

It will also be convenient here to notice the stipulations contained in the 22d article. These are:

1st. That foreign privateers not belonging to French subjects or citizens, having commissions from any other prince or state in enmity with France, shall not fit their ships in the ports of the United States.

2d. Nor sell their prizes, nor in any other manner exchange their ships, merchandizes, or any other lading;

3d. Nor purchase victuals, except such as shall be necessary for their going to the nearest port of the prince or state from which they have commissions.

The cases that have occurred in the course of the present war in relation to our treaty with France, particularly the 17th and 22d articles just mentioned, have led to numerous discussions, in which several points have been deliberately settled either by legislative or executive acts, or by judicial decisions.

The first important executive act was the proclamation of neutrality by the President of the United States. This was issued on the 22d of April 1793.

At the next meeting of Congress, on the 3d of December 1793, the President laid this proclamation before both Houses. The Senate, in their address, in answer to the President's speech, thus express their opinion of the proclamation.

"We deemed it a measure well-timed, and wise: manifesting a watchful solicitude for the welfare of the nation, and calculated to promote it."

The address of the House of Representatives was unanimously agreed to. We read in it this paragraph: "The United States having taken no part in the war which had embraced, in Europe, the powers with whom they have the most extensive relations, the maintenance of peace was justly to be regarded as one of the most important duties of the magistrate charged with the faithful execution of the laws. We accordingly witness, with approbation and pleasure, the vigilance with which you have guarded against an interruption of that blessing, by your proclamation, admonishing our citizens of the consequences of illicit or hostile acts towards the belligerent parties; and promoting, by a declaration of the existing legal state of things, an easier admission of our right to the immunities belonging to our situation."

Yet this is the instrument, thus approved by Congress, and whose only object was to caution our citizens to avoid certain acts which would violate the laws of nations, which Mr. Adet has ventured to call "an insidious proclamation of neutrality!"

The next executive act noticed by Mr. Adet, is the letter of the 4th of August 1793, written by the President's command, by the Secretary of the Treasury, to the collectors of the customs, and accompanied by the rules which the President had adopted, for preventing all armaments in favor of any of the belligerent powers. These rules were considered as just and necessary deductions from the laws of neutrality established and received among nations. The letter from the Secretary of the Treasury is explanatory of these rules, and among other instructions, particularly points the collectors to the 17th and 22d articles of our treaty with France; left by inattention or misconception of them, the might be injured and her enemies benefited. The letter concludes with enjoining the collectors to execute those instructions "with vigilance, care, activity and impartiality"—"because omissions would tend to expose the government to injurious imputations and suspicions, and proportionably to commit the good faith and peace of the country." How could such rules, with such reasons to enforce them, not escape censure? They were framed and required to be executed with strict impartiality; and consequently were to prevent Frenchmen continuing these aggressions on our sovereignty and neutrality, which had been commenced under Mr. Genet's orders, and which were calculated to involve us in a war with Britain, Spain and Holland, for at that time these were all combined against France. Frenchmen were to have no other preferences than those secured to them by treaty; (except that they were not forbidden to sell their lawful prizes in our ports) and our citizens were to be restrained from committing hostilities under the banners of France, as well as those of other powers.

The third offensive act was the President's submitting to Congress these measures, and suggesting the expediency of extending our legal code, giving competent jurisdiction to the courts, and providing adequate penalties to prevent or punish violations of the laws of nations.

The next complaint respects the act of Congress passed on the 5th of June 1794, "for the punishment of certain crimes against the United States;" being those to which their attention had been called by the President's speech. Mr. Adet asks, "What was its result?" and gives himself the following answer. "In consequence of this law, the greater part of the French privateers have been arrested, as well as their prizes; not upon formal depositions, not upon established testimony, not upon a necessary body of proofs, but upon the simple information of the consul of one of the powers at war with the French republic, frequently upon that of sailors of the enemy powers, sometimes according to the orders of the governors, but often upon the demand of the district attorneys, who assert upon principles avowed by the government, that their conviction was sufficient to authorize them, without complaint or regular information, to cause the privateers to be prosecuted in virtue of the law above mentioned."—And "when the ministers of the republic have asked for justice of the government, for the vexations experienced by the privateers, in contempt of the 17th article of the treaty, they have never been able to obtain satisfaction."

Judging only by these declarations of Mr. Adet, a stranger would imagine there had been a combination of the general and state governments and of our courts, to harass and do injustice to Frenchmen engaged in privateering. But our own citizens place a different estimate on this impeachment of their President, their senators and

representatives in congress, their judges and other public officers: and an examination of the cases cited by Mr. Adet to support his assertions will manifest their inaccuracy.

First case. The French privateer Sans Pareil and her prize the *Perseverance*.

On the 26th August 1794 Mr. Fauchet complained that the prize had been seized on the pretext that the Sans Pareil had been illegally armed in the United States. The answer of September 3d from the secretary of state, which Mr. Adet censures "as indicative of delay," assured him that the secretary had urged the governor of Rhode Island, where the prize was carried, to report the circumstances of the case without delay. On the 27th of September, the secretary informed Mr. Fauchet that the governor had decided that the prize should be restored. On the 17th of October Mr. Fauchet renewed his complaint, for on the suit of the claimant the prize had again been arrested by process from the district court. The secretary of state answered on the 22d, with information that ought to have satisfied Mr. Fauchet. For admitting that agreeably to the law of the 5th of June 1794, the courts had authority and were bound in duty to take cognizance of captures made within the jurisdiction of the United States, or by privateers illegally fitted in their ports (the right of doing which Mr. Fauchet did not contest) they could not refuse it in the case of the prize of the Sans Pareil: the guard against vexatious prosecutions being the judgment for costs and damages to which an unjust prosecutor is exposed. The circular letter written on this occasion to the governors of the states manifests the solicitude of our government to prevent vexatious suits.

2d case. *Glass and Gibbs*.

By the copy of the proceedings in the supreme court of the United States, in this case, you will see that the court did not, as stated by Mr. Adet, determine, "That the tribunals could decide whether a prize belonged to enemies or to neutrals." The question before the court was of the cognizance of a captured vessel and cargo, the former the property of a Swede and the latter belonging partly to some Swedes and partly to a citizen of the United States. The opinion therefore pronounced by the supreme court applied to the case in which one of the claimants was a citizen of the United States. And after solemn argument, the court decided "That the district court of Maryland had jurisdiction and should accordingly proceed to determine upon this case agreeably to law and right."

I will add only one more remark—That the 17th article, the letter of which we are charged with violating, in suffering our courts to take cognizance of French prizes, expressly refers to "The ships and goods taken from their enemies;" and it is the "examination concerning the lawfulness of such prizes," which the article forbids. But no examination of such prizes has been attempted by our government or tribunals, unless on clear evidence, or reasonable presumption, that the captures were made in circumstances, which amounted to a violation of our sovereignty, and territorial rights.

3d. Case. The French privateer *L'Ami de la Pointe à Peire*, Captain William Talbot, and her Dutch prize, the *Vrouw Christina Magdalena*.

To the information contained in the papers collected in this case, I have to add, that this cause was finally decided in the Supreme court in August term 1795. The court were unanimously of opinion that in the particular circumstances of Talbot's case, notwithstanding his French commission, and his taking an oath of allegiance to the French republic, he continued to be a citizen of the United States. But the cause, as I am informed, did not appear to have turned on this point. Talbot had associated with one Ballard, commanding an armed vessel called the *Ami de la Liberté*, which had been fitted out in the United States, and had no commission. Talbot and Ballard cruized together as corsairs; and in fact it was Ballard's vessel that took the prize; Talbot not coming up till an hour after the capture. Ballard was afterwards tried before the Circuit court for piracy.

The court were of opinion from the tenor of the evidence, that Talbot's vessel was owned by citizens of the United States, to whom the prize money would eventually find its way in case of restitution to the captors.

Ballard and Talbot were both citizens of Virginia. The attempt of the latter to become a French citizen was considered to be fraudulent, being made for the sole purpose of obtaining a commission, under colour of which he might plunder the subjects of nations with whom the United States were at peace.

An observation ought not to be omitted here—That although the captors, Talbot and others, had been defeated both in the district and circuit courts—yet they carried the cause up to the supreme court; thus using the legal right of appealing to the court in the last resort; a right which alike exercised by the subjects of powers who were enemies to France, has formed a principal subject of Mr. Fauchet's and Mr. Adet's continued complaints.

4th. Under the head of complaints for vexatious prosecutions, Mr. Adet mentions only two cases in which damages and interest were allowed to the French captors, viz. One of the *Nuestra Señora del Carmen* at Rhode Island—and the other of the *Princesa de Asturias* at New-York. "Yet (says he) the tribunals have always allowed damages to the captured, when they have declared the prizes illegal." How far the facts will warrant this last assertion, I am not possessed of documents to determine. I presume it is to be understood in a general sense only, and to admit of exceptions. And in this sense there will be no difficulty in admitting the truth of the assertion and accounting for it. The captures here referred to were made either within our jurisdictional line, or by illegal privateers, being such as were equipped in whole or in part in the ports of the United States. Of these material facts, the captors could not be ignorant: consequently they could have no apology for defending their unjust claims in our courts; and of course, were justly condemned in costs and damages.

In the case of the prizes of the privateer the *Citizen of Marseille*, damages were claimed by the captors, but denied. For those prizes had been considered in the district court to be illegal. And although the sen-

tence of that court was reversed in the circuit court, yet it was upon the introduction of *new testimony*, on the part of the captors. This last decision was affirmed in the supreme court, yet without damages; inasmuch as the testimony was considered to be so ambiguous as to justify the appeal.

The same remarks apply to the prizes of the privateer *General Lavaux*; with this addition, that one of the Judges dissented from the opinion of the court, being firmly of opinion that this privateer was covered American property.

The privateer the *Parisienne* has been registered as an *American coasting vessel*, under the name of the *Hawk*. During the embargo, in the spring of 1793, she slipped out of Charleston and went to Port de Paix, where she was sold to one Blochos, a Frenchman, who armed her and provided her with a commission. Having afterwards arrived at Charleston, she was recognized and prosecuted for a breach of the revenue laws, in having gone to a foreign port whilst she was in the legal predicament of a *coaster*. The district court condemned her: but on the application of Blochos to have her restored on paying the appraised value, the Judge permitted him to take her, in a *state of warlike equipment*. Shortly afterwards she put to sea & captured two valuable British prizes, the brigantines *Cesar* and *Favourite*. On their arrival, the one at Charleston, the other at Savannah, suits were commenced to obtain their restitution as having been captured by an illegal privateer. The decrees of the courts were in favor of the captors, but without damages. The supreme court disapproved of the restitution of the privateer without dismantling her; and considered the mistake committed in this respect a sufficient reason to cover the party prosecuting from the payment of damages.

All the other cases of captures by French privateers which have been brought up to the supreme court were decided at last August term. In some of them, the circumstances would not have warranted an award of damages, in others, the counsel for the captors omitted to ask for them.—When demanded, you know that it is in the discretion of the court to grant or refuse them: this discretion being regulated by all the circumstances of each case. Hence when a party is drawn before the Court without good cause and vexatiously, damages are always given; but are denied when there appears a reasonable cause of controversy.

5th. Mr. Adet having briefly noticed several cases by name, seems to reserve those of the *Vengeance* and *Cassius* for a full display of unwarrantable conduct in the Government and Courts of the United States, and therefore defers on them at some length; but with so many aberrations from the facts, with so many erroneous ideas concerning our jurisdiction, and so many injurious insinuations respecting our Courts and their officers, it will be necessary that you should learn the true history of these cases from authentic documents.

Case of the French privateer La Vengeance.

For the full history of this privateer and her prize I must refer you to the documents in the case. The principal facts are these. About the latter end of June, or beginning of July 1795, the privateer *La Vengeance* arrived at New-York with a valuable Spanish prize called the *Princesa de las Asturias*, Don Diego Pintado the owner commenced a suit for his vessel, on the ground that she had been taken by an illegal privateer. The suit was instituted by Mr. Troup, not wantonly, but upon information which was afterwards verified by the oaths of several witnesses. In the progress of the cause these witnesses were contradicted by the witnesses produced on behalf of the captors, for whom a decree was finally given; the conflicting evidence preponderating, in the Judge's opinion, in favor of the captors: but he expressly declared that there was probable cause for the seizure.

After this suit for the prize had been commenced, the Spanish Consul complained to Mr. Harrison, the District Attorney, in his official capacity, of a violation of law, on the part of the privateer *La Vengeance*, in consequence of which a Spanish subject had been injured. Mr. Harrison upon inquiry found at least a probability that the complaint respecting the privateer was true. This probability arose from what he considered as affording the certainty of material proof: and, therefore, in conformity with his official duty, commenced a prosecution on the act of Congress forbidding the arming of privateers in our ports. The decision of this and of the prize cause depended on the same evidence. The decision being in favor of the captors, Mr. Harrison acquiesced in it as it respected the privateer; and he united with his associate council in the prize cause in advising the like submission in that case. But the Spanish Consul deemed it his duty to pursue the claim to the court in the last resort. This can warrant no complaint: for Mr. Harrison remarks that perhaps there never were causes in which more contradictory and incoercible evidence was offered, and in which the minds of the auditors were more divided as to the real state of facts.

The second public suit against the privateer was for exporting arms and ammunition from the United States, when such exportation was prohibited by law. The evidence, which appeared in the other causes, gave rise to this prosecution: and upon the trial the Judge condemned the privateer. An appeal from this sentence was interposed by the French Consul. The appeal was heard in the circuit court: and upon new evidence the sentence of the District Court was reversed.

Mr. Adet complains, that while one suit was pending for the prize, and another against the privateer, the District Attorney should exhibit a second information against the privateer, on which she was arrested anew, for having exported arms in violation of a law of the United States, which was in force when the *Vengeance* sailed from New-York: and that this information was filed on the simple declaration of Mr. Giles, the Marshal of the Court, who as informer was to share part of the confiscation. As Mr. Harrison remarks, it was in favor of the privateer, that this second information was filed while the first was pending; because it saved time. Had he postponed the latter until the first had been decided there might have been some foundation for a charge of unnecessary delay. Mr. Harrison's state of the case shews that this second information was not made on the declaration of the Marshal; but on the evidence that appeared on the examination of the first.

Mr. Adet having been pleased to censure the conduct of the attorney, clerk and marshal of the district court of New-York, in justice to them, I have added to the other documents in this case, the letters of Mr. Harrison and Mr. Troup. They will answer the double purpose of justifying them, and of vindicating our government and tribunals.

Mr. Adet particularly notices the papers he had received from St. Domingo, "Proving (as he says) in the most convincing manner, that the *Vengeance* [the *Vengeance*] had arrived at Port de Paix without any armament or equipment whatever, and that she had been sold, armed and equipped wholly, and commissioned as a privateer on the territory of the republic. These documents were certificates of the general, the *Ordonnateur*, and of the greater part of the principal officers of St. Domingo," &c.—"He hastened to communicate to the secretary of state, and to request him to order the attorney of New-York district to stay the proceedings instituted in the name of the government: there was nothing done with them, and Mr. Harrison continued his prosecution." It will appear by my letter of October 1st, 1795, to Mr. Harrison, that these papers were sent to him, and by his answer of October 3d, that he received them. That the bill of sale (one of the papers) was produced to the court, in behalf of the claimant of the privateer, but that the certificate of general Lavaux could not be considered as evidence in the case, and if it had been admissible, "the claimant would be very cautious of producing it, on account of its differing from the witnesses."

6th. Case of the privateer *Le Cassius*.

For the full history of this case, I must also refer you to the documents: and here only present you with a concise statement.

The *Cassius*, under the name of *les Jumeaux*, was fitted and armed for a vessel of war in the port of Philadelphia, in violation of a law of the United States. In December 1794, having escaped from the port to defend the river, orders were given to the militia of the state of Delaware to intercept her. The attempt was made and failed—the crew of *les Jumeaux*, which was unexpectedly found to be very numerous, resisted the officers, who went on board, manned their cannon, and brought them to bear on the cutter in which the militia (about 40 in number) were embarked. Their force being inadequate to the enterprise, they retired, with an intention to return the next day with a reinforcement. They did so: but *les Jumeaux* had failed and gone to sea. The agent, Mr. Guenet, by whom *les Jumeaux* had been fitted out, was tried in the circuit-court at Philadelphia, convicted of the offence, and received sentence of fine and imprisonment.

Les Jumeaux proceeded to St. Domingo. Samuel B. Davis, a citizen of the United States, there took the command of her, with a commission from the French government. Davis probably sailed from Philadelphia in *les Jumeaux* for the purpose of finally taking the command of her. Her name was now changed to *Le Cassius*; and on a cruise she took a schooner called the *William Lindsay*, belonging to Messrs. Yard and Ketland of Philadelphia; Mr. Ketland having purchased an interest in her after her sailing. The schooner and her cargo were condemned as prize at St. Domingo. In August 1795, captain Davis, commanding *le Cassius*, came with her to Philadelphia. She was immediately known. Mr. Yard, with a view of obtaining an indemnification for the loss of the schooner and her cargo, libelled *le Cassius* in the district court, and caused the captain to be arrested. Soon after, the supreme court, being in session, captain Davis's counsel applied for and obtained a prohibition to the district court, to stop its proceedings; by which the suits both against him and *le Cassius* were defeated. The prohibition was granted on this principle: that the trial of prizes taken without the jurisdiction of the United States, and carried to places within the jurisdiction of France, for adjudication, by French vessels, and all questions incidental to it, belong exclusively to the French tribunals: and consequently that its vessels of war and their officers are not liable to the process of our courts, predicated upon such capture and subsequent proceeding within the jurisdiction of the French government.

Messrs. Yard and Ketland having failed to obtain an indemnification in this mode, procured new proofs, on the information of Mr. Ketland, to be issued from the circuit court by which *le Cassius* was attached as a vessel armed and equipped as a ship of war in the port of Philadelphia, with intent to cruise and commit hostilities against nations with whom the United States were at peace; in violation of the act of congress prohibiting such armaments. Mr. Adet complained that the process was taken out of the circuit court, because, as he alleged, it had no jurisdiction, and that it would be attended with delay, that court sitting but twice a year; whereas the district court, in which it was said the prosecution (if at all permitted) should have been commenced, was always open. I consulted gentlemen of legal knowledge on the point of jurisdiction in this case, and they were decided in their opinion that the circuit court had jurisdiction, and exclusively of the district court. You will see also, in Mr. Rawle's statement of this case, that this opinion was adopted and supported by two gentlemen of eminence at the bar. You will further see in that statement, that the government of the United States had no part in originating this prosecution; and that the district attorney, in behalf of the United States, took measures at each term of the circuit court to prepare the cause for trial, and on a plea calculated to defeat the prosecution. At length in October term, 1796, the cause was brought to a hearing. In the course of the argument the question of jurisdiction presented itself. The court adjourned till the next day to consider of it, and on the following morning dismissed the suit. As soon as I had received notice of this event (on the 19th of October last,) I wrote to Mr. Adet, informing that *le Cassius* remained in the custody of the marshal, but ready to be delivered to his order. To this no answer was returned: but he mentions the matter in the notes subjoined to his note of the 15th November, intimating that the United States were answerable in this case for a violation of treaties and for the damages the *Cassius* has sustained. Here the affair rests. [To be continued.]

* In Saturday's Gazette the following was omitted in the quotation from Mr. Jefferson's letter of 24th July, 1793—After the word enemy, read *are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize.*