

**Cotton Vs. Wallace**

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**Court :** US Supreme Court

**Decided On :** 1796

**Appeal No. :** 3 U.S. 302

**Appellant :** Cotton

**Respondent :** Wallace

**Judgement :**

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**Cotton v. Wallace**

**3 U.S. (3 Dall.) 302**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF GEORGIA*

## **SYLLABUS**

Where a judgment or decree was affirmed on a writ of error, there can be no allowance of damages but for delay.

Damages for delay amounting to eight percentum allowed.

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Writ of Error to the Circuit Court for the District of Georgia to remove the proceedings and decree in an admiralty cause. At the last term, the decree of the circuit court had been affirmed with costs, subject to the opinion of the court whether any and what damages shall be allowed on the affirmance. On arguing this question at the present term, it appeared, that the libel prayed for restitution "and all the damages and costs that have arisen by occasion of the premises" that the decree of the circuit court awarded restitution, "and that the defendants do pay all the expenses of this suit," and that the circuit court affirmed the decree of the district court generally. When the decree of the circuit court was affirmed here, the counsel for the plaintiff suggested that he was entitled to damages and urged the Court to sanction some mode of assessing them. This proposition, however, was rejected, and therefore the plaintiff in error applied to the circuit court, where the presiding judge was in favor of appointing auditors; but the district judge dissented from the opinion. Under these circumstances, the plaintiff in error, with notice to the defendant, engaged some respectable citizens to value and certify the damages, and his counsel, Reed (of South Carolina), now offered his certificate as the measure proper to be adopted by the court, urging that if the proceeding was deemed irregular, further time might be allowed to ascertain the proper remedy for an evident right.

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After advisement, THE CHIEF JUSTICE delivered the opinion of the Court that where a judgment or decree was affirmed on a writ of error, there could be no allowance of damages but for the delay, and thereupon the following order was made in this cause:

By the Court. It is ordered that the defendant in error recover as damages against the plaintiff in error the sum of \$3,515.11, being the interest on \$34,841.55, the

amount of the sales of the brig *Everton* and her cargo from 5 May, 1795, the date of the decree of the circuit court in the said cause, being 1 year, 3 months and 4 days, at the rate of 8 percent per annum, and also that the said plaintiff in error do pay the costs accrued in this cause since the last term. And a special mandate is awarded to carry this order into execution.

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