

CASES DECIDED In the Supreme Court, N. C. July Term, 1814.

Counties alphabetically arranged.

From Anson. James Douglas vs. James S. Auld. A judgment made absolute. Judgment for Plaintiff according to sci. fa.

From Beaufort. Dickinson vs. Van Norden. Judgment for Plaintiff.

From Brunswick. Boy Smith vs. Alexander Hosker. The affidavit is sufficient for the removal of the writ.

From Buncombe. Philip Hoodenpyle vs. Ex'rs of J. M'Dowell. The Plaintiff to recover the value of the land at the time of sale and interest.

From Chatham. John & Andrew Siler vs. William Ward. Rule for new trial discharged. Judgment for Plaintiff.

Whitlock Arnold vs. Ex'rs of Clement Lister. Judgment for Plaintiff and scire facias awarded against the Testator's heirs and devisees.

From Chowan. Henry Gardner vs. Peggy Neill & others. Nonsuit set aside, and new trial granted.

Den on demise of Humphrey Hatly vs. James Jones. New trial granted.

From Craven. Enoch Gatlin, adm'n of John Banks vs. Mary Kilpatrick. Bill of complaint dismissed.

James Phillips, jun. vs. the Ex'rs of Dry. The Plaintiff to recover the value of the land at the time of sale and interest.

Richard B. Jones and wife vs. R. D. Spaight. Judgment for Defendant.

John C. Stanly vs. Benj. Smith and Amelia Green. Judgment for Plaintiff.

From Cumberland. Wm T. Slocum vs. David Anderson. The rule for setting aside the judgment is made absolute.

Davis & McNeill vs. Evans and others. It is competent for the Court below to make the order for amendment, and the rule for setting aside such order is discharged.

From Edgecomb. Hadin and wife & others vs. Arthur Dew. New trial granted.

From Granville. Squire Spearman vs. John C. Russel. New trial granted.

Wm. McClure vs. Robert Burton & others. Plaintiff has leave to amend on payment of full costs.

From Guilford. State vs. Robert Stewart. The witness is entitled to mileage from the place of his actual residence.

Robert Thompson vs. George Johnson. Judgment according to scire facias.

From Halifax. Ricks Fort vs. Elias Fort's Ex'rs. The demurrer is overruled.

Wm. C. Webb vs. Allen Jones's Ex'rs. The bill of complaint is dismissed with costs.

Den on demise of Stith vs. John Barnes. Judgment for the Defendant.

David Coffield, Ex'or, &c. vs. Richard Cherry & others. Demurrer sustained. Bill dismissed.

From Johnston. State vs. Pannel Penny. The indictment is quashed.

From Iredell. Ex'rs of Benzen and others vs. Wm. Leair and others. Judgment for the Plaintiffs.

From Mecklenburg. Thos. Parke vs. Ex'rs of R. Morrison. Plea in abatement overruled.

John Johnson vs. Thomas Green. The demurrer allowed. Plea overruled.

Ex'rs of Smart vs. Polk & Kendrick, Ex'rs of Smart. The letters testimonary are sufficient to enable the Plaintiff to maintain the suit.

State vs. Wm. Bryson. Motion in arrest of judgment overruled. Judgment for State.

From Nash. F. Mason vs. Benj. Cooper. Judgment according to Sci. Facias.

From New-Hanover. Abraham Golden vs. Levy & Carroll. New trial not granted.

Paul E. Lorent vs. Joshua Potts. Nonsuit granted.

From Rockingham. State vs. Abraham Lumbrick. The Prosecutor to pay all costs.

From Rutherford. Joseph M. D. Carson vs. John Noblet. Judgment for Plaintiff.

From Wake. State vs. Lewis Yancey. The plea of autrefois convict is overruled. Judgment for the State.

James Curtis vs. Nathan Hartsfield and David Deik. Injunction confirmed.

From Warren. Philemon Hawkins and wife vs. John Hawkins's Ex'rs. The parole evidence on the first issue was properly rejected; on the second, improperly rejected. New trial on this issue.

From Wayne. Laurence Wood and others vs. Britton Hood. An appeal from the County Court to the Superior Court does not lie in a petition for a private way. The appeal is dismissed.

From Wilkes. State vs. John Ford. The verdict is set aside, there being no issue joined on record.

THE WAR.

Copy of a letter from Capt. Porter to the Secretary of the Navy.

Essex Junior, July 31, 1814, at Sea. SIR--I have done myself the honor to address you, repeatedly, since I left the Delaware; but have scarcely a hope that one of my letters has reached you; therefore, consider it necessary to give you a brief history of my proceedings since that period.

I sailed from the Delaware on the 27th of October, 1812, and repaired, with all diligence (agreeably to instructions from Comm. Bainbridge) to port Praya, Fernando de Noronho, and Cape Frio; and arrived at each place on the day appointed to meet him. On my passage from port Praya to Fernando de Noronho, I captured his Britannic Majesty's packet Nocton; & after taking out about 11,000 sterling in specie, sent her under command of Lieut. Finch, for America. I cruized off Rio de Janeiro and about Cape Frio, until the 12th January, 1813, hearing frequently of the Commodore by vessels from Bahia. I here captured but one schr. with hides and tallow; I sent her into Rio. The Montague, the admiral's ship, being in pursuit of me, my provisions now getting short, and finding it necessary to look out for a supply, to enable me to meet the Commodore by the 1st of April, off St. Helena, I proceeded to the island of St. Catharines, (the last place of rendezvous on the coast of Brazil,) as the most likely to supply my want; and, at the same time, afford me that secrecy necessary to enable me to elude the British ships of war on the coast, and expected there. I here could procure only wood, water, and rum, and a few bags of flour; and hearing of the Commodore's action with the Java, the capture of the Hornet by the Montague, and of a considerable augmentation of the British force on the coast, and of several being in pursuit of me, I found it necessary to get to sea as soon as possible. I now, agreeably to the Commodore's plan, stretched to the southward, scouring the coast as far as Rio de la Plata. I heard that Buenos Ayres was in a state of starvation, and could not supply our wants; and that the government of Montevideo was very inimical to us. The Commodore's instructions now left it completely discretionary with me what course to pursue, and I determined on following that which had not only met his approbation, but the approbation of the then Secretary of the Navy. I accordingly shaped my course for the Pacific; and after suffering greatly from short allowance of provisions, and heavy gales off Cape Horn (for which my ship and men were fully provided) I arrived at Valparaiso on the 14th March, 1813. I here took in as much jerk'd beef, and other provisions, as my ship would conveniently stow, and ran down the coast of Chili and Peru; in this tract I fell in with a Peruvian corsair, which had on board twenty four Americans as prisoners, the crews of two whale ships, which she had taken on the coast of Chili. The Captain inform-

ed me that, as the allies of Great Britain, they would capture all they should meet with, in expectation of a war between Spain and the United States. I consequently threw all his guns and ammunition into the sea, liberated the Americans, wrote a respectful letter to the Vice Roy, explaining the cause of my proceedings, which I delivered to her Captain. I then proceeded for Lima, and recaptured one of the vessels as she was entering the port. From thence I proceeded for the Gallapagos islands, where I cruized from the 17th April, until the 3d October, 1813; during which time I touched only once on the coast of America, which was for the purpose of procuring a supply of fresh water, as none is to be found among those islands, which are perhaps the most barren and desolate of any known.

While among this group, I captured the following British ships, employed chiefly in the spermacetti whale fishery, viz.

LETTERS OF MARQUE. Table with columns: Name, Tons, Men, Guns, Pierced for.

As some of those ships were captured by boats, and others by prizes, my officers and men had several opportunities of shewing their gallantry. The Rose and Carlton were given up to the prisoners; the Hector, Catharine, and Montezuma, I sent to Valparaiso, where they were laid up; the Polly, Georgiana, and New Zealander, I sent for America; the Greenwich I kept as a store ship, to contain the stores of my other prizes, necessary for us; and the Atlantic, now called the Essex Junior, I equipped with twenty guns and gave command of her to Lt. Downes.

Lieutenant Downes had conveyed the prizes to Valparaiso, and, on his return, brought me letters, informing me that a squadron under the command of Comm. James Hillyar, consisting of the frigate Phoebe, of 36 guns, the Raccoon and Cherub sloops of war, and a store ship of 20 guns, had sailed on the 6th July for this sea. The Raccoon and Cherub had been seeking me for some time on the coast of Brazil, and, on their return from their cruise, joined the squadron sent in search of me to the Pacific. My ship, as it may be supposed, after being near a year at sea, required some repairs to put her in a state to meet them; which I determined to do, and bring them to action, if I could meet them on nearly equal terms. I proceeded now in company with the remainder of my prizes to the island of Nooheevah, or Madison's island, lying in the Washington groupe, discovered by a Captain Ingraham of Boston; here I caulked and completely overhauled my ship, made for her a new set of water casks, her old ones being entirely decayed, and took on board my prizes provisions and stores for upwards of four months, and sailed for the coast of Chili on the 12th December, 1813. Previous to sailing, I secured the Seringapatam, Greenwich, and Sir Andrew Hammond under the guns of a battery, which I erected for their protection; (after taking possession of this fine island for the United States, & establishing the most friendly intercourse with the natives,) I left them under the command of Lieut. Gamble of the marines, with twenty one men, with orders to repair to Valparaiso after a certain period.

I arrived on the coast of Chili on the 12th January, 1814; looked into Conception and Valparaiso, found at both places only three English vessels, and learned that the squadron which

sailed from Rio de Janeiro for that sea had not been heard of since their departure, and were supposed to be lost in endeavoring to double Cape Horn.

I had completely broken up the British navigation in the Pacific; the vessels which had not been captured by me, were laid up and dare not venture out. I have afforded the most ample protection to our own vessels, which were, on my arrival, very numerous and unprotected. The valuable whale fishery there is entirely destroyed, and the actual injury done them may be estimated at two and a half millions of dollars, independent of the expenses of the vessels in search of me. They have furnished me amply with sails, cordage, cables, anchors, provisions, medicines & stores of every description; and the slops on board them have furnished clothing for the seamen. We had in fact lived on the enemy since I had been in that sea, every prize having proved a well found store ship for me. I had not yet been under the necessity of drawing bills on the department for any object, and had been enabled to make considerable advances to my officers and crew on account of pay.

For the unexampled time we had kept the sea, my crew had continued remarkably healthy; I had but one case of the scurvy, and had lost only the following men by death, viz.

John S. Cowan, Lieutenant, Robert Miller, Surgeon, and eight seamen.

I had done all the injury that could be done to the British commerce in the Pacific, and still hoped to signalize my cruise by something more splendid before leaving that sea. I thought it not improbable that Commodore Hillyar might have kept his arrival secret, and believing that he would seek me at Valparaiso, as the most likely place to find me, I therefore determined to cruise about that place, and should I fail of meeting him, hoped to be compensated by the capture of some merchant ships, said to be expected from England.

The Phoebe, agreeably to my expectations, came to seek me at Valparaiso, where I was anchored with the Essex, my armed prize the Essex Junior, under the command of Lieut. Downes, on the look out off the harbor; but, contrary to the course I thought he would pursue, Commodore Hillyar brought with him the Cherub sloop of war, mounting 28 guns, eighteen 32 pound carronades, eight 24's, & 2 long 9's on the quarter deck and fore-castle, and a complement of 180 men. The force of the Phoebe is as follows: thirty long 18 pounders, sixteen 32 pound carronades, one howitzer, and 6 three pounders in the tops, in all 53 guns, and a complement of 320 men; making a force of 81 guns and 500 men; in addition to which, they took on board the crew of an English letter of marque lying in port. Both ships had picked crews, and were sent into the Pacific, in company with the Raccoon of 22 guns and a store ship of 20 guns, for the express purpose of seeking the Essex, and were prepared with flags bearing the motto, "God and Country; British Sailors' best rights; Traitors offend both." This was intended as a reply to my motto, "Free Trade and Sailors' Rights," under the erroneous impression that my crew were chiefly Englishmen, or to counteract its effect on the Essex 46 guns, forty 32 pound carronades, and six long 12's, and her crew, which had been much reduced by prizes, amounted only to 255 men. The Essex Junior, which was intended chiefly as a store ship, mounted 20 guns, ten 18 pound carronades, and ten short 6's, with only 60 men on board. In reply to their motto, I wrote at my mizen, "God, our Country and Liberty; Tyrants offend them."

On getting their provisions on board they went off the port for the purpose of blockading me, where they cruised for near six weeks; during which

time I endeavored to provoke a challenge, and frequently, but ineffectually to bring the Phoebe alone to action, first with both my ships, and afterwards with my single ship, with both crews on board. I was several times under way, and ascertained that I had greatly the advantage in point of sailing, and once succeeded in closing within gun shot of the Phoebe, and commenced a fire on her, when she ran down for the Cherub, which was 2-1/2 miles to leeward; this excited some surpriz and expressions of indignation, as previous to my getting under way, she hoisted too off the port, hoisted her motto flag and fired a gun to windward. Com. Hillyar seemed determined to avoid a contest with me on nearly equal terms, and from his extreme prudence in keeping both his ships ever after constantly within hail of each other, there were no hopes of any advantages to my country from a longer stay in port. I therefore determined to put to sea the first opportunity which should offer; and I was the more strongly induced to do so, as I had gained certain intelligence that the Tagus, rated 38, and two other frigates had sailed for that sea in pursuit of me; and I had reason to expect the arrival of the Raccoon from the N. W. coast of America, where she had been sent for the purpose of destroying our Fur Establishment on the Columbia. A rendezvous was appointed for the Essex Junior, and every arrangement made for sailing, and I intended to let them chase me off, to give the Essex Junior an opportunity of escaping. On the 28th March, the day after this determination was formed, the wind came on to blow fresh from the southward, when I parted my larboard cable and dragged my starboard anchor directly out to sea. Not a moment was to be lost in getting sail on the ship. The enemy were close in with the point forming the west side of the bay; but on opening them, I saw a prospect of passing to windward, when I took in my top-gallant-sails, which were set over single reefed top-sails, and braced up for this purpose: but on rounding the point, a heavy squall struck the ship and carried away her main-top-mast, precipitating the men who were aloft into the sea, who were drowned. Both ships now gave chase to me, and I endeavored in my disabled state to regin the port; but finding I could not recover the common anchorage, I ran close into a small bay, about three-quarters of a mile to leeward of the battery, on the east side of the harbor, and let go my anchor within pistol shot of the shore, where I intended to repair my damages as soon as possible. The enemy continued to approach, and shewed an evident intention of attacking, regardless of the neutrality of the place where I was anchored; and the caution observed in their approach to the attack of the crippled Essex was truly ridiculous, as was their display of their motto-Flags, and the number of Jacks at their mast heads. I, with as much expedition as circumstances would admit of, got my ship ready for action, and endeavored to get a spring on my cable, but had not succeeded when the enemy, at 54 minutes after 3 P. M. made his attack, the Phoebe placing herself under my stern, and the Cherub on my starboard bow; but the Cherub soon finding her situation a hot one, bore up and ran under my stern also, where both ships kept up a hot raking fire. I had got three long 12-pounders out of the stern ports, which were worked with so much bravery and skill, that in half an hour we so disabled both as to compel them to haul off to repair damages. In the course of this firing, I had by the great exertions of Mr. Edward Barnewell, the Acting Sailing-master, assisted by Mr. Linscott, Boatswain, succeeded in getting springs on our cable three different times; but the fire of the enemy was so ex-

(Concluded on the 4th Page.)