

practice but from the fair sense of the particular contract between the parties, order any part of the freight to be paid ; and I reject the application.

THE "PHENIX"—(Susini, Master). Oct 15, 1800.—Colonial trade—Voyage from a French colony with false destination to Altona, actually to France or Spain—Ship and cargo condemned.

This was a case of a ship and cargo taken on a voyage from Guadaloupe, ostensibly, to Altona, but captured off Cape Finisterre, with a French pilot on board, and, as it appeared to the Court, going actually into some French port, or into Corunna. A claim was given for both ship and cargo, as the property of Mr Susini, a person born in Tuscany, but residing chiefly in French islands.

[187] *For the captors, the King's Advocate and Arnold*—There are several grounds on which it is impossible for this person to obtain restitution on the present evidence. The proofs of property are very doubtful and imperfect, and the suspicion very strong, that this person who appears to have been wandering about on different adventures, could not be the *bona fide* owner of this property, for which no adequate funds appear in any part of his history. His national character is, besides, so composed as to bring him under the description of a French merchant. But these grounds are immaterial, any further than to shew the true and original complexion of this case ; as were the property and neutral character allowed to be fully proved, the course of the voyage would be alone sufficient to subject both the ship and cargo to confiscation. It is a voyage, as it is asserted, to Altona ; but at the time of capture they were found sailing so far south as the Cape of Finisterre, with a French pilot on board, and as it is confessed by one witness, "going into Corunna for water" ; another witness acknowledges that *he* was hired to go on a voyage direct to Bourdeaux—taking it therefore to be a voyage between the colony and mother-country of the enemy, or between the colony and mother-country of an ally in the war, the cargo would be subject to condemnation on the authority of several cases determined in this Court (*The "Immanuel,"* Eysenberg (2 C Rob. 186), "*Rose,"* Young) But those were cases of an open and professed, destination, and in them the Court restored the ships. In this case, there is the additional aggravating circumstance of a destination *fraudulently coloured* to disguise the real course of the transaction [188] That an additional penalty should attach on such a case would be highly reasonable, and in the case of *The "Fortuna,"* Norberg, the Court did consider the fraudulent conduct with which the whole of that case was covered, as a just ground for condemning the ship.

*On the part of the claimant, Laurence and Sewell* denied the sufficiency of the arguments with which it was attempted to impeach the property and the national character of the claimant. On the question of law, it was contended that there had been no case determined by the Court which could be deemed an authority for the present case *The "Fortuna,"* Norberg, was a case in which the destination was between the mother-country and the colony ; but the ground of condemnation in that case was the *gross fraud* apparent in every part of the case. In the present case no such imputation could be sustained, allowing the course, at the time of capture, to have been for Corunna, it had arisen only from a supervening necessity, which in no degree impeached the truth of the original destination to Altona

*Judgment—Sir W Scott* : This is the case of a ship which is claimed as well as the cargo for a person of the name of Susini, whose history has been very eventful, and leaves considerable doubt on the important question of real national character. He appears to have been a native of Tuscany, who had resided a considerable time in St. Domingo, and was at that time the owner of a French vessel called the "*L'Aigrette.*" When Je-[189]-remie was taken by the British forces, the same vessel continued to be navigated by him under English colours, and was, as such, taken and condemned by the French ; he then went to St Thomas, where he remained inactive and unemployed two years ; he now describes himself as a burgher of St. Thomas, and considers himself to have been for the last five years a subject of the king of Denmark ; but during that time St. Thomas seems to have been as little visited by him as any other spot on the globe He is not a married man, holding any connection with that place by the residence of his wife and family : he is a navigator, and appears to have been personally during these five years hardly there at all. Under these circumstances, it is not a burgher's brief alone, that will be sufficient to

control all other circumstances of his history and conduct, and to entitle him to the privileges of a clear and undoubted neutral person.

At St. Thomas, he says, he purchased this vessel, and went to Jeremie, where he was first detained; but being released, he went to Cuba, sold his cargo, and bought another, with which he went, *not to St. Thomas*, but to Baltimore, from *thence* to Angola in Africa, where he took cargo of slaves, and sold them at St. Thomas; from thence he went to Baltimore again, and took a cargo with which he returned to St. Thomas, *not to sell his cargo but to enquire the state of the West India market*; he stayed there only ten days, and then went to Cape François, where he disposed of his cargo; and from that time he appears never to have been at St. Thomas.

From St. Domingo he took a cargo of colonial produce on a destination to Altona, but put into Bour-[190]-deaux, owing to bad weather; from Bourdeaux he sailed again for St. Thomas, but the same bad fortune attending him, he never got there, but was taken by a French privateer and carried to Guadaloupe, where the government of the island compelled him to sell his cargo; from Guadaloupe he sailed on the present voyage, as it is asserted, to Altona. From this account it is evident that the ship has had as little connection with St. Thomas as possible; and that her voyages, whether voluntary or not, have been much more directed to French ports than to any ports of Denmark. Then as to the crew—they are described generally as French, Italians, and Spaniards, but the fact is, that four are mentioned specially as Italians and Spaniards; from which I may conclude that the rest, not particularly described, are French. The pilot is a Frenchman; and it appears that the pilot in the former voyage was a Frenchman also; so that if the claimant meant to hold out his ship as a Danish vessel, he has acted throughout as imprudently as a man could do, in employing so many French persons to navigate her. It has been argued, that the chief part of the enumerated voyages to French ports have been under compulsion, and the sentence of the French court at Guadaloupe has been relied on as proving the truth of this representation. But, without meaning to speak hardly, I may venture to say, adverting to what we have seen, that documents proceeding from such courts do not make complete faith.

This is the history of Mr. Susini's national character; and I cannot but accede to what has been said upon it, that no person can appear connected [191] with Denmark by a slighter thread than he is; it rather appears that the sin of his old character is revived, and that he is to be considered, at least, as much a Frenchman as a Dane.

But the material question for me to consider will be the character of the present voyage:—Is it a voyage from Guadaloupe to Bourdeaux? or to Altona? If to Bourdeaux, the Court has held it, as a principle from which it will not depart, that a neutral vessel, carrying on the trade between the colonies and the mother-country under a false and colourable destination, will be subject to condemnation. If neutrals will lend their vessels to the enemy, and engage them in a trade of which the legality is, in its fairest aspect, very questionable, they should, at least, do it frankly and openly: The belligerent nation will then exercise its judgment upon the case fairly proposed, and probably will determine that such a trade, even fairly conducted, is not to be tolerated. But where it is done under concealment, and with the aggravation of fraud, the party concerned clearly at once subjects himself to be considered as an enemy, in all the consequences of that transaction.

Then I am to enquire, whether this is a voyage to Altona? when I say to Altona, I should observe, that the whole of this representation is rather an assertion of counsel than of the master; for it is not a little extraordinary to see, how cautiously he ventures to say anything that points to Altona: The interrogatories leading to that question are the 7th, 12th, and 29th. To the 7th he says "the voyage was to end at St. Thomas," choosing to speak of the whole outward and returned voyage together, as one; although [192] he had said of the former voyage, under the same circumstances, "that *that* was to Altona." To the 12th he says, "the cargo was to be delivered at Altona." To the 29th, "that he was steering at the time of his being pursued towards Altona," saying nothing of the previous part of the voyage, nor giving any account how he came so far down as Cape Finisterre, within two leagues of Corunna: Such a deviation might certainly happen from accident or innocent mistake, but still it is a circumstance to be accounted for, and not a word does he say about it. It is besides to be observed, that there is not one letter on

board addressed to any person at Altona. The master is going *novus hospes* to a country where he was a perfect stranger, and yet he appears not to have carried with him any particular recommendation or consignment to any merchant of that place. There is no bill of lading, nor any one paper mentioning Altona, except a declaration at the French custom-house, and a contract with one of the mariners. These are the only papers that point in the least degree to Altona; and it is surely not too much to say that the master does not venture to assert a *real and direct destination to Altona*. Then what do the other witnesses say? The pilot is a Frenchman, as he himself admits, who had never been to the north of Bourdeaux, and knew nothing of the local navigation of the British channel, Bourdeaux he knew well, being bred and born there; but would any man of common prudence, meaning to avoid French connections, take a pilot on board so invariably riveted to Bourdeaux? This is, however, not the course on which they pretend to be going: even the pilot is guilty of prevarication and falsehood; he pretends that they [193] were going into Corunna for water; but another witness confesses that *he* was hired expressly to go to Bourdeaux. and the fact is, that there appeared to have been no immediate want of water, as there were six barrels remaining on board.

This being the case, taking all the circumstances together, fortified as they are by the great similarity between them and the former voyage, seeing, that the pilot is a person particularly adapted to navigate the vessel to Bourdeaux. I have not a doubt that this is a voyage originally to Bourdeaux, under a false and colourable destination, and that there never was an intention of going to Altona. Upon these facts, I shall hold the ship as well as the cargo to be subject to confiscation.

Dec. 1801. In the case of *The " Star,"* an American vessel, bound from Teneriffe, ostensibly, to Hamburg, but going actually at the time of capture into Corunna — An excuse was set up to account for this deviation, that they were in want of water and firewood, and that a storm had, a day or two before, swept away her studding sails. The Court being of opinion that the state of distress, if fully proved, was not of that magnitude that would justify a deviation into an enemy's port, and that the truth of the fact was not supported by the entries in the journal, or the general evidence in the case, pronounced the ship and cargo subject to condemnation; saying, that it was a case so similar in its circumstances to the case of *The " Phoenix "* that it must fall under the same principles of law.

[194] THE " ROBERT "—(Paterson, Master). Oct. 23, 1800.—Joint capture: Being in sight, but sailing in a contrary direction — Fraud in actual captor postponing capture to defeat the sight of another party — Facts not proved, claim rejected.

This was a case of joint capture, in which an allegation had been admitted on the part of His Majesty's ship " Defence " The cause now came to be heard on the proof of facts, and the general principles of law applying to them.

The circumstances of the case were, that it was a capture made on the breaking out of Dutch hostilities of a large Dutch merchant vessel coming from the East Indies; on approaching the English coast, owing to the distress of the vessel and sickness of the crew, the master was obliged (though very reluctantly, on account of suspected hostilities) to put into a British port; and for that purpose he had taken on board a pilot to carry her into Dartmouth. In the course of that evening, information was received in Dartmouth of the arrival of such a vessel on the coast, and the mate of a revenue lugger (the " Alarm ") slipped out of port the next morning, and made the *actual capture, in sight*, as it was asserted, of His Majesty's ship " Defence "; and, as it was farther alleged, *after having fraudulently sailed past the prize, and concealed her purpose*, in order that the " Defence " might be out of sight.

30th October. *Judgment*—*Sir W. Scott*: This is the case of a demand of joint capture, set up by His Majesty's ship the " Defence " on a plea of having contributed to this valuable cap-[195]-ture; the actual capture having been made by another vessel, whose character is allowed to have been that of a non-commissioned vessel, and who will therefore entitle the Admiralty to that interest, which she would herself have taken if she had been provided with a commission of war against the Dutch.

It is unnecessary to observe, that the party setting up a claim of joint capture