
The Unlucky General Armstrong

BY HAROLD A. MOUZON

EVERYONE at all familiar with the naval history of the War of 1812 knows about the privateer *General Armstrong* that fought the bitter, bloody battle at Fayal in the Azores; but few have heard of another privateer *General Armstrong* that sailed from Charleston on her first cruise on Christmas Eve of 1812 and came back into Wilmington, North Carolina, in the spring of 1813 in a veritable cloud of troubles—litigation, recrimination, mutiny and murder. The histories of privateering ignore her; even Coggeshall,¹ who was himself a captain of privateers in the same war, does not mention her. But there were interesting things about her, although her career as a privateer was neither long nor successful. This record has had to be picked out and pieced together from the faded and brittle files of contemporary newspapers, from musty law reports, and from a few scattered documents in the National Archives in Washington.

I.

We do not know when *General Armstrong* was built or who built her. We do not know how she was rigged or what she looked like, except that she seems always to have been called a 'ship'. We do not know her dimensions except that she was of 205 tons. She carried sixteen six-pounders and a crew of a hundred men (the commission called for 120), but a privateer always carried an extra large complement to furnish crews for prizes. She was owned by John Sinclair, of New York, and John Everingham, of Charleston, who was also the principal owner of the very successful Charleston privateer schooner *Saucy Jack*.²

We have no record of when *General Armstrong* began fitting out at

¹ George Coggeshall, *History of the American Privateers and Letters-of-Marque, During Our War with England in the Years 1812, '13 and '14* (New York, 1856).

² Record of *General Armstrong's* Commission, National Archives; Records of the Department of the Navy; Records Acquired from the Department of State; Letters from Collectors of Customs Relating to Commissions of Privateers, 1812-15; Privateers, War of 1812, Vol. 2 (RG 45); *The Investigator*, 24 December 1812.

Charleston, but it must have been a lengthy process. On 5 November 1812, William Livingston was signed on as sailing master.³ The President's commission dated 23 November named John Sinclair as captain and David Pearce as lieutenant.⁴ She did not sail until Christmas Eve, on what was intended to be a four months' cruise. *The City Gazette and Commercial Daily Advertiser* for Christmas Day gave the event a somewhat less than enthusiastic notice:

After thundering the notes of preparation for several months, the privateer ship *General Armstrong*, Captain Sinclair, at length has put to sea. If the length of her cruize equals that of her fitting out, she must be a fortunate sailor if not a swift one. We wish her much success and fewer rebuffs at sea than she has met on shore—May she return with rich prizes and lawful ones, and may her crew be enabled another year to enjoy a *Merry Christmas*.

A search of available newspapers fails to reveal the nature of the 'rebuffs' which had so delayed *General Armstrong*, but considering what was to come it seems a pity that she did not delay a little longer and let her crew enjoy Christmas in Charleston before embarking on what was to be a melancholy voyage. The *Gazette's* wishes for 'rich prizes and lawful ones' have a distinctly ironic tinge in the light of later developments.

On 11 March the *Charleston Courier* reported that *General Armstrong* was spoken on 15 January in lat. 32° N., long. 44° 50' W. Then on 19 March Charleston read in the *Times* that the ship *Sapor* had arrived in New York on 2 March with this story:

On the passage, was boarded by the privateer *Gen. Armstrong, Sinclair, of Charleston*, of 16 guns, last from France. She had taken a Spanish vessel, which had been captured by the British from the Algerines. The *Gen. Armstrong* detained the *Sapor* several hours, searched the ship, and broke open several letters, and threatened to send her into France.

This seems impossible to reconcile with an item in the same newspaper on 29 March:

The brig *Amazon*, Phillips, of Philadelphia, 46 days from Cadiz, has arrived in New York. Feb. 23, lat. 26, long. 54, was boarded by the *General Armstrong, privateer, Capt. Sinclair*, 16 days from New-London—had made no captures, and had lost his stern-boat while chased by a British frigate.

There must be some confusion here, of dates or places or both. It is clear, however, that *General Armstrong* had struck out boldly across the Atlantic instead of doing her hunting in the British West Indies, as was the usual

³ *United States v. The Matilda*, Fed. Cas. No. 15, 741.

⁴ Record of Commission.

practice of the Charleston privateers. If bold, *General Armstrong's* tactics were not profitable. No more is heard of her Spanish prize, and what appears to have been her only British prize never made port.

Charleston first heard of this prize in a brief item in the *Gazette* of 19 April, but in a few days there was a fuller account in the same paper in the form of a dispatch from Georgetown, some sixty miles north of Charleston on the South Carolina coast, dated 21 April. It told of the loss of *Armstrong's* prize, the brig *Tartar* from St. Barts laden with 160 puncheons of rum. Fleeing into Georgetown harbor from a British brig of war, she struck on North Island, bilged and broke up, some of her cargo being taken off by *Orion* and some floating ashore.

The same issue of the *Gazette* carried a dispatch from Wilmington, North Carolina, dated 17 April:

Arrived at this port last evening, the privateer ship *General Armstrong*, of Charleston, from which port she sailed on the 24th Dec. 1812, on a cruise for four months, but after experiencing every hardship, &c. which will hereafter be given, the crew were obliged to turn her back to the westward.

II.

It would soon become apparent that the somewhat peculiar phrasing of the above item was quite accurate. It was her crew, and not Captain Sinclair, who had turned *General Armstrong* to the westward and brought her into Wilmington. This was made clear in the following from the *Wilmington Gazette* of 24 April, reprinted in the Charleston papers:

In our last, we mentioned the arrival of the Privateer Ship *General Armstrong*. The day after her arrival, Capt. Sinclair, who was also half owner and who had been confined to the Cabin for 28 days, by the crew, was liberated. He laid his complaint before T. N. *Gautier*, Commandant on this Station, charging the crew with mutiny, &c. demanding their arrest for trial. There was some difficulty in getting them to consent to surrender themselves. A request was made to the Captains of the Volunteer Companies to call out their men in aid of the Officers of the United States, which was done with great promptness. A general and considerable alarm was excited, but fortunately, it was not necessary to board the ship to compel the crew to submit to the authority of the law; they at last yielded, and are now in confinement on board the gun-boats, awaiting the court martial which must decide on their conduct. Subsequent to their arrest of the Captain, two prizes were taken, which may possibly raise a question involving piracy. The above is but a brief summary.⁵

Let us examine in more detail the events of which 'the above is but a brief summary.'

⁵ Wilmington, N. C., *Gazette*, 24 April 1813, quoted in *Charleston Times*, 29 April, and *City Gazette and Commercial Daily Advertiser*, 30 April.

We do not know just how or why trouble first started on the ship, but on 22 February Captain Sinclair placed the sailing master, William Livingston, under arrest for disobedience to orders.⁶ Possibly this was the first step in the differences between the captain and the majority of his officers and crew which broke out into open revolt on 18 March. According to a statement made by Captain Sinclair after arrival in Wilmington, the ship was then ten days out from Brava, in the Cape Verde Islands, in lat. 21° 49' N., long. 23° 23' W. from meridian of London, with the Isle of Sal 312 miles distant, Cape Blanco 356 miles distant, and Teneriffe 542 miles to the northeast. According to the same statement the ship was 'steering on a wind So. by E. Variation more than 1 Pt. North [?], destined to touch at Teneriffe to furnish such stores as were expended unless we fell in with them before, which from the situation we were sailing in was very probable.' Provisions on board amounted to 3 cwt. of bread, 4 barrels of peas, 3½ tierces of rice, 2,100 pounds at least, and 1¼ barrels of flour, making 'bread kind' enough for forty-four days' rations, besides 1½ firkins of butter, 1½ barrels of molasses, 2½ boxes of sweet oil (30 bottles), and 23 or more barrels of best salt beef and pork. So bounteous were the supplies, according to Captain Sinclair, that there were landed at Wilmington 10 barrels of salt meat, 2 barrels of peas, 1½ tierces of rice, and a box of oil, vinegar and other stores.⁷

A very different picture was painted in the 'Memorial' which was printed in the *Wilmington Gazette* at the request of Master's Mate Charles Cromwell. It was said to have been signed by six master's mates, gunner, boatswain, carpenter, three mates, quartermaster, and fifty-one seamen and marines, belonging to *General Armstrong*, and constituting nearly three fourths of her crew. Captain Sinclair said later that there were actually only fifty-two signatures to the memorial;⁸ but the question would seem to be academic, since he charged eighty of his officers and crew with mutiny.⁹ The memorial is a rather remarkable document which seems worthy of quotation in full. It is said to have been 'handed Captain Sinclair, on board the American private armed ship *General Armstrong*, latitude 22.03, N. longitude 25, W. at Meridian, Thursday, 18th March, 1813'; and it reads:

⁶ *U. S. v. Matilda*.

⁷ Statement by Capt. Sinclair, National Archives, Records of the Department of the Navy; Office of the Secretary of the Navy; Miscellaneous Letters Received, 1801-1884; Miscellaneous Letters, 1813, Vol. 3 (RG 45), hereafter cited as Miscellaneous Letters.

⁸ *Ibid.*

⁹ Arrest Warrant, Miscellaneous Letters, 1813, Vol. 3.

Captain John Sinclair.

Sir—Eleven days have now elapsed since we left the Isle of Brava, all of which time we have been endeavoring to get to the Eastward; but our prospects are *now* no better than they were in our opinion of effecting such a thing than when we started. For the ground we *gained* the evening before our coming to anchor in Brava, convinced us fully of the impracticability of our being able to work to windward among those Islands, without getting a slant or two of wind; and should your object have been to touch at one of the Canaries you would doubtless have stood well to the northward first, so as to have got out of the Trade Winds. Your intention surely cannot be to touch at one of the Cape de Verds, where you were apprized of a British squadron being among those Islands, which caused you to quit Brava in the manner you did, without purchasing any supplies for the remainder of the cruise; well knowing the situation of our stores, not now having above 100 lbs. bread, two and a half tierces of rice, two barrels cow peas and one barrel of flour—water we had abundance of, say upon a moderate calculation 6000 gallons, and yet allowed only two quarts per man a day, and one quart per week to boil rice or peas with. Great discontent (and God knows not without sufficient cause) which has for some time past prevailed on board among both officers and men. *Starvation now staring us in the face, for we are fully convinced your intention is to go on the coast of Africa. Languor and weakness* already having possession of half of the crew, and that among the best of us, induces us to apprise you that we are aware of the situation we are likely to be placed in, even allowing that fortune should throw another prize within our grasp, and she be of half the force of the one we lost; we hesitate not to say that she will also slip through our fingers. If your intention has not been of a nature that may prove fatal to us, it has excited much alarm. Why did you not purchase (for you said you could) sufficient supplies at Brava? and not attempt to *gull* us with the *story* of a 'British squadron being off those Isles.'

But, sir, we are fully convinced that *all is not clear on your part*. The privations we have put up with, from the commencement of the cruise, will convince mankind, when they come to be fully stated (and that they will one day or other,) that we have done more than any commander of a private cruising ship could or would have expected from his crew, and still you would wish to make us more than slaves. Allowing, sir, you were at Africa, *you could purchase there no more than what you could at Brava; and the time it will take us to get on the coast will terminate our cruise*. And (from threats you have thrown out) there is no doubt but many there are among us that you may have in your power, on whom you will execute them, *if we have or may take any step that you may think improper*. Be it so. In our *native country* we are ready at any and all times to have an investigation of our proceedings—*But not trust to your clemency* in a strange land, among a lot of Turks or Africans. But, sir, a presumption as strong as holy writ, and the *first law in nature*, bids us *shape our course home*, and that presumption is, sir, *that there are a hundred chances to one but we will fall in with one or more English cruisers on the coast*; and then, sir, would it take much philosophy to tell what would become of us? A prison ship—for life—for there would be no exchange under two years, and it is not likely one of us would weather that time out; or, if by superior sailing, we should run away we must starve to death. *The crisis demands that we*

go to the Westward, and the prospect far better for both owners and crew. In fact in taking the one (going home) we have great hopes of doing better. In the other, *the horrors of a prison ship on a coast that is known to be fatal to strangers at the coming season, or starvation on board our own ship*—by standing to the westward, should we fall in with any supplies, let us stay out untill the cruize expires—If not let us proceed to the United States. Trusting you will consider seriously the dreadful situation you are about placing us in, and without the most singular interposition of Divine Providence *will prove a total loss to yourself and owners*—We say, we trust you will shape our course towards the United States, or if you think we can get to France before our provisions be out, go thither—In so doing, we are willing and at all times ready to obey your commands.

This was the document which Captain Sinclair described as 'a paper replete with Falsehoods, Aspersions, insult and threats.'¹⁰ Cromwell's account, in the Wilmington paper, of its reception by the captain is the more dramatic for its very simplicity:

After the above Memorial was presented to Captain Sinclair, he called several of the officers into the cabin and after one hour's full deliberation with them, capt. S. came on the gun-deck and addressed all hands, (who were assembled aft in a peaceable manner) saying, 'Gentlemen, what means this mustering aft.' he was told 'to know your determination upon the memorial'—he said 'this was no time, wait until morning.' He was answered 'that would be losing too much time, as he could as well agree to our wishes now as any other time, and requested him to turn the ship's head to the westward and navigate her home, as starvation was staring us in the face, or if he would not we should.' He then said he 'would not, but the moment we did, he would retire to his cabin.' One and all then sung out 'put the helm up, put the helm up,' which was immediately done and the ship's head put to the westward. Captain Sinclair going into his cabin, was asked what he was going there for, whether it was for his sword or what? He replied it is for my sword and I'll run the first man through; accordingly as he entered his cabin, the doors were secured, and those officers with him kept there until next day.¹¹

One of these officers presumably was James Johnston, who was later to testify that he was first lieutenant of the vessel and that he was 'confined in the wardroom with liberty to go on deck, but to have no communication with the crew.'¹² David Pearce, the lieutenant named in the privateer's commission, must already have been demoted. Perhaps he had been put under arrest like the sailingmaster, William Livingston; at any rate Captain Sinclair later charged him as one of the mutineers.¹³ Livingston

¹⁰ Statement by Capt. Sinclair, Miscellaneous Letters, 1813, Vol. 3.

¹¹ Clipping from Wilmington, N. C., *Gazette*, Miscellaneous Letters, 1813, Vol. 3; *City Gazette and Commercial Daily Advertiser*, 14 May 1813.

¹² *U. S. v. Matilda*.

¹³ Arrest Warrant, Miscellaneous Letters, 1813, Vol. 3.

no doubt was one of the leaders in the outbreak. He and Cromwell were described by the captain as the 'principals or chieftains' of the mutineers, and they put Livingston in command of the ship.¹⁴

III.

Obviously convinced of the rightness of their cause, the mutineers headed straight for home. On the way they took two prizes and ordered them into Wilmington, North Carolina, where *General Armstrong* herself arrived on the evening of 16 April 1813. Livingston promptly next morning went ashore and reported to the Collector of Customs, Robert Cochran, who sent a deputy marshal on board the ship for Captain Sinclair. He emerged from his cabin blazing with fury against those who had kept him shut up there for a month.¹⁵

After talking with Captain Sinclair, Mr. Cochran was of the opinion that the matter should be referred to the naval authorities, then represented in Wilmington by Lieutenant Thomas N. Gautier commanding four of that swarm of futile gunboats which Mr. Jefferson had inflicted upon the United States Navy a few years before. To him Mr. Cochran addressed this communication:

The private armed Ship *General Armstrong* having arrived under such circumstances as require inquiry as to certain disorders which appear to have prevailed on board induces me to request you to meet me at my office today at such time as may be convenient to you in order to examine into the premises. The 15th Section of the act of Congress concerning letters of marque and reprisal providing for the interference of the officers of the Navy of the U. States in which capacity I now ask your attention.¹⁶

It developed that Gautier was temporarily absent from Wilmington, and Captain Sinclair was in no mood for delay. He applied to two justices of the peace, John Hogg and William Cutler, who issued a warrant to the sheriff of New Hanover County for the arrest of eighty officers, seamen and marines of *General Armstrong* upon the charge of mutiny. Before the warrant was executed Lieutenant Gautier came back and it was turned over to him, 'he being thought by counsel as the proper person when present to make or cause the arrest.' Before acting Gautier 'requested a line' from Captain Sinclair, who complied as follows:

¹⁴ Statement by Capt. Sinclair, Miscellaneous Letters, 1813, Vol. 3; *U. S. v. Matilda*.

¹⁵ *Wilmington Gazette*, 24 April 1813, quoted in *Charleston Times*, 29 April, and *City Gazette*, 30 April; Capt. Sinclair's footnote to Arrest Warrant, Miscellaneous Letters, 1813, Vol. 3.

¹⁶ National Archives, Records of the Department of the Navy; Office of the Secretary of the Navy; Letters from Officers of Rank below That of Commander, 1813, Vol. 1 (RG 45), hereafter cited as Letters from Officers.

You will perceive by my declaration made and sworn to before two Justices of the Peace at the Court house of this town and now furnished you, that the Private Ship of War *General Armstrong* of which I am the only legal Commander and largely concerned in as Owner, and which Ship is now lying at Anchor in the Stream of this Port, was on the 18th of March last, forcibly, feloniously and piratically taken possession of by the Officers, Seamen & c. in said declaration named, who at the same time confined me and others of my Officers and Crew, and who have since kept me confined in the most rigorous, wanton, Cruel and unprovoked manner, from said 18th day of March until this day, when I was relieved by the Civil Authorities, they in the meantime directing and converting my said Ship on Such Courses and to such purposes as they saw fit, Capturing, detaining, overhauling and plundering such vessels as they met without any legal Authority to such Acts. I have therefore to request you, as Commandant of the Naval force of the United States on this Station, to cause said offenders to be arrested and confined in such manner and in such place as you may Judge Expedient, until they may be brought before a Court Martial, then to answer for the Crimes, felonies and Piracies they have respectively and collectively done and committed.¹⁷

The alleged mutineers seem to have acted at all times with calmness and deliberation and a considerable degree of dignity. They made a formal statement to Captain Sinclair of their grievances and their demands. They sailed the ship to a port of their own country and reported at once to the civil authorities. This is not the conduct of violent and lawless men; and the blame for the seemingly hysterical alarm in Wilmington and the turning out of the volunteer companies to aid the Navy against *Armstrong's* people must be charged to the furious Captain Sinclair. He obviously regarded those who had shut him in his cabin as a lot of bloody-minded pirates and he had impressed this view on Gautier. To the officer commanding each of the gunboats the latter issued the following order:

Sir: You will repair on board the private Ship of War *General Armstrong* and take out such mutineers as shall be pointed out to you by Captain St. Clair & confine them on board the Gun boat under your command. You will allow no liquor to be given them & if any disobedience of your orders should take place you will detain the offender immediately & regulate your proceedings agreeable to the rules of the Navy until further orders.

To the prospective prisoners Gautier gave this order:

You will consider yourself under an arrest agreeable to the rules & regulations of the U. S. Navy for disobedience of orders contempt of your superior officer & mutiny. You will hold yourself accountable to a Court Martial for said charges. Repair on board Gunboat No. ——— under charge of Commander ———.¹⁸

¹⁷ Arrest Warrant, with Capt. Sinclair's Footnote and Letter to Gautier, Miscellaneous Letters, 1813, Vol. 3; Letter also in Letters from Officers, 1813, Vol. 1.

¹⁸ Letters from Officers, 1813, Vol. 1.

Which in all likelihood the mutineers promptly and obediently did; and the volunteer companies were dismissed, feeling perhaps a little silly. Gautier, however, apparently remained convinced that he had very dangerous men to deal with and made his arrangements accordingly. They were to have a tragic consequence. He left ten of the prisoners on *Armstrong* and distributed the rest among the four gunboats. He then gave these instructions to his subordinate officers:

Mr. Manson, I need not point out to you how necessary it is that every care should be taken that none of the prisoners escape, for which purpose I request a guard to be rowed round the Boats and ship *General Armstrong* every night, during the hours of eight at night and daylight. You will direct the guard boat to-night; Mr. Hadamy 2d, Mr. Evans 3d, and Mr. Wolfington 4th. You will suffer no intercourse between the prisoners from one boat to the other, nor any shore boat but by your permission to come along side. You will keep in view, I expect the assistance of all the officers in the execution of the duties devolved on us. I shall give the officers of the night the guard word at 4 o'clock each evening.

An early result of this arrangement was the shooting and killing of Captain John S. Oliver, evidently a retired mariner, who 'carried on the mercantile business in Wilmington.' He was put in charge of *General Armstrong* by her owners and, according to news from Wilmington in the Charleston papers, was brutally killed as he rowed ashore one night, when he failed to obey the summons of the naval guard. Sailing Master Evans, commanding *Gunboat No. 157*, whose brother was captain of the frigate *Chesapeake*, and Midshipman M'Chesney, who did the actual shooting, were both arrested and charged with murder. There was an ominous note in the comment of the Wilmington newspaper:

When an officer acts with insolence, and, with impunity, exercises the duties of his office cruelly and tyrannically, as the conductors of a public journal we should feel ourselves bound to animadvert with severity on his conduct; we should take pleasure in being the instrument of bringing him before the tribunal of the public, and by a just exposure aid in inflicting on him the punishment of general indignation and deserved odium. But, whenever the commission of an act involves him in a criminal prosecution and particularly when it may lead to the result of an ignominious death, we should observe a most scrupulous adherence to a naked narration of facts, neither mitigating nor heightening the circumstances which led to it. The even hand of Justice should not be shaken by passion, or unnerved by partiality. We are persuaded that Mr. Evans, with whatever feelings he may look back on the late melancholy occurrence, will not have reason to regret, that this town may be the scene of his public trial.—He will not find the citizens of Wilmington forgetful of the respect they owe themselves or the justice which will be due to him.¹⁹

¹⁹ *Times*, 29 April 1813; *City Gazette*, 29 April and 10 May 1813.

IV.

But in addition to charges of mutiny and murder *General Armstrong* had stirred up still more complicated legal questions. It will be remembered that she had taken two prizes after the crew had removed Captain Sinclair from the command. One appears to have been the schooner *Commerce*, of which we hear no more than that her master was tried in the District Court at Wilmington and acquitted of a charge of violating the Non-Importation Law.²⁰ The other was the schooner *Matilda*, of Newbern, North Carolina. She was taken by *General Armstrong* on 5 April and ordered into Wilmington, where she arrived on 19 April. Captain Sinclair sent his lieutenant aboard 'to take an inventory of the effects, and to dispossess the mutineers,' and in due course proceedings were instituted for the condemnation of the schooner and her cargo. The case came on to be heard early in May in the United States District Court in Wilmington and naturally excited considerable interest in Charleston, where a newspaper account of the trial said:

The material facts appearing in evidence, were these—that some time before the capture, the Captain of the privateer had been confined and under arrest, by some of his officers and crew, and so continued confined at the time of her capture—that when the master of the schooner brought his papers on board he presented to the person then exercising command, the usual Custom House documents and clearances, for a Neutral port—the privateer at the time wearing British colors. On perusal of these papers, the person in command pretending the privateer was British, observed he must send him in; and that he must immediately bring his things on board—whereupon, the master of the schooner drew from his pocket a British License, protecting a trade direct to British ports, whereon, according to the requisites of the British regulation, the name of the vessel and master were endorsed. He was then informed that he was on board an American cruiser, and that his vessel would be taken as having a British License on board, and trading with the enemy. The schooner was accordingly captured, and sent into this port. Another British License was afterwards found in the Master's trunk, protecting to British ports, with liberty to touch at a Neutral port, but without any endorsement thereon, a circumstance, by the British regulations, rendering it wholly ineffective. There was also a letter from the owner to the master, mentioning the rising of the Congress—that nothing had been done in the License, nor Importation Bills; that therefore, in his returns, he must take care to guard against his own government.

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The condemnation was urged by the Libellants, on the grounds of her being in the course of an actual trade with the enemy, and sailing under the sanction of a Foreign License. The Claimants, in defence, denied that any part of the evidence justified

²⁰ *City Gazette*, 14 May 1813.

the legal conclusion of a trading with the enemy, there must have been an actual entrance into his ports; so that, even if in this case there were an intention to go to an enemy's port, until that intention was consummated, no punishment was incurred. But, at all events, that as at the time of the capture, the Captain of the privateer being under arrest, and the crew in a state of mutiny, the powers of the Commission under which she cruised, was at least so far suspended, as during an arrest of the Commander, legally to disqualify her from making captures.

It was an ironical circumstance of the trial that a principal witness for the libelants was William Livingston, chosen captain by the mutineers, called to prove the facts justifying *Matilda's* capture, while the claimants put up Captain Sinclair to testify that at the time of the capture he had been deprived of his command and his liberty by Livingston and his mutinous associates. Sinclair abated none of his hostility toward the mutineers to serve his own financial interest, but testified emphatically as to their villainous doings and 'that he would not from his knowledge of the general character of Livingston, believe him on oath.'

The District Court held that the evidence proved that *Matilda* was trading with the enemy and therefore subject to seizure, but that the seizure by *General Armstrong* was illegal and invalid because of the displacement by the mutineers of the lawfully commissioned officers of the privateer. The Court accordingly dismissed the libel, but without decreeing the return of *Matilda* to the claimants, her owners.²¹

There was a prompt appeal to the Circuit Court of the United States at Raleigh and a prompt hearing before no less a legal dignitary than the Chief Justice of the United States, John Marshall. He agreed with the District Court that *Matilda* was trading with the enemy and on the other point, the legality of the capture, he said:

The president's commission was the authority under which the capture was made; this commission authorizes John Sinclair the captain, to seize, etc., but the evidence is that the captain, at the time of capture, was, by the violence of the crew, put in close confinement and deprived of all command and authority over the ship.

... The libel is filed in the name of the United States for the use of the owner, officers and crew of the ship. Had it been in the name of the crew only, according to the truth of the case, the objection then would have been, that you have departed from the commission, which was their authority to seize. And taking the case as it stands, it appears a little awkward for the United States to sanction an act that necessarily springs from another which they have said, by the legislature, shall be punished with death. The crew in a state of mutiny made the capture: mutiny is punished with death. And is it competent for the captain to contradict the fact, and now allege that he made the capture, or that it was made with his consent? Or shall he

²¹ *Times*, 26 May 1813; *U. S. v. Matilda*.

now give a right to himself by relation, and make valid that which was unlawful at the time? The court inclines to a negative answer.

The Circuit Court affirmed the decree of the District Court and also ordered the return of *Matilda* to her owners.²² That was the end of the case as a matter of law, but the *National Intelligencer*, of Washington, printed a column and a half of comment by a legal pundit writing under the name of 'Philonomus.' He was not very complimentary to either of the courts. The District Court, having correctly found that *Matilda* was trading with the enemy and therefore good prize, should have awarded her to someone and not stopped with holding that she did not belong to the libelants, the owners and crew of *General Armstrong*. The District Court's decree was not final and therefore not appealable, which made the proceedings in the Circuit Court void. Furthermore, the Chief Justice had erred in returning *Matilda* to her owners. Having declared her subject to seizure, he should have heard further argument as to whether she belonged to the United States or to the part of the *Armstrong's* crew who had not joined the mutiny.²³

V.

If the outcome of this trial was a disappointment to Captain Sinclair, it was a small matter compared to what was happening at Wilmington at about the same time.

As we have seen, the naval authorities at Wilmington had arrested the greater part of *General Armstrong's* crew on Captain Sinclair's charges of mutiny. There were so many culprits that a printed form was used for the statement of the charges against each of them. One sample will suffice for all.

EXHIBITION OF CHARGES

Against William Livingston belonging to the private armed ship *General Armstrong*, owned by Mr. John Everingham of Charleston South Carolina and John Sinclair, New York

John Sinclair, charges that he was and is commander of the private armed ship *General Armstrong* belonging to John Everingham of Charleston S. C. and the said John Sinclair. That said ship was fitted out at the port of Charleston, S. C., in the United States, that a certain William Livingston shipped on board said ship as Master on or about the Fifth day of November 1812 to cruise against the Enemies of the United States of America for four months as per articles—that on or about the Eighteenth day of March in the year 1813 and for divers days afterwards, at sea, and

²² *U. S. v. Matilda*.

²³ *Times*, 15 June 1813.

during the continuance of said cruise the said William Livingston did make a mutiny on board said ship, and the said William Livingston with divers others belonging to said ship did, with force and arms, deprive the said John Sinclair of his command, and put him into confinement on board the said ship . . . that the said William Livingston . . . did attempt to make a mutiny on board the ship General Armstrong, and did attempt to deprive the said John Sinclair of his command on board said ship . . . that the said William Livingston . . . did utter in the hearing of the crew belonging to said ship seditious and mutinous words against the said John Sinclair, to deprive him of his command . . . that the said William Livingston . . . concealed and connived at seditious and mutinous practices of the officers and crew of said ship General Armstrong when on said cruise . . . that the said William Livingston . . . refused to obey the orders of said John Sinclair . . . that the said William Livingston . . . did rebel against the said John Sinclair and his authority . . . that the said William Livingston with divers others, did take forcible possession of said ship General Armstrong, from the said John Sinclair, and brought her against the will of the said John Sinclair into the Port of Wilmington, North Carolina.²⁴

This formidable document is signed by John Sinclair with such flourishes and curlicues as might be thought to imply an especial animus against Sailing Master Livingston were it not that a similar 'Exhibition of Charges' against simple John Murphy, O. S., bears an even more flamboyantly decorated signature.²⁵ The whole sheaf of 'Exhibitions,' one presumably for each of the eighty rebels, with supporting documents, must have made an impressive bundle when they were sent to Secretary of the Navy William Jones.

It would be extremely interesting to know the considerations which moved Secretary Jones to the course which he took with regard to the mutiny charges, but there is little hope of this unless his letter of instructions to Gautier at Wilmington should be brought to light. The result of his letter appeared in an item of marine news in the Charleston papers of Friday, 28 May 1813:

Arrived yesterday, in 40 hours from Wilmington, N. C., in a Whale Boat, Mr. C. Cromwell and three other Officers and one seaman, late of the Privateer Ship *General Armstrong*, of this port; who, together with the greater part of the crew, had been arrested by Commodore Gautier on their arrival in that port, on a charge of mutiny, which was left to the Secretary of the Navy—who, upon his getting a statement of the matter, ordered the Commander to discharge the crew from the said vessel, which was accordingly done on Tuesday morning last.²⁶

Considering the space which would have been given to this news in a

²⁴ Letters from Officers, 1813, Vol. 1.

²⁵ Miscellaneous Letters, 1813, Vol. 3.

²⁶ *Times*, 28 May 1813; *City Gazette*, 28 May 1813; *Charleston Courier*, 29 May 1813.

paper of today, we could wish that we had at least been told the reasons for the Secretary's action. They certainly were not satisfactory to Captain Sinclair. Witness his letter of 29 May to Secretary Jones.

My different reports already transmitted you by Thomas N. Gautier, Esq., of which I now enclose you Copies as far as they were by me addressed to that Gentleman in the first instance, and the letters of Mr. Cochran Collector of this district being in your possession, it would be Superfluous to say more at present on the Subject of my Complaint against the Mutinous part of the Officers and Crew of the Gen. Armstrong than that no pages have ever appeared before me of such unprovoked, Cruel and high handed proceedings as have been exhibited on board of said Ship, of which I was not only Constitutionally appointed Commander, but largely Concerned in as owner.

The Memorial/as it is termed by the Mutineers/which they have published, I send you a printed copy of, was handed to, or rather thrown at me, at Half past five o'clock on the Evening of the 18th March, and the ship taken possession of at half past 6 o'clock the same evening. The tenor of that paper fully Evinces/in my opinion/the premeditation of their Subsequent Conduct or worse intentions, that is of the design of the leaders of the faction, and for which I believe the Comments of Cromwell at foot of said Memorial will afford no apology.—if more is wanting, I can furnish to you Sir and to the world the most incontrovertible and consequently the most Satisfactory proofs of the perfidiousness of these wretches, but being yourself an experienced Marine Character, I leave it for you to Judge from the Complexion of the printed Copy now enclosed you, in what point of view the Original can be Justly held—And have to request you will inform me—if everything has been fairly Stated, on what grounds I am left without relief by the Prisoners in Charge of Captain Gautier being Set at liberty without duly advising me how to proceed against them other than of his telling me it was the Hon. Secretary of the Navy's order he Should do so—and that I must apply to the Civil Authority to what Civil Authority he says not, Civil Authority of the United States there is none here/at least it is thought so/and the Magistracy of the town have refused to take further Cognizance in this business as the prisoners were in Charge of the United States Marine Authority—which they and Professional Gentlemen here—consider the only Competent Authority to take Cognizance of Such Offences,—be who may be right, be who may be wrong—I was left without Redress, and the Villains, who had taken my vessel, imprisoned my person and wantonly Sported with my feelings and my property Suffered Insultingly to cross the ferry and Evade the punishment due to their Crimes, having been turned loose at the early hour of half past five o'clock in the morning before I could avail myself of the only Opportunity left me of detaining them, by Arrest on Civil Process, until other means could be devised to arrest them Criminally, the district Attorney being at the time your order for their release was notified to me on the 24th Inst. 300 Miles from this, there was Consequently no time afforded to make application to him, and the prisoners were released next morning at the early hour above stated. Had the Written Opinion of the Honourable Attorney General accompany'd your instructions, to Captain Gautier,

all difficulty would have vanished, not only with the Magistracy here, but with the district Attorney, should he have doubts on this occasion—on which I understand he, whilst attending the district Court in this town, gave his Opinion far different from that of conveying to me an Idea, that he will cause them to be Arrested, unless warranted So to do by the Written opinion of Mr. Pinckney,²⁷ which I will Esteem a favour you transmit as early as possible—if the Case is decidedly such as is not embraced by the 15th Section of the Act of Congress passed on the 12th June 1812 Concerning Letters of Marque and Prize Goods.

Mr. Collector Cochran, who has deliberately read my Journal & c. will probably write you again on this subject, and I believe he, as well as many others, who have made themselves Acquainted with the Circumstances of my Crews most Villainous Conduct, and Cruelties towards me whilst in Confinement, Consider as highly necessary, that an Example be made proportionate to Such Crimes: to Satisfy Justice and deter others from Such Acts of Wanton Wickedness in future.

I have the honour—Sir—to be personally known to more than One of the Gentlemen that fill the highest departments around you, but more particularly to the Honourable John Armstrong.²⁸ I shall cease to refer you to him for any particular recommendation of me—but it may be to you satisfactory to learn from him, that I am not a man of such stamp as to trouble on unimportant Occasions, the heads of departments that have already business of the first importance to attend to—And I trust Sir: you will allow it is of the highest importance to me, as a man who has so far Conducted himself through the various walks of life as I have done, without tarnishing his honour or his reputation to fix a proper value upon either, to the preserving them Spotless in the eyes of Mankind, as it respects his Professional Conduct and Moral Character, both of which has been attacked and can only be restored to their Original Standard in public Opinion by an investigation of this business/as is the Case with me/—as the tribunal before which these Aggressors may have their trial, will also Serve as a Court of inquiry of my Conduct on my late Cruize—and I trust I Shall not fail of my wishes on that Score. Justice and my Countrys Good Says I should not.²⁹

If this letter is over wordy, it is the wordiness of a man seething with righteous indignation. If the Secretary of the Navy had dropped the case against the mutineers, Captain Sinclair did not approve. Cromwell and his fellows, it would seem, were well advised to head out from Wilmington by the first available transport, even an open whaleboat.

VI.

The departure of the mutineers, however, still left untried the murder charge against the slayers of the unfortunate Captain Oliver. It was 31 Oc-

²⁷ William Pinkney, Attorney General of the United States.

²⁸ Secretary of War, for whom the privateer was named.

²⁹ Miscellaneous Letters, 1813, Vol. 3.

tober 1813, six months after the shooting, before they were arraigned in the Superior Court at Wilmington. Sailing Master Evans was tried first. As the newspapers reported the evidence it showed:

That the crew (of *General Armstrong*) with the exception of ten were taken out of the ship and distributed among the several gun-boats, one of which the defendant commanded—That for the greater security of the prisoners, guard-boats were ordered to row round the ship and gun-boats during the night, of which public notice was given by an advertisement under the Court-House; Captain Oliver had determined to set this order at defiance, as he had freely declared—That the deceased was employed by the agent of the ship to take care of her—That he usually visited her every evening between sun-down and dark—That about 8 o'clock on the night of the fatal accident, Capt. Evans, then commanding one of the gun-boats, observed a boat put off from the ship, which he pursued and hailed, 'What boat is that?'—he was answered, '*You are in a damned hurry.*'—He hailed the second time and requested the countersign; he was answered, 'I have no countersign; I am Capt. Oliver, a citizen and gentleman—you know me.' The defendant replied that he did not know him, and ordered him on board of the guard-boat, stating, *that he only wanted him to go on board the gun-boat, and that if he was the person stated, he would not detain him long.* At this time the boats were near together. The boat in which the deceased, the son of the Capt. of the Gen. Armstrong and a negro were, pulled toward the town—the defendant ordered him back with a threat to fire into the boat if he refused—the deceased replied, 'Fire and be d----d!' The defendant then *snapped a pistol* at the boat, which did not go off; another, was handed to him, but he did not attempt to fire again. There was considerable altercation between the parties. At this time another guard-boat came up, the commander of which, on enquiring the cause, was informed by capt. Evans that here was a man that refused to come on board the guard-boat—the commander of the last mentioned boat then ordered the deceased on board—he replied he would be d----d if he would come on board, at the same time taking up a shingle as one witness stated, an oar as was stated by another, and swore he would knock down the first man that should attempt to lay hold of his painter; upon this the commander of the last mentioned boat struck him several times with the *flat* part of his cutlass; during this altercation the painter of Oliver's boat was made fast to one of the guard-boats, and was towed alongside of the nearest gun-boat; the defendant immediately went on board the gun-boat, leaving his arms in the stern sheets of the guard-boat; Oliver's boat being near the guard-boat, he seized one of the pistols and cried out, 'Now fire! I am armed as well as you;' at this moment the deceased was struck on the arm with an oar, whether by accident or design did not appear in evidence; he immediately turned around and discharged a pistol—one of the boat's crew instantly fell overboard, and it was generally supposed that he was shot, and word was given on board the gun-boat to fire, which was immediately done by M'Chesney's discharging a musket, the ball of which entered the left breast of the deceased, who exclaimed murder! murder! and immediately expired. The prosecutor proved that Evans acknowledged that he gave the order to fire; however this fact was admitted by the defendant's counsel.

Gautier was called as a character witness and Evans could have asked none better. He testified:

That as well from his own knowledge, as from the information derived from the officers of the navy under whom the defendant served, that he was of a mild, gentle and amiable disposition, with a heart teeming with benevolence, and that if he had a fault (if a fault it could be called) he was too lenient.

This seems to leave but little room for argument, but counsel for the defendant did not spare their eloquence on that account.

J. D. Toomer, esq. opened his defense; his speech exhibited a summary view of the transaction, a general but concise and able sketch of the case in flowing and select language, concluding with a fair and manly appeal to the sympathy of his hearers, which could not have failed to produce an effect favorable to the accused. John R. Loudon, esq. succeeded. He entered immediately into the field of argument; in a sympathetic, ingenious, and convincing manner, he dissected the whole case, proceeding step by step, to mark the evolvment of the different circumstances, applying with precision those only which ought to bear on the defendant, and from a consideration of which he argued with great force the necessary exculpation of the prisoner. Gen. Wm. W. James closed the defence. He rose, evidently laboring under considerable indisposition, expressing his regret that a case of so much importance should be at all dependent for support on one, at the present so little qualified to do it justice; although he did not believe his state of health would admit him to devote more than a few minutes to the defence of Mr. Evans, yet those few would be strenuously exerted in the behalf of innocence accused and endangered; he then delivered a simple and interesting narrative of all that had preceded and led to the melancholy catastrophe; he proved incontestably that no feeling rankled in the bosom of the accused, dwelt with pathetic power on his peculiar situation, on the uniform amiability of his deportment, on his gentle manner, to all his endearing kindness to those subjected to his command, the utter impossibility that he could have been actuated by any other motive than that of a sense of duty, obeying the command of a superior officer, acting in self defence and opposed by the premeditated resistance and abusive rashness of the misjudging and illfated Oliver. As the advocate proceeded, his power of argument increased, and the rising impulse of his feelings seemed to have banished, or made him forget his indisposition.

One quails at the thought of what General James might have said had he been in good health. As it was, the prosecuting attorney realized that his was a hopeless task and bowed gracefully to the inevitable.

Mr. Troy, the U. S. Attorney, closed the pleadings in a short address, replete with elegance and sensibility. While he stated the law with clearness, and urged that *at least* the defendant was guilty of the crime of aggravated manslaughter, he evinced in the necessary and faithful discharge of his official duty, a liberal and tender

spirit, that would rejoice more in the acquittal of the unfortunate Evans, than in the triumph of having gained a victory by his talents at the price of human blood.³⁰

It is hardly necessary to say that the jury very promptly brought in a verdict of acquittal, whereupon the charges against M'Chesney were dropped.

This case had followed the course which has become all too familiar in American murder cases. First there is public sympathy for the victim and indignation against the slayer. Then as time passes there is a building up of sentimental pity for the poor criminal cruelly threatened with the penalty of death, and only the hardhearted thinks any more of the wrong done the original victim. In Oliver's case this process was hastened by the fact that he apparently was one of those troublesome individuals who insist on standing up for their rights, regardless of consequences, just as a matter of principle. If he had lived in these times, he would have argued with traffic officers. The newspaper put the matter thus:

At the time that this dreadful event took place, the tide of popular prejudice was strong against the accused; but an enquiry into the character and conduct of Mr. Evans, and a more dispassionate consideration of all the circumstances had produced so great a change in public opinion, that we are confident the verdict of acquittal met with general approbation.

It even turned out that Mr. Evans actually had nothing to do with the shooting of Oliver; he was just too good a sport to deny it.

Since the trial we have learnt that Mr. Evans did not give the order to fire. But as Mr. M'Chesney did fire under the impression that this order was given by him, he assumed it, and thus risked his own life, submitting to the harrowing situation of being arraigned at the bar of justice for the crime of murder, of which the result might have been an ignominious death. A rare instance of generous heroism, a magnanimity, which, though few imitate, all must applaud.³¹

VII.

What in the meantime of Captain Sinclair? If he ever had a reply to his application to the Secretary of the Navy, he had got no satisfaction from him. Apparently he stayed on in Wilmington and went no more to sea. No doubt *General Armstrong's* cruise had been financially disastrous to him, and in view of what had occurred it would probably have been very difficult for him to find backers for another venture. At any rate, he was still

³⁰ *Wilmington Gazette* quoted in *City Gazette*, 15 November 1813.

³¹ *Ibid.*

in Wilmington and still seeking for justice by a letter to James Monroe, Secretary of State, and through him to President Madison on 22 August 1814.

As the Statement of my case, as well as of the proceedings that have been had upon it, since my first arrival and application for the Arrest of the Mutinous portion of my Officers and Crew will accompany this letter, I consider it as [is?] as unnecessary, as it would be superfluous, to say more on the subject of either than the sheets I now send you Contain.

I am extremely sorry that circumstances have rendered it necessary for me, particularly at this time, to be troublesome to the Executive Magistrate of my Country, or to you. Yet I trust my Apology will be found from my present application originating in a duty, which I conceive of the highest importance, not only to me, but to my fellow Citizens at large, to enquire from what Source, the Honourable Secretary of the Navy derived the Authority to dismiss the Mutineers of the General Armstrong, after they were Arrested, without even the formality of a Court of Enquiry on their Conduct, or an examination of my books, papers, Officers or self, relative to the Circumstances of my Cruize, or the rise, progress and consequences of the Mutiny, by which means they escaped the punishment due to their Crimes and I became the Victim of the act, as I had already been of their Villanies, and they are now at liberty, each to earn his living, and exultingly boast of their evil deeds, whilst I am left as a disfranchised Citizen to suffer under the heavy losses I have sustained, still rendered more heavy and aggravated, by the redress and Justice, I had adopted Constitutional means to obtain, being withheld from me.

Constitutional authority to the act of dismissing the Mutineers, The Secretary of the Navy had not—it was a stretch of Power unprecedented in any Country, unless in Countries where Despotism is the order of the day, which leads me to believe/tho' contrary to the opinion of many/that the President, or even the Attorney General of the United States at the time, had never been Consulted as to the propriety of the measure. Political necessity there was none; I am not of Consequence enough to be the victim of such necessity on any occasion. Nor, have I ever, by any act of mine forfeited any right to political protection. Here I close my enquiry and observations for the present to await the Answer of the President and if his opinion is affirmative of mine, from him, with all the respect that is due from a faithful Citizen to the highest Executive Magistrate of his Country I now seek that redress of my grievances, and reparation for my sufferings that has heretofore been denied me, to the procuring of which, as far as your official duties lead, I rest Satisfied you will not be inattentive.³²

Captain Sinclair still signed himself as 'Commander of the *Genl. Armstrong*.' Receiving no reply, he wrote again to Monroe on 4 October.

Under date of the 22d August I had the honour to address you and at same time to transmit you a file of papers relative to my Cruize &c in the General Armstrong, to

³² National Archives, Records of the Department of the Navy; Records Acquired from the Department of State; Letters from Collectors of Customs Relating to Commissions of Privateers, 1812-15; Privateers, War of 1812, Vol. 5 (RG 45).

which, from the unfortunate circumstances that took place at Washington, and even before my letter could have reached it's destination, I did not look for an immediate Answer; but, as a considerable time has now elapsed, I will most humbly acknowledge the favour, if you will acquaint me if any measures have been taken relative to my concerns and what I have to expect.³³

Still no reply from Monroe, though the British were no longer in Washington, and on 20 October Captain Sinclair sent him his final word.

Under date of the 23d of August last, I had the honour to address you, and at the same time I forwarded to the Department of State a file of papers in which were exhibited a detail of the most atrocious Mutiny that has ever been suffered to escape legal investigation in any Civilised and Commercial Country, and what is still more strange to tell, the perpetrators, after Arrested, were dismissed without even the formality of a Court of enquiry being had on their conduct, by the order of an Officer no less than the Secretary of the Navy of the United States of America, which, as I have before said, was an assumption of power, Extraordinary, unprecedented, and unconstitutional, and such as no man in this Country, however elevated his situation, had a right to exercise, and to add if possible, to the Injuries I have sustained, and as if to wound still deeper, my already much wounded feelings, I am, on application to the Chief Magistrate of the United States, to whom through you I have preferred my Complaint, refused even an acknowledgment of the receipt of my letters and papers.

It is true, that it was at an unfavourable moment that I first addressed you, as the enemy in a few days after my first letter &c left this, were in possession of the City of Washington, which circumstance, from the derangement that must necessarily have taken place in consequence of that most unfortunate event, I acknowledged to you in my letter of the 4th Inst. to have precluded my expectation of an immediate attention to my business, but after forty two days had elapsed, I considered an Answer of some kind was due, which consideration induced me to write you my said letter of the 4th. And now after twenty two days more have elapsed, being still without any Acknowledgment of the receipt of my case, or of either of my letters, I again, humbly, solicit you to inform me, if my said papers and letters have reached you, and if they have, to what Cause I am to impute the neglect with which I am treated by the government of my Country or it's Ministers. If in aught I have forfeited their attention or protection, It is but Justice I should be made Acquainted in what I have offended, that I may have it in my power to remove any Ill founded impression, they may have been led to entertain of my conduct, or to atone for my error, by a fair and candid acknowledgement of, and apology for the wrongs I have done, when, that I have done wrong, is fairly demonstrated. Surely Sir: such favour cannot be refused to an injured and complaining Citizen—unless the genius of Liberty has fled this land, and a Relentless Aristocracy has assumed her shape and place, in borrowed garb, to play the Tyrant in disguise.³⁴

³³ National Archives, General Records of the Department of State; Miscellaneous Letters, October-December, 1814 (RG 59).

³⁴ *Ibid.*

That seems to conclude the correspondence. If Captain Sinclair ever had a reply from Washington, it cannot be found among available records. The charges of mutiny were never brought to a hearing, and we shall probably never know the rights and wrongs of the matter. As we have remarked, the rebels must have thought they were right or they would not have sailed *General Armstrong* to an American port to face the American authorities. Nor would we expect four fifths of the officers and crew of a ship to rebel against a captain who had treated them with any reasonable degree of justice and fairness. We suspect that Captain Sinclair, being part owner of a ship whose voyage had been profitless, was reluctant to spend money on provisions and seized on the rumor of a British fleet in the neighborhood as an excuse to hurry out of Brava harbor when he could have taken on needed supplies, always hoping that he could replenish the larder from a prize without expense. No doubt he was a harsh, unapproachable, unbending, stiff-necked man; he sounds so. At the same time, however, we cannot but feel that he deserved better treatment than he received from his own government. He should have had a reply to his letters and he was entitled to his day in court.

VIII.

And finally, with all her problems settled or shelved—mutiny, *Matilda* and murder—what of *Armstrong* herself?

A dispatch from Wilmington dated 17 July 1813 mentions *General Armstrong* as in that harbor and available for its defense against a threatened British attack.³⁵ After that she seems to disappear from the news in Charleston and the Wilmington papers of the time have not survived. The Charleston papers from time to time mentioned a 'three masted boat *General Armstrong*,' sometimes referred to as a schooner, plying between Georgetown and Charleston; but this can hardly have been our ship, particularly as she is sometimes said to have taken the inland route, which would require very shallow draft.³⁶

We should probably know nothing further of our unlucky privateer had she not ended her career in characteristic fashion, in disaster and litigation, so that her final chapter was recorded in the reports of cases decided in the Constitutional Court of South Carolina under the title of *Miller & Brown v. South-Carolina Insurance Company, et al.*, 2 McCord 336, 13 S. C. Law 133, 13 Am. Dec. 134. This was a suit to collect insurance in

³⁵ *Charleston Courier*, 23 July 1813; *City Gazette*, 23 July 1813.

³⁶ *Charleston Courier*, 15 December 1813; *City Gazette*, 30 May 1814, and 9 January 1815.

the sum of \$7,000.00 as a result of the sinking of *General Armstrong* on 12 September 1818 on a voyage from Charleston to Havana with a cargo of looking glasses and coffee boilers. She began to leak dangerously soon after leaving Charleston, apparently from the springing of a butt, and Captain Henry D. Hill, her commander, ran her inshore where she sank in four fathoms, so that some of her cargo was saved, though she was a total loss. The underwriters unsuccessfully resisted payment of the insurance upon the ground that the loss was due to unseaworthiness.

The report includes a summary of the evidence in the trial below, from which we learn a number of facts about *General Armstrong* otherwise unknown. She was French built and first came to Charleston in 1807 or 1808. She was a sharp vessel, strongly built, with an uncommonly fine frame. She was first a brig but was changed to a ship when she was being fitted out as a privateer in 1812. She had remained in Wilmington for a long time after putting in there and then lay in Chisolm's dock in Charleston for some two years before her last voyage.

One of the witnesses for the underwriters was our old acquaintance, Charles Cromwell, once Master's Mate of *General Armstrong*, who pleaded the cause of the mutineers in the *Wilmington Gazette* and came to Charleston in a whaleboat after Gautier released him and his fellows from imprisonment. He told of certain incidents in *General Armstrong's* only cruise which might have affected her seaworthiness. Eight or ten days out of Charleston in a gale of wind she sprung a bad leak 'under the lower breast hook . . . about four feet from the joining of the keel and stern.' She later had 'a sort of an engagement with a British vessel, which lasted about two or three hours.' Perhaps this was the occasion when she lost her sternboat. On her way back to the United States she was chased by the British ship *Sappho*. She grounded on Wilmington bar but was pumped out and floated on the next tide.

The plaintiff's witnesses having somewhat disparaged Cromwell's veracity, 'Mr. Charles Graves was then examined as to Mr. Cromwell's character. He said he did believe from a knowledge of his character, that he would not swear to a lie; that he thought he would rather cut off a joint of his finger than do so, and that he was always too high minded for a poor man.'

It is to be doubted that Captain Sinclair would have agreed even to this rather cynical compliment.

Harold A. Mouzon, a member of the Maritime Law Association, is a collector of maritime books and prints and President of the Board of Trustees of the College of Charleston.