

to surrender was expressed on the evening, but a great deal of deliberation was necessary on the reciprocal propositions. Frequent messages passed the next day under a flag of truce, which shewed that much was yet to be done. It would, I think, be too much to say, that the surrender could be considered as complete till the next morning, when the capitulation was actually agreed upon. At this time the ships were certainly in sight; Admiral Harvey says, "that they were there before the signature"; and he infers, I think, upon good grounds, that they had been seen from the island, and were themselves within sight of the island, before they were descried from the fleet. The evidence does afford a reasonable presumption, that they were there before the actual agreement of surrender; and therefore without bringing into discussion, how far it might have been sufficient to have arrived before the signing and formal execution of the articles, I shall pronounce them entitled to share in the capture of the island, but not in the capture of the ships which took place the evening before.

THE "NOSTRA SIGNORA DE BEGONA"—(Ybriniga). Jan. 31, 1804—Contraband rosin to a port not of a military equipment, *not contraband*.

[S. C. I Eng. Pr. Cas. 483.]

In this case a question arose respecting the contraband quality of rosin, going from St. Sebastian to the port of Nantes.

[98] *On the part of the captors, the King's advocate* contended—That it was an article much used as an ingredient in various military preparations, and that it was to be deemed contraband.

*Judgment—Sir W. Scott*: Are there any cases in which this article has been held to be contraband, on a destination to a port merely mercantile? If it had been going to a military port of the enemy, I should have had no hesitation, as there are many cases in which, under such circumstances, it has been deemed contraband—Going to a mercantile port, (a) it is not, I think, so decidedly of a warlike nature, as to be excluded from the favourable considerations that are applied to other articles *uncruptis usus*. I shall therefore decree restitution

"LA VIRGINIE"—(Coigneau). Feb. 7, 1804.—National character of a native Frenchman, an asserted American subject, but personally present in St. Domingo, shipping goods for France, and described in the evidence as a French merchant. The native character held to be reverted.

[Observations cited, *Udny v. Udny*, 1869, L. R. 1 Sc. & Div. 451;

*Tingley v. Müller* [1917] 2 Ch. 174.]

This was a question on the national character of the claimant Mr. Lapierre, claiming property shipped by him in St. Domingo for Bourdeaux. The affidavit of claim stated him to be an American subject, and in his attestation, which was exhibited in further proof, it appeared that he had sailed from New York to St. Domingo in September 1802.

*In support of the claim it was argued*—That he was to be taken as a person domiciled in America, [99] though absent on temporary business in the colony of the enemy at the time of the shipment; that it did not appear how soon he had again returned to America, further than that he was there in August 1803, when the attestation was made

*On the other side, it was said*—That his name implied him to have been a native of France, and that his return to America, after hostilities, would not operate to protect this property, shipped by him as a person resident in St. Domingo

*Judgment—Sir W. Scott*: I should entertain no doubt in this case, if it appeared that Mr. Lapierre was originally a native of France, because it is always to be remembered, that the native character easily reverts, and that it requires fewer circumstances to constitute domicile in the case of a native subject, than to impress the national character on one who is originally of another country. If it could be inferred that he had been originally a French merchant, and was at the time of shipment resident in St. Domingo, and shipping property to Old France, I should have no hesitation in considering him as a Frenchman. Had the shipment been made for America,

(a) "*Santa Bona Ventura*" Rosin on board a Portuguese ship to Nantes, restored to the owner of the ship. Dec. 12th, 1747.

his asserted place of abode, it might have been a circumstance to be set in opposition to his present residence, and might afford a presumption that he was in St. Domingo only for temporary purposes. But this is a shipment to France, from a French colony, and if the person is to be taken as a native of France, the presumption would be that he had returned to his native character of a French merchant. Then as to the point, [100] on which I say the only doubt remains, the depositions of the master may, I think, be taken to supply that deficiency. He says, "that he received the cargo from French merchants, and that it was the property of the laders and other French subjects" This representation does very much fortify the presumption, that Mr. Lapierre was considered by the master as a Frenchman, and that he was resident at Saint Domingo on the ordinary footing of other French merchants. On this view of the case, I shall pronounce his claim *subject to condemnation*.

THE "ANNE"—(Bicknell). Feb. 13, 1804.—Claim of salvage on rescue of a slave ship, not substantiated.

(Instance Court)

This was a case of salvage, brought by the owners and master of the "Elizabeth," a slave ship, for salvage services alleged to have been rendered to the "Anne" on the coast of Africa.

It appeared that the "Anne" had been in considerable distress from an insurrection of her slaves, but that this insurrection had, in fact, been quelled by her own crew, on the night before the "Elizabeth" came up. A second insurrection was alleged on the part of the "Elizabeth," but not proved. On this and other facts relied on in numerous affidavits, the Court expressed an opinion generally to the following effect

*Judgment*—*Sir W. Scott*: This demand is made against the ship and a valuable cargo for salvage, but I do not [101] think that the claim is in any degree supported. Two pleas are set up: First, a rescue from an insurrection of her own slaves; but that appears to have been subdued before the "Elizabeth" came to her assistance. A second insurrection is also alleged of the Butlers and Lingueters, who are officers of the nations of the coast, with whom they were carrying on their traffic; but this is not in any manner proved. A different turn is now attempted to be given to the claim of salvage, by resolving it into a general superintendance, and assistance rendered to the master of the "Anne," who was almost entirely deprived of his own crew, and was himself disabled from continuing in the command and management of his vessel, by illness. Several of the people who appear to have gone on board to render assistance were paid at the time. In the whole circumstances of the case there is not a pretence for constructing a claim of salvage on such services. If any rescue had been effected out of the hands of the insurgent slaves, I should have pronounced for salvage, as I did in a former case. (a) For although there may be a general duty incumbent on all persons to render assistance to others in distress, yet when there is a danger incurred, and a rescue effected, it appears to me to be an act justly entitled to remuneration, as a salvage service. No such case is made out by these parties, and I shall dismiss the suit

[102] THE "REBECCA"—(Maddick). Feb. 17, 1804.—Bottomry bond put in suit originally on the part of a French merchant in 1792—suspended during the last war—not enforced during peace, but now attempted to be further prosecuted on the part of the British merchant, to whom it was endorsed—not allowed to be put into execution under the original proceedings.

[Referred to *The "Royal Arch,"* 1857, Swab 284.]

(Instance Court.)

This was a question on a bottomry bond, executed in Marseilles in 1792, by the master of an English vessel, to Mr. Guerin, a merchant in that city. The warrant was extracted 24th December 1792, by Mr. Thellusson, on the part of the French merchant.

On the breaking out of the war, the defendant appeared under protest pleading alien enemy. In 1796, an answer was given to the protest, and a reply to that

(a) *The "Trelawney,"* 4 C. Rob. 223