ENGLAND.

ERROR FROM THE COURT OF KING'S BENCH.

THOMSON—*Plaintiff in error.*

BEALE—*Defendant in error.*

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

RUSSIAN Government lays an embargo (as they called it) on British ships in Russian ports, till an alleged convention between the Russian and British Governments should be fulfilled by the latter. Crews taken out of the ships, marched up the country, detained for six months, and treated as prisoners of war. At the end of six months crews marched back to their ships, and the vessels with their cargoes restored. Decided that this was an embargo and not a hostile capture.

Michaelmas Term, 1812. Special verdict.

ASSUMPSIT by Defendant in error, (a seaman,) in Common Pleas, for wages, against Plaintiff in error (a ship owner.) Plea, Non assumpsit. Trial in Michaelmas Term, 1802, when the jury found a special verdict, stating as follows:

Terms of the contract by which the seaman engaged to serve on board the owner's ship.

That the Defendant in error, a British seaman, on the 8th day of September, 1800, signed articles to serve as a seaman in a British ship called the Aquilon, of which the Plaintiff in error was owner, at the wages of 5*l.* 10*s.* per month, on a voyage from Hull to Petersburgh, and from thence to London, and that in consideration of the said monthly wages, the Defendant in error should and would perform the above-mentioned voyage, and the Plaintiff in error did hire the Defendant in error as a seaman for the said voyage at such monthly wages, to be paid pursuant to the laws of Great Britain; and the Defendant in error did promise and oblige himself to

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

do his duty, and obey the lawful commands of the officers on board the said ship, or boats thereunto belonging, as became a good and faithful seaman and mariner, and at all places where the said ship should put in or anchor at during the said ship's voyage, to do his best endeavours for the preservation of the said ship and cargo, and not to neglect or refuse doing his duty by day or night, nor should go out of the said ship on board any other vessel, or be on shore under any pretence whatever till the voyage was ended, and the ship discharged of her cargo, without leave first obtained of the Master, Captain, or commanding officer on board, and in default thereof he should be liable to the penalties mentioned in the Act of Parliament made in the second year of the reign of King George the Second,

2 G. 2. cap. 36. intituled, "An act for the better regulation and government of seamen in the merchants' service,"

and the act made in the thirty-seventh year of

37 G. 3. cap. 73. his present Majesty's reign, intituled, "An act for preventing the desertion of seamen from British merchant ships trading to his Majesty's colonies and plantations in the West Indies," and that twenty-four hours absence, without leave, should be deemed a total desertion, and render the Defendant in error liable to the forfeitures and penalties contained in the acts above recited; and further, that the Defendant in error should not demand, or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge, and her cargo delivered, and that if the Defendant in error should well and truly perform the above-mentioned voyage, he should be en-

titled to the wages or hire that might become due to him pursuant to the said articles: That the Defendant in error sailed on board the said ship, which arrived at Petersburgh on or about the 18th day of October, in the same year, and continued there in prosecution of the purposes of the voyage, until the 5th day of November following, on which day the following order was issued by the Russian Government.

June 9, 1813. EMBARGO.—SEAMEN'S WAGES.

"Whereas, we have learned, that the island of "Malta, lately in the possession of the Hercule, has "been surrendered to the English troops, but as it is "yet uncertain whether the agreement entered into "on the 30th day of December, 1798, will be ful-"filled, according to which this island, after its cap-"ture, is to be restored to the order of St. John of "Jerusalem, of which his Majesty the Emperor of "all the Russias is Grand Master, his Imperial Ma-"jesty being determined to defend his rights, has "been pleased to command that an embargo shall "be laid on all English vessels in the ports of his "Empire, until the above-mentioned convention "shall be fulfilled." In consequence thereof guards were placed along the shore to prevent the crews escaping from their respective ships until the 10th of the same month of November, when such part of the crew of each ship as were British subjects were taken out by a Russian guard and marched into the interior of the country. On the 18th and 21st days of the said month of November, the following proclamation appeared in the Petersburgh Court Gazette:

5th November, 1800. Order of Russian government laying an embargo on British ships, and crews marched into interior of the country.

18. 21. November, 1800. Proclamation in Petersburgh Gazette, continuing the embargo.

"The crews of two English ships in the harbour

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

" of Narva on the arrival of a military force to put
" them under arrest in consequence of the embargo
" laid on them, having made resistance, fired pis-
" tols, and forced a Russian sailor into the water,
" and afterwards weighed anchor and sailed away,
" his Imperial Majesty has been pleased to order
" that the remainder of the vessels in that harbour
" shall be burnt, his Imperial Majesty having re-
" ceived from his Chamberlain Stalinskoi, at Paler-
" mo, an account of the taking of Malta, has been
" pleased to direct that the following note shall be
" transmitted to all the diplomatic corps residing at
" his court by the minister presiding in the college
" for foreign affairs, and the Vice-Chancellor Count
" Panin: His Majesty the Emperor of all the Russias
" has received circumstantial accounts respecting
" the surrender of Malta, by which it is actually
" confirmed that the English Generals, notwith-
" standing the repeated remonstrances on the part
" of his Majesty's ministers at Palermo, as well as
" from the ministry of his Silician Majesty, have
" taken possession of the island of Valetta, and of
" the island of Malta, in the name of the King
" of Great Britain, and have hoisted his flag only:
" his Imperial Majesty's just indignation having
" been raised by this violation of good confidence,
" he has resolved not to take off the embargo that
" has been laid on all English vessels in the Rus-
" sian ports until the agreement of the convention
" concluded in 1798 shall have been completely
" carried into execution."

14th January, 1801. Order of British go.

On the 14th day of January, 1801, his Britannic Majesty in Council issued the ollowing order:

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

Government laying an embargo on Russian ships, &c.

"Whereas, his Majesty has received advice that "a large number of vessels belonging to his Ma- "jesty's subjects have been and are detained in the "ports of Russia, and that the British sailors na- "vigating the same have been, and are, detained as "prisoners in different parts of Russia, and also, "that during the continuance of these proceedings "a confederacy of a hostile nature against the just "rights and interests of his Majesty and his do- "minions has been entered into with the court of "Saint Petersburgh by the courts of Denmark and "Sweden respectively: His Majesty, with the ad- "vice of his privy council, is therefore pleased to "order, as it is hereby ordered, that no ships or "vessels belonging to any of his Majesty's subjects "be permitted to enter and clear out for any of the "ports in Russia, Denmark, or Sweden, until fur- "ther order: And his Majesty is further pleased to "order that a general embargo or stop be made of "all Russian, Danish, and Swedish ships and ves- "sels whatever now within, or which hereafter "shall come into any of the ports, harbours, or "roads within the United Kingdom of Great Bri- "tain and Ireland, together with all persons and "effects on board of the said ships and vessels, but "that the utmost care be taken for the preservation "of all and every part of the cargoes on board any "of the said ships or vessels, so that no damage "whatever be sustained, and the Right Honourable "the Lords Commissioners of his Majesty's Trea- "sury, the Lords Commissioners of the Admiralty, "and the Lord Warden of the Cinque Ports, are

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

16th January, 1801. Order of British Government, that no bills drawn by Russian subjects be accepted or paid without licence.

" to give the necessary directions herein as to them " respectively appertain."

On the 16th day of January, 1801, his Britannic Majesty in council issued the following order:

" Whereas, his Majesty has received advice that " a large number of vessels, belonging to his Ma- " jesty's subjects, have been and are detained in the " ports of Russia; and that the property of his " Majesty's subjects in Russia has, by virtue of se- " veral orders and decrees of the Russian govern- " ment, particularly one bearing date the 29th day " of November last, old style (corresponding with " the 10th of December, new style,) been seized " and directed to be applied, in violation of the " principles of justice, and of the rights of the se- " veral persons interested therein, his Majesty, with " the advice of his privy council, is thereupon " pleased to order, as it is hereby ordered, that no " bills drawn, since the said 29th day of Novem- " ber last old style, (corresponding with the 10th " of December, new style,) by, or on behalf of, " any persons being subjects of, or residing within " the dominions of, the Emperor of Russia, shall " be accepted or paid without license from one of " his Majesty's principal secretaries of state, first had " in that behalf, until further signification of his " Majesty's pleasure, or until provision shall be " made in respect thereof, by Act of Parliament, " whereof all persons concerned are to take notice, " and govern themselves accordingly."

Defendant in

The captain and crew of the Aquilon (including

the defendant in error) remained up the country, until the 28th of May in the succeeding year, during which time they were kept within certain bounds, and from the time they were taken from their respective ships, were treated, in other respects, as if they had been prisoners of war. On the said 28th of May, in the succeeding year, the said captain and crew were marched back to Petersburgh, and returned on board the ship, and afterwards proceeded on the voyage to London. The ship went out to Petersburgh in ballast, to bring a cargo to London, and was to be paid freight for that cargo by the ton. The defendant in error did his duty as seaman on board the ship during the said voyage, and the ship received the same freight as if she had not been detained, and no more. After the captain and crew returned on board the ship, the Russian government issued the following order:

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

error, along with rest of crew of Plaintiff's ship, detained and treated as prisoners of war.

Crew sent back to ships, and order of Russian Government, restoring vessels and their cargoes.

" Quoique l'intention magnanime de S. M. l'Em-
" pereur de toutes les Russies de rendre pleine et
" entière justice aux Sujets Britanniques, qui ont
" essuyé des pertes pendant les troubles qui ont
" alteré la bonne intelligence entre son Empire et
" la Grande Brêtagne, soit, dejà, contatée par les
" faits, S. M. I. ne consultant que sa loyauté, a
" autorisé encore le Plénipotentiare soussigné à de-
" clarer, comme Il declare par la présente:

" Que tous les navires, les merchandizes, et les
" proprietés des Sujets Britanniques, qui avaient
" été mis en sequestre sous le dernier regne en
" Russiè, seront non seulement fidèlement restitués,
" aux dits sujets Britanniques, ou à leurs com-

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

" mettans, mais que pour les effets qui auroient " été alienés d'une manière quel-conque, et qui ne " pourraient plus être rendus en nature, il sera " accordé aux proprietaires un equivalent conve- " nable; lequel sera determiné ulterieurement " d'après les regles de l'equité.

" En foi de quoi, nous, plénipotentiare de S. " M. I. de toutes les Russies, avons signé la pré- " sente declaration, et y' avons fait apposer le sçeau " de nos armes. Fait à St. Petersburgh, le 5- " 17me Juin, 1801.

(Signé) " LE COMTE DE PANIN."

Defendant receives his wages, except for the time he was detained as prisoner.

This order has not yet been carried into complete effect; no new articles were entered into between the captain and the crew; the Plaintiff has received all his wages for the voyage, according to the articles, of five pounds ten shillings per month, *except* for the time the captain and crew were so kept out of the said ship.

The action was for wages during the period of detention, being about six months. In Easter term 1803, the Court of Common Pleas gave judgment for the Plaintiff in error. The Defendant in error immediately brought a writ of error in the Kings Bench, and that Court, in Hilary term 1804, reversed the judgment of the Common Pleas and gave judgment for the Defendant in error, upon which the Plaintiff in error brought his writ of error returnable in the House of Lords.

Proceedings in Courts below, and writ of error in *Dom. Proc.*

Argument for Defendant in error.

Mr. Brougham, (for Defendant in error,) in answer to an objection which had been made on the part of the Plaintiff in error in the course of the

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

cause, argued, that the being actively employed in the performance of the service, during the whole of the time, was not a condition precedent, or necessary to be averred in order to lay a foundation for the claim. The condition precedent was his entering on board, and continuing for the whole voyage in the service of the owner, and this was averred. Whether the active performance of service during the whole of the time ought to have been averred, was exactly the question to be decided. The defendant in error had performed it as far as it depended on him, and the special verdict found that he had done his duty according to the acts, &c. &c. As instances to show that it was not necessary absolutely and in all cases to perform the service, they referred to the case of sickness in a servant, which excused him from the service to his master, and the case of premises being burnt down without any fault of the lessor. Wages in the one case, and rent in the other, were due because the contracts were made with a view to these contingencies, and such was the nature of the contract in the present case. The only question was, who must run the risk, which ought to have been in the contemplation of the parties.

The actual performance of service during the whole time not a condition precedent.

That sickness excuses servants, and rent due though premises burnt.

This was not a hostile seizure, but a civil detention or embargo. But however that might be, it was at any rate only a *temporary* detention, followed by a subsequent liberation, and did not alter the situation of the parties, or the nature of the running contract. If this was a hostile seizure, the freight had notwithstanding been paid, and therefore the wages were due, and *à fortiori* they were

That whatever the nature of detention it was only a temporary detention, followed by subsequent liberation, and did not alter nature of running contract

June 9, 1813.

EMBARGO — SEAMEN'S WAGES.

due if it was only a civil detention. Marine contracts differed emphatically from others in this respect, that the seaman's wages depended on the success of the voyage. Where no freight was earned by the owner, no wages were due to the men. On the other hand, where freight was earned, the seaman ought to have his wages, unless forfeited by his own misconduct. There were authorities where capture followed by recapture did not impede the claim of the owner against the freighter, and in such cases the contract was not dissolved between the master and mariner. In all the cases where the freight was refused after an embargo, the ground was, that the voyage was not performed. But when the voyage was performed as in the present case, the seaman was entitled to his wages.

Molloy, 268.

Cases of the *Werldsborgaren and Isabella Jacobina*, 4th Rob. Ad. Rep. 17. 77.

Then came the question whether the mariner had *forfeited* his wages. The Defendant in error promised and obliged himself to do his duty and obey all lawful commands of the officers on board the ship, and not to go out of the ship without leave; and in default of complying with these articles, the Defendant in error was to be liable to the penalties of the acts 2 G. 2. c. 36, and 37 G. 3. c. 73. All these instances related to some wilful act of the mariner himself. It was not every absence that made a forfeiture. There must be a wilful absenting, and this was negatived by the special verdict, which found that the Defendant in error had done his duty. Absence from inevitable necessity was one of the risks of the voyage, all which ought to have been in view at the time of forming the contract. The voyage might be slow, the ship might

That cases of forfeiture of wages always resulted from some wilful act of mariner himself.

Absence from inevitable necessity was one of risks of voyage to which owner was liable.

be delayed by calms or by baffling winds, or detained in ports by foul weather; and yet in such cases there could be no doubt but the master must pay. But then it might be said that in these cases the mariner was on board the ship. The answer was that this was not necessary. The vessel might be detained for weeks and months by stress of weather, as in the case of a ship frozen up, and the mariners taken out and removed to a distance of some miles, and yet the claim to wages would be good. Then again it might be said, that there the men were kept together and ready to do duty when wanted. The answer was, that here too the mariners were kept together, and ready as soon as they were wanted. But, waving that for a moment, suppose another accident had happened; suppose a seaman were sick, he could not be busy about the ship, and yet it was clear that he must have his wages upon the general law. This however, it might again be said, was the act of God, and that this constituted the distinction. But there was no real distinction between the act of God and that of the king's enemies, as to this purpose. This might be assumed on the reason of the thing, since the principle was, that inevitable necessity, without fault of the party, was an excuse. In this sense, disease, a blow wilfully given by another, came under the description of the act of God. There was no authority for the distinction. The authorities, on the contrary, were the other way, as in cases of waste, where it was a good answer that it happened by tempest, the king's enemies, &c. without any fault of the party. The principle upon which

That not necessary that mariners be always on board ship.

1 Oleron. Molloy, 246. Chandler v. Greaves, 2 U. Blackstone, 606.

C Litt. 53, b. 283, *a*.

Paradyne v.

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

the authorities rested was this, that the party was not liable for what happened from inevitable necessity, without his fault or procurement. It was hardly necessary to repeat the train of decisions where the same principle was recognized in cases of premises destroyed by fire, where the rent was held to be due.

Jane, 27 Aleyne, *et ib. cit.* 2 Rolle Abr. 248. Molloy, 264. Y. B. 40. Ed. 3. p. 6. Monk v. Cooper, 2 Str. 763. Belfour v. Wigton, 1 T. R. 912, *et ib. cit.* Pindar v. Anislie. Doe v. Sandham, *ib.* 705. Shubreck v. Salmon. 3 Bur. 1637. Bergstrom v. Mills, 3 Esp. 36. Molloy, 263.

They were now arguing upon the supposition that this was a hostile seizure. And here the case of *Bergstrom v. Mills* decided at *Nisi prius* by Lord Eldon was in point. There, in a case of capture and recapture, the defence was the same as in the present instance, that the service had not been performed during the whole of the voyage. But if the voyage was performed with a temporary interruption, and the services as far as depended on the mariner, this was sufficient. Freight was earned and wages were due. It had been objected that this was a contract by *time*, and that the contract for freight was by the *ton*. But still the ship was earning this freight during the whole time of the voyage. It was spread over the whole time, and the amount might be divided by the months, so as to make it appear how much it came to per month. So if the mariner had stipulated for the whole voyage, the amount of wages might in the same manner be divided by the months. Each contract was in effect for the voyage; both were commensurate, and as freight had been earned for the whole, so ought the wages to be paid. The principle was distinctly recognized in *Hadley v. Clarke*, (8 T. R. 259,) and *Blight v. Page*, (3 Bos. Pull. 295,); and in *Robertson v. Eure*, (1 T. R. 127,)

and *Pratt v. Cuff*, cited in *Thomsom v. Rowcroft*, (4 East. 43,) the doctrine was admitted by inference peculiarly cogent. The whole of the cases were with them upon the principle.

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

But this was not properly a hostile seizure. It was only a temporary detention; and such it appeared in the findings of the special verdict. In this light it was considered by the British Government, as appeared from the Orders in Council of the 14th and 16th Jan. 1801. The mere act of seizure was not necessarily a capture, though it might turn out to be so. It was merely an inchoate act, to which the final result had a retrospect and showed its nature. In the present case it urned out to be only a temporary detention. The sailors returned to the ship, and the voyage was completed.

Molloy, b. 2. c. 2. s. 3. Hamilton v. Mendez, 2 Bur. 1209. Goss v. Withers, *ib* 694. 1 Rob. 139. Gertruyda, 2 Rob. 211, 222.

Another point was, that the master or agent had received the mariners again on the old contract, no new one having been formed; and the Session cases clearly proved, that where servants were received after a temporary interruption the wages were due for the whole time. It was besides a clear principle of mercantile law, that wages attended on freight. It might be hard, that in a voyage usually of three months the owner should have to pay during a detention of six months; but the loss would be harder still on the mariner; and it was more reasonable that he who earned the freight should be subject to the consequences of the risks of the voyage.

Reasonable that he who earns freight should bear risks of voyage.

Holt (on the same side.) The writers on embargo divided it into two sorts: 1st, Precautionary,

June 9, 1813.

EMBARGO,— SEAMEN'S WAGES.

2d, For procuring a pledge. The second differed from the first in this, that it was marked with a hostile force; but if the result was not hostile it was still an embargo; if war ensued, it was then *quasi* a capture *ab initio*. Capture *ex vi termini* implied a loss, embargo only a detention. In the present case there was no capture, no sale, no condemnation. It was nothing but an embargo, and if so, there was an end of the question, as the Plaintiff in error was bound by law to pay. There was an interruption of the service, but no interruption of the obligation. There were three ways of dissolving a contract: 1st, by consent of the parties, 2d, by a default of some or one of them, 3d, by construction of law. There was no dissolution in this case by consent of parties, or by the default of the mariner. If dissolved then it must be by construction of law. Contracts might be dissolved by construction of law, 1st, from their nature, 2d, from the presumed consent of parties. But none of these grounds of dissolution existed here. This was a marine contract, of which all the risks and consequences fell upon the capitalist, except in cases where freight could not be recovered. The men could not resist the force to which they were exposed, and it would be monstrous to say that in such circumstances they ought to have attempted it. It was not from any fault of theirs that they were not on board in the performance of their duty, and the suspension of that service could not therefore be held to dissolve the contract. The same equitable rule prevailed in the case of *Perry v. Royal Assurance Company*.

That though seizure took place, if result not hostile, still an embargo.

Interruption of the service; but no interruption of the obligation.

1 Bur. 206.

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

Mr. Gaselee (for Plaintiff in error.) The Defendant in error had not put himself in a condition to receive the wages claimed. He might say that the performance of the service was a condition precedent, and so it had been considered by those who drew the pleadings on the other side, as an attempt had been made to show that the whole had been performed, but without success. When a party sought compensation he ought to show that the service was performed, or that he was prevented from performance by the party against whom he sought compensation. The case of *Paradyne v. Jane*, and the cases there cited were not strictly applicable to the present case. Here the contract was for wages, not during the whole voyage, but at so much per month, and the Defendant in error had been paid at that rate for the time he was in the Plaintiff's service. There was no occasion to stop to inquire whether or not the acts of God and of the king's enemies were not the same in effect in the particular cases referred to; but by the marine law, capture put an end to the claim for wages. The present case did not go so far. The Plaintiff in error only sought to relieve himself from the payment of wages for that time during which he had no benefit from the Defendant's service. It had been said in the course of the arguments in this case, that it was not necessary to inquire whether or not this was a hostile seizure. But hostile or not hostile made all the difference. This was not a case of forfeiture of the whole of the wages, but only a forfeiture during the time the mariner

Argument for Plaintiff in error.

That the performance of service was a condition precedent.

Aleyne, 27.

That capture by marine law put an end to claim for wages.

June 9, 1815.

EMBARGO,— SEAMEN'S WAGES.

Principle of revived contract, in case of recapture, rested on ground that crew supposed to be assisting in recapture. Here only a restoration. 4 Rob, 144.

was not in the owner's service. It was said that the mariners were here ready to perform the service; but how did that appear? In a case of recapture the mariners were ready to do their duty, and the principle upon which the contract revived was, that the crew were supposed to be assisting in the recapture. This principle governed the decision of Sir W. Scott in the case of *The Friends*, Here the crew were not in a situation to do any thing for the rescue of the ship. The case of *Chandler v. Greaves*, differed from the present, as there the inability happened by an accident in the performance of the duty, through the act of God, so that it came within the rule in Molloy. In *Robertson v. Ewer*, the question was not raised. *Pratt v. Cuff* was a *nisi prius* case, and at any rate it did not appear there how the freight was earned: it might have been by the time. All the cases cited on the other side, (without going over them minutely,) differed from the present in some material circumstance. In *Hadley v. Clarke* the detention was a mere embargo, and the action was not for compensation.

Molloy, 246.

But if there were any doubt as to the wages not being due for the time when the service was not performed, it was hardly possible, after attending to the facts, to call this a mere precautionary embargo. It was a hostile capture, and it might be contended that the claim to any wages was at an end. But he was not under the necessity of going that length. Were the crews separated from the ships in the case of a precautionary embargo? Were

That this was a hostile capture.

they imprisoned? That they were kept together made no difference here, any more than if they had been kept in separate prisons. The transaction carried hostility on the face of it. It might be called an embargo, or any thing else. But the name signified nothing. It was in fact a hostile capture. Not one of the definitions of embargo applied to this. It was treated in this country as an act of hostile confederacy, though the consequent act of our government was an embargo. In the case of *Curling v. Long* there was a recapture, so that he need not rely on the *dictum* of Chief-Justice Eyre; though he might. The ground of giving wages in case of recapture was to encourage recapture. Here there was only a restoration, and on the principle of the case of the *Friends* no antecedent wages were due. As to the crew being received again, there was no agreement then to pay them wages, and they must have been glad to get back again without any wages. 1st then no service was shown to have been performed for the wages claimed; and 2d, if there was any doubt as to the service, the claim could not be supported, as this was a hostile capture and there was no recapture.

1 Bos. Pull. 634.

The object of giving wages in case of recapture was to encourage recapture.

Lord Eldon (Chancellor). This was a very important case, and it was proper their Lordships should have the opinion of the Judges upon a question embracing the whole of it.

It was agreed that the opinion of the Judges should be taken on the question, whether on the whole of the facts found in the special verdict, the original Plaintiff was intitled to recover wages during

June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

July 12, 1813.

the time he was kept out of the ship, as found in the Special verdict.

The Judges attended this day, and the Lord Chief Baron delivered their unanimous opinion that the Plaintiff was entitled to recover.

Lord Eldon (Chancellor). This appeared to him to be a case of considerable difficulty; but, on the whole, he concurred in opinion with the Judges.

Judgment of the Court below affirmed.

Agents for Plaintiff in Error, ATCHESON and MORGAN.
Agent for Defendant in Error, RIPPINGHAM.

ENGLAND.

APPEAL FROM THE COURT OF EXCHEQUER.

PARMETER and others—*Appellants.*
ATTORNEY-GENERAL—*Respondent.*

Feb. 13. 15. 1813.

QUESTION AS TO A NUISANCE IN PORTSMOUTH HARBOUR.

THE Appellants, claiming under a grant by Charles I., of the soil between high and low water marks, along the coast of the county of Southampton, erect a wharf, dock, &c. between high and low water marks in Portsmouth harbour. Information to abate this as a nuisance. No possession of this particular spot under the grant, till 1784. Court of Exchequer decree a removal of the nuisance, and this decree affirmed by the Lords, solely on the ground of non-user as to this particular place, without reference to general validity of grant.

THIS was an appeal from a decree of the Court of Exchequer, made in a cause commencing by