts with Heaven*.

Parthenely, who is something of a wit—in looking over this part of my *ratiocination*—observed, "if they had it as hard to settle accounts with heaven, as we do with them on earth;—it will be like the disenchantment of Dulcinea." You must know, gentle reader, that a bunch of parish tax bills lay uncredited before him.

Owe no man any thing. In this short sentence is found more of the rule of happiness—than in all the ranting of philosophic nonskulls, and theatric madness. The deacon will have it—that the congregation, in following this maxim, would not appear half so *respectable*. The preacher believes that they would look twice as heavenly; and that the upper galleries would have different occupants. Mr. Hodgkinson and Williamson would without doubt, lose by it, and the venerable bench of lawyers fare less sumptuously.—Instead of benefit nights and plays gratis—all would be for the benefit of self and good fellowship. There would be no skulking in blind allies to escape Monsieur Catchpole, and avoid the payment of honest debts.—*Our great men* would be dressed in plain suits, eat food more agreable to nature, and enjoy much sweeter sleep. Beauty would walk forth—arrayed in modest garb—and the lovely bloom of health would beam rapture to the gazing eye. Your *Fanny Wilkinsons* would shut up shop, and the simpering beau skulk behind his counter, or retire to the breaking up of the clods and topping old poles. The handicraft's men and daily labourer would car-