

1761.

Gold and Silver Coin, a Box of Silk Cloaks and other things, laden and found on Board the said Sloop to be forfeited and lost, to be divided and distributed according to the Prayer of the Libel, and that the Claimants thereof should be respectively Condemned in Costs to be Taxed. [On the hearing by the Committee,] the Counsel for the Respondents Alledging that several other Appeals were Allowed from the said Sentence with respect to the Sloop and the rest of the Cargo, which have never been prosecuted—Their Lordships do therefore agree humbly to report as their Opinion to your Majesty that so much of the said Sentence of the Vice Admiralty Court of the Island of Nevis of the 23d of February 1760 as relates to the Gold and Silver Coin should be Reversed and that the Appeales of the other Parties should be dismissed.

[Geo. III. Vol. II. pp. 125–7, 167.]

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[438.] [Reference to the Committee of the petition of Robert Mantle, late commander of the *Thurloe* privateer, for a day for hearing his appeal from part of a decretal order of the Jamaica Chancery, 24 Sept., 1759, relating to his seizure of the French brigantine *Mentor*, and praying that the appeal of Charles Le Conte, commander of the *Mentor*, from the other part of the order, be dismissed with costs for non-prosecution. The *Mentor* was condemned in the Vice Admiralty Court, 26 Aug., 1758 : Le Conte filed a bill in Chancery for restitution.] [p. 185.]

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[On the Committee report of 16 March, part of the decree is reversed and part affirmed. The case was heard *ex parte*, no appearance having been entered for Le Conte. The appeal set forth] That the Appellant being on a Cruize against his Majestys Enemies Seized a French Brigantine called the *Mentor*, Loaded with Provisions and Stores of every kind, bound from Jamaica for the French at Mississippi Charles Le Conte Commander and brought her into the Island of Jamaica and Libelled the said Brigantine and her Cargo in the Vice Admiralty Court there ; and the usual Preparatory Examinations being taken and the Ship's Papers

brought in and the said Brigantine and her Cargo claimed by the said Charles Le Conte as a Flag of Truce, the same came on very fully to be heard on the 26th Day of August 1758, when the Court Condemned the said Brigantine Mentor and her Cargo to the said Appellant as Prize ; from which Sentence the Claimant prayed and was allowed an Appeal to the Lords Commissioners for Appeals in Prize Causes and gave the usual Security, but hath never prosecuted the same ; That notwithstanding the aforementioned Appeal pending, the said Charles Le Conte upon the 13th of April 1758 Filed his Bill in the High Court of Chancery of Jamaica, thereby Stating that he as Commander of the Brigantine Mentor was a Publick Agent Commissioned Ratified and Allowed for the Exchange of Prisoners of War between the Province of Louisiana and the Island of Jamaica by Virtue of and under the General Cartel Settled and Ratified between their Britannick and Christian Majestys for the Exchange of Prisoners of War during the present War and prayed that the Appellant might make unto the Respondent full Discovery and Restitution of the said Brigantine called the Mentor and of all the Goods and Effects taken and Spoiled on Board the said Brigantine and also of all his Costs and Expences and losses disbursed and suffered in that behalf ; And that it might be referred to one of the Masters of the Court of Chancery to take an Account thereof and to Ascertain the same ; And that the Appellant and his Agents might be Restrained and enjoined by the Court from Selling and disposing of the said Brigantine called the Mentor and the Goods by him Seized on Board the same ; And that a proper Person might be appointed to take the said Brigantine Mentor and all the Goods taken on Board the same into his Possession, Subject and liable to the further Order of the Court ; And that the Appellant might give sufficient Bail or Security that he would not go or attempt to go into any parts beyond the Seas or leave this Island without the leave of the Court to him first Granted for that purpose ; And for a Writ of Ne Exeat against the Appellant and an Injunction

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to stay the Sale of the Ship and Cargo, and for further Relief. On the 13th of September 1758 the Governor as Chancellor upon the bare Allegations in the Bill on the Petition of the Respondent Ordered a Writt of Ne Exeat Insula to Issue against the Appellant to restrain him from departing the Island, until he should have fully Answered the Bill and have given Security before one of the Masters of the said Court to perform and abide by such Order, Sentence or Decree as should be made in the Premises for the Respondents Relief. That on the 20th of October 1758 the Appellant put in his Plea and Answer to the said Bill. That the Respondent Le Conte never Replied thereto but the Plea and Answer was on his own Petition set down to be Argued and accordingly on the 24th of September 1759 it came on to be heard before the Lieutenant Governor when his Honour was pleased to make the following Decree. "This Cause coming on this Day to be heard on Bill and Answer before the Chancellor, the Honourable John Ayscough and William Lewis Esquires Assistant Judges of the Supreme Court of Judicature, having been first called in by his Honour for their Advice and Assistance according to the form of the Statute in that Case made and provided, Mr. Gordon of Counsel with the Plaintiff opened the Bill and Mr. Welch of Counsel with the Defendant opened the Plea and Answer and upon Arguing the said Plea and hearing what could be Alledged by Counsel on both sides, his Honour was pleased by and with the Advice and Assistance of the said Judges to Order that the said Plea should and do stand for an Answer ; And his Honour was pleased further to declare the Opinion of the Court that the Plaintiff under the Circumstances aforesaid by any defence made in the Court of Admiralty or by any Appeal from thence ought not to be precluded from the Protection and Justice of this Court ; And his Honour was pleased further to declare the Opinion of the Court that the Commission of Truce and Letters of safe Conduct ought to Extend only to the Plaintiff his Officers, Mariners and Prisoners his and their necessary

and proper Goods and Effects and to the Brigantine and Vessel called the Mentor her Apparel Tackle and Furniture and to the necessary and Suitable Provisions for the Voyage ; but ought not to be deemed to extend to protect or give Countenance to any illicit Trade, or to any Goods, Wares or Effects laden on Board the said Brigantine as Merchandize or Supplies to the Enemy ; His Honour by and with the Advice and Assistance aforesaid was therefore pleased to Order adjudge and Decree that the Defendant do forthwith make Restitution of and deliver unto the said Plaintiff the said Brigantine called the Mentor in the Pleadings of the Cause mentioned with her Apparel Tackle and Furniture : and also the proper and necessary Goods and Effects of the said Plaintiff his Officers Mariners and Prisoners and also the necessary and Suitable Provisions of and belonging to the said Brigantine Mentor and by the said Defendant taken and detained as in the Pleadings of the said Cause mentioned. And as to so much of the said Bill as seeks Relief for any Goods or Effects laden on Board the said Brigantine and Exported as Merchandize or Supplies for the Enemy ; His Honour by and with the Advice aforesaid was pleased to Order, Adjudge and Decree that the same and such part of the said Bill be and stand dismissed and reserve all further Considerations until the Court shall be informed after what manner this Decretal Order shall be Complied with." [From this dismissal of his bill Le Conte appealed, while Mantle appealed from the order for restoring the ship, etc. Mantle's appeal was upheld, and Le Conte's dismissed.]

[*pp.* 361 ; II. 121-3, 167.]

[439.] [Reference to the Committee of the petition of Jasper Hall, merchant, of Kingston, Jamaica, that the Council dismiss with exemplary costs for non-prosecution the appeal of John Harvey, Esq., of Kingston, one of the surviving executors of Alexander Macfarlane, Esq., from a Chancery order of 17 Nov., 1758, quashing the report of a Master in Chancery in a case relating to a partnership account.] [*p.* 186.]

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