

# Gazette of the United States.

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SATURDAY, JUNE 29, 1793.

[Whole No. 435.]

### LAW CASE.

Robert Findley, jun. and others, }  
Ship William. } Libel filed.

Sketch of the Pleadings in this important case, continued.

JUNE 15.

MR. INGERSOL for the captors, first endeavored to shew, that the violation of one part of the treaty, by proceeding in this case would annul the whole. To this effect he cited 4. Vat. Sec. 26. He could not reconcile the proceedings of the Executive in arresting the prize and detaining her, with the express words of our treaty of amity and commerce with France. Even if the property was wrested from our hands the Court would not have a right to declare the prize illegal.

From the Universal Dictionary, page 112, he read the words of part of a treaty between France and the United Netherlands, in substance nearly the same as the 7th art. of our treaty with France, and also page 234, part of another treaty, containing similar provisions. Is it not incumbent upon the counsel on the part of the libellants (he asked) to shew cases wherein a construction has been put upon the provisions in these treaties, similar to that contended for. If none can be adduced, the cause surely cannot be supported.

He cited Lee 77, 78, 81, 220, and 211, to shew that it is the duty of him who is neutral, not to interfere in determining the question of prize or no prize. 3. Grotius, chap. 9, sec. 16—says, It is said, that when the capture is found on neutral ground it forms an exception; but Burlamaque combats this opinion. Bynk. 191, 192 says, it would be unfair that a court should have power to restore without the power to condemn. In the case now before the Court, it is not contended that there is power to condemn.—A faithful observance of treaties, he remarked, is the best method of attaining respect and preserving peace. A capture on neutral ground is an offence to the neutral power; but it belongs to the Executive only to obtain redress by means of negotiation; the Executive is the only organ of government by which we communicate with foreign nations.

Mr. Rawle had cited 3. Vat. sec. 132, to shew that if a power at war attacked an enemy on neutral territory, a wrong is done to the neutral country; this he admitted; but he insisted the Executive alone is competent to demand reparation.

Many observations had been made by Mr. Rawle, on the extent at sea of our territorial claim. He differed as to the extent of that claim and conceived it more confined than it was endeavored to be laid down by that gentleman.—10. Vat. p. 116, says, that the dominion of a state is as far as is necessary for its safety; if the facts stated in the libel were compared with this rule, he conceived, that no just ground of complaint could be formed by us. Our treaty with France, the Netherlands, and Sweden, are indefinite on this head.—“near the coast,” is the expression. The indefinite nature of the question rendered it a much siter subject for negotiation than for a legal decision.

He turned to the Encyclopædia, article Gunnery, to shew, that a 24 pounder will not throw a ball to the distance of quite three miles.

Judge Peters called the attention of the counsel to the point, before the court, viz. whether, if the capture was made on neutral territory, then can the court take cognizance.

The question, Mr. Ingersol said, is a question of prize and no prize, the very question expressly precluded by treaty. From 16 Vintr. 600 it appears plainly, that to give jurisdiction to a neutral court of admiralty, it must appear, that the countries to which the captors and captured belong are at peace with each other. He cited Molloy 14, 15, to the same point.

2 Shower 332. In this case the answer given by the Court was, if you think yourself aggrieved, apply to the King in council.

Justice Jay's argument was cited to shew that this case had better be decided in a judicial court. It was enough to answer that the framers of the treaty never contemplated a decision of this kind in case of disagreement.

Code des Prises 877 had been referred to. The case there recited and that before the Court are very dissimilar. The Fosters were Merchants established at Bourdeaux; France was at peace with the United States; their vessel was taken by an American frigate; the Court of Admiralty could condemn as well as return.

Magens 487. The court of that country to whom the captors belong determine the question of prize or no prize, and there cannot be any other equitable mode of trial. Grotius 601, was also quoted as containing a case or opinion in point.

Mr. Sergeant on the same side. Vattel states the great jealousy that exists between belligerent powers relative to the

conduct of neutral nations, which should be consequently very cautious how they, in any manner interfere in their quarrels. A neutral nation should consider both parties as right. Prizes become the property of the sovereign, in a degree, who gave the commission to the captors; they are not to be meddled with; but our treaty with France is explicit on that head.

2. Vat. Sec. 346 to 349, lays down, that a nation has no right to judge between an individual and a sovereign State. Sec. 210 to the same point nearly; a neutral nation has no right to set itself up as judge between belligerent powers unless by the agreement of both parties. 4. Inst. lays down, as in 14 Vin. 600 that before a case of capture can be brought before a neutral admiralty court it must be shewn, that the sovereign of the country where the cause is instituted be at peace with the countries where the parties belong and that those countries are also at peace with each other.

Lee expressly says that in case of insults offered to a neutral nation, satisfaction must be demanded by the executive and the business settled by negotiation. If it was admitted that admiralty courts could interfere in cases like the present, privateers circumstanced as the Citizen Genet is supposed to be, would, with their captures, ever keep out of the jurisdiction of those courts, and then the executive must at last be resorted to. One powerful reason why the executive should settle differences arising from a violation of a neutral territory is, that having the public force at their command, they can make those neutral rights more respected.

The counsel on the other side appear to suppose that a republic possesses fewer of the rights of sovereignty because their executive is not so energetic as that in absolute governments; but Montesquieu says well, that in every sovereign State there exists the same quantum of power,—power complete for self preservation and the vindication of wrongs.

He adduced a recent case in point: An English merchantman at the Falkland Isles, which are claimed by no nation and looked upon as common property, was stopped by a Spanish sloop of war, her rudder blocked and sails taken. The English, through their executive agent demanded and obtained concessions and reparations of damages.

Shall the Captain of a British merchantman, he asked, be the guardian of our rights, or rather shall not we undertake the task of vindicating them without his interference?

Suppose we should go into the merits of this case and find that the capture is a good one, the court however could not condemn it.

The case from Bynkerhoek, he conceived by no means in point; neither that from the Code des Prises, as had been stated by his colleague.

Upon the whole, he recapitulated, that a neutral court of admiralty cannot judge between belligerent powers. That if there is a violation of territory, the court of admiralty cannot obtain redress, but that it must be left to the executive; that there is no instance of a court at law vindicating the rights of neutrality; that the injured party must apply to the sovereign; and if we are injured we must settle the business by negotiation.

Mr. Duponceau, before the court adjourned, wished to call their attention to an observation made by Bynkerhoek, of a difference between deliberately taking a vessel in a neutral port, or capturing her within the neutral territory in the heat of pursuit.

Adjourned to the afternoon.

[Mr. Lewis's argument in our next.]

### FROM THE VIRGINIA GAZETTE.

Messrs. HANSON & BOND,  
I send you a copy of the letter directed by the Club of French Patriots of this Town to their friend Capt. FERREY, commanding the privateer Sans Culotte. By publishing it in your useful and patriotic Gazette, you will oblige your servant and brother Republican,  
CHERUI.

By order of the Committee,  
June 14, 1793.

N. B. The answer will be translated for your next.

### TRANSLATION

Of an Address directed by the Club of the French Patriots of Alexandria, to their friend Citizen FERREY, commanding the French Schooner Sans Culotte, and presented by Citizen CHERUI, at Baltimore.

CITIZEN CAPTAIN,

THE French Patriots, your friends, of Alexandria, incited by love for their country, and actuated by respect for those of their brothers who are its defenders, of whatever denomination, have charged Citizen CHERUI to acquaint you with the esteem they have conceived for your invincible courage. Well done! Captain continue to rid the world of the blind enemies to liberty; purge the seas of those fierce Britons, who once boasted to possess their empire. Let them know that, as we were equal to them at a time when we

smarted under the rod of tyranny, now, free republicans, we will be their superiors. What glory it is to fight in such a cause! and how deeply you seem to be convinced of this truth! For, give us leave to observe to you, Captain, that at the rate at which you go on, you would soon convert GEORGE himself, to freedom. The newspapers every day mention your exploits; and a few meetings like the one you had with the *Joseph, Fanny, &c.* would be more than sufficient to convince the wise soldiers of despotism, that the cause of liberty is the best. These men are deaf to any arguments but those of cannon. Be assured therefore, Captain, we look upon you as one of the best missionaries the National Convention has sent to these shores.

If you do not persuade, you defeat them.—Your mode is equal to any other. Slaves disregard whoever do not conquer them. In vain you would reason with them; they think themselves born to serve; they fear, as foes, those who offer to be their deliverers; an unaccountable distrust is the lot of the ignorant. We have displayed the rights of man through the channel of our National Assemblies. The universe first wondered at our boldness, but soon after, they admired our wisdom. None but tyrants have trembled: they were afraid that liberty, the basis of our new system of government, should extend its shade as far as their desolated lands; then they commanded their subjects to take arms, & those wretches, like vile slaves, have run to the field of battle. Who are those they are going to murder?—Their benefactors. What will be the consequence of the conquest for which they are so eager? Universal slavery. And can we look upon such men as our brothers? No, Captain, they do not even deserve our pity.

Arm again, and go to fight them; do not be afraid of wanting men. There is not a true Frenchman who is not determined to give up his life rather than to see the cause of his country deserted. If our brethren who inhabit our mother country, are not sufficient, we are ready to unite ourselves from the four parts of the world, to form an immovable phalanx, which nothing but one common death shall annihilate, or a complete victory dissolve.

With the greatest respect for your courage, and with particular esteem, we are, Sir, your friends, the French Patriots of Alexandria,  
CHERUI; *and* D. F. DONNANT,  
NEBLOU, *and* JOHN DARANNE,  
CONDÉ, *and* ROBERT DUBOIS,  
JOHN BADIN, LEMOINÉ,  
JOHN PETIT, *and* BELOY.

P. S. We think it our duty to mention to you the kind and fraternal reception your prize, the *John*, met with in this harbour from our generous allies. They manifested the joy they felt for our success by a salute of cannon, which we answered; and with the more delight, as we were persuaded of the sincerity of their hearts. It is the characteristic of Freemen to be friends.

SALEM, (Mass.) June 18.

ADDRESS OF THE TOWN OF SALEM,  
To GEORGE WASHINGTON,  
President of the United States of America.

SIR,

FULLY and deeply impressed with the wisdom, propriety and policy of the measure which you have lately adopted in issuing your proclamation, wherein it is declared, that the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct, friendly and impartial towards the belligerent powers therein mentioned; and contemplating with heart felt sorrow the calamities and distress of mankind invariably accompanying and necessarily incident to a state of war; and at the same time viewing, with the most pleasing and grateful emotions, the happy and flourishing situation of these states, under the present excellent constitution, in the administration of which so much is due to your integrity, impartiality and wisdom, ever watchful to promote the true interests of the citizens thereof:

We the Freeholders and other inhabitants of the town of Salem in Massachusetts, legally and duly met in town-meeting, cannot refrain from thus unanimously expressing to you the pleasure and satisfaction which we received on seeing that Proclamation; and are induced to take the earliest opportunity of assuring you of our fixed and determined resolution of strictly complying with

its object, and discouraging and discouraging the attempts of all persons who, regardless of their duty, and willing to injure the true interest of these states, shall act in any manner contrary to the injunctions therein contained.

And permit us further to add, that from our knowledge of the sentiments of our fellow citizens in this part of our common country, we have no doubt that the watchfulness and paternal care of the Supreme Magistrate of the United States, aided and assisted by the exertions of the peaceable and good citizens thereof, will effectually prevent the smallest deviations from the strictest neutrality; will restore, preserve and keep our infant Republic in the cheering and fostering bosom of peace; and make and continue us the friends and brothers of the great family of mankind.

MAY 31st, 1793.

### THE ANSWER.

To the Freeholders and other inhabitants of the town of Salem, in Massachusetts.

GENTLEMEN,

PLACED in the situation I am by the free voice of my fellow citizens, it becomes a duty, pleasing as it is strong, to pursue such measures as appear best calculated to promote their true interests.—Under this impression I issued the late Proclamation, declaring the neutrality of the United States in the present contest between France and other European Powers.—In making this declaration, I was persuaded that I spoke the wishes of my countrymen, without violating any political or moral obligation.—And the evidences of satisfaction which have been exhibited on this occasion, as well as the assurances of good Citizens to use their influence in preserving the peace and prosperity of our infant Republic, afford a new proof of that liberal and enlightened sentiment which has been so often and so honorably manifested by them on great occasions.

G. WASHINGTON.

### Foreign Intelligence.

LONDON, May 7.

From Tuesday's LONDON GAZETTE.

Tournay, May 3.

ON the 1st inst. the French attacked the advanced posts of the left wing of the combined army, but were repulsed in all their attempts. On the same morning the French also attacked the advanced posts on the centre, but were there likewise repulsed: They suffered in these several engagements a considerable loss both of men and cannon.

We have this day received letters from Brussels, dated the 3d inst. in the afternoon, one of them inclosing the following letter, that moment come to hand, dated

“Mons, May 1.”

“We have taken by assault the mountain of Aulin, 1 league distant from Valenciennes, which was strongly fortified with cannon, and intercepted the communication of the four roads. We have taken several prisoners, and we are assured 40 or 50 pieces of cannon. However this may be, it is certain that we have possession of the mountain; so that we can keep a check of the camp of Famars, and get possession of Valenciennes with more facility.”

Extract of a letter from Doser, May 5.

“The Capt. of the Packet from Ostend, just arrived, reports that a messenger arrived at Ostend from the armies yesterday afternoon, who brought an account of an action in