

be fairly inferred, that he considered this transaction entered into without any [232] such protection to be made on account of his Embden house only

On these grounds I am disposed to think that he is not excluded from receiving restitution.

Restored.

THE "DREE GEBROEDERS"—(Vandyk, Master). March 25, 1802.—National character of Mr. Grant, an asserted American merchant, in France at the time of shipment, and sending cargoes from France to Lisbon—Condemnation.

This was a case respecting the national character of Mr. H. Grant, claiming as a merchant of America.

*Judgment*—*Sir W. Scott*: The chief question in this case turns upon the national character of Mr. H. Grant; a question which has been discussed in two former cases. In those the Court decreed restitution, and if the circumstances of the present case were similar to those, the same decree would certainly follow; although I may here observe that the consideration of those former cases was tempered with as much indulgence, and liberal construction of the situation in which Mr. Grant appeared, even then, as the rules and purposes of justice would admit. If there are, in the present transaction, circumstances which materially vary the aspect of Mr. Grant's character from what it bore on the description then given, the Court will not be very much affected by the authority of those cases.

Mr. Grant appears to have been a native of Great Britain, but settled in America, where he resided and carried on an extensive trade till the year 1798, when he came to Europe,—to England and France, [233] to look after his debts, and to reclaim some property, captured by the French, and also with an intention of carrying back with him his wife and family, who had been residing in England for the education of his children. His affidavit states, "That he was requested by the President of the United States to take the command of an armed ship against the French; but on declining that offer, he was persuaded to accept the office of Consul General for Scotland." In this capacity he says, "he has not acted further than to appoint deputies." Whether there are any deputies now acting under his appointment, does not appear. If so, it would be a strong circumstance to affect him with a British residence, as long as there are persons acting in an official station here, and deriving their authority from him.

Owing to the seizure which the French made of all American vessels, it seems, his wife did not choose to venture on her return to America. Mr. Grant, therefore, took a house for her in this country, and went himself to France, in February 1800, for the purpose of recovering payment of some debts. He continued in France from February till July, and having succeeded in the recovery of some part of his money, which he had no opportunity of remitting directly, he invested it in the purchase of several prize vessels, which he sent to England, some in ballast, and others loaded with provisions. Two of the latter description were captured, and brought to adjudication in this Court, and restored. But a circumstance materially distinguishing those cases from the present, is, that in them he was stated to have entered into that transaction, merely for the purpose of withdrawing his [234] funds, and bringing them hither to collect his property, and carry it home to America. Such pretences are at all times to be watched with considerable jealousy; but when the transaction appears to have been conducted *bona fide* with that view, and to be directed only to the removal of property, which the accidents of war may have lodged in the belligerent country, cases of this description are entitled to be treated with some indulgence.—Is this such a case? Is this a case of a neutral merchant sending property to England, where he meant to be personally resident for some time? What are the circumstances of it? He appears to have gone again to France in the following year to collect outstanding debts. Part of the money which he received was invested in a speculation of sending this cargo of butter to Lisbon, "because that port afforded a favourable market." What is this but a voluntary mercantile speculation in the enemy's trade? It is not the case of a man withdrawing his property to England, but engaging in new speculations, and standing on the same footing as any other merchant in the country of the enemy.

If the national character of Mr. Grant stood perfectly clear, this circumstance alone would distinguish the present case, and take it out of the *range* of those con-

siderations, which produced restitution of this gentleman's property in two former cases. But that is not all—it appeared before, that he had very much narrowed his connection with the commerce of America, having ceased to act as a general merchant there, and having confined himself to the shipment of the produce of his own landed estate. The Court did *then* [235] feel some difficulty in considering a person in this situation *as a merchant of America*; because a person confining himself to the shipment of the produce of his own estate does not stand exactly on the same footing as a general merchant retaining a mercantile domicile by his house of trade.

It now appears that Mr. Grant has disposed of his house, and has nothing left in America but his landed estate, which alone has never been held sufficient to constitute domicile, or fix the national character of the possessor, who is not personally resident upon it; except with regard to property which is going as the immediate produce of that landed estate. Mr. Grant does not even seem to have formed any definite *intention* of returning to America. He does indeed say, "that he has ordered a house to be built"; but when? Only, "when the materials for building shall return to their usual price." Who can say when that may be? Under this view of the circumstances in which Mr. Grant appears in this case, his mercantile connection with America, if any, is held by a mere thread: This is a transaction not originating in any purpose of remitting his funds to England, and from thence to America, but in an independent mercantile speculation, from Cherbourg to Seville, or Lisbon. It is, I think, not entitled to be considered in an American character.

It will be unnecessary for me to say whether Mr. Grant's character is that of a French or a British merchant; it is sufficient to pronounce, that he does not stand in the character of a neutral American merchant, and that he is not entitled to restitution.

[236] THE "THERESA BONITA"—(De Jong, Master) March 26, 1802.—A. B. having purchased a cargo of the consignee free of all expenses, and having obtained possession under an order of the Court, made respecting the ship under embargo—The demand of freight on the part of the master, against the purchaser, *not sustained*

This was a case respecting the liability of Mr. Joseph Wolff to pay the freight of the cargo which had been delivered to him by decree of the Court, 20th January, on bail, "to abide such further order as should be made by the Court respecting the said goods."

*On the part of the defendant, appearing under protest, Swabey.*—The ship, on whose behalf the demand of freight is made against Mr. Wolff, is a Danish vessel, which had arrived in the port of London the day before the Danish embargo (a) was imposed, having brought a cargo of fruit from a Spanish port, imported by the order of Burnet and Co. and consigned to them. The cargo had been sold by Burnet to Wolff the 28th of June 1800, under a contract to import two cargoes of nuts, and sell them to Mr. Wolff. Owing to the embargo, this cargo could not be delivered without application to this Court. In consequence of an intimation made to Government, that there were several cargoes detained in the River under this embargo, which belonged to British merchants, an order of Council issued the 28th of January, directing the delivery of such goods as were British property, and were coming under a licence to be made *without bail*; and further, that in the case of neutral [237] property, or British property not under a licence, the delivery should take place *on bail*, "to abide adjudication in this Court, if any proceedings should be commenced against the cargo within two months." On the same day another order of Council issued, which forbade the payment of any bill to persons whose property was under embargo, and also the payment of freight for merchandise imported in the embargoed vessels. On the arrival of this ship she became subject to these orders, so far as to be incapable of receiving her freight. The freight was liable to remain due indeed from some person, that is, from Messrs Burnet and Co the consignees, when it could be paid; but in no manner could it be demanded from Mr. Wolff. He had under his contract with Burnet included all charges and freight, and had actually paid them in the price agreed on. But now because Burnet has become insolvent, it is attempted to resort to another quarter, and enforce the

(a) Embargo imposed by proclamation, 14th January 1801.