

Gazette of the United States.

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SATURDAY, JULY 6, 1793.

[Whole No. 437.]

PHILADELPHIA.

District Court of the United States, in and for the Pennsylvania District.

Rob. Findlay, jun. and others, subjects of the King of Great-Britain, Versus, the Ship William and her cargo, now in the port of Philadelphia.

The libel plea and replication being first recapitulated by the judge, as well as the pleadings of the council, he proceeded to deliver his DECREE upon the plea to the jurisdiction as follows:

I HAVE given this subject every consideration I am capable of, and have deliberated on the arguments and authorities, brought forward by the advocates on both sides the question, with the attention they justly merit. But it seems to me that much has been said, not immediately applicable to the only point I have now to determine, to wit: *Whether this Court is vested with the power to enquire into the legality of the prize, and to investigate the fact on which all the reasonings are founded?* If this fact is established, and the extent of our territorial limits ascertained, so as to make it clear, that a capture has been made within the territories of the United States, there is not a doubt but that a flagrant violation of the right of neutrality has been committed, and this is followed by many of the consequences mentioned by the advocates for the libellants for as they respect our national dignity and duty towards a friendly power, in endeavoring to cause restitution and recompense to be made. Nor does this seem to be denied by the other side of the question. But the embarrassment still exists. *Who is to enquire into the matter, and either give or attempt the redress?*

It is difficult for a neutral nation, with the best dispositions, to conduct itself, as not to displease one or the other of the Belligerent parties, heated with the rage of war, and jealous of even common acts of justice or friendship on its part. Neither is it easy for the nation at war to refrain their subjects from acts of violence even in the territories of their friends. The least under control are those whose object is not honorable conflict, or patriotic exertion. They are actuated by a spirit of avarice, which not only incites to plunder, the safe and lawful freebooters, but to inhuman even heroism, by seducing into unjustifiable actions the bravest men. It would be for the interest of nations and the happiness of mankind, if by universal consent, the quarrels of nations were prevented from being turned to the purposes of private advantage. But the swords of those who fight for gain, will not in our day, be beaten into plough shares.

We must take nations and men, as we find them, and consider as lawful, what those at war authorize, so far as it respects the parties engaged. After all, it depends much on the interest, the convenience, or the good temper of government, whether a neutral shall, or shall not be engaged in war. A prudent and just conduct, on the part of the neutral, particularly, is the surest preventative. But how to evince this is a matter of consideration with those to whom the government is delegated. The simplest mode of evincing our impartial disposition, is to confine ourselves to the customs of other nations in our predicament. An over anxious zeal to avoid conflicts may otherwise lead us into error, and while we are endeavoring to avoid one rock, we may split on another.

Mutual toleration must be exercised, for those who are at war, and those who are not have their difficulties on this subject.

Under this view of the matter before me, I have given a patient hearing to both sides, and have particularly attended to the arguments, by which a jurisdiction has been endeavored to be established in this court. It must certainly be allowed by the advocates for the libellants, that they have not been able to shew any direct authority upon the point. For the two calls of the Duke of Euseby, seizing the vessel committing the outrage near the port of Leghorn, and that of the King of England, ordering the restitution of the effects taken out of the houses of the inhabitants, and belonging to a ship of a friendly power driven by its enemy on his coast, appear to have been acts of power, and not done in consequence of decrees, or orders of courts of Admiralty.

Yet these jurisdictions existed in both the countries above mentioned.

The case of Capt. Landais, in the American Private Alliance, who was ordered by the court of France to release a ship taken by him, is not in point—for, the Fosteris, who appeared as owners, were either subjects or persons resident and domiciled in France; and the ship was sailing under a passport of that nation. They therefore could not be considered as enemies and the capture not being made from enemies, the case was not comprehended in the treaty, or the capture both cited by the laws of nations. In the case being under the notice of the King of England (except that of his having the powers of peace and war, as an appendage to which he is not to have exercised this kind of authority) I should not have supposed him vested, without an act of the legislature, with the authority he used; and it is doubted by Binkershook whether he did right in interfering at all on the occasion.

If it be consistent with treaties, and otherwise right, our legislature can vest the executive in future with similar powers. I should suppose too that the liberty of selling prizes, in a neutral country is not a perfect right; and may also be

considered, by our national legislature, as a subject of regulation. If any captures are made within our limits, and the vessels or plunder is brought within our ports; the sale may be forbidden. They must then be either abandoned, or carried within the jurisdiction of the captors; where the proper courts will consider of their legality. Yet this is a matter not of judicial but of political arrangement and must be left to those who have the authority to direct. The sovereignty of our nation is as complete as that of any other.

Therefore whatever other foreigners can do, we have in our power. But because, at this time, the authority supposed necessary on this occasion, is not as it is alleged to be found in the executive branch, I do not see that the judiciary ought to exercise it, as a consequence resulting from political convenience or the necessity of the particular case. This I fear would be a novelty dictated by our zeal, and might give cause of offence to one, while we were aiming at justice to ourselves, or gratification to the other. I hesitate not to use my plain authority, I know this court to possess, let the consequence be what it may. But this is a question too important in its effects, to be acted on but on the best grounds. I agree here, as I do in many of their other positions, with the advocates for the libellants, when they say that—"courts of admiralty jurisdiction are less liable to objection as these courts are regulated by the laws and customs of all nations and not liable to political bias or entanglement in political considerations." This should induce the greater caution in their determinations. I have not seen any proofs that "the laws and customs of all nations" warrant the intertence of this court. If they do not, no authority can be derived from our own laws, if they were not silent on the subject. In the existing arrangement of our government, we did not calculate on our relative situation, as to conflicts between other nations. If for this reason no immediate remedy is at hand, who can justly censure the executive when he has given decided evidence of his impartial and just inclinations? Who can with reason blame the judiciary, if they will not assume a power not conceived to be vested in them? Not the government of the country whose subjects are the libellants, to whom I wish every degree of justice may be done.—The principles established in the decisions of their own courts, and the opinions of their most celebrated Lawyers in the contests with the King of Denmark, in the case of the Silesia Loan, in a great degree reach the point, as to judiciary authority in a neutral nation.

[To be concluded in our next.]

Mr. FENNO,
If a want of candor appears in some paragraphs of the following, those which refer to profligate characters are worthy the attention of the free citizens of this state.—Please therefore to republish the whole article.

From the American Daily Advertiser.

To the Citizens of the United States.

THE defection and treachery of general Dumourier is big with instruction to the citizens of the United States. The general possessed great talents and knowledge, but he was devoid of virtue. He lived in a splendid and expensive style far beyond his circumstances, which prepared the way for his yielding to the seduction of Austrian and British gold.

The Americans are jealous of their liberties, but this jealousy does not extend sufficiently to the moral characters of their rulers. A profligate man cannot be a patriot, and if such a person does not become a traitor, it is only because he is not tempted.

It has been said, that if France be subdued, the confederated despots will turn their arms against the republics of America. No such thing is probable. But it is more than probable they will turn the current of their gold against us.—By means of this powerful weapon, they may bribe men among us to introduce monarchical systems, habits and laws into our country, or to subvert our excellent governments by a hue and cry against the composition of power in our legislatures, or to involve us in a destructive war by indecent publications against the English or French nation. It becomes the Americans, at this awful crisis in human affairs, to keep a good look out. They cannot do this more effectually than by keeping a steady eye upon the private characters of their rulers, and by believing every libertine among them to be half traitor.

A WATCHMAN.

FROM THE SALEM GAZETTE.

ALL governments tend to tyranny. Constitutions and Declarations of Rights, are a feeble barrier against aspiring aristocrats, unless strengthened by a general diffusion of knowledge, and guarded by an enlightened people. Public Free-Schools, the institution of New-England, and the free circulation of newspapers, are the ground-work and the grand preservative of liberty, equality, and the rights of man, in a social state. It is therefore a pleasing reflection, that these are now more than ever fostered in the eastern states. Travel through any part of the country, and you behold new school-houses erecting, and old ones repairing. In most of the new townships, appropriations are wisely made of some of the best lots for the support of schools and public worship. This is true republicanism, which chains down the monster of despotism to the ground. In a country like this, a man who neglects the education of his children, commits treason against the state.

Foreign Intelligence.

LONDON, April 30.

THE restoration of the Imperial authorities in the Low Countries, was the immediate consequence of the Austrian victories. While the splendid miseries of royalty attract so much regard, the hoiney sorrows of the vulgar demand some share of our sympathy. In the course of this country, the Netherlands have been doomed to feel every sad variety of pain; and change of place is only change of woe. At one moment they were lifted in the embraces of French fraternisers; at another forced to crouch beneath the sword of military violence; at one time compelled to embrace a scheme of anarchy, and at another to submit to a system of oppression which violated every principle of genuine liberty and salutary subordination. The possession of these provinces is no longer obtained by multiplied sieges of fortified towns, which contract the extent of warlike operations, and confine their consequences within a narrower sphere; their dismantled cities must yield to the attack of a successful army; and a single battle may bring upon the country a train of calamities which it is as fruitless to resist as it is impossible to escape. Perhaps, however, the conduct of France was more destructive of the domestic repose of the people, and more inimical to the habits they had acquired, and the prejudices they had imbibed, than the most arbitrary acts of their former masters. Their affection for the Catholic faith must have inspired them with indignation against those lawless innovators who were substituting a code of infidelity in its stead; the tumultuous assemblies which were summoned together under the auspices of the republic, and the rash proceedings by which those meetings were distinguished; must have revived their predilection for those aristocratic tribunals which administered municipal justice with impartiality, however adverse they might be supposed to the process of political freedom.—If the governors of the Low countries remember, in the season of returning prosperity, the promises of which they were so liberal on the eve of their late expulsion, it may still be possible to insure a stable and happy constitution to this hitherto distracted territory. In common with every other state

on the continent, it retains the rudiments of that feudal system of legislation and policy which the researches of the profoundest inquirers, and the experience of many centuries, have proved to be capable of being reduced into a form of government the most adapted to European manners, and the most congenial to the present condition of mankind, without recurring to the visionary speculations of political economists, or the almost obliterated examples of the commonwealths of antiquity. But in order to accomplish this purpose, these provinces must be emancipated from their dependence on the Imperial court, and their subjection to a foreign standing army. Of this event there is unfortunately little probability at the present era, and the exertions the French have removed the prospect to a greater distance than ever, as their revolutions have had the effect of persuading many enlightened minds to leave the amendment of their condition to societies perverted from their original end, the fantastic improvements of polished life, or the arbitrary concessions of sovereign authority, rather than to principles deduced from the laws of truth and reason combining to form a strict political union among various independent communities.

United States.

ALEXANDRIA, June 27.

Translation of the answer of Capt. Ferrey, commanding the schooner Saus Calotte, to the address of Patriots of Alexandria, in the French Baltimore, 15th June, 1793, Second year of the French Republic. Citizens,

I have received, with inexpressible pleasure, the kind letter you sent me by citizen Cherui. The principles you display in it shew your true and well meant patriotism. The opinion you have formed of my courage, penetrates me with gratitude. What should not men do to defend such a cause? What should they not do to deserve the name of restorers of the freedom of mankind? This is the honorable title, that our perseverance will obtain for us among future generations. Is it not ten thousand times more glorious to die victims to the happiness of our fellow brothers, than to triumph under the orders of whimsical tyrants, who engross all the honor of the combats, at which they are not even present? Yes, undoubtedly. These considerations, I think, are very proper to inflame courage in every heart. There are certain conjunctures in life, when we ought to sacrifice the tranquillity of a moment to the promotion and glory of the human race. Such is the case in the present war; the success of which is interesting to every free nation.

The thick veil of prejudices, which is spread over the eyes of our combined enemies, will soon be torn off; and then they will bless the thunderbolts with which we are going to strike dead their despots, and embrace the arms by which we are going to carry triumphant liberty into their unhappy country.

Keep yourselves always ready, citizens, to come at the first call. We eagerly accept your patriotic offer; perhaps in a short time, we shall want you. Prepare, as much as it lies in your power, the minds of our countrymen to fly to the standard of liberty, when the case requires it. This is the service you may at present render to the common cause. Represent to those who Indulge in