

Betsey

Miss^{rs} Anthony Atwood Sen.
John M^r Lachlan & Benj.^{rs} Haywards }
Merchants at Bermuda }

Beverly 1st Nov^r 1794.

Gentlemen

We received your Letter bearing date the 2^d Jan^y last, by Capt. Kinsman, and a copy thereof by M^r Cressy his Mate, — We are since without any of your favors, — having made our Insurance principally in London. We abandoned the Schooner Betsey & her Cargo to the Underwriters, and did not think ourselves ~~qualified~~ authorised to give any particular & positive directions concerning the Property without their concurrence and approbation, or we should have replied to you before.

We are informed that the Vessel & Cargo are both sold, but considering the Cargo did not consist of perishable Articles, we are at a loss for the motives. We will thank you however, for the Account of Sales and a particular Account of all the transactions relative to the property since Capt. Kinsman left Bermuda, both as it respects his own Adventure, and the Owner's Property. — We request you particularly to inform us whether the papers have all gone forward with the appeal, that we may be enabled to inform our friends at Hamburg, and the Underwriters the present state of the property.

Having

Having the misfortune to have another Vessel
(in which we are concerned viz. the Schooner Swallow) captured
& carried to Bermuda, we have thought proper to
send out Capt. Edward Allen the bearer of this, as our
Agent & factor, and we take the freedom to recommend
him to your Notice, any attention or civilities he
may receive from you will be gratefully acknow-
ledged by your most Obedt. Servts

Signed Moses Brown
Israel Thorncliffe

(Copy)

Messrs Brown & Thorncliffe Bermuda 15th Dec: 1794
Beverly

Gentlemen We have to acknowledge receipt of
your Letter of 1 Nov^r by Capt. Allen, in which you
seem to question the propriety of our having disposed
of the Schooner Betsey & Cargo, and desire to know our
motives for that measure, they were briefly as
follows. Capt. Kinsman's express directions to us
were to that effect (as mentioned to you in our Letter
to you of 2^d Jan^y) provided he did not return in a
reasonable time; as he neither returned nor wrote
we waited until the 1st Feb^y when finding that she

the property seemed to be totally neglected on the part
of the Appellees, that the Hurricane Months were
approaching, and that the Schooner was in such a crazy
condition as to excite just apprehensions that she might
sink along side of the Wharf with a great part of her
Cargo on board (even suppose no bad weather ensued)
we thought it high time to take some effectual mea-
sures for the Interest of those concerned, as well as for
our own security. The last reason alone we conceive
is sufficient to justify the measure, for having stipula-
ted for the Value of the Vessel & Cargo, both lay at our
risk. The Gross Sales of the Cargo, Adventures
included Amounts to £3546 the Schooner £250-
together £3796 Bermuda Currency - we at first
sold the Schooner for £200- and by the purchaser's
desire incurred some expense for repairs, but he
not sending for her from America at the time
stipulated, we had just made a second sale of her
at the time Capt Allen arrived - the £50 Difference
will about pay the expenses we were at in consequence
of the first Sale.

The Charges which are consi-
derable we cannot at present ascertain, as to our
Agreement with Capt. K the substance of which is
expressed in our Letter of 2^d Jan^y before alluded to.

Our Commission for stipulating in the Court
of Admiralty was to be 5th Cent. and our Sales & disbur-
sements 5th Cent. these are the usual terms on which

such business is transacted here, and as to other particulars, we must be regulated by the Custom of the Country. — Capt Allen has procured and will transmit you by this conveyance Copies of the proceedings in the Court of Admiralty. — We knew not until he arrived that you had not been furnished with these papers by Capt. H. he left the business here in the hands of his Proctor and gave us no information or instructions concerning it. — The Captors are determined to prosecute the Appeal, and in the mean time we have already remitted to our Correspondent in London £3519⁶⁷ Currency there to abide the event.

We flatter ourselves that having given this detail of Circumstances, our Conduct will be approved by all concerned, we have done the best we could for their interest, and to prevent any loss from accruing to either party so far as depended on us.

We are respectfully Gentlemen
your very Obed^t hum^l Serv^{ts}

(Signed)

(Copy)

Atwood Hayward & M^r Lachlan

W^m Henry the Clerk
of the Admiralty

Bermuda October 22nd 1793

(36)

Gentlemen Owners,

I take this opportunity to write these few lines to let you know my Difficulties — on the 7th of this month in the Lat^d of 30.00 N. Longitude of 65.30 West. I fell in with a Ship from Providence bound to Liverpool which was called the Chimble commanded by Capt. Caley which took out my Mate and two of my hands and put a Prize Master & four hands sent me to this port I expect to be libel'd and oblige to stand bygal whether I shall loose my Nessel or not, I can't tell, I think if they can condemn my Cargo they may condemn every Cargo that crosses the Salt Seas. I arrived here yesterday I am ruined for making my Voyage to Hamburg if I should ever get clear I shall make the best of my way to Beverly — I remain yours to serve
 To Moses Brown Signed Nath^l Shinsman
 Israel Thorndike.

Gentlemen Owners,

St. Georges in Bermuda 23rd Oct. 1793

Sirs I take this Opportunity to write these few Lines to let you know my Difficulties — on Octob^r. the 7th I fell in with a Ship from Providence bound to Liverpool Commanded by Cornelius Caley he took me and sent me into this port, took out my Mate and two of my hands, he put on board a Prize Master

Prize Master of four hands. The 23^d of the Month we had a very heavy Gale which drove me ashore and all the shipping in the Harbour. The Wind veering to the Northward I came off to my Anchors & I paid away a large scope and rid out the Gale. The Ship that took me parted her cables and was lost. My Mate & people has got aboard of me. I have been here eight days & nothing done. They suppose my Cargo to be French property. If I get clear from this Port I shall make the best of my way for Beverly, the season is so late it will be in vain to think of getting to Hamburg.

I noted a protest as soon as I arrived to this port.

I remain yours to serve

Signed Nath^l. Kinsman

To Capt. Moses Brown & Israel Thorndike

St. Georges in Bermuda Nov^r. 8th. 1793
Capt. Moses Brown & Thorndike

Sir, I take this and all opportunities to inform you of my difficulty on the 7th of Octob^r. 1793 in the Lat. of 30 North Longitude of 65.30 West I fell in with a ship from New Providence bound to Liverpool Commanded by Capt. Cayley who came along side of me and took out my Mate and two hands. Put on board me a Prize Master of four hands and ordered me to this Port. My schooner is libelled & I must stand tryal. how it will go with me I cannot tell for I have not a farthing of Property but of the United States. — there is but little justice done here, here,

here is eight or ^{Neutral} nine Vessels here, and some has been condemned which was American property as much as my Cargo, God only knows how it will go with me. — I would recommend to every one not to send their Vessels to sea without arming them to defend themselves against their enemies.

^{The ship that took me parted her cables and drove her ship} I have had a very hard Gale of Wind since I have been here and was drove a shore and was damage very much. My Mate & people has got on board of me again. If I should get clear I shall make the best of my way for Beverly. The season is so far advanced my Voyage is spoiled let the case go as it will with me.

I have not wrote on to Hamburg for I have not had no Opportunity. I have wrote home by Capt. Bradbury of Newbury port which was here when I came in, but he is gone to Virginia.

I remain yours to serve

Signed Nath^l. Kinsman

St. Georges in Bermuda Nov^r. 8th. 1793
Capt. Moses Brown & Thorndike in C.

Sir I take this and all opportunities to inform you of my difficulties on the 7th of Octob^r. 1793 in the Lat. of 30 North Longitude of 65.30 West I fell in with a ship from New Providence bound to Liverpool commanded by Capt. Cayley who came along side of me and took out my Mate and two hands. Put on board of me a Prize Master of four hands ordered me into this Port. My schooner is libelled and I must stand tryal for her how it will go with me I cannot tell. here is eight or nine Neutral Vessels

Nepels here I had a very heavy gale of Wind here
on the 23^d of Octob^r which drove me a shore, what damage
I have received I cannot tell, my vessel don't leak,
the ship that took me parted her cables and drove a shore
and is bilged and is full of water, and God knows I am
not sorry. My mate & people has got on ^{board} ~~shore~~ again
If I should get clear I shall make the best of my way
for Beverly. The season is so far advance my voyage
is spoiled but she can go as it will with me. — I had
not wrote on to Plamberg for here is no opportunity. I
have wrote home every opportunity. I expect to have
the case decided in a few days for I have been here 19
Days — No more at present I remain your hum^l serv^t.

Signed Nath^l Kinsman.

Elisha Whitney do hereby declare that I
have carefully ^{examined} the four original letters aforesaid
the foregoing is true and exact copy that I am
acquainted with the hand writing of the said Nath^l
Kinsman and know the same originally truly copied on
this paper, to be in his hand writing and signed by
him —

Elisha Whitney

Essex Co. Commonwealth of Massachusetts
December 30th 1798 then the above named Elisha
Whitney made oath to the truth of the above written
deposition by him subscribed ^{and sworn to}
before me Nathan Dane Justice of the peace

Bermuda at this By His Excellency Henry Hamilton
 Esquire, Captain-General, Governor,
 Commander in Chief and Vice-Royal
 of these Islands.

To all to whom this present Writing or
 Instrument of Publick shall come, Greeting.

Henry Hamilton

Know Ye, That this twenty first day of
 December One thousand seven hundred and
 ninety three, before me the Governor personally
 appeared Capt Nathaniel Keniman, Master
 of the Schooner Betsey, of Beverly in the State of Massachusetts, who
 solemnly made Oath in the Holy Evangelists of Almighty God, did
 declare, that he sailed from Point Petre, in the Island of Guadalupe,
 on the twenty fifth day of September last past in the said Schooner
 Betsey, well and completely provided with Cables, Anchors, Sails
 and Rigging, Provisions, Wood and Water, and completely and fully
 manned for a Voyage to the Port of Hamburg in Europe, to which
 Port she was destined by the plan of her Voyage as marked out
 and directed by Messrs Moses Brown and Israel Thundike,
 Merchants of the said Town of Beverly, and Owners of the said Schooner
 and likewise of her cargo, which was on board when she sailed from
 the said Port of Point Petre, consisting of Coffee, Sugar and Cotton
 well and safely stowed and secured. That on the seventh day of October
 last past, being then in the Latitude of 30 degrees North, Longitude
 65. 30 West from the Meridian of London he, was hailed and brought to
 by

by an Armist Ship (which proved to be the Liberator of Liverpool, & com-
manded by Commodore Cayley bound from New London to Liver-
pool) and ordered to leave out his Boat and crew on board said Ship,
to which he answered that he could not, as it was blowing a Gale
of Wind and a very heavy Sea was running. That he was not
withstanding ordered to come on board at all hazards, he and Capt
Cayley threatening that if he did not, the said Schooner should
suffer him. That he at last complied, the vessel to get out his
Boat without great difficulty and hazard, that in his going up
his papers to the Captain of the Ship, he was ordered on board the
own vessel again; that the said Cayley took from him his Plate and
two hands, putting on board of the Schooner a prize Master and
four hands, and ordered him to lie to under a double reefed &
foresail, till the Gale was over. That in getting the Boat on board,
one of the Schooner's Main Chaise was broken, her Mast struck in
and two of the barls Cars and one of her Casks lost, and some
of the Schooner's Blocks split. That the Gale continued with
violence four days, when, on the eleventh day of October, the weather
having become moderate, Captain Cayley ordered the Schooner to
proceed to Bermuda, at which Island she arrived on the seventeenth
day of the same Month, and on the twenty first came to anchor in
the Harbour of Saint George. That on the twenty third in a storm
came blowing from South by West, the Schooner drove on the Rocks
where she lay beating about two hours, but the Wind changing sud-
denly to the West, she drove off and rode it out. That in the hurricane
the Schooner lost her Mast, which was afterwards recovered though
greatly damaged; her Mainmast was blown to pieces, several of her
Chain plates broken, her starboard Quarter considerably damaged,
and

and her Cables shivered by straining against the Rocks. That on
the twenty fourth the Schooner Betsey and her Cargo were libelled
in the Court of Vice Admiralty by Capt Cornelius Cayley, as being
French property, and on the next day a claim was interposed by
this Appellant for the same, as Neutral Property; that after many
unnecessary and considerable delays by the Libellant, the cause was at
length heard, and on the thirtieth day of December instant, a
Verdict was pronounced, ordering restoration of the said Schooner
and Cargo to the claimant, with the costs. That the Libellant
appealed from this Verdict, on which the Court the Claimant was
legally obliged to enter into stipulation to restore to the Appellant
the appraised value of the Schooner and Cargo, in case the Verdict
of the Vice Admiralty Court should be reversed. That this Appellant
having in his possession Bills of Credit, duly executed by Messieurs
Bourne and Thomsen & Co. for the amount of two thousand
pounds Sterling Money of Great Britain, did repeatedly offer to
deposit them in the Hands of several Gentlemen in the Islands
of Bermuda, on condition that they would enter into the stipulation
above required, which offer not being accepted, he has been constrain-
ed to leave his said Schooner and her Cargo in the hands of Capt
Anthony Munn, Capt Benjamin Hayward and Mr John Mc
Lellan of the Islands of Bermuda, who have entered into the
above required stipulation with this Appellant. And the said
Sethaniel Roseman further declared, that his Cargo, having been
unladen at the Request of the Libellant, has been found to be
greatly damaged, and that the prize-master and crew put on
board said Schooner, have consumed and destroyed in provisions,
Wood, Water and sundry other Articles, to the value of more than

two hundred Spanish Milled Dollars. And ~~that~~ at the same
time also appeared Israel Greasy, Mate of the said Schooner +
Betsy, who solemnly made oath that the several Matters and
Things herein before set forth and related by the said Nathaniel
Kinsman, are just and true. Wherefore the said Nathaniel +
Kinsman does hereby solemnly protest, as well against the said
Ship Chelmsley, her Commander, the said Cornelius Engley, and
the Officers and Crew of the said Ship, as against her Owners, +
underwriters, and all other Persons whomsoever concerned in +
the same, for all Losses, Costs, Damages and Injuries already +
suffered or to be hereafter suffered by means and reason of the
said illegal and unjustifiable capturing, seizing and detaining
of the said Schooner Betsy, while in the lawful and peaceable
pursuance of her said lawful voyage, from Point Petre aforesaid
to Hamburgh; the said Appraiser still reserving to himself
from time to time, to make such further protest or protests as
he may think fit and find necessary or useful; And persevering
in his said Protest the Appraisers aforesaid have hereunto
set their Hands.

Nathl. Kinsman

Israel Greasy

By His Excellency's
Command }
Henry Tucker
Secretary

Thus done and protested before me the
Governor. In Testimony whereof I have hereunto
set my Hand and caused the Great
Seal of these Islands to be hereto affixed the
day and year first above written.

1793
No 2

Extrait from a letter from General Thondike to Henry Brown
to Mr. Caspar Night

HC055.4

(2)

Rooverley 30 Dec. 1793

We received a letter from Capt. Krimmann dated Point à Pitre in Guadeloupe
1st wherein he says: "I have my proceedings in my letter that I have wrote before -
I have got my Cargo on board and shall sail to morrow morning if Wind & weather
permits. I have sent your invoice of my Cargo that I have on board, my Voyage
will be very late for Hamburgh, but I cannot help that, I have made all
dispatch possible, I shall proceed my Voyage 14th." - The Vessel, which
brought this Letter, was overhauled by a British Privateer at Sea, the
Letter opened and invoice taken out by the Captain, who retained it, he said, to
compare with Capt. Krimmann's Cargo: for he had no doubt, but he would be taking
this kind of conduct has been much practised by the British Cruizers - so that
we have no particular Account of what he had on board, excepting what we
learn from his Letter, dated 14 Sept^r at Nassimua, wherein he says: "I have
taken in 29000 lb of Coffee, 12 Kibbs Sugar & 4 Bales Cotton, I am bound to Guada-
loupe to Morrow Morning." - We are told by Messrs of Mervels, which
have arrived from Guadeloupe since, and who conversed with him concerning
his Voyage thence, that he had about 20 Kibbs of best clayed Sugars on board
besides Coffee and Cotton on Deck. - About the 1st of Dec^r we received a letter
from Capt Krimmann dated the 8th Nov^r and in a few Days after one other
of the same date together with one dated the 22^d of Octob^r & one dated
the 28th Octob^r. attested Copies of which we herewith enclose, by which we
are informed of his being captured the 7th Oct. in Lat 30° North and Long.
65° 30' West by a Ship from New Providence bound to Liverpool call'd the *Chimble*
/ alias the *Chelmsley* / Comd^r by Capt. Layley Master, who took out his Mate and two of his
hands, and put on board a Prize Master & four Hands and sent him into Bermuda
where his Vessel & Cargo are libelled to stand trial. - We are under no
apprehensions of their being condemned, for we have known no

Instance of American property being so endangered excepting where there has been
French Property on board. - he writes that on the 10th Octob. he met with a
heavy Gale of Wind, which drove his Vessel on shore - but what damage he had received
he could not tell: the same Gale drove on shore the ships which took him - she bilged
sprung with water. - Capt Krimmann writes "if I shall get clear, I shall
make the best of my way for Beverly - the season is so far advanced, my
Voyage is spoiled, let the Case go as it will." - Thus upon receiving Your much esteemed
favor of the 10th Septbr. which informs us that our Assurance is effected in London
we wrote to the Underwriters in Salem and also to Your friend Kähler, giving
them Notice, that we do abandon the Schooner Betsey & cargo to the Underwriters.
That, Sir, we have stated to You all the facts we know relative to the Schooner
Betsey & her cargo since her capture - we request therefore You will represent to
the Underwriters in London, that in consequence of the capture & Detention at Bermuda
the Voyage is entirely defeated and broken up. The season being so far advanced
it would be very dangerous, if not impracticable to pursue the Voyage on Your Coast
till the next season, more especially as the Vessel has been driven on shore and probably
her bottom very much injured. As the Master seems determined to proceed homewards,
when he is acquitted, we suppose it would be considered as a deviation, and
if the Vessel should be lost while on her passage here we might be left without remedy
on the Underwriters. We therefore abandon the Vessel & cargo to the Underwriters
while the Court is undecided and we request and expect You will call on them
as for a total loss. We are in daily expectation of Capt Krimmann's Arrival and
if he comes here, we shall call on the Underwriters at Salem, and pursue such
steps, as shall best promote the Interest of all concerned, provided that in
a Case like this the Care of the property, with propriety devolves on us.

Court of Vice Admiralty
Bermuda

Be it known and made Mani-
fest that a certain Schooner,
or Vessel called the Victory of
and belonging to Beverly in
the State of Massachusetts, in
North America, & her Lading
having been seized & taken as
prize by Cornelius Layley &
Commander of the Private Ship

of War called the Chetowley & libelled in this Court
by him the said Cornelius Layley in behalf of himself
and the Owners, Officers & Crew of the said Ship &
Chetowley. And Whereas a Claim was interposed for
the same by Nathaniel Kinsman Master of the said
Schooner for the same; And Witnesses being examined
on the Standing interrogatories, other interrogatories
admitted, Exhibited & Witnesses thereon also examined
and all Matters propounded, a Day was fixed on for
arguing the Merits of the said Cause. Therefore, I John
Green, Sole Judge of the said Court of Vice Admiralty,
having fully heard the argument on both Sides &
having carefully & diligently examined, Searched,
into & considered the whole proceedings had & done
before me in the cause aforesaid; and having also
observed all & singular the Matters & things that

by

by law in this behalf ought to be observed accord-
ing to the style, Manner & practice of this Court
in case of a person that the said Schooner & her Cargo
are not liable to forfeiture & condemnation, the
same are, therefore hereby acquitted; And I do adjudge
Sentence, decree & order that the said Schooner Betty
with her tack Apparel, Furniture & Boat together
with her Cargo and every thing else on board be restor-
ed to the said Claimant, And I do further Order and
Direct that all the taxed Costs & expences of this
Suit be paid by the Libellant aforesaid.

Pronounced in the Court
of Vice Admiralty this
12th Day of December 1743

In^d Lewis Reg^d

A True Copy attest

Lewis Reg^d

Pernambuco
Lovers Islands.

By the Honorable John
Green Esquire Judge
of His Majestys Court of
Vice Admiralty in these
Islands.

To all to whom these presents shall
may concern.

I Know Ye that I have compared and examined
the aforesaid Copy of the Decree of the Schooner
Betty, And do hereby Certify that that the same
is a just and True Copy from the Original Decree
now remaining in the Registry of the Court of
Vice Admiralty in these Islands.

In Testimony whereof the Judge
aforesaid hath hereunto set my hand &
Seal of the Court of Vice Admiralty of these
this second day of January 1744.

John Green

N^o 2—
N^o 2

Mr. Caspar Voght, Beverly 24th May 1794

MS. 5.6

Sir,

The foregoing is copy of our respects to you under date 20th March, - in a few days afterwards an Embargo took place throughout the United States, owing to the almost universal detention and Spoilation of our Vessels by the British in the West Indies, - it is now like to be discontinued, and we hope there is not so much reason to apprehend the like inconveniences in future. - -

Mr. Greery mate of the sch^r. Betsey has just arrived here from Bermuda, he informs us that the Property remains in the same state as when Capt. Thinsman left there, excepting that the damaged Coffee was sold, but he appears to be apprehensive that considerable of what coffee was in the store will be pilloined and wasted, - he thought he could be of no essential service to continue longer there, - the Boardmen paid him up his Wages and he took his discharge. - -

We received your much esteemed favor of the 19th Nov^r. & 9th Dec^r. & note their contents. We regret

We regret exceedingly our mutual Disappoint-
ments in having the Betsey arrested in the midst
of a Voyage which would otherwise have proved
so advantageous to us. — As the Appearances
of a Rupture between the United States and
Great Britain seems to be wearing off, we
are still in hopes of making you a Shipment
of West India produce in the course of the
Season. —

We remain Sir very respectfully
your most hum^{ble} servants

Moses Brown
Isaac Thorndike

Received
of
M^{rs} Carter 10/4

Received 24 May 1794
Brown & Thornyke

M^r Caspar Voght
Merchant
Hamburg

(Copy)

HCOS 5.7 21

Salem May 27th 1791

Mr. Gaspar Coght
for

I enclose you have a copy of the Sch-
Debeys Taperus Sather Hunsman Master owned by Messrs
Brown & Shorncliffe of Beverly, the Sch- being to your address
you must know every particular respecting the Voyage —

I wish to inform you that Col. Ben^{ts} Pickman underwrote
for them seventy five pounds Sterl^y I wrote three hundred
pounds Sterl^y As there is an appeal to the Courts of Admiralty
in London we wish you to appear in our behalf & prosecute
the appeal in conjunction with the other Underwriters
in England, & as the owners have abandon'd the property
we suppose the whole sum recover'd will be for the
Underwriters & that Messrs Brown & Shorncliffe have
no claim to any freight or other damages that may be recover'd

We are Dear Sir

Your most Obedt. Serv^{ts}

Jⁿ. Fisk
over

Ch^r Caspar Voght

for

Salem June 7th 1791

The other side is a copy of
mine of the 27th May since which have seen a person from
Bermuda informs that the Betsey lay there with the greatest
part of her cargo on board the other part landed, sh^d
the decree of the Admiralty at Bermuda be in fa
I the Vessel Wagon released to the Underwriters it would be
convenient for me to transact the business for them, they
giving orders in what manner they wish to have it conduc
ed

I am with respect

C Merchant

Hamblough -

Your Most Obedt. Serv^t

Jos^h Fish

Valun 27 May 1795.
7 June

J. Pish

Warrington

Merchand

Mr. Thomas Pish

Mr Caspar Voght,

Beverly 7th June 1794 HCOSS. 8
92

Sir,

Your much esteem'd favors
of the 18th Feby 18th March and 1st April have
this moment come to hand, — the Vessel
which conveys this is just on the point of
sailing — We have only time to inform
you that we have settled with the Underwriters
here and have received a total Loss. —

The Documents which we sent you
the 5th Feby will we think be satisfactory
to the Underwriters ^{in London} and enable you to recover
the Loss speedily. — with reference to our
next we remain in haste your most
hum^l Servants

Moses Brown
Israel Thornicke

Reverley 7 June 1794
Percival Pownseyke

Mr Caspar Voght
Merchant

Capt. Allen

Hamburg

I Israel Crosey of Beverly in the Commonwealth of
Massachusetts, being of lawful age testify & say, that I
sailed from said Beverly on or about the seventeenth day
of July 1793, as chief mate of the Schooner Betty whereof
Nath^l Thinsman was Master, said Schooner was loaded
with Fish, Flour, Soap, Candles, Tow Cloth & Duck for
Coffee Bags, four hundred forty nine & one quarter
Joannes, & seventy two & three quarters Doubloons, said
Vessel & Cargo, was the property of Mess^{rs} Moses Browne
& Israel Thoroike of said Beverly Merchants, —

On our Arrival at Dominica, we were taken possession
of by a Vessel said to be a tender to one of his Britanick
Majestys Ships of War, by which we were conducted into
Prince Georges Bay, and after examining our Papers,
We were permitted to pass, without much detention,
the next day we arrived at off Roseau, in Dominica,
and Capt Thinsman went on shore, to try his market,
but could not sell. We then proceeded to St. Pierre in
Martinico, where the Captain again went on shore, to
try the market but did not sell. We then proceeded to St.
Lucia, but could not sell there, we then returned to
Martinico, at the Port of Sackmaran, but could not
sell, We then returned to St. Pierre where we sold our
Cargo, & purchased a part of a Load of Clayd Sugars
Coffee & Cotton, — but on Capt Thinsmans being informed
that he could purchase cheaper at Guadeloup, We
proceeded to that port, where we completed our loading
and

and sailed on or about the twenty fifth day of September for Hamburg, with a full Cargo, of Sugar, Coffee & Cotton, and with provisions & water for such a Voyage. - On the seventh day of October while prosecuting our Voyage to Hamburg as aforesaid, We were taken by the private armed ship Cholmley, Cornelius Cayley Master, belonging as the Master said to Liverpool in England, Capt Cayley ordered me, & two hands from on board the Betsey on board his ship, and he put on board said Schooner, a Prize master and four hands, & ordered her for Bermuda, where she arrived as I was informed, three, or four days before the ship, - when the ship arrived at Bermuda, viz, on the 20th or 21st of Oct. 1793. I found the said Schooner Betsey in possession of the Prize Master, and so continued till the twenty third day of October, when she was drove on shore, by a violent Gale of Wind, & was very much damaged. On or about the thirteenth day of December the Schooner Betsey & her Cargo had a trial & was acquitted by the Court of Vice Admiralty, but Capt Cayley & the Captors appealed to the Court of Admiralty in Great Britain, & Capt Hensman did to my certain knowledge repeatedly try to procure Bondsmen to be accountable for the property in case of a reverse of Judgment, but he could not procure Bondsmen without leaving the Vessel her Cargo & adventures in their hands for security, which he was obliged to submit to, at that time it would have been impossible for us to have proceeded on our Voyage to Hamburg even if the Vessel had been liberated both on Account of the

the injury the sustained in her Hull, & Sails, and because two of her hands had run away from the said Vessel, one of which shipped on board a Privateer, and from the great Rage for Privateering the Men could not be replaced at Bermuda, under these Circumstances Capt Hensman Determined to leave the Vessel & Cargo & adventures in the hands of the Bondsmen & left me to take care of the Vessel, and himself left the Island, & returned home. I remained in Charge of said Vessel, untill the Ninth day of May last, when I was informed by Capt Atwood one of the Bondsmen, that he was determined to haul said schooner into a Cove, and there let her lay, untill the dispute was over, and that he should sell the Cargo, as soon as he could obtain such a price as he thought would answer, the Coffee which was damaged when the Schooner went on shore, was sold before I left Bermuda, but a considerable Coffee was damaged, in the Store, where it was stored, the Store being an old wooden building, stood a considerable height from the Ground & the owners of the Store having an Occasion for to occupy it, for other purposes had the Coffee removed, when it appeared that a considerable part was damaged, by reason of the water, leaking through the Roof, in many places, & while it was removing I saw many of the bags entirely rotten, & a considerable part of the Coffee had run out, - it appeared also, that Persons had been under the Store, & started off some of the Boards of the floor in such a manner, as to enable them to take out Coffee from the Bags, besides which many of the bags appeared to be cut, and the Coffee almost entirely taken out, & carried off. There were also a great number of Rats on board the said Schooner, when the Sugar & Cotton

Hill

Still remained, which will be in danger of being very much injured, by them they had actually eaten a Number of holes in the Hogheads of Sugar & had destroyed Considerable Cotton before I left Barbuda, the holes I constantly stopped as I found them but as the vessel lay at the wharf it was impossible to prevent the Rats from increasing. I asked Capt Atwood one of the Bommen, why he did not take out the Sugar & Cotton, on which he replied that the whole property was under his Controul, and he should do, as he pleased with it.

Salem July 15th 1794

Israel Cressy

Commonwealth of Massachusetts

Essex Co. July 15th A.D. 1794

} This day the above named Israel

Cressy personally appeared and being carefully examined and duly cautioned to testify the whole truth relative to the matters in the within and aforesworn Affidavit contained made solemn Oath to the truth of the same Affidavit being by him subscribed. This Affidavit is taken in perpetuam Testi Memoriam, at the request of Moses Brown and Israel Thorndike both of Beverly in said County of Essex merchants.

Before us

Malcolm Good
Wm Prescott

Justices of the Peace in &
for said County of Essex
Quorum Unus.

(Commonwealth of Massachusetts)

By His Excellency Samuel Adams Esq
Governor of the Commonwealth aforesaid

To all whom it may concern

Know ye that Isaac Ozgood Esq is a
Justice of the peace and quorum that Wil-
liam Prescott is a Justice of the peace both
within and for the County of Essex in
the said Commonwealth duly constituted
and sworn, and that to their acts and at-
testations as on the paper annexed, full faith
and credit is, and ought to be given, in &
out of Court.

Samuel Adams

In Testimony whereof I have caused the public seal
of the Commonwealth to be hereunto affixed this eleventh day
of September A.D. 1794 and in the Nineteenth year of the
independence of the United States of America.

By His Excellency's command

John Avery junr Secretary

Protest
of the first mate
of the Betsey
Captained

Wth Caspar Light,

Reverly 16th Sept^r 1794

Sir,

The preceding is copy of our last respects to you under date of ^{the} June. We have since been honored by your esteem'd favor of the 15th & 22^d April and note their contents. We now inclose you M^r Israel Greasy the Mate's Original Deposition and Copy of Capt^t Kinsman's Protest taken at Salem - this Evidence tends principally to show the impossibility of Capt^t Kinsman's prosecuting the Voyage for want of Sailors, even had the Betsey been under no restraint after she was acquitted by the Court of Vice Admiralty at Bermuda. This Evidence with what we have before furnished you we think must be sufficient for to recover of the Underwriters in London. We have settled with the Underwriters at Salem who have paid us a total loss. If even there was cause for an Abandonment where the loss of Property was not absolute & total there was undoubtedly in this case, for the Voyage was absolutely broken up and could not be pursued. We have had no direct information from Capt^t Kinsman's Bondsmen at Bermuda, but are told by a person from there that the property is sold and we consider it as deposited for the benefit of the Underwriters and all concerned.

You'll please to recollect that in our Letter to you of the 4th July 1793. we there intimated to you that we did not expect to enter largely into commercial Speculations, - but being improv'd with an Idea that during the European War a favorable Opportunity presented, which induced us to engage in a speculation of the kind therein pointed out, and in order to guard against every Risk that might subject us to the inconvenience of providing any other Source than that which was at Risk, - we requested you to insure against every possible contingency that might happen to the Voyage in order that you might in case of misfortune look to the Underwriters for indemnification without our being call'd upon to make any other specific advances upon the Adventure of the Schooner Betsey - the same ideas we communicated in substance to our mutual friend, M^r M. Muller before we wrote you - it is true notwithstanding that about the time we heard of the Capture of the Betsey, we had some Sugars & Coffee on hand, and were in expectation of a further supply from the West Indies, on the arrival of which we intended, to make another Shipment to you, but being disappointed, of some arrivals occasion'd by Detentions in some measure similar to the Betsey's. - we have not had it in our power with convenience to make any further Shipment for Hamburg, - and it being inconvenient to make any specific remittance on account of this property untill we know the extent of the loss, we must beg you to suspend any expectation of being reimbursed, till a settlement is made with the Underwriters in London, in the mean time.

time we have no objection to giving satisfactory Security if the Underwriters are not chargeable with the Loss.

You'll please to observe that all Capt. Kinsman's Invoices and Accounts and Papers relative to his Cargo & his own Adventure were deposited in the Court of Vice Admiralty at Bermuda and no doubt will be sent forward to London with the Appeal. When this Matter comes before the Court of Admiralty in London, you will cause a claim to be filed in our behalf for the Freight, and (if you think best) for the Profits of the Voyage which were not insured, and which must be recovered by way of Damages. The Schooner Betsey of 14 Tons when she sailed we estimated at £450 Sterling which Sum she was reasonably worth, tho' we did not think to mention to you her Value when we ordered the Insurance, her Cargo consisted of Sugar, Coffee & Cotton of excellent qualities as follows viz
36 Hogsheads Bay Sugar french weight 38096 -
19 Hogsheads 1/2, 1 Tonne, 1 Barrel & 306 Bags Coffee french weight 38000 -
4 Bales of Cotton french weight 1509 -

His own Adventure on which he had no Insurance, consisted of Sugar & Coffee viz - 5 Hogsheads Bay Sugar french weight 5040 -
2 Hogsheads, 4 Barrels & 10 Bags Coffee 2^d weight. 5174 -
Capt. Kinsman has wrote you concerning his Adventure & requesting you to claim it in his behalf. As it does not appear that the Underwriters have as yet paid any attention to the Recovery of the Property at Bermuda, we will if you & they request it, join with the Underwriters here in our endeavours to recover of Capt. Kinsman's Bondsmen at Bermuda, the property in their hands for joint account of all concerned, - without special directions from the Underwriters we do not consider ourselves authorized to give any directions concerning it. - We consider the Underwriters accountable to us for a total Loss, of course there might be an impropriety in our doing any thing about the matter without their special authority. Mr. M. Muller has lately address'd us in your behalf on the subject of remittances. We refer you to him for an account of our communications on that subject. We have not yet had the pleasure of seeing you Mr. Steinbach, nor your friend Mr. Walter Prevost junr. We shall be happy to have an opportunity of shewing them our respects and remain with much Esteem & Respect

Your most obedient, Humble Servants -
Moses Brown

Isaac Thornbridge

Beverly 16 Sep 1794
Brown & Hornby Key

M^r Caspar Voght
Merchant
Hamburg

For the Information of Merchants

HCOS5.12

76

Notice is hereby given to all persons interested in the Cases of British Captures, that M^r. Samuel Bayard of the City of Philadelphia, is appointed to proceed to London as Agent of Claims & Appeals. — that the Merchants of Philadelphia whose Property has been condemned have appointed a Committee consisting of Th^o. Fitzsimons, James Ward, Stephen Girard, James Olden and J. Shoemaker, to confer occasionally with the Secretary of State. that Copies of the Letters which have passed between the ~~Secretary of State~~ Committee of Secretary, are transmitted to the several Collectors in the United States for the Inspection of all concerned. That the Committee will adopt Measures for procuring the records yet wanting, and will enter into the proper Correspondences in the United States, and in the West Indies.

Nov^r. 8th 1794

The Committee having been notified by the Secretary of State, that the Agent of Claims and Appeals appointed by the President of the United States, is to embark immediately for London, and that he is authorised to bind the United States under the direction of W^r. Jay for the Costs and Damages attending the prosecution of the Claims of American Citizens, that the necessary Counsel will be

be engaged on the part of the United States, and that
if the parties will obtain Copies of the proceedings of
the Courts in their respective Cases, the Expenses
of the Records will be reimbursed by the United States.
Nov. 6th 1794

NB. The foregoing are extracts of Publications in the
Gazette published for the Information of all concerned

John & Fran: Baring & Co^{rs} Esq^{rs}
 London

Hambro' 4th 13 Jan 95th

Sirs: I crave your Reference to my respects to you of 1st inst^l advising my Drafts for L^{ds}. 3000. - at 3 Mos. and L^{ds}. 346. 13. 2^d at 82^d. 1st & enclosing a remittance for L^{ds}. 600. - Protest of a Bill of L^{ds}. 124. 7th accepted for the honor of your Indorsement. I have since then been favor'd with both your favors of 30th past & 2nd inst^l 11th 1st. Rainhold at Manchester's Draft for L^{ds}. 138. 18. 3^d for 16 Dec^r 2nd 11th 1st is duly credited you, & shall in course expect your D^t against the same, pt^l appoint^d. I am very sorry for Mr. Codman's Displeasure abt. Stetchers Co^{rs}, however, it can be no approach to me, as to avoid it, I ventured to deviate from Mr. Voght's general unexceptionable Instructions for as much as was wanted to perform Mr. Codman's Plan, certainly no further such Disappointments shall arise between us, nothing impeaches the Execution of his orders abt. the Gov^r Bowdoin's Cargo, & am very glad now, to have Mr. Voght's consentment to such Distinctions with said Friend, as may be required in any case to show, if particular regard he deserves. I have thank'd you the 21. 13. 4th Difference in the Commission of Insurance on Ship Tuno, if there's no Possibility of having y^r return of Premium settled with

You for more than half a year, I must beg Your Favor to
send me an affidavited Copy of Policy & Settlement, in order to beg
receiving the other half in America. The Sum is safely arrived
at our River's mouth, be so kind as to send me the Abstract
of my Acc^t (cont^d of past year) together with my acceptances
discharged during y^e same, if not yet at way, please forward
the needful with the inclosed L^{ts}. 390. 18. 7th on several acc^{ts}.
Note as foot, in order to credit me y^e same, & note my acceptances
at Your Demerit for

L^{ts}. 300. by M. Müller at Boston from 8th October
" 200. " 300th S. order Hays
" 110. by J^r. Price at Boston from 27th 6th 300th S. order
Dickason all accepted y^e 29th Dec^r last & due 28th inst^t which
I beg your favor to discharge to y^e charge of my account
I still made you to furnish on You
L^{ts}. 250. - at 3rd S. order Reddick & Beaumont please
forward & charge me y^e same in course, no, news in Trade.
Navigation continues entirely shut up, I beg your kind care
of the inclosed for M^r Voght.
The 3 first Bills for L^{ts}. 150. 130. 120. fr^m 16 Dec 3rd S. which
I mention'd y^e 6th inst^t to have been lost, have now been
found again, & You'll be pleased to accept them, for the

kind, as to forward the inclosed for America, by a Trader or
first Packet, excusing y^e Trouble.

Note of my Remittances

L^{ts}. 190. - } fr^m 280th 1st 3rd Mths date on Simon Fraser.
" 120. - }
" 115. 18. 9. - fr^m 8th Dec^r 90 Days d^t on Maurice de la Torre.
" 147. 12. 1. - fr^m 1st Dec^r 3rd Mths Jan Stratton Gibson & Shönberg
" 4. 15. 9. - fr^m 6 Aug^t at sight on Minet & Factor
" 12. 12. - fr^m 23 Nov^r 3 days sight on Wolff & Daville.
L^{ts}. 590. 18. 7th in all

16 Jan: 95.

M^r J. Barung & Co.

London My respects to You of 13th. covered L^{ts}. 390. 18. 7th
on several at same time requesting Your Favor to note my
acceptances for L^{ts} 800. - and protest my Draft for L^{ts}. 250. - to
which 2nd y^e further Contents, I leave Your Reference -
I've since received none of Your much esteem'd Favours, y^e
mails of y^e 6th & 9th being due by y^e strong East wind with
hard Frost & Snow, almost no Trade (offices only keep in Den^t.
good sound common Hth Downth asked for at 9th being sent
into Germany by Land. Sugars firm, but as yet little asked
for, Tobacco expected to have a regular fall immediately
at y^e Navigation's opening, a parcel of brown Manilla
Tobacco of perished Quality & forced to a public Sale

by Contest has obtained about 3/ on an average which is 1/4
to 3/8 more than could have been expected according to the
market Price in New York. Each in London sold, & Bills may
offer'd please do y^e needful with th^e inclosed
L^{tr} 390 - fr. 24 Feb. on Agassiz Wilson & Co to Charge
my account.

B^y a letter Packet sent up from Coxhaven, out of y^e American
Vessels arriv'd there. I receiv'd one of y^e Betsy. (Cap Kinney)
owner, which I find it advisable to hand over in original
together with y^e 2 sworn depositions of Cap & Mate, &
You'll observe that Mess^{rs} Brown & Thorneiche affirm
y^e same thing. I likewise find about y^e Bills Lading and
Invoice to be found amongst the Papers deposited at Barbadoes
& sent over to Eng^d for th^e appeal. The said Friends had
not yet receiv'd my letter by which together with Bills
Lading & Invoices. I insist on a Certificate of Value on
Ship, however they now mention that Value is a letter
& in a manner which could satisfy th^e Underwriters
but they'd not have their own reasons for insisting
on mere formalities, if then you can get the Bills
Lading & Invoices or legalised copies of y^e same out of
the Paper or Packet sent over to your Court.

Detsey - Skinsman

Messrs Brickitt & Tounley enclose
a Copy of the Bill of Lading of the
outward cargo and of the Account of the
return &c, not finding in the Proceedings
any Bill of Lading for the latter -

Neptunus, Danberg

C & S now find that it is the
determination of the Captor to go on
with his appeal and they request
therefore the favor of the enclosed Order
to defend the sentence of the Court of Ady

Maria Catharina - Shubshman

This case has been ordered for further
Proof and the Forms of the Documents
required have been sent to Messrs Wolffs, Dornier

Opperman - Petersen

Graf Van Bernstorff - Smid

These cases have been also ordered for further
Proof; but it is hoped that the Documents
already transmitted from Leghorn will satisfy

Wade

State of Iowa - These

The decree of partition in this case
is suspended - But C & D are not able
at present to state the particular
objections on which this step is founded

Dated 16 Jan 1895

Crickitt & Sonley
16 Jan'y 1795

Mr Baring & Co

Caution, as I doubt not You can, It seems advisable again to enter into Negotiation with th^e Underwriters in order to have them accept an Abandon, as th^e American Underwriters have done long ago, pray, dear Friends do Your best Endeavors for succeeding in this, as for y^r Claim to be set forth at our admiralty Court, I doubt not Your Attorney will long ago have been instructed of whole Extent of the claim, such as it's now again stated in Mess^{rs} Brown & Thorncliffe's Letter, that's to say, that You not only appear as Claimant for th^e amount insured by You, but for y^r whole amount of Ship & Cargo, including y^r sums already paid by th^e underwriters in America, y^r Cap^t's own adventure & not to relinquish the Claim of Freight & Losses, particularly the Loss of a most favorable adventure which may be proved in course. It will be necessary also to consult Your Underwriters about any Measures or Proceedings which they may judge it convenient to have Mess^{rs} Brown & Thorncliffe authorised to with regard to the Ship & Cargo, or th^e amount, still existing or being deposited at Barbadoes. I am sorry for the Embarrassment which this unhappy Business must cause You.

Hambro' y^e 20th January 1795.

Sirs!

I have Your Reference to my respects to You of
themselves with a remittance for Ldg. 39g. - 2 small Bills for 10^l
each & a Letter of Mess^{rs}. Brown & Thorndike relating to the
Belay. Cop^y. Kinsman's Business.

Inclosed you have y^e Depositions of Cap^t.
of Mate. mention'd by y^e same. I have now been favor'd
with both Your much esteem'd of 6 x 9th inst^l. am surpris'd
of Your not having receiv'd my Letter of 23 Dec^r. inclosed
Copy of y^e same, as I'm perfectly sure of Letters having
been given into our Postoffice safe and right. I wait'd the
arrival of one Packet more with You before making the
expences of Duplicates of the aforesaid Documents, deeming it
probable that the Letter may have been left back in Hollnd.
Your Letter for M^r. Will Codman has been forwarded, by
way of Switzerland under Cover to my Friend at Paris.
to be handed to M^r. R. Codman at his Lodgings & point'd
to me by him, if there, but if not, to be sent to Mess^{rs}.
Homburg at Haare, that for Cap^t. Doorn goes to Alk-
-had, where he is with his Ship. I have already bought
most of the Cargo orders for him. & M^r. Codman's orders

when I can't help shewing my Impatience to know any
Success with as soon as possible. pardon my troubling
You with the inclosed 2 Bills for
Ldg. 10 - on Thomas Maude
Ldg. 10 - on James Lykes, with their Letters of Advice;
the amount of which when receiv'd please to credit me -
my Indorser says. They are drawn by 2 British Officers
& indorsed by their Captain, whose Friends, Ammony &
Page would honor them in case of Nonacceptance. I
could Wish he had mention'd where these 2 last are
to be found, if you d^o not know 'em. The acceptants
may tell You about them, I conceive that in every
case, no Protest must be made, as it seems, the expence
would be useless. Beg Your favor to forward the
inclosed for M^r. Voght, also the Letters for America by
the first sailing Freighter or Packet, am glad to finish, because
I trouble You to day as long as writing -
P.S. Cap^t. Kinsman's & his Mate's Depositions will
follow p^{er} next mail. I am of mind to have a notarial
Copy taken of y^e same, for y^e Cause of being lost by the
present Troubles in Holland.

to that Purpose will be complied with to full extent,
without using any Reimbursement on You, as ordered
Insurer. Liff. 1500. - on Ship, against Sea risk only?
against the time of Expedition, I shall inform You
of y.^e Premium at which I can here cover y.^e Tisk, in
order to hear whether You might do it at a lower Premium
and choose what might be most to our Friends Advantage
please to do y.^e needful with th^e inclosed
✓ Liff. 300. from 24 Dec. 2. M^{rs} on Agassiz Wilson & Co.
and credit me y.^e same; no News at this market, I beg
Your Care of th^e inclosed for Mr. Voght. & remain.

For: Voght.
Jan 16/20 Jan 95
23 Feb 95
Ans 24 Dec 94

16 May 1795—

Ship Betsey Captain Winsman Devonshire Square 100

When We troubled you before respecting the Capture of the above Ship nothing could be done ^{upon the above mentioned papers} the Settlement of the loss because the insurance effected by us being indiscriminately on Ship & Cargo & that some insurance appeared to have been made ~~off~~ ^{for} this Ship in America, it was necessary to procure the Value of the Cargo & of the Ship & the Value of the insurance effected in America, the particulars of which We have received within these few days & beg leave to lay them before you, they consist, as follows,

- 1 of Invoice of Cargo to the West Indies
- 2 Bill of lading of do
- 3 Estimate of Ship at the time of sailing £450 Sterling
- 4 { Letter to the Captain from the Owners containing
- 5 { their instructions how to act
- 6 { Invoice of the Cargo shipped in the West Indies
- 7 { amounting to 70672 livres equal to £1927—
- 8 { exclusive of private adventure — " 195—
- 9 { of provisions — " 40—
- 10 { Account of Sale of the Betsey's outward Cargo
- 11 { amounting to Livres 73769
- 12 Protest of Licesey, the first mate—
- 13 Protest of Captain Winsman
- 14 { Declaration of Captain Winsman that all
- 15 { the above accounts are true & just
- 16 { Declaration that the sum insured in America
- 17 { was five hundred pounds Massachusetts
- 18 { currency on the Ship & Cargo, equal to £

Prize

The cargo depreciating daily from the damage it had sustained by the vessel having been driven on shore, & the ship likely to be lost in case of any ~~severe~~ hurricane, sold the Vessel & Cargo, & by the Copy of a letter ^{which they} dated 15 December 1794 it appears ^{that} ~~they~~ ^{including private adventures} have netted £3579. 6. 7 ^{Pennada} ~~Currenty Pennada~~, which sum they say they have remitted to their Correspondent in London to answer the Appeal but do not mention the name of the correspondent -

As the Ship & Cargo were restored at ^{are} ~~the~~ Bermuda, ^{not they} Underwriters ~~are~~ liable to all the costs attending the trial there, even supposing on appeal the decree should be reversed, of which however in our opinion there is not the least probability - & as the Ship & Cargo have been restored at Bermuda the likewise immagina the expense of defending the Appeal likewise falls upon the Underwriters even should the Appeal go against them -

Query what other charges are the Underwriters liable to, as we are afraid nothing will be to be recovered from the Captors as the words of the Order of Council protect them.

Yours &c
J. W. Barrington

Wm. Livingston &c

Ms. Angerstein Warren & Lock's Comp. was
on Mr. Bannings H^c — They have laid the letters
relative to the Peter Kinsman before the Underwriters
on that ship cargo. Their remarks are as follow,

" That as the Ship has been captured by an English
" Cruiser on suspicion of the Cargo being French property
" They cannot be answerable for any events during the
" litigation, because, should she be released condemned,
" they are released from their obligation, the property
" being warranted in the Policy not to be French. & if
" the Owners do not make out the warranty to the
" Satisfaction of the Court, the loss must fall upon themselves,

"Upon being released, the Captain proceeds
"upon his Voyage to Hambro, the Underwriters are bound
"to follow him there, & to pay, in case of his being lost in
"the prosecution of his Voyage &c. &c.

The Insurance is on Ship & Cargo -

Proof of interest

bill of lading & Invoice -

bill of Sale.

Argentina &c

Betsey, Kingman

M^{rs}. Parings & Co -

Before the Most Noble and Right Honourable the Lords Commissioners of Appeals
in Prize Causes.

B E T S E Y,

NATHANIEL KINSMAN, Master.

Cornelius Cayley, *Commander of the Private*
Ship of War the Cholmley, Captor of the } Appellant.
said Ship Betsey and her Cargo, - - }

AGAINST

Nathaniel Kinsman *the Master, Claimant of* } Respondent.
the said Ship and Cargo, - - }

On an Appeal from the Vice-Admiralty Court of Bermuda.

Appellant's CASE.

THIS Ship appears to have belonged to American Subjects residing at Beverley in the State of Massachusetts, from which Place she sailed in or about July 1793, with a Cargo of Fish, Flour, Soap, Candles, and Money, on a trading Voyage to the French Islands in the West Indies: She went first to *Sac Marine in Martinique*, then to *St. Lucia*, and from thence to *St. Pierre in Martinique*, where she disposed of the greater Part of her original Cargo, in return for which she took on board, in September 1793, Sugars, Coffee, and Cotton, the Produce of *Martinique*: Afterwards she proceeded to *Point a Pitre in Guadaloupe*, and there completed her Lading, by taking in about 29 Hog-heads of Sugar, and a Quantity of Coffee, the Produce of that Island. About the latter End of the same Month, she took her Departure from *Guadaloupe*, ostensibly bound for *Hamburgh*; but, from the Evidence, it appears probable that she was destined to *Bordeaux*; and on the 7th of October following she was captured by the Private Ship of War the *Cholmley*, Cornelius Cayley Commander, and carried to *Bermuda*.

While the *Betsy* remained at *Martinique*, the Master received on board Dispatches from the Governor to the French Ministers, containing Information of material Consequence both to *Great Britain* and *France*. One of the Envelopes was superscribed, "To the Citizen Ministers of the National Convention at Paris."—"This Packet to be thrown overboard in case of encountering or meeting with an Enemy." (Signed) "*Dn. Rochambeau*." These French Dispatches were attempted to be concealed by the American Master at the Capture, but were seized by the Captor, and delivered to his Excellency *Henry Hamilton* Governor of *Bermuda*, who found it would be of material Consequence to prevent the Contents from being divulged in the *West Indies*; and therefore he withheld the Papers from the Captors, and transmitted the same to His Majesty's Secretary of State for the Home Department.

In the Vice Admiralty Court of Bermuda.

The Captor proceeded against the Ship and Cargo as Prize.

The Ship Papers were exhibited, with an Affidavit of the Prize Master, stating, that the Papers then delivered into Court, marked from No. 1 to 20 inclusive, were all the Papers found on board at the Capture, the Mail only excepted, which was lodged with his Excellency the Governor.

SHIP

S H I P P A P E R S .

- No. 1.—Register, dated Salem, 13th July 1793, wherein *Moses Brown* and *Israel Thorndike* of *Beverly*, in the County of *Essex* and Commonwealth of *Massachusetts*, are stated to be the Owners.
- 2.—Cocket and Clearance at *Salem* for the *West Indies*, dated 13th July 1793.
- 3.—*American* Passport or Sea Letter, without Date.
- 4.—Permit for taking on board at *Salem*, 4800 Dollars in Gold, dated 14th July 1793.
- 5.—Permit for taking on board at *Salem*, 34 Hogheads of Fish, 10 Boxes of Soap, 100 Barrels of Flour, and 400 Yards of Bagging.
- 6.—Bill of Lading, dated 15th July 1793, for 69 Hogheads and 21 Boxes, containing 671 Quintals of dried Fish, 21 Boxes of Soap, 8 Boxes of *Spermaceti* Candles, 198 Barrels and 30 Half Barrels of Superfine Flour, 2480 Feet of Lumber, 397 Yards of Duck for Coffee Bags, and 678 Yards of Tow-cloth for Coffee Bags, and in Gold 449½ Joannes, and 72½ Doubloons.
- 7.—Invoice of Cargo, for Sales and Returns in the *West Indies*.
- 8.—Letter of Instructions from the Owners to the Master, respecting the Voyage to the *French* Islands, then to *Hamburg*, there to take in a Cargo for *America*, from *Messrs. Vaigt and Sieueking*; and the Instructions then proceed thus: "Or if the *European* War should continue, and you think it would be more for our Interest to return to the *West Indies* with the Productions of *France*, you'll take from our said Friends a Sum sufficient to purchase a suitable Cargo for the *West Indies*, which must be, if in Cash, a Coin that is current in *France*: You'll then proceed, with our said Friends Advice, to such Port in *France* as you suppose is the most proper for you to purchase a Cargo for the *West Indies*; and from thence you'll proceed to such of the *French West India* Islands as you think the most advantageous, touching first at *Martinique* and *Guadaloupe*, and after selling your Cargo there, you'll invest the neat Proceeds in *West India* Produce, and proceed for *Beverly*."
- 9.—Further Letter of Instructions from the Owners to the Master, respecting the Specie on Board, dated *Beverly*, 15th July 1793.
- 10.—Account Sales of the outward Cargo at *St. Pierre's*, in *September* 1793.
- 11.—Abstract Account Sales of outward Cargo sold, and Account of Return Cargo, shipped at *Martinique*.
- 12.—Another Account of the Sales at *Martinique*.
- 13.—Account of the Master's Disbursements.
- 14.—Duplicate Account of the Return Cargo.
- 15.—Attestations as to Nationalities of the Master and Crew.
- 16.—Invoice and Receipt for 8 Hhds. Clayed Sugar, purchased at *Point a Pitre*, 19th *September* 1793.
- 17.—Ditto of 15 Hhds. Clayed Sugar, purchased at the same Place.
- 18 and 19.—Invoice of Sugars and Coffee, purchased of *Bondi and Balesie*, at *St. Pierre's*, in *Martinique*, and Account Current between that House and *Capt. Kinsman*.
- 20.—Clearance at *Point a Pitre* for *Hamburg*.

18th October
1793.

The Master gave a Claim for the Ship and Cargo, as the Property of *Moses Brown* and *Israel Thorndike*, Natives and Citizens of *America*.

Nataniel

18th October
1793.

Nataniel Kinsman the Master was examined on the Standing Interrogatories. In answer to the

6th, he saith, That he had 5 Hhds. of Sugar and Four Thousand Pounds Weight of Coffee on board, as his own private Adventure; the Mate had Eight Hundred Pounds Weight of Coffee.

7th and 8th, The said Vessel sailed from *Beverly*, and the first Port she anchored at was *Sac Marine, Martinique*. Not finding the Market answer, he went to *St. Lucia*, but did not anchor there, as he could not dispose of his Cargo: From thence he went to *St. Pierre*, in *Martinique*, where he sold his Cargo, all except 5 Boxes of *Spermaceti* Candles. The Voyage began at *Beverly*, and was to have ended there. The Cargo taken on board at *Beverly* was Fish, Flour, Soap, Candles, and Money, which was sold at *Martinique*. The last clearing Port was *Point a Pitre, Guadaloupe*, with Sugar, Coffee, and Cotton.

11th, That the Lading was taken on board at *Martinique* and *Guadaloupe*.

16th, There were no Papers, excepting the Ship Papers and Accounts, WITH ONE PRIVATE LETTER, on board, none of which were torn, burnt, thrown overboard, destroyed, concealed, or attempted to be concealed.

21st, The Cargo on board was all of the Growth, Produce, and Manufacture of *Martinique* and *Guadaloupe*.

4th November
1793.

Israel Cresfy the Mate was examined on the Standing Interrogatories; and his Deposition conforms to that of the Master.

The Master and Mate having thus withheld their Evidence respecting the *French* Government Dispatches which were on board,

On the 14th
November.

The Captor's Counsel moved the Court for Leave to exhibit Interrogatories for the Examination of the Prize-master, and One of the Seamen of the *Cholmley*, and Two Passengers on board; and alledged, that he expected to disprove certain Allegations deposed to by the Claimant and his Mate. This Motion was opposed by the Claimant's Counsel: And, after hearing the Arguments, the Judge admitted, that *William Smith* the Prize-master, *Stephen Cole* a Seaman, and *William Brown* and *James Sale*, Passengers on board the *Cholmley*, be examined as Witnesses, so far as might reach the disproving certain Allegations on the Part of the Claimant.

And, on Motion of the Claimant's Proctor, Interrogatories, to be answered by the said Claimant, his Mate, and One of his Seamen, were admitted and filed.

16th Nov.

Thomas Hitchings, a Mariner belonging to the *Betsy*, was examined on Special Interrogatories.

To the 3d, saith, He heard *Kinsman* the Master of the *Betsy*, and also the Mate, say, that she was bound to *Bourdeaux*; and he also heard *Kinsman* say, that it would be too late to go to the East Country, for that it would be froze up before they should get there. After the Capture, while he and *Cresfy* the Mate were on board the *Cholmley*, *Cresfy* told him that when the *Betsy* was brought to, while her Boat was hoisting out, (to take the Master on board the *Cholmley*;) said *Kinsman* told *Cresfy* there was something in his Chest which he must take care and throw overboard, meaning the *French* Papers; but that he, *Cresfy*, was prevented from so doing by Means of receiving a Hurt while getting the Boat out.

Lastly, That he heard the Mate say, the Captain had told him he had been detained by the Governor at *Martinique* Two Days to take on board *French* Papers.

19th Nov.

William Brown, a Passenger on board the *Cholmley*, was examined on the Interrogatories.

To the 4th, saith, He was present on board the *Cholmley* when the Claimant went on board; that soon afterwards, on examining his Papers, *Capt. Cayley* asked him if he had any *French* Papers or Letters on board, and he answered, He had none.—*Kinsman* afterwards returned on board his Ship, accompanied by the First Lieutenant of the *Cholmley*, who went to examine the *Betsy*; and soon after he got on board, he sent Two Packets of *French* Letters on board the *Cholmley*; and when the Lieutenant returned, he informed *Capt. Cayley* that, on examining the Chests and Trunks, he had found those Letters which *Capt. Kinsman* had endeavoured to secrete; for, that on examining his Chest or Trunk, he had taken out some Papers and put under him as he sat; and the Lieutenant, on making him rise

rife up, found those Papers which he had sent on board the *Cholmley*, which were French Papers.

20th Nov. James Sale, also a Passenger, was examined on the Interrogatories.

To the 4th, he saith, That after the Capture, *Kinsman* went on board the *Cholmley*, and delivered his Papers to *Cayley*, who asked *Kinsman*, if he had any French Papers or Letters? to which he answered, He would give his Word and Honour that he had no such Thing as a French Paper or Letter on board his Vessel. After which, *Cayley* sent his Lieutenant, Mr. *Smith*, on board the *Betsy*, to examine her; and soon afterwards Two Parcels of Papers or Letters were sent on board the *Cholmley* from the *Betsy*, which were said to have been found on board her.—The same were French Papers, and appeared to the Deponent to be Dispatches.

21st Nov. William Smith, Lieutenant of the *Cholmley*, was examined on the Interrogatories.

To the 3d, saith, He found on board the *Betsy* a Packet of public Dispatches which was indorsed "*Rochambeau*." While he was examining her Log-book, and his Ship-mates were examining the Chests in the Cabin, he saw the Claimant take the Packet out of the Mate's Chest, and put it under the Mattress of the Mate's Birth in the said Cabin: Whereupon the Respondent said, "Come out of that, Captain *Kinsman*; you are doing "something you ought not to do." Upon which Captain *Kinsman* left the Place, and the Respondent took Possession of the Packet.

5th, That some Time after the Capture, the Claimant asked the Respondent if he had found any more Papers? and on his answering, "No," the Claimant said, "Nor would "you have found them, had my Mate done as I ordered him."

6th, The Respondent understood from some of the *Betsy's* People, that the Claimant had ordered his Mate to throw the said Packet overboard.

22d Nov. Stephen Cole, a Mariner of the *Cholmley*, was examined on the Interrogatories.

To the 3d, saith, He was present when Two Packets, or Letters, were found in the Mate's Birth in the Cabin of the *Betsy*. He saw Capt. *Kinsman* take those Papers out of the Mate's Chest, and put them in the Mate's Birth, and sit upon them.—*Smith*, the Prize-master, then asked *Kinsman* to get up, which he did; and then *Smith* took the Papers from where *Kinsman* had been sitting.

6th, saith, He heard Capt. *Kinsman* say, that he had given his Mate Orders to throw those Two Papers overboard.

26th Nov. Thomas Hitchings (afore said) was cross-examined on Interrogatories filed by the Claimant.

To the 3d, saith, He did hear the Mate of the *Betsy* say, before the Capture, that she was bound for *Hamburg*; but he supposed that *Bourdeaux* would pick them up.

22d Nov. Nathaniel Kinsman, the Claimant, was examined on the Claimant's Interrogatories.

To the 3d, saith, That previous to leaving *Beverley*, he received from *Brown* and *Thorn-dike* 449 Half Joes and One Quarter, in Gold, 722 Doubloons, for the Purpose of purchasing *West India* Produce, not supposing that his outward Cargo would be sufficient to purchase a Load for his Ship in the *West Indies*.—The Respondent had also to the Amount of 337 Dollars, in Gold and Silver, his own Property.

4th, The Respondent was requested, when at *Martinico*, by Mr. *Bealfire*, to take a Letter to *Hamburg* for a Friend of his. He did not receive any Charge to take any particular Care of such Letter.

5th, No Person whatever at *Martinico* did declare or suggest to the Respondent that the said Letter was of a public Nature, or of any special Import; nor did he believe it to be so.—No Order was given to the Respondent, or Request made to him, or any Person, as he knows or believes, to throw overboard or conceal the said Letter or Packet, under any Circumstances whatever; nor did he at any Time think of or make any Attempt to conceal such Packet.

7th, saith, He did not, on leaving the *Betsy* to go on board the *Cholmley*, tell any Person to throw any Letter, Packet, or Paper whatever overboard, as he was not conscious

scious that there was any Paper on board that could affect his Safety in any Manner; and if the said Packet was of a public Nature, the Respondent was, upon his Oath, entirely innocent and unacquainted with it.

23d Nov. Israel Creevy, the Mate of the *Betsy*, was examined on the Claimant's Interrogatories.

To the 6th, respecting the French Packet or Letter which was found in his Chest, he answers, "He did not receive any Letter, as mentioned in this Interrogatory."—And

To the 4th, 5th, and 7th, which also relate to the French Papers, he answers, that "He knoweth nothing."

On the 23d November. Matthew Joseph, a Seaman belonging to the *Betsy*, was examined on the Claimant's Interrogatories, in order to affect the Credibility of *Hitchings*.

On the 28th November. The Governor of *Bermuda* was examined on Interrogatories filed by the Captor.

In answer to the 1st, saith, That on the 20th *October* he wrote the Secretary of State that Ten Inclosures fell into his Hands on that Day: "The Letters dated the 5th and 27th of "August and 14th September, with Seven others, were signed D' *Rochambeau*, who "the Respondent believes to be actually the Commander of the French Windward Islands, under "the Authority of the French Convention."

3d, "The said Letters did contain Information of material Consequence to both Great "Britain and France."

Same Day. The Governor was cross-examined on Interrogatories filed by the Claimant.

To the 5th and 6th, The Packet was directed on the Outside, "To the Citizen Ministers "of the National Convention at *Paris*."—There was on the Outside a general Direction, "This Packet to be thrown overboard in case of encountering or meeting with an Enemy."

Same 28th Nov. The Claimant's Proctor moved the Court for Leave to file sundry Papers as Exhibits; and, after Arguments, the same were admitted and filed: The Papers are marked A to Z, and A 1 to A 7 inclusive; of these W, X, and Y, are Documents from the Custom House at *Martinique*, dated 14th September 1793. A 7 is a Letter of Credit for 1000 l. Sterling, written by the Owners in Favour of the Master, dated 15th July 1793; and the Rest of the Papers are Bills of Parcels of the Goods sold and bought by the Master at *Martinique* and *Guadeloupe*.

On the 12th Dec. 1793. The Judge of the Vice Admiralty Court gave Sentence, and decreed the Ship and Cargo to be restored to the Claimant, and condemned the Captor in Costs and Expences.—From this Sentence the Captors immediately appealed, and the Claimant gave Security in 3,362 l. 1 s. 1 d. the appraised Value of the Ship and Cargo, to answer the Appeal.

In the High Court of Appeals.

25th Nov. 1794. FENTON, Proctor for the Captor and Appellant, brought in the Process, under Seal of the Vice Admiralty Court of *Bermuda*, and alledged the Appeal to be contained therein; and he exhibited Attestation of *John Bradbury* Esq. with Papers annexed, marked from N° 1 to 40 inclusive; and alledged those marked N° 1 to 37 to have been found on board the *Betsy* at the Time of Capture; and that they were mentioned and referred to in and by the Process: That all the same Papers were sent by the Governor of *Bermuda* to His Majesty's Secretary of State, and by him delivered up for the Purpose of being exhibited in this Cause. TOWNLEY, Proctor for the Claimant and Respondent, objected to the said Papers being received; and the Surrogate referred such Objections to the Lords, at the Hearing.

22d August 1794. Is the Date of Mr. *Bradbury's* Affidavit, wherein he states, That, on the 10th February 1794, the Right Honourable *Henry Dundas*, then Secretary of State for the Home Department, did receive from his Excellency *Henry Hamilton*, Governor of *Bermuda*, a Letter dated "St. George's, *Bermuda*, 24th October 1793," together with the several Papers marked N° 1 to 37; and on the 11th July, His Majesty's said Secretary of State did receive from the same Governor, a Letter, dated "St. George's, *Bermuda*, May 30th, "1794," with the authentic Papers, marked No. 39 and 40; all which Papers the Depo- nent, with the Permission of His Majesty's said Secretary of State, annexed to his said Affidavit.

PAPERS

PAPERS annexed to Mr. Bradbury's said Affidavit.

- No. 1.—Is a Letter, dated at *The Cape*, 30th July 1793, the Second Year of the Republic, addressed to the National Convention, by *Sontbonax*, the Civil Commissioner of the Republic at *St. Domingo*.
- No. 2.—Is a Duplicate thereof.
- No. 3.—Is an Extract from the *Cayes Gazette* of the 21st July 1793.
- No. 4.—Is a Letter, dated *Cape Francois*, 2d August 1793, the Second Year of the Republic, from *Sontbonax*, to the Minister of the Department of the Navy and the Colonies.
- No. 5.—Is another Letter from *Sontbonax*, addressed to the French Minister at the United States of America, dated at the *Cape*, 16th August 1793.
- No. 6 to 37.—Are authenticated printed Proclamations, impressed with the Arms and Motto of the French Republic, issued in the Names of *Polverel* and *Sontbonax*, Civil Commissioners of the Republic, appointed to the French Leeward Islands in America.
- No. 38.—Is the Letter of Governor *Hamilton* to the Right Honourable *Henry Dundas*, of the 30th May 1794.
- No. 39.—Is the Petition of the Captor to Governor *Hamilton*, dated "Bermuda, December 19th, 1793," stating the Facts which constitute the Appellant's Case, supported by the Governor's Certificate, stating, that the Facts advanced in the Petition are true, and that he transmitted the Dispatches referred to, to the Secretary of State.—The Certificate is dated in Council, at *St. George's, Bermuda*, May 22d, 1794, subscribed by the Governor, and authenticated with the Seal of His Majesty's Arms.
- No. 40.—Is the Envelope of the Two preceding Numbers.

8th March
1795.

Fenton exhibited further Attestation of *John Bradbury* Esquire, with further Papers annexed, marked No. 1 to 11 inclusive, and alledged them to have been found on board the Ship at the Capture, and referred to by the Process; that the same were sent by the Governor of *Bermuda* to His Majesty's Secretary of State for the Home Department, and by him delivered up for the Purpose of being exhibited in this Cause. *Townley* objected to the same being received.—The Lords reserved the Consideration of such Objection to the final Hearing.

Mr. *Bradbury's* Second Attestation states, That on making a further Search among the Papers remaining in the Office of His Majesty's Secretary of State for the Home Department, he discovered, that, on the 26th December 1793, the Secretary of State did receive from Governor *Hamilton* a Duplicate Letter, dated "St. George's, October 20th, 1793," with Papers marked No. 1 to 11 inclusive; which Papers (with Permission of the Secretary of State) he annexed to his said Attestation.

PAPERS annexed to Mr. Bradbury's Second Attestation.

- No. 1.—Is a Dispatch dated *Martinico, Trinity*, 7th July 1793, Second Year, subscribed "Dn. *Rochambeau*," addressed to the Minister of the Marine.
- No. 2.—Is a Dispatch dated *Martinico, Fort de la Republique*, 10th July 1793, Second Year: Subscribed and addressed as in the preceding Number.
- No. 3.—Is the like, dated *Martinico, Fort de la Republique*, 20th July 1793, Second Year: Subscribed as in No. 1, and addressed to the Ministers.
- No. 4.—Is a Dispatch dated *Martinico, Fort de la Republique*, 20th July 1793, subscribed "Dn. *Rochambeau*," addressed to the Minister.
- No. 5.—Is a Dispatch dated *Martinico, Fort de la Republique*, 3d August 1793, the Second Year: Subscribed and addressed as in the preceding Numbers.

No. 6.

- No. 6.—Is a Dispatch dated *Martinico, St. Pierre*, 25th August 1793, Second Year: Subscribed and addressed as in the preceding Number.
- No. 7.—Is a Dispatch dated *Martinico, St. Pierre*, 27th August 1793: Subscribed and addressed as in the preceding Number.
- No. 8.—Is a Dispatch dated *Martinico, Fort de la Republique*, 3d September 1793: Subscribed and addressed as in the preceding Number.
- No. 9.—Is a Dispatch dated *Martinico, St. Pierre*, 14th September 1793, Second Year: Subscribed and addressed as in the preceding Number.
- No. 10.—Is a Dispatch dated *Martinico, St. Pierre*, 14th September 1793, Second Year: Subscribed and addressed as in the preceding Number, stating (among other Things) that the Dispatches were transmitted by the French Governor to the Ministers by the *Betsy*, *Kinsman*.
- No. 11.—Is a Proclamation issued by *Rochambeau*.

The Appeal has been regularly prosecuted, and now stands assigned for final Hearing; and it is humbly hoped that their Lordships will be pleased to admit the Papers brought in by the Appellant's Proctor:

BECAUSE the greater Part of them are sufficiently proved to have been found on board the *Betsy* at the Capture, and the Remainder are material auxiliary Proofs.

It is also humbly hoped that their Lordships will reverse the Sentence of the Judge below, and condemn the Ship and Cargo as lawful Prize to the Captors, for the following, among other,

R E A S O N S :

- I. BECAUSE, by carrying the French Dispatches for the Enemy, the American Master departed from his Neutrality.—And
- II. Because the Goods, supposing it to be proved that they were American Property, were taken in a Voyage which subjects them to be considered and treated as the Property of Frenchmen.

W. SCOTT.
J. SCOTT.

Before the Most Noble and Right Honourable the Lords
Commissioners of Appeals in Prize Causes.

B E T S E Y,
NATHANIEL KINSMAN, MASTER.

Cornelius Cayley, *Commander of the*
Private Ship of War the Cholm-
ley, Captor of the said Ship Betsey } Appellant.
and her Cargo, - - -

AGAINST

Nathaniel Kinsman, *the Master,* } Respondent.
Claimant of the said Ship and Cargo, - - -

On an Appeal from the Vice-Admiralty Court of
Bermuda.

Appellant's C A S E.

To be heard before their Lordships at the Cockpit, White-
hall, on the Day of

1795.

FENTON,
Appellant's Proctor.

Before the Most Noble and Right Honourable the Lords Commissioners of Appeals
in Prize Causes.

THE BETSEY,

NATHANIEL KINSMAN, MASTER.

Cornelius Cayley, *Commander of the Private Ship of War Cholmley, the Captor,* } Appellant.

The said Nathaniel Kinsman, the Master and Claimant of the Ship and Cargo, on Behalf of Moses Brown and Israel Thorndike, of Beverley, in the State of Massachusetts, Natives and Citizens of the United States of America, the sole Owners thereof, } Respondent.

(An Appeal from the Vice-Admiralty Court of the Island of Bermuda.)

The Respondent's CASE.

THIS is an *American Schooner*, the sole Property of Messrs. *Brown and Thorndike, of Beverley, Natives and Citizens of the United States of America.* In the Month of *July 1793*, the Vessel sailed from *Beverley* with a Cargo of *Fish, Flour, Soap, Candles, and Specie*, on Account of the afore-mentioned Owners of the Ship, and proceeded to the *French Islands in the West Indies*, where the Master, who was the Consignee of the Cargo, disposed of the same, and vested the Proceeds in a Cargo of *Coffee, Sugar, and Cotton*, also on Account of the Owners of the Ship, and with which the Vessel was proceeding to *Hamburg*, when she was captured on the *7th of October 1793*, by the Private Ship of War the *Cholmley*, *Cornelius Cayley* Commander, and carried to the Island of *Bermuda*.

At the Island of *Martinico*, where a Part of the said Return Cargo was shipped, the Master received on Board a Letter from *Monsieur Beaulieu*, to be delivered, as the Master was told, to a Friend of his at *Hamburg*; which Letter, it is now said, contained Dispatches for the *French Government*; and Condemnation of the Ship and Cargo was contended for, on Account of these Dispatches being on board.

On the Part of the Respondent, it is to be observed, that the Neutral Master was not privy to the Nature or Contents of the said Letter; that the Contents are not suggested to relate to the Ship or Cargo; and that there was not the least Attempt to conceal such Letter, it having been delivered up with the rest of the Ship Papers at the Time of the Capture.

It is further submitted, that the Charge, if true, would not be a Ground for condemning either the Ship or Cargo.

1793.
October 24.

A Libel was filed in the Vice-Admiralty Court at *Bermuda* against the Ship and Cargo as Prize, as being laden with *Sugar, Coffee, and Cotton*, belonging to Subjects or Inhabitants of *France*, and bound from *Martinico* to *Bordeaux*, and as having on board a concealed Mail or Packet of public Dispatches, written by *Monsieur Rochambeau*, Governor-General of the Island of *Martinico*, to the Administration in *France*.

October 31.
November 4.

The Master and Mate were examined in preparatory, and their Depositions are to the Effect following, to wit:

PRE-

PREPARATORY EXAMINATIONS.

Deposition of
NATHANIEL
KINSMAN,
the Master.

Says, to the first Interrogatory, That he is a Native and Resident of *Ipwich* in the State of *Massachusetts*, and a Citizen of the *United States of America*. To the third, That the Vessel sailed under *American Colours*; had no other Colours on board; and that no Resistance was made. To the fourth, That he the Deponent was Master of the said Vessel; that he was appointed to the Command of her by *Moses Brown* and *Israel Thorndike*, and took Possession of her at *Beverly*, which Possession was given him by said *Brown* and *Thorndike*. To the sixth, That the Vessel is *American* built. To the seventh, That the Vessel sailed from *Beverly*, and the first Port she anchored at was *Sac Marine* in *Martinico*; that not finding the Market answer, he went to *St. Lucia*, but did not anchor there, as he could not dispose of his Cargo; that from thence he went to *St. Pierre* in *Martinico*, where he sold the whole of his Cargo, except five Boxes of *Spermaceti Candles*; that the Voyage began at *Beverly*, and was to have ended there; that the Cargo taken on board at *Beverly* was Fish, Flour, Soap, Candles, and Money, which was sold at *Martinico*; and that the last Port the Vessel cleared at and sailed from, previous to her Capture, was *Point Pierre* in *Guadaloupe*. To the eighth, That the present Cargo, consisting of Sugar, Coffee, and Cotton, was laden in *September* last (1793). To the ninth, That the Vessel was owned by *Moses Brown* and *Israel Thorndike* at the Time she was seized; that the Deponent knows they were Owners, because he and *Jabez Farley* gave them a Bill of Sale for her, and knows not of any Transfer having been since made; and that the said Owners are *Americans* by Birth, and reside with their Wives and Families at *Beverly*, and are Subjects to the *United States*. To the eleventh, That the Lading was taken on board at two different Ports, to wit, *Martinico* and *Guadaloupe*; and that about 29 Hogsheads Sugar, and about 2000 lbs. Coffee were taken on board at *Guadaloupe*, and all the rest of the Cargo at *Martinico*. To the twelfth, That he the Deponent disposed of his outward-bound Cargo, it having been consigned to himself, and was authorized by the aforesaid *Moses Brown* and *Israel Thorndike* to purchase *West India* Produce, such as Coffee, Sugar, and Cotton, which he did from the Proceeds of the said outward Cargo; that the said Goods were to have been delivered at *Hamburg* on the real Account, Risk, and Benefit of the said *Moses Brown* and *Israel Thorndike*, and were consigned to Messrs. *Voight* and *Seiveking*, Merchants in *Hamburg*; and he can take upon himself to swear, that he believes that at the Time of the lading the Cargo, at the present Time, and also if the said Goods shall be restored and unladen at the destined Port, the Goods did, do, and will belong to the same Persons, and to none others. To the thirteenth, That having purchased the Cargo himself he did not sign any Bills of Lading, but only sent forward to the Owners an exact Account of the Cargo on board, and his Transactions. To the fifteenth, That there was no Charter Party signed. To the sixteenth, That there were no Papers, except the Ship's Papers and Accounts, with one private Letter, on board at the time the Vessel took her Departure from her last clearing Port, none of which were burnt, torn, thrown overboard, destroyed, cancelled, concealed, or attempted to be concealed. To the eighteenth, That he the Deponent has sustained some Loss since the Capture, by the Vessel's Boat being damaged when ordered to be hoisted out at Sea by the Captors, and some pilfering by the Crew of the Privateer; that the Commander promised to make good all Damages, but that such Damages had not been made good. To the nineteenth, That he believes the Vessel and Cargo were insured from the *West Indies* to *Hamburg*, but cannot positively say they were, although the Owners told him they should make such Insurance. To the twentieth, That in case the Vessel had arrived at her destined Port, no Part of the Cargo, on being unladen, would have become the Property of the Consignees, or any other Persons, (excepting the Adventures on board,) but that the Owners were to take the Chance of the Market for the Sale of their Goods. To the twenty-fourth, That the Ship's Papers were delivered to the Captor, and that he the Deponent had also in his Possession a Number of Accounts and such like Papers relative to the Transactions of the Vessel and Cargo, which were ready to be produced. And to the twenty-seventh, That all the Papers found on board were entirely true and fair; that there was one private Letter on board, the Contents of which the Deponent was unacquainted with; and that the same was given up with the rest of the Papers at the Time of the Capture.

Deposition of
ISAAC
CHERRY,
the Mate.

Says, to the ninth Interrogatory, That the Vessel in question was owned, at the Time she was taken, by *Moses Brown* and *Israel Thorndike*; that he was told by the said *Brown* and *Thorndike*, that they were the Owners of her at the Time they engaged him the Deponent to go in the Vessel; and that the said *Brown* and *Thorndike* are *Americans* by Birth, and reside with their Wives and Families at *Beverly*, and are Subjects of the *United States of America*. To the tenth, That the Deponent understood there was a Bill of Sale made to the said *Brown* and *Thorndike* for the said Vessel, by Captain *Kinsman*, and a Mr. *Farley*, the former Owners. To the twelfth, That the Lading was shipped by Captain *Kinsman*, the Master of the Vessel, for and on Account of the aforesaid *Moses Brown* and *Israel Thorndike*, and was consigned to Merchants at *Hamburg*, whose Names he does not recollect, and was to have been delivered there, on the real Account, Risk, and Benefit of the said *Brown* and *Thorndike*; and that he can take upon himself to swear, that he believes that at the Time of the Lading the Cargo,

at

at the present Time, and also if the Goods shall be restored and unladen at the destined Port, they did, do, and will belong to the same Persons, and to none others. To the sixteenth, That at the Time the Vessel took her Departure from the last clearing Port, she had on board the usual Ship Papers, the Captain's Accounts, and one French Letter; that no Papers were burnt, torn, thrown overboard, destroyed, cancelled, concealed, or attempted to be concealed, in any Manner whatever, to his Knowledge. To the eighteenth, That he has sustained a Loss by the Capture, by his Chest being plundered, while he the Deponent was on board the Privateer, of sundry Articles, to wit, a Pair of Silver Knee-Buckles, a Pair of plated Shoe-Buckles, a Case of Razors, sundry Ship's Needles and Palms, to the Value, he estimates, of about five or six Dollars; and that he was told by the Commander, that in case he should sustain any Loss he would make Satisfaction for the same. To the twentieth, That in case the Vessel had arrived at her destined Port, the aforesaid Owners of the Vessel, who were the Owners of the Cargo, were, he conceives, on the same being unladen, to have taken the Chance of the Market for the Sale of their Goods. To the twenty-fourth, That the Ship's Papers were delivered to the Captors at the Time of the Capture; and that there was also one private Letter on Board, which was delivered at the same Time to the Captors. And to the twenty-seventh, That he believes the Ship's Papers were all true and fair, and there were none false or colourable to his Knowledge.

And both the said Witnesses do, in express Terms, prove the Fact of the Ship's Destination to *Hamburg* at the Time of the Capture.

The Papers on board and delivered up at the Capture, (with the afore-mentioned Letter, received from Monsieur *Bealserre*;) were the following; viz.

SHIP PAPERS.

The Ship's Registrar, dated *Salem*, 13th July 1793, describing *Moses Brown* and *Israel Thorndike* of *Beverly* to be the sole Owners.

Clearance from *Beverly* with a Cargo of Fish, Lumber, Soap, Flour, and Bagging, dated 13th July 1793.

Sea Letter or Passport for the Ship in question, in the Name of the President of the *United States*, dated 13th July 1793.

Permit to the Master from the Custom-house at *Salem* to take on board a Quantity of Specie to the Extent of 4800 Dollars, dated 14th July 1793.

Clearance for a further Part of the outward Cargo, dated *Salem*, 13th July 1793.

Bill of Lading for the outward Cargo described as consisting of

TB. 69 Hogsheads and 21 Boxes, containing 671 Quintals dried Fish,
27 Boxes Soap,
8 Boxes Spermaceti Candles,
198 Barrels and 30 Half Barrels Superfine Flour,
2480 Feet of Lumber,
397 Yards Duck for Coffee Bags,
678 Yards Tow Cloth for ditto; and in Gold 409½ Johannes, and 72½ Doubloons,

marked as in the Margin, and declared to be laden by *Moses Brown* and *Israel Thorndike*, to be delivered in the *West Indies* to the Master paying Freight nothing being Owners Property; "the said Property is there to be vested in Coffee, White Sugars, and Cotton, which is to be delivered at *Hamburg* to Messrs. *Voight* and *Seiveking*," dated *Beverly*, 15th July 1793.

Invoice of the said outward Cargo, stated to be shipped for Account and Risk of *Moses Brown* One-third, and *Israel Thorndike* Two-thirds, and consigned to the Master for Sales and Returns in the *West Indies*, dated *Beverly*, 15th July 1793; Amount 1397 l. 10 s. 1½ d.

Instructions to the Master from his Owners the said *Moses Brown* and *Israel Thorndike*, dated *Beverly*, 15th July 1793. These Instructions contain Directions for the Government of the Master in the Disposition of his outward Cargo in the *West Indies*, and investing the Proceeds in a Return Cargo of Sugar and Coffee, which, when completed, he is ordered to proceed with to *Hamburg*, and deliver the same to their Friends Messrs. *Voight* and *Seiveking*. The Master is then informed of the Intentions of the Owners as to the further Employ of the Vessel; and he is particularly cautioned to break no Aids of Trade, and to be very careful to take no Property on Freight, or Passengers belonging to any of the Powers at War.

Further

Further Instructions to the Master in consequence of the Owners having put on board the afore-mentioned Quantity of Specie, dated *Beverly*, 15th July 1793.

Accounts of Sale of the outward Cargo, and of the Purchase of the Return Cargo in question, described as shipped on Account of *Moses Brown* and *Israel Thorndike*, dated September 1793.

Notarial Attestations as to the Crew of the Vessel, consisting wholly of American Citizens, dated *Salem*, 15th July 1793.

Acquittances for the present Cargo purchased at *Point Petre* and *St. Pierre* in September 1793.

Account Current between the Master and his Agents at *St. Pierre*, dated 13th September 1793.

Clearance from *St. Pierre* for *Hamburg*, dated 23d September 1793.

October 28. A Claim was given in on Oath of the Master for the Ship and Cargo on Behalf, and as the Property of the said *Moses Brown* and *Israel Thorndike*, American Citizens as aforesaid, with Costs and Damages.

Nov. 14. Application was made on the Part of the Captor for Leave to exhibit Interrogatories for the Examination of the Prize Master and one of the Seamen, and also of two Passengers on board the Privateer, the Proctor of the Captor asserting, That he expected to disprove the Depositions of the Claimant and his Mate. This Application was opposed on the Grounds, 1st, That the Captor's Proctor had had Access to the Preparatory Examinations, declaring that he did not intend to examine further; and, 2dly, That *William Smith* and *Stephen Cole*, (two of the Persons proposed,) were interested Witnesses.

It was nevertheless admitted by the Court to examine the said *William Smith* and *Stephen Cole*, and *William Brown* and *James Sale*, two of the Passengers on board the Privateer; and upon Motion of the Proctor of the Claimant, it was then also allowed to examine the Master, Mate, and one of the Seamen belonging to the *Betsy*, to Interrogatories on the Part of the Claimant.

It is submitted, that this Order of the Court below was irregular, and that the Examinations taken under such Order cannot be received as Evidence in the present Appeal. The Respondent has, however, (subject to the Opinion of their Lordships on its Admissibility,) printed the Evidence alluded to as a Rider to his Appendix, being confident that the Suggestion of the Captor, that the Ship in question was engaged in carrying Dispatches to *Bourdeaux* in France, which is the Object of these Interrogatories to establish, will thereby appear to be wholly without Foundation.

Nov. 26. The Marshal returned into Court an Inventory of the Cargo in pursuance of a Writ of Unlivery and Inspection, which had issued at the Instance of the Captor; and by such Return, it appears that the Articles on board were solely the following:

41 Hogheads Sugar,
22 Hogheads and Tierces Coffee,
8 Barrels ditto,
120 Bags ditto.

Nov. 28. The Claimant's Proctor moved for and obtained Leave to file sundry Exhibits on Behalf of his Party.

These Papers were on board at the Capture, and as such are admissible Evidence. They consist principally either of Bills of Parcels in French on the Sale of the outward Cargo, or Receipts for the Purchase of that in question, but are not printed in the Appendix, the Respondent not having translated the same, considering them as by no means necessary to support the Sentence of the Court below. One of the Papers alluded to is, however, a general Letter of Credit from the Owners to the Master, dated *Salem*, 13th July 1793, and is printed in the Appendix.

Dec. 5. The Cause came on for Hearing before the Judge of the Vice-Admiralty Court at *Bermuda*, when, after hearing the Proctors on both Sides, the Court was adjourned to the 12th;

The Decree appealed from. When the Judge pronounced his Opinion, That the Vessel and Cargo were not liable to Forfeiture or Condemnation, and decreed the same to be restored to the Claimant; and further directed the Costs and Expenses of Suit to be paid by the Libellant.

From

From this Decree an Appeal has been interposed and prosecuted; and, on

July 12th, 1794, The usual Inhibition was decreed.

August 22d, *Townley* appeared for the Claimant and Respondent, and the Appellant's Proctor was assigned to libel.

A Libel was afterwards given, and on

Nov. 7th, The same was admitted, and a negative Issue given thereto. *Fenton*, Proctor for the Appellant, then brought in the Process, and alleged the Appeal to be contained therein; and he at the same Time exhibited an Attestation of *John Bradbury* Esq. with Papers annexed, marked from No. 1. to No. 40. inclusive, and alleged those marked from No. 1. to No. 37. to have been found on board the Ship at the Capture, and to be referred to by the Process; that all the same Papers were sent by the Governor at *Bermuda* to his Majesty's Secretary of State, and by him delivered up for the Purpose of being exhibited in this Cause. *Townley* objected to the said Papers being received, and the Surrogate referred such Objection to their Lordships at the Hearing.

In respect to these Papers, it is to be observed, that there is not the least Evidence to prove that they ever were on board the Ship in question.

March 21. *Fenton* exhibited further Attestation of *John Bradbury* Esq. with further Papers annexed, marked from No. 1. to 11. and alleged them to have been found on board the Ship at the Capture, and to be referred to by the Process; that the said Papers were sent by the Governor at *Bermuda* to his Majesty's Secretary of State, and by him delivered up for the Purpose of being exhibited in this Cause. *Townley* objected to the said Papers being received, and the Surrogate, as before, referred the Objection to their Lordships.

In respect to these Papers also, the Observation before made applies. One of them (No. 10.) mentions, indeed, that in consequence of hearing of the Capture of former Dispatches, the Writer "sends others by the American Vessel *Betsy*, Captain *Kingman*." How far this proves either the Identity of the Vessel, or that the Papers were on board, is submitted to the Judgment of their Lordships.

It is also submitted, that the Papers, not having been exhibited in the Court below, and transmitted in the Process, are not admissible Evidence on the Appeal.

It is further submitted, that these Papers, if received as Evidence, are perfectly immaterial and irrelevant. They consist principally of printed Proclamations issued in the French Islands, and of Duplicates of Dispatches sent in the Months of July, August, and September, from Monsieur *Rocambeau* to the French Government.

It does not appear that the Master was apprized even of the Nature of these Papers; and it is submitted, that it was not illegal for him to be the Bearer of them to *Hamburg*, much less could such an Act work the Confiscation of Ship or Cargo.

Subject to the Objection stated, the Cause has been assigned for Informations and Sentence before their Lordships; and the Respondent relying, as he most firmly does, upon the general Merits of the Case, (whether the Papers brought in upon the Appeal are received or not,) humbly hopes, that the Decree appealed from will be affirmed; and that the Captor will be condemned in the Costs of the Appeal, for, among other, the following

R E A S O N S :

Because there is full and undoubted Proof, that the Ship and Cargo belong to the American Citizens, on whose Behalf they are claimed.

Because the Ship and Cargo in question were not engaged in any Transaction which subjects Neutral Property to Confiscation.

J. NICHOLL.
ROB. DALLAS.

Before the Most Noble and Right Honourable the Lords
Commissioners of Appeals in Prize Causes.

THE BETSEY,
NATHANIEL KINSMAN, MASTER.

Cornelius Cayley, *Commander of*
the Private Ship of War Cholm- } Appellant.
ley, the Captor, - - - }

The said Nathaniel Kinsman, the
Master and Claimant of the Ship
and Cargo, on Behalf of Moses
Brown and Israel Thorndike, of
Beverley, in the State of Massa- } Respondent.
chusetts, Natives and Citizens of
the United States of America,
the sole Owners thereof, - - - J

(An Appeal from the Vice-Admiralty Court of the Island of
Bermuda.)

The Respondent's CASE.

To be heard before their Lordships at the Cockpit,
Whitehall, on the Day 1795.

CRICKITT and TOWNLEY.

Ship Betsey Captain Hinson

HCOS. 20. 120

A Hamburg
Agents direct B in London to effect insurance
£9900. on Ship & Goods the American
for the goods of Ship Betsey from the West
Indies to Hamburg
B accordingly effected insurance for £9900 on
Goods warranted not French property —

~~This insurance was effected because the~~
The insurance of not French property was only
effected because at the time of making the insurance an act
of Parliament had passed prohibiting the
insurance of French property, ~~and~~ the premium
of Insurance which was given, namely 2 1/2
% Cent was adequate to all risks — ~~This~~
~~was no guarantee given of the ship~~

The ship in prosecuting her voyage from
Hamburg the West Indies to Hamburg was
captured by an English privateer & carried
into Bermuda — at Bermuda.

The Cause was tried & the Court decreed
of Ship & Cargo with costs as being American
property —

The Captor chooses to appeal, & the Captain is
in consequence obliged to find bail to refund
the the Value of the Ship & Cargo in case the
decree should be reversed — The Captain
could not by any ^{other} means procure bail but
by leaving his Ship & Cargo in the
hands of 3 people at Bermuda who in
consequence became Bail,

The Bail finding the Cargo depreciating
daily by from the damage it had sustained
by the vessel having been driven on shore
& the

with of the ship being
~~likely to be~~ lost in case of a Hurricane,
resolved to sell the Ship & Cargo for the
benefit of whom it may concern & by the
copy of a letter dated 15 Decem 1794 it
appears the Ship & Cargo including private
adventure netted £3519 Bermuda Currency
which Sum they say they have
remitted to their Correspondent in London
to answer the Appeal. (thus far)

So long ago as July 1794 our protectors
Crichton & Townley informed us that the
Captains had instituted an appeal, & their
consequence gave them orders to defend -
but ~~no determination~~ the Case has not
yet been heard, & from what we can
~~no date learn~~ no determinations or cases
of this nature is likely to take place,
It does not appear therefore just that
the assured having waited 3 Years
should wait any longer to recover
from the Underwriters -

Your opinion is requested

whether the assured being in
possession of the Sentence of Perjury
of the Court of Bermuda cannot
proceed against the Underwriters
for the loss. & whether any doubt
the Documents are necessary for
the Recovery.

Blanketingly effected the said insurance
for £3300. on ship & goods, warranted not
French property, at & from any of the
West India Islands, British or foreign to
Hamburg —

West Indies to Hamburg

Gentlemen

So long ago as June 1794 agreeable to the Underwriters
 written communicated to us this your / vide your
 letter 25 June We consulted our proctors (Gibbs
 & Townley) what was best to be done, & their
 answer was (vide their letter of July & how that
 is arrived the order of Council)

On the 17 July 1794, The Proctors acquaint us that
 the Captains had instituted their appeal & We
 gave orders to defend

We have since repeatedly enquired after
 this appeal & notwithstanding ~~2~~ ² years almost
 2 years have elapsed, it is now in the same
 state as it was in the beginning of ~~June~~
 We understand the Court will not give
 any opinion ~~therefore~~ is not likely to come
 to any determination respecting ^{the captain's} property
 carrying direct from the West Indies to
 Europe.

Permit us therefore to call your attention
 to this business - the case is correctly
 "as follows" copy

As affected an assurance of
 Goods warranted not French property
 on to Antwerp.

Mr Augustus Lee Smith told us Mr Shedd
 had received the money - Do consider
 therefore Gentlemen in what way
 this ought to be settled, We have
 received

every document that is necessary to
prove that every thing is fair & there
cannot remain the least suspicion of
either ship or cargo being French,
The documents consist of

N^o 1
2
3
4
5
6
7
8
9
10
11

Ship Betsey Captain Kinsman

A. at Hamburg directs B. in London to effect Insurance for £ 3300- on Ship & Goods of the American Ship Betsey from the West Indies to Hamburg -

B. accordingly effected the said Insurance for £ 3300- on Ship & Goods, warranted not French property, at & from any of the West India Islands, British or foreign to Hamburg.

This warrant of not French property was only inserted because at the time of making the Insurance an Act of parliament had passed prohibiting the Insurance of French property, and the premium of Insurance which was given, namely 25 ^{per} cent. was adequate to all risks. -

* ~~The Ship in ^{the} ~~presenting her~~ Voyage from the West Indies to Hamburg, was captured by the English privateer & carried into Bermuda. -~~

The cause was tried at Bermuda & Restitution decreed of Ship & Cargo with costs as being American property -

The Captor chooses to appeal, & the Captain is in consequence obliged to find bail to refund the value of the Ship & Cargo in case the decree should be reversed. - The Captain could not by any other means procure bail than by leaving his Ship & Cargo in the hands of 3 people at Bermuda who in consequence became Bail. -

The Bail finding the Cargo depreciating daily from the damage it had sustained by the vessel having been driven on shore, & the risk of the Ship being lost in case of a Hurricane, resolved to sell the Ship & Cargo for the benefit of whom it may concern, & by the Copy of a letter dated 15 December 1794. it appears the Ship & Cargo including private adventure netted £ 3519- Bermuda Currency, which

Some they say, they have remitted to their Correspondent in London to answer the appeal, but it is not known who that Correspondent is

So long ago as July 1794 - our Trustees Crickell & Townshend informed us that the Captors had instituted an appeal, & we in consequence gave them orders to defend, but the case has not yet been heard, & from what we can learn no determination on Cases of this nature is likely to take place. It does not appear therefore just that the assured having waited 3 Years, should wait any longer to recover from the Underwriters - &

Your opinion is requested

Whether the assured being in possession of the sentence of Restitution of the Court of Bermuda - cannot abandon and proceed against the Underwriters for the loss - & whether any & what other Documents are necessary for the Recovery. -

as it involves the great question whether neutrals have a right to carry french produce from the ~~East~~ french West India Islands to Europe, ^{clinging & war with France} not having had that right before the War.

Some of the Underwriters have paid 25 % out on account, but it does not appear just that the assured having waited 3 years should wait any longer to recover the whole sum due from the Underwriters

Praying You request Mr H Smith to peruse the annexed case & to take Mr Parker's opinion thereon.

Devonshire Square

15 May 1797.

The Captain purchased Goods in the French West India Islands with Goods which he carried out from North America. Hailed from the French West India Islands to Hamburg, & was captured by an English privateer & carried into Bermuda.

The Ship & Goods were libelled as french

To
Henry Smith Esquire

Drapers Hall

Wm
Henry Smith
1