

## (b) The protection of science, education, and art

## THE MARQUIS DE SOMERUELES

*Vice-Admiralty Court at Halifax, February 26, 1813*

FEBRUARY 26, 1813, Dr. Croke, Judge of the Court of Vice-Admiralty sitting at Halifax in Nova Scotia, condemned the *Marquis de Somerueles*, captured on her way to Salem from Civita Vecchia, "and her cargo to the captors as having been taken under the Order in Council of the 26th of April."

On April 21, 1813, the case was heard again upon petition for the restitution of the property. The petition was supported by the Solicitor General, and opposed, though not strenuously, by the King's advocate, the captors not consenting.

*Dr. Croke:* "This petition is of a different kind from what usually engages the attention of the court. It prays that certain paintings and prints, which were captured on board the American vessel called the *Marquis de Somerueles*, may be restored to the petitioner on behalf of a scientific establishment at Philadelphia. The ground of the petition is contained in a letter annexed to it, which states: 'That in the *Somerueles*, from Italy, was taken a case belonging to the Academy of Arts in that city, containing twenty-one paintings and fifty-two prints; that they were presented to the academy by Mr. Joseph Allen Smith, who has already given most objects of the statuary, paintings, and prints which they possess; indeed this is the remnant of what he collected for the purpose of assisting in its formation. The value we know not, but in this country, and in an infant establishment, every accession is important. The Academy is now preparing an application for them, which will be handed with an accompanying letter from Anthony St. John Baker, late secretary of Mr. Foster, who has examined into the circumstances — knowing that even war does not leave science and art unprotected, and that Britons have often considered themselves at peace with these, we are not without hopes of seeing them.'

"Heaven forbid that such an application to the generosity of Great Britain should ever be ineffectual. The same law of nations,

which prescribes that all property belonging to the enemy shall be liable to confiscation, has likewise its modifications and relaxations of that rule. The arts and sciences are admitted amongst all civilized nations, as forming an exception to the severe rights of warfare, and as entitled to favor and protection. They are considered not as the peculium of this or of that nation, but as the property of mankind at large, and as belonging to the common interests of the whole species. Not to mention innumerable cases of the mutual exercise of this courtesy between nations in former wars, even the present governor of France, under whose control that country has fallen back whole centuries in barbarism, whilst he has trampled upon justice and humanity, has attended to the claims of science. Besides other instances, there was one which came within my knowledge. A gentleman, a fellow of the royal society, was unfortunately one of the persons so unjustly detained at Paris at the commencement of the war. Considerable interest was exerted, through the medium of the British Government to procure his release, but without effect. Yet to an application from Sir Joseph Banks, as the president of the Royal Society, in favor of a member of that useful institution, Bonaparte paid immediate attention, and in the handsomest manner permitted him to return to England. If such cases were unheard of, every Briton would be anxious that his country should set the honorable example; but I trust that every British bosom would blush with shame, if his country should be found inferior to the lawless government of France in obeying the dictates of liberality. We are at war in the just defence of our national rights, not to violate the charities of human nature.

"In thus favoring an institution of this kind, besides contributing to the maintenance of such a reciprocal exchange of civilities with our enemy as is consistent with the state of hostilities, we shall perhaps at the same time promote most effectually our own best interests. There is a natural connection between all the arts and sciences, as well material as intellectual. It is impossible for a nation to improve in the polite arts without a corresponding amelioration in the practical science of human nature. It is a school-boy quotation, but not the less true for being trite, that

*Ingenuas didicisse fideliter artes emollit mores: nec sinit esse feros.*

"This observation is founded in nature, for what is usually called taste is only good sense applied to the polished ornaments of life; and correct ideas in morality are the same good sense directed to human actions. All absurdities, and deviations from rectitude, are nothing more than a bad taste influencing human conduct. The public standard of morals will therefore always rise with the advancement of the polite arts. Minds, accustomed to the contemplation of picturesque excellence, cannot fail of being disgusted with any departure from the sublimer form of moral beauty.

"In the United States, such improvements are not improbable, or perhaps very remote, and cannot fail of being advantageous to both countries. They have shown themselves not incapable of producing genius in these departments. The very eminent artist [Benjamin West] who now presides, with so much credit to the country, and so much benefit to the students, in the Royal Academy of Great Britain, owes his birth and earlier education to that country. The time may shortly come when in an advanced state of the arts, to which this very institution, which is now before the court as a petitioner, may contribute its share, new Wests may arise to revive the school of Raphael in the wilds of America; and when likewise, by a corresponding improvement in moral feeling, the public taste may be too highly cultivated to bear with such hideous deformities as the picture of a country priding itself upon its liberty and independence, yet submitting to be the tool of a foreign despot; so cowed by faction that no man is bold enough to stand up and avow himself the friend of the land of his forefathers; so destitute of all sense of honor and generosity, as to spurn, with indignity, the hand of fraternal benevolence repeatedly held out to it, and to throw itself into the embraces of the common enemy, who despises and insults it: — when such an improved state of society shall take place, there can be no doubt but that the two nations of brethren on the opposite shores of the Atlantic, will be united in the indissoluble bonds of friendship, as well by inclination as by a common interest; they will cultivate in unison the advantages of an enlightened commerce; they will labor together in the furtherance of the useful arts; and will experience no other enmity than a liberal rivalry in every elegant and manly accomplishment.

"Not to disappoint the expectations which have been entertained of the liberality of this country, and to give every encouragement to an infant society, whose views and objects are so laudable and beneficial, with real sensations of pleasure, and the sincerest wishes for its success and prosperity, in conformity to the law of nations, as practised by all civilized countries, I decree the restitution of the property which has been thus claimed."

(Stewart: *Reports of Cases argued and determined in the Court of Vice-Admiralty, at Halifax, in Nova Scotia, etc.* [London, 1814], pp. 482-86. The statement of the facts is condensed.)

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### THE AMELIA

*United States District Court, November 26, 1861*

AND NOW, 26th November, 1861, this case was heard upon the claim of Mitchell King, of Charleston, South Carolina, for two cases of books marked "The University of North Carolina, Chapel Hill, North Carolina, care of Mitchell King, Esq., Charleston, South Carolina, Nos. 1 and 2," received and filed on the 14th instant, with the written consent of the District Attorney of the United States. And the affidavit of John Pennington, taken on the 16th instant, and this day filed, being read by consent, and the letter of the said claimant therein mentioned being put in evidence, and it appearing to the Court that other parts of the said letter than are extracted in the said affidavit should be considered in forming an opinion as to the sufficiency of the authority conferred upon Mr. Pennington to receive the said two cases of books, the said letter is filed of record. And the said claim having been considered upon the above-mentioned papers, and upon the documents on board of the captured vessel, the Court said:

*Cadwalader, Judge:* "Though this claimant, as the resident of a hostile district, would not be entitled to restitution of the subject of a commercial adventure in books, the purpose of the shipment in question, gives to it a different character. The United States, in prosecuting hostilities for the restoration of their constitutional authority, are compelled incidentally to confiscate property captured at sea, of which the proceeds would otherwise