

241

49 Trials

No. 1.

Three Letters  
etc.

Chas Pinckney.

Phila

1799.



THREE LETTERS,  
WRITTEN, AND ORIGINALLY PUBLISHED,  
UNDER THE SIGNATURE OF  
*A SOUTH CAROLINA PLANTER.*

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THE FIRST,  
ON THE CASE OF  
JONATHAN ROBBINS;

DECIDED UNDER THE TWENTY-SIXTH ARTICLE OF THE TREATY WITH GREAT-BRITAIN,  
IN THE DISTRICT COURT OF THE UNITED STATES,  
*FOR SOUTH CAROLINA.*

THE SECOND,  
ON THE RECENT CAPTURES  
OF  
AMERICAN VESSELS BY BRITISH CRUISERS,  
CONTRARY TO THE LAWS OF NATIONS, AND THE TREATY BE-  
TWEEN THE TWO COUNTRIES.

THE THIRD,  
ON THE RIGHT OF EXPATRIATION.

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By CHARLES PINCKNEY, Esquire,  
SENATOR IN CONGRESS, FOR SOUTH-CAROLINA.

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TO WHICH IS ADDED,  
AN APPENDIX,  
CONTAINING SUNDRY DOCUMENTS CONCERNING JONATHAN ROBBINS.

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PHILADELPHIA:  
AURORA-OFFICE,  
1799.

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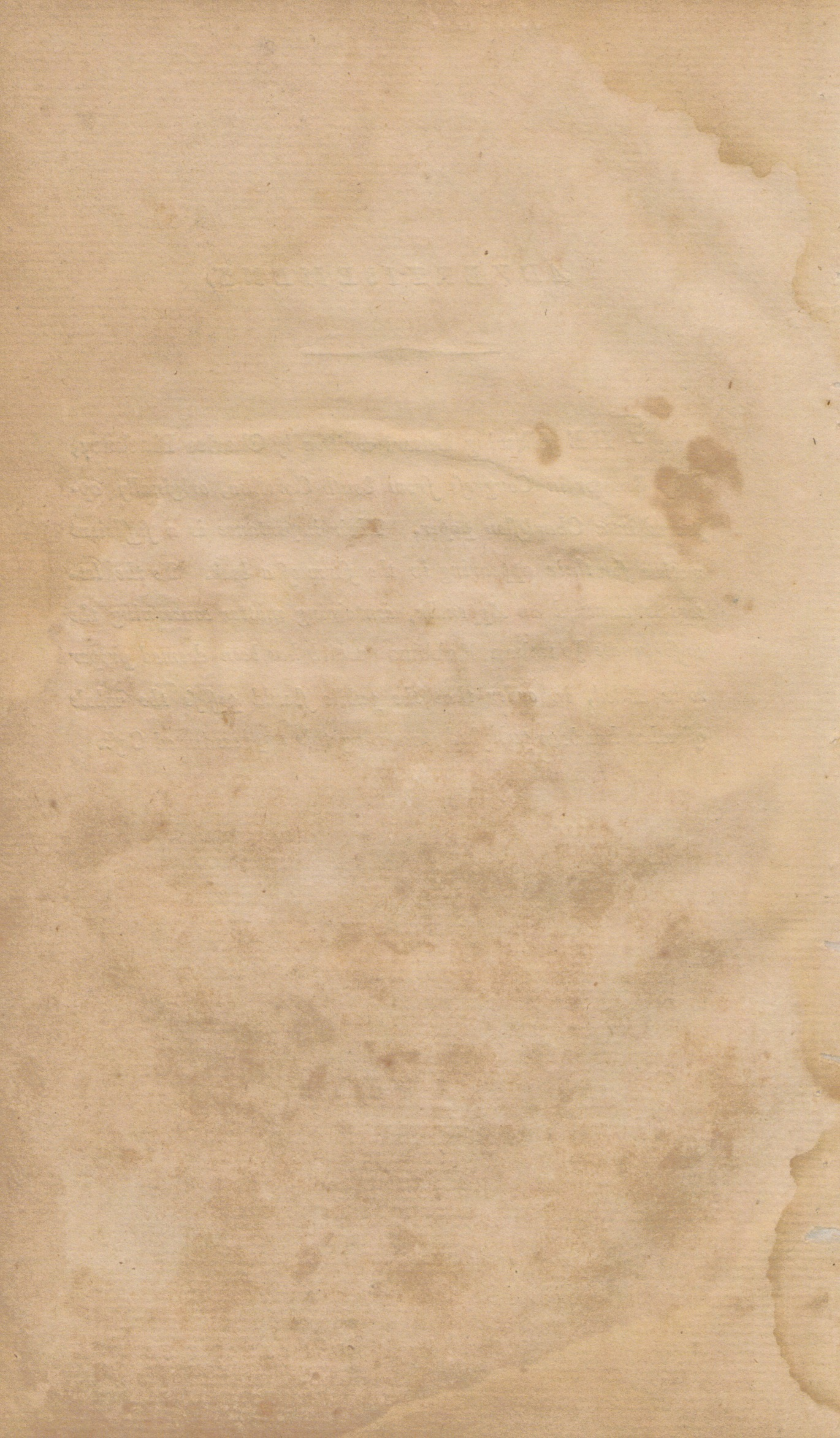


ADVERTISEMENT:

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*THE following Letters written by Charles Pinckney, Esq. Senator in Congress from South-Carolina, originally appeared in a Charleston paper. Their importance is a sufficient motive for their appearing in the form of a book. To the letters is annexed an Appendix, containing matter concerning the unfortunate Jonathan Robbins, which has been deemed proper to be added, in order that the public should possess the whole of what has been published concerning this unprecedented Case.*

*Prof. Charles Pinckney  
is at present in paper*



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TWO LETTERS,  
OF  
A SOUTH CAROLINA PLANTER,  
ON THE CASE OF  
JONATHAN ROBBINS;  
AND THE DEPREDACTIONS  
OF THE BRITISH CRUIZERS.

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As Congress must by law provide at their next session for any similar cases which may occur under the British treaty, and as it is of general importance to the citizens of the United States, the following examination of the case of Jonathan Robbins, lately decided in the District Court of South Carolina, is with deference, submitted to their consideration.

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*Fellow Citizens,*

AS I believe you have not been much troubled with my remarks on any subject, I hope you will more readily excuse the favor I now ask, in requesting your attention to the present. I am induced to make them because the question is of very great public consequence, and involves the dearest and most valuable rights of every man in the United States. It reaches all situations, as well the elevated and opulent, as the most indigent. It affects the knowledge and independence of our judicials in the most important manner; and as I know it has excited the sensibility of the people, and must be so far made the subject of enquiry in congress, as to enable them to provide for similar cases, I have supposed some examination of it may be necessary, in that spirit of deference and delicacy in which all such enquiries should be conducted.

I shall not go into a definition of the principles of a free government, and the blessings its citizens ought to expect; because few of our own, even amongst the most illiterate, are ignorant of the nature of a representative government, the

right of suffrage, and the inestimable privilege of the trial by jury, in all cases in which their characters, lives, or property are concerned. To a people so informed, it is scarcely necessary to remark, that to men of feeling the value of character, of honorable fame, is dearer than life or property or even the most tender connections; that to all men, whether of the nicest honor or otherwise, the love of life is dearer than that of property, and that they would readily sacrifice the one to preserve the other. Hence it follows, that those privileges which guard the characters and lives of our citizens, are viewed with a more jealous eye, and will be asserted with more firmness and promptitude than even those which protect their properties, vigilant as they are with respect to these. A number of our citizens therefore, believing that the inestimable privileges secured to them by the constitution and laws of the United States, have been affected in the case of *Jonathan Robbins*, that it is one which may, if established as a precedent, reach some valuable inhabitants of this country, and to the intent that these privileges should be more carefully guarded by a positive law in future, the following remarks are submitted, with a view to bring this business more fully before the public than it has hitherto been.

The following is the statement of the case with the accompanying affidavits.

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### FEDERAL DISTRICT COURT.

*For the District of South Carolina, July, 25, 1799.*

*Present his honor Judge BEE.*

THE question before the court was grounded on a habeas corpus, to bring up Jonathan Robbins, who was committed to gaol in February last, on suspicion of having been concerned in a mutiny on board the British frigate *Hermione*, in 1797, which ended in the murder of the principal officers, and carrying the frigate into a Spanish port; and on a motion of counsel, in behalf of the consul of his Britannic majesty, that the prisoner should be delivered up, (to be sent to Jamaica for trial) in virtue of the 27th article of the treaty between the United States and Great Britain, which article runs thus:

“Article 27. It is further agreed, that his majesty and the United States, on mutual requisitions, by them respectively, or by their respective ministers or officers authorized to make the same, will deliver up to justice all persons, who being charged with murder or forgery, committed within the



jurisdiction of either, shall seek an asylum within any of the countries of the other: provided that this shall only be done on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and a commitment for trial, if the offence had there been committed. The expence of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."

The commitment of the prisoner, and the consequent demand made of him by the consul of his Britannic majesty here, were grounded on the two following affidavits:

*South Carolina District.*

William Portlock, a native of Portsmouth, in the state of Virginia, upwards of eighteen years old, appeared before me, and being duly sworn and examined, saith, that he was one of the crew before the mast, in the schooner *Tanner's Delight*, which was commanded by captain White, who arrived here about three weeks ago; that a person who answered to the name of Nathan Robbins came also in the said vessel before the mast with him; that he, said Robbins, is a tall man, middle size, had long black hair, dark complexion, with a scar on one of his lips; that on or about last Christmas night he was present, and heard the said Robbins, talking in the harbor of the city of St. Domingo, to some French privateersmen, who were on board the *Tanner's Delight*, when and where he informed them in his hearing that he the said Robbins was boatswain's mate of his Britannic Majesty's frigate *Hermione*, when she was carried into the port Cavillia, and added that they had no occasion to take any notice of that. And after the above time, sometimes when he was drunk, he, the said Robbins, would mention the name of the *Hermione*, and say, bad luck to her and clench his fist.

His

WILLIAM ✕ PORTLOCK's  
Mark.

Sworn before me, this }  
20th Feb. 1799. }

THOMAS HALL, J. P. Q. U.

United States of America, }  
S. Carolina District. } ff.

PERSONALLY appeared before me lieutenant John Forbes, who being duly sworn on the Holy Evangelists of Almighty God, deposes, that a person confined in the gaol of this district, who calls himself Nathan Robbins, but whose real name this deponent believes to be Thomas Nash, was a seaman on board the *Hermione* British frigate, in which the deponent was a midshipman, from the 8th of February,

1797, until the 30th of August following, during which time the said Nash was personally known to this deponent: that this deponent was removed from the said frigate to the sloop of war Diligence, on the said thirtieth day of August 1797; this deponent further deposes, that on the 19th of September following, he was sent on board the said frigate, at which time he saw and left the said Nash in the same station on board that vessel, as he was at the time of this deponent's being a midshipman therein—That on the 22d day of the said month, the crew mutinied on board the said frigate, killed the principal officers, piratically possessed themselves of her, carried her into Laguira, and there disposed of her to certain subjects of his Catholic majesty. That the said Thomas Nash was one of the principals in the commission of the said acts of murder and piracy, whose conduct in that transaction has become known to this deponent by depositions made, and testimony given in courts-martial, where some of the said crew have been tried.

JOHN FORBES.

Sworn before me, this  
18th April, 1799.

THOMAS BEE.

District Judge S. Carolina.

Upon a candid and legal review of these depositions, the testimony was so slight and trifling on the part of Portlock, and so wholly hearsay on the part of Mr. Forbes, that I was clearly of opinion it did not even justify a commitment for trial here; and that was Robbins now in this state, and brought up by habeas corpus, to have the nature of the testimony against him and his case fully argued, that, if not discharged he would at least be considered as entitled to bail. I would almost be content to rest the decision of the question here, even had I not used the unanswerable arguments which have occurred respecting jurisdiction in this case, "meaning exclusive territorial jurisdiction," and nothing else.

On the subject of the jurisdiction, the part of the act of the British parliament, for carrying into effect their treaty with the United States, and which was published in your gazette this morning, completely proves what I have observed. In this act not one word is said of any fugitives found within their dominions, charged with having committed offences at sea, on board American vessels. It is entirely confined to cases within the jurisdiction of each, meaning most clearly "exclusive territorial jurisdiction." For had the British parliament considered "ships" as the territory meant in the treaty, in an act which appears to go so much into detail, they certainly would, by a particular clause, have provided for cases arising at sea. To prove however, unquestionably, that

the British government considered the meaning of the word "territory" in the same light that I do, I have just received information, that not long since the crew of an American vessel rose upon the captain, whose name was "Little," murdered him and his mate, and piratically carried the vessel off; that they were afterwards taken in England, tried and executed. Nothing can more clearly prove their idea of the meaning of the word territory, than this; because had they thought otherwise, instead of trying and executing, they would have confined these men until the American government were acquainted with it, and sent to demand and carry them away for trial in their own courts.

His honor the Judge had received a letter some days before from the secretary of state of the United States, mentioning, that an application had been made by the British minister, Mr. Liston, to the president, for the delivery of the prisoner under the 27th article of the treaty, and containing these words — The president "Advises and requests" you to deliver him up.

This letter was not read in Court, though it was shewn to the counsel on both sides.

The following certificate and affidavit were produced in behalf of the said prisoner.

United States of America, }  
State of New-York. }

By this public instrument, be it known to whom the same doth or may concern, That I, John Keese, a public notary, in and for the state of New-York by letters patent under the great seal of the state, duly commissioned and sworn; and in and by the said letters patent, invested "With full power and authority to attest deeds, wills, testaments, codocils, agreements, and other instruments in writing, and to administer any oath or oaths, to any person or persons;" Do hereby certify, that Jonathan Robbins, who hath subscribed these presents, personally appeared before me, and being by me duly sworn, according to law, deposed, That he is a citizen of the United States of America and liable to be called into the service of his country, is to be respected accordingly at all times by sea and land.

Whereof an attestation being required I have granted this under my notarial firm and seal.

Done at the city of New-York, in the said state of New York, the 20th day of May, in the year 1795.

Quod attestor.

JOHN KEESE.

Notary public, and one of those for the city of New-York.

JONATHAN ROBBINS.

Jonathan Robbins, mariner, a prisoner now in the custody of the marshal of the district court of the United States for South Carolina, being duly sworn, saith he is a native of the state of Connecticut, and born in Danbury in that state; that he has never changed his allegiance to his native country; and that about two years ago he was pressed from on board the brig Betsey of New-York, commanded by capt. White, and bound for St. Nichola Mole, by the crew of the British frigate *Hermione*, commanded by captain Wilkinson, and was detained there contrary to his will, in the service of the British nation, until the said vessel was captured by those of her crew who took her into a Spanish port by force; and that he gave no assistance in such capture.

JONATHAN ROBBINS.

*Sworn this 25th July, 1799, before me,*

THOMAS HALL, Federal Clerk, and J. P. Q. U.

The signature made by the prisoner to this affidavit in court, appeared to be in the same hand writing as the signature to the one made in 1791, from which circumstance it is presumable, that Jonathan Robbins is the prisoner's real name. The body of the affidavit made in New York, in 1795, was printed; the names, dates, signatures, &c. were filled up in writing; it had the notarial seal of John Keefe, esq. affixed, and had the appearance of being a genuine paper, deemed at that day by seamen to be a protection.

It appears, however, by the result, that these affidavits, and the question, whether the prisoner was an American and an impressed seaman, or not? Were, in the opinion of the court, altogether immaterial; the court would have felt itself bound to deliver up any respectable citizen of the U. States, if claimed under the circumstances of the prisoner.

It appears by the preceding statement that the judge, under the circumstances of this case, would feel himself obliged to deliver up any "respectable citizen of the United States." I do not mention this because he used the words "respectable citizen;" but I do it to shew, that his is a question which seriously concerns every part of the community, and that no citizen, whose business may oblige him to go to other countries is hereafter safe from such demands. It will not depend upon him to say, he is not a mariner, or to shew certificates or proofs to the contrary, it will depend upon the force with which he is attacked, and the temper or violence of the officer who directs it. Instances it is said, have lately occurred where not only the seamen, but the passengers have been impressed, who, although declaring they were not seamen, were still impressed as such, and obliged to perform their duties. No production of papers, no intreaties availed them; they were

compelled to submit. Had these men been enterprising, or an opportunity offered, and they had possessed themselves of their oppressors, and brought them into port; or had they, in the attempt to regain their freedom, been obliged to destroy them, while the world would have applauded the act, the judge must, from the decision, have delivered them to a similar demand, neither influence, friends, nor fortune could save them; however superior in these, in political privileges they were only equal to the unknown and friendless Robbins; a consistent and inflexible magistrate must view them with the same impartial eye; he must give to them the same construction of the law or constitution; he could not vary them without the immediate loss of character. An enlightened people therefore will as attentively, nay, they ought more carefully to guard them in the person of a poor or unprotected, than a rich or considerable man. The latter will always find powerful friends to support and protect his privileges; while the rights of the former may in silence and with impunity be unattended to, merely because he is unknown, and has not an advocate to assert them. This would probably have been the case in the present instance, had not some gentlemen voluntarily offered themselves to examine and discuss its consequences. The public are obliged to them; it is an excellent example; I hope it will be followed upon every occasion, and that it will make us infinitely more vigilant of our rights than ever. We must never forget that in this country the poor and the rich, the humble and the influential, are entitled to equal privileges; that we ought to consider a violation of the rights of the most indigent and unprotected man, as an injury to the whole; while we have a pen to guide, or a voice to lift, they should be constantly exerted against the exercise of tyranny or oppression, by whatever nation committed, or to whomsoever the violence may be done.

I now proceed to examine the case, and the nature of the evidence on which Mr. Bee determined to deliver Jonathan Robbins, to the demand of the British minister.

I believe it is the first instance which has occurred, of a demand under the British treaty in the United States; certainly, in this state. The law respecting the delivery of fugitives from justice was silent on the delivery of fugitives to foreign powers, and therefore, the judge conceived himself not only authorised but bound to interfere. By his own statement it appears to have been entirely a new case, in which I should suppose he had considerable discretion, and was not bound by any particular legislative act to deliver on a mere affidavit, or any "trivial surmise or hearsay evidence." It

was his duty to have maturely considered what were the legal import and meaning of the words, "Charged with murder and forgery," and how far, according to the laws of this country, there was such evidence of criminality as would justify the sending any man, claiming to be a citizen, and not disproved as such, from his country, to be tried by a foreign tribunal, and most probably by a court martial.—The judge's auditors must have been surprised when they heard him say, "that no man can be punished by the laws of Great-Britain without a trial; if he is innocent he will be acquitted; if guilty, he must be punished." This observation was by no means applicable to the present case, the true question before the court was, whether Jonathan Robbins, producing a notarial certificate of being a citizen of the United States, and asserting that he was impressed by violence into the British service, was, from the nature of the affidavits before him, to be torn from his country and connections, and deprived of all the rights of citizenship, and sent to be tried by a foreign tribunal, acting without a jury, in the most summary manner, and by martial law.

I do not pretend to equal legal knowledge with the judge; but, I have sometimes attended to points of this kind, and as far as I am able to form, am clearly of opinion that the prisoner, not having been disproved to be a citizen of the United States, there was not such evidence before the court as justified the judge in giving so important an order, as to surrender him to the demand of the British consul. This I will endeavor to prove from the examination of the affidavits, and the nature of the testimony required by our laws, as sufficient even to justify the putting a citizen upon his trial in this country, without adding to it the inexpressible disgrace and danger of sending him to be tried by a foreign tribunal.

The first affidavit is William Portlock, on which I suppose the judge could not have rested at all; he appears from his age, and the statement in the affidavit, to have been a sailor lad, as little known in this country as Robbins himself, and to have been so illiterate as not to have been able to write his name. This lad says, he heard a person who answered to the name of Nathan Robbins, declare he was boatswain's mate on board the *Hermione*, when she was carried into the port of "Gavilla;" and that sometimes, when he was drunk, he would mention the *Hermione*, clench his fist, and say, "bad luck to her"

From this statement it results, that this Portlock was an illiterate sailor lad, so ignorant as not to know the name of the port the frigate was carried into. It does not appear that he

was shewn the prisoner, or that he could swear that Jonathan Robbins was the person he knew on board the Tanner's Delight; he avowedly knew nothing of himself. He does not say the person he spoke of, confessed to him that he was concerned in the murder or piracy charged on him. From the youth, ignorance, and situation of Portlock; from the vague and uncertain account he gave, I must still be of opinion that the judge could not have rested at all on his testimony; he knew, that even if Portlock had sworn positively to the identity of Robbins and the latter had, when sober, made any confession of guilt to him, that it was the duty of a judge not to have attended to it.—Any confession of a criminal must be made in a particular manner, before magistrates, or in open court, to operate to conviction. An elegant writer, treating on this subject, says: ‘the confession of a criminal when taken even before a magistrate, can rarely be turned against him, without obviating the end for which he must be supposed to have made it. Besides we have known instances of murders avowed, which never were committed; of things stolen, which had never quitted the possession of the owner.’”

The evidence of words alledged to have been spoken by the person accused, and connected with the criminality of the charge, ought also to be received with great distrust. Such words are either spoken in the zeal of unsuspecting confidence, and cannot be repeated without a breach of private faith, which detracts much from the credibility of the witness, or, in the unguarded hours of boasting dissipation, in which case they are not unlikely to be false in themselves, and very likely to be falsely repeated.

If every situation, therefore, in which Portlock can be viewed as a witness, or the testimony he gave examined, it must at once be seen, that it was not such as a grand jury could have found a bill on, or such as will be considered sufficient to justify the delivery the judge has ordered. It must therefore have been altogether on the single testimony of lieut. Forbes he ordered it, and this remains to be examined.

The whole of lieutenant Forbes's examination says, that a man confined in the gaol of this district, who calls himself Robbins, but whose real name he believes to be Thomas Nash, was a seaman for a certain term on board the Hermione; that after he left the Hermione, she was seized by the crew and carried into an enemy's port; and that he has heard, from the depositions of others in courts martial, that the man whom he believes to be named Thomas Nash, was a principal in the commission of the said acts of piracy and murder, &c.

From this account, Mr. Forbes has confessed that he knows nothing of himself—that he was not sure what the prisoner's name was, but that he believes it to be Thomas Nash, and what is extremely important, he does not attempt to say he is an Irishman, and not an American, or that he was not impressed into the British service. But that from the depositions of others, and what he has heard, he considers him as one of the principals in the said act. He does not explain what is the nature of the testimony he has heard on the subject, as it respects Nash—by whom given—whether by respectable, or unprincipled witnesses—by such as were intimidated and forced into confession of any thing ;---or by ignorant and illiterate men, (without a jury to interpose their lenient and impartial decisions) before a court of strict military officers, the severity and dispatch of whose decrees they are every moment fearing to experience themselves.

His testimony, therefore, being altogether hearsay, ought in strictness of law, to have operated less forcibly upon the mind of the judge, than even Portlock's, for however more respectable as an officer and a gentleman, Mr. Forbes is, yet when he tells you himself he was not on board the frigate when the murder and piracy was committed, and that he knows nothing but by hearsay, either from the relations or depositions of others, he at once comes within that description of testimony which the laws of England, and the decision of the best judges, and our laws borrowed from them, forbid either a judge or a jury to receive in any case affecting the life or a limb of a subject of the one, or a citizen of the other.

This being the state of the evidence before the judge, two important questions arise.

1st. Whether the judge was strictly authorized; and if there was a doubt, whether he ought to have decided alone upon this question? And,

2dly, Whether in deciding, he had any and what discretion, as to the nature of the evidence to be required, and whether his decision was such as the security of the personal privileges of our citizens, or the policy of the United States, demanded.

To the first question—It appears that from the law of congress respecting the delivery of fugitives from justice from one state to another, being silent, the judge was of opinion, on the application being first made to him, that it was a matter for executive interference; but that upon reconsideration, as the law and the treaty were silent, he was under the necessity of deciding. I think a further view of this subject must have, by this time, convinced him that he was mistaken, and that no possible construction, that he can give to the 3d article of



the constitution, can justify the opinion he formed, of his having a right to decide on this case. The article respecting the judicial, after vesting in congress the right to establish superior and inferior tribunals, defines the important powers they shall exercise, but leaves the boundaries of each to be ascertained by congress. They have accordingly detailed the duties and fixed the limits of the Supreme, Circuit, and District Courts, in a manner so clear, that it is astonishing a doubt should have for a moment arisen as to the Court really having jurisdiction to decide this question. The district courts have no right to decide on any crime, where the punishment is to exceed 30 stripes, 100 dollars fine, and six months imprisonment: in any case exceeding these and particularly for capital offences, however, the judge like any other magistrate, may on proper testimony commit for trial: here he has no right to decide: this authority is given to the circuit court.

Had therefore Robbins been committed for trial in this state, could Mr. Bee have tried him? Certainly not—he must have remained to be tried by the circuit court.

With what authority, therefore, could he decide upon a question, which not only went to divest the prisoner of his right of citizenship, banish him from his country, and deprive him of the trial by jury; but also to dispossess the circuit court of a right to decide upon as new, delicate, and important a subject as ever came before them: one which I hoped would have been reserved for much more ample discussion and consideration, and in which I should have supposed the public would have been pleased to hear the opinions of all the most experienced council at the bar, and to have seen decided by the supreme court.

It is no answer to say, that the 27th article of the treaty speaks of commitment; because the latter clause qualifies it, and makes this commitment depend upon the evidence of criminality according to our laws; and there is surely an astonishing difference between a mere commitment for trial, and a delivery over to a foreign tribunal. Nor is it more just to say that the law of Congress respecting fugitives from justice, in the different states, makes them deliverable on a bill found, or by an affidavit, because they are only removed from one state to another, where the same laws, same right of jury, and same forms exist; and what is equal to all, the invaluable right of habeas corpus, where a prisoner, improperly committed, can, after delivery and removal, demand to be brought before a judge, and have the reasons of his confinement examined. But where is the habeas corpus that can, in this situation, reach an unfortunate American? How-

ever slight or unfounded the accusation against him, or erroneous the opinion of the single judge who delivered him may be, when once delivered he is for ever deprived of this invaluable privilege. The moment the order is given, he is hurried in chains on board an armed cutter, from whence, on his arrival in a distant and foreign port, he is immediately transferred, to another vessel, on whose deck, after a summary military trial, he is doomed to meet his fate.

I will pause here, and ask you, my countrymen, if there is no difference between this, and an ordinary commitment by a magistrate for trial here?—Your own good sense, and the security you must wish to the rights of your fellow citizens and yourselves, will best dictate the answer you should give.

There is another important reason why the judge ought not, upon this occasion, singly to have decided. I think if it had occurred to him he certainly would have postponed the decision, until the meeting of the circuit court: it is this—That however all nations may have agreed upon the propriety of delivering up fugitives from justice, in the case of forgery; yet, that in times of war, and particularly in revolutions, when different nations hold such opposite opinions upon what are piracy or murder, and what justifiable resistance to tyranny and oppression; when it is so extremely difficult, and requires all the acuteness, and all the knowledge and experience of the ablest judges, to draw the line between them: most certainly, in this country, our judges ought not to have decided, in cases that may hereafter be quoted as precedents, without the utmost caution and deliberation.

They should have reflected, that in all trials where there was a claim of birth right or citizenship, on the part of the accused, and where there was not the fullest and most positive proof of his criminality, that it was safest to try him here.\* In this instance they ought certainly to have done so.

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\* The following is taken from the advertisement of the British government of Antigua, April 14, 1798, describing Thomas Nash, with the other men that were on board the *Hermione*:

“ Thomas Nash, an Irishman, one of the fore-castle men,  
 “ about 5 feet 10 inches high, dark complexion, long black  
 “ hair, remarkably hairy about the breast, arms, &c. had  
 “ left the ship in Porto Caballo; had entered on board either  
 “ an American or Spanish trading schooner.”

In this advertisement it is remarkable that Thomas Nash is not called a warrant officer; he is only advertised as a common seaman, and not charged as one concerned in the

The testimony was slight and trivial; it was nearly all hearsay; it was indispensable therefore to justice, that the prisoner should have had an opportunity of sending to New-York and Connecticut to prove, if he could his birthright and citizenship, in the case of such delicate importance, and of such slight proof, could the British government have censured the procedure. It was as easy for them to send their witnesses here, as to have sent an armed cutter to carry him away. Justice would have been done to all parties, and venerating as their nation is said to do, the trial by jury, a generous and free people would have applauded the respect that was paid to it here.

To the second question, it has been already observed, that this was a new case, in which Congress had not legislated, and the more that if the judge tho't proper to assume the power of deciding he was bound by no particular act or restriction, but at liberty to declare the nature of the evidence on which in his opinion so important a decision should have been made. Supposing him, as the district judge, to have been at all authorised to decide, his discretionary power certainly would have extended to this; and the point then for consideration is, that having the power to determine on what evidence so important an order should be founded, what ought to have been his conduct, and what the nature of the proof he should have required? My own opinion decidedly is, that he should at least have required such proofs as a grand jury would have thought sufficient to find a bill. Perhaps he ought to have gone further, and before he consented to his removal into a foreign country and military tribunal he should have demanded complete proof of his guilt, such as would have induced a petit jury to convict him. But that he should at least have required the proof necessary to find a bill no one I think will contend. The enquiry then is what is the proof which the English law and the laws of his country require to enable a grand jury to find a bill? Although I think there are many defects in the administration of justice, such for instance as the dependance of the judges on the crown from which they receive their appointment, and to whom they may be looking up for further promotion and honor, that of being removable by an address from parlia-

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murder of the officers. But the most remarkable thing is this — that while Robbin's certificate says he is a man five feet six inches high, the other, (that is the Antigua advertisement,) says he is five feet ten inches — Now, four inches is so conspicuous a difference in the height of a man, that surely it was of sufficient consequence in fixing the identity to have deserved attention.

ment, which a minister can always command, and whose views and wishes therefore none else but an inflexible magistrate will dare oppose; and particularly in the sheriffs having the power to summons whom they please as jurors, and to pack them if they think proper: yet there is one part of their system which I have always admired, that is, the institution of a Grand Jury.

Their laws have wisely and humanely considered, that next to the disgrace of being convicted of an infamous offence, is the dishonour of being charged with one; and therefore, before they would submit a subject to the danger and inconvenience of being publicly arraigned, an impartial jury are on their oaths to declare the just cause for accusation. We have copied their system, and improved upon it. Our juries cannot be packed; they are drawn by lot, and in my judgment criminal trials in this state are as perfect as they can be.

The nature of the evidence which can alone be properly offered to a grand jury, although not entirely conclusive as to the actual guilt of the prisoner, must be such as if offered to the petit jury would be legal evidence—Even examinations taken agreeably to the 2d and 3d Philip and Mary, chapter 10, (of force in this state) can only be given in evidence before a jury, when the court is satisfied the witness is dead, unable to travel, or kept away by the means or procurement of the prisoner. No other examinations can be given, or ought to be received in evidence; and a presentment founded upon any other, would not be that due presentment, without which a citizen's life should not be put in danger.

The above opinion is founded on the highest law authorities. A learned English judge, speaking on this subject, says “The evidence to be given ought to arise to a high degree of probability—absolute positive proof if not to be insisted upon before a grand jury; AND SLIGHT TRIVIAL SUSPICION AND HEARSAY evidence, are not sufficient to ground such presentments upon; for although they are only in the nature of a charge, and do not carry a conviction, yet many inconveniences, as well as expence and danger attend a charge of this sort, which no subject ought to undergo, but upon legal and sufficient evidence.”

This is the law of England, on the subject of legal evidence sufficient to enable a grand jury to find a bill. Our law is taken from, and founded on it; and the public can now judge whether the testimony submitted in this case, was such as ought, in one of so much importance and danger to the prisoner, to have authorised his delivery.

Some distinctions are attempted to be drawn, respecting territory and jurisdiction, the counsel for the prisoner having

contended that the treaty entirely alluded to the peculiar exclusive jurisdiction of each. I have no doubt in my own mind, that Mr. Jay meant no other than the exclusive territorial jurisdiction of each nation. He seems to have carefully omitted the word piracy, aware of the difficulty I have before mentioned, of distinguishing between what may be called *piracy*, or what laudable resistance to violence and oppression. This omission therefore must at once convince us, that Mr. Jay could only have meant private acts of premeditated and deliberate murder, arising from motives unconnected with any attempts which individuals, coming to be the citizens of this country, might at any time make to free themselves from the tyranny of imprisonment. It is wonderful, however, to me that Mr. Jay, having seen the necessity of omitting piracy, did not also omit, at least during the existence of the war murder also: For in attempts to regain vessels or escape from imprisonment, it is certainly as difficult to distinguish what is murder, and what is piracy. Upon an occasion of such importance to the future safety of his fellow citizens Mr. Jay certainly ought, and will I suppose explain, what was his meaning in that article of the treaty. The quotations from Vattel and Rutherford did not apply at all. They are merely meant to refer to the cases of children born at sea, to ascertain, as Vattel does very properly, the right as subjects or citizens of the nation to which the vessel they are born in belongs.

To suppose that Vattel designed to extend the doctrine, so far as to mean that the ships of a nation are, with respect to the space of water they cover on the ocean, its territory as to jurisdiction, as completely as its land or rivers are, is to prove him not only guilty of an inconsistency unbecoming so well-informed an author, but to make him flatly contradict doctrines expressed in other parts of his work. He then contradicts that neutral vessels do not make free goods; and it is on his authority the British rest more than any other, their rights to search neutrals.

Among the reasons which should make our judges very cautious in deciding against the claim of citizenship, by persons assuming to be citizens, there is one *peculiar to this country*, and which should be carefully attended to: it is, the difficulty of distinguishing between the natives of some of the middle and southern states, and the natives, of Ireland, Germany, and in some instances Scotland. The emigrations from those countries to America were formerly very great. Whole countries have been entirely settled by them, with scarce the intermixture of any other. Their children, hearing nothing but the language of their parents, will as naturally have the Ger-

man, Irish, or Scotch accent, as if they were born in Europe. Instances of this sort must have occurred to any man, the least acquainted with these states. Indeed it is well known, that in some places many native Americans, born of German parents, have been met, who could not speak the English language. If then any of these men, born of German parents, have become seamen, will it not be impossible to distinguish between them and Europeans.

And can there be a more fallacious mode of determining than from the voice or accent. I know of none more so, than that of the countenance; and to neither should an acute or experienced judge ever attend.

I now come to the policy of the measure in the United States. More than any other nation, except Great Britain, ought the privileges of our seamen be vigilantly attended to—they are the instrument of our commerce, and to them their country must look up as the true means of becoming an important naval power—of having the ability to protect and guard their rights, and to insure to its citizens the blessings of peace: they are more exposed to the attacks and insolence of powerful and overbearing nations than any other class of our citizens, and are therefore more entitled to the care and attention of our public guardians. Possessing as the United States do, bulky products, every day increasing, and to export which great quantities of shipping and numbers of seamen are necessary, to what portion of their citizens can they look with more anxiety than to them? Numerous as they may become within these ten years, who knows to what extent the parental and fostering hand of government may increase them within the like succeeding period? But to effect this we must value and cherish them. We must recollect that they are not our men, but citizens—that they do not, the moment they become impressed, by a superior foreign force, lose their rights, or become lost to their country. Can it be supposed, because they are seamen, they have no families, no tender connexions, no comforts to endear their homes to them? Rough and boisterous as is the element they traverse, and laborious as are their lives, among none of our citizens are to be found more true independence and generosity, or more ardent attachment to their country. If then they have those passions, that impatience of insult, that invincible thirst for revenge, which indignities like impressment and tyranny never fail to provoke, are they to be punished for using opportunities to exercise them? Are they to submit to the manacle and the lash, without a murmur, because they fear their country, however possessing the means, may not have the inclination to protect them? If so, adieu to your commerce and your navy!

Your seamen will fly to other governments more sensible of their value, and more disposed to assert and maintain their rights.

I will here take notice of the letter which the judge was said to have received from the secretary of state, mentioning, that "the President advises and requests the delivery of the prisoner," because it has made some noise, and I do not view it in the same light with others; I believe that neither of them meant to influence the opinion of the judge—that they supposed it was a mere matter of course, that there was no doubt as to the identity or country of the prisoner; and they probably never heard of his claim of citizenship: that they were anxious, on the part of this government, faithfully to execute the treaty, and that the letter to the judge had another intent. This I really believe to be the case; but the noise it has made will shew the extreme impropriety of the higher executive officers of our government ever touching in the most distant manner on any subject that may come before the judicial. However innocent the intention, as I think it was in this instance, it is very apt to give rise to unfavourable opinions; and none more dangerous to a community can be entertained, than that of a wish of the executive to influence the judicial. It weakens the confidence of the public in both; and lessens the respect it is their wish to shew them. The present instance will probably operate to advantage; because it is to be supposed, that after this our secretaries will be careful to avoid ever writing to a judge on any subject that may possibly come before him.

In one thing I perfectly agree with Mr Bee, and that is, in his avoiding to question the constitutionality of the treaty, although I think it unconstitutional. On no subject am I more convinced, than that it is an unsafe and dangerous doctrine in a republic, ever to suppose that a judge ought to possess the right of questioning or deciding upon the constitutionality of treaties or laws, or any act of the legislature. It is placing the opinion of an individual, or of two or three, above that of both branches of Congress, a doctrine which is not warranted by the constitution, and will not I hope long have many advocates in this country.

I shall here conclude my remarks on this case. They are made in that spirit of deference and respect, which is intended to avoid giving offence, while it examines with candour the subject under discussion. My earnest wish is to draw the attention of Congress to the amendment of the act, and to prove to them the necessity of providing in future

against the delivery of any fugitives, unless a bill is found against them by a grand jury; to guard them against entering into any articles on this subject in other treaties, unless they assent to it; and particularly to warn them against ever forming any agreements, respecting fugitives from justice, except with nations whose citizens possess the right of trial by jury, and are willing to reciprocate so indispensable a provision.

A SOUTH-CAROLINA PLANTER.

Charleston, Aug. }  
23d, 1799. }



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 LETTER II.

*Having lately stated to the Citizens of the United States, my opinion on the case of JONATHAN ROBBINS, which appeared to me to be of much consequence; I now take the liberty of addressing them on a subject of general concern, on which the rights, the honour, and perhaps the peace of our country may depend.*

FELLOW CITIZENS—

**I**T is unfortunate for the happiness of mankind, that ambition, avarice, or revenge have always governed the councils of the most powerful nations. In the earlier ages, their ignorance and barbarism were some excuse; but it is astonishing that learning and the arts, while they have enlightened and embellished the people who have encouraged them, seem not to have softened the ferocious temper of their governments. The same thirst for dominion and revenge, the same disposition to controul the weaker nations, prevail as formerly. It is almost in vain we seek for a spot in the civilized world, where the hand of power, or the instruments of avarice, will not reach us by their force or influence. The blessings of peace and freedom, if ever they are to be found, can only be uninterruptedly enjoyed by a people remote from the busy and perplexed theatre of Europe, and who either possess sufficient force to protect their maritime rights, or are content to relinquish them during a contest among the greater powers. If they determine upon the first, unless their force is such as to make their junction with either a serious inconvenience to its adversary, they risque the evils and calamities of war: if the latter, the loss to a commercial people is incalculable; every class feels it; the merchant, the planter, and mechanic, are alike affected by its consequences.

I have always considered it among the hardships of mankind, that no nation, however just and impartial in its conduct to others, or disposed strictly to adhere to its duty as a neutral; however innocent in its acts, or useful in its commerce to the belligerent powers, is suffered to escape. From their

recent behaviour it appears as if no desire to exhibit the most marked impartiality, no condescension, no wish to oblige, will save the commerce of this country from their *ravenous grasp*. The conduct of France, in capturing our vessels, no man can palliate; it seems to have originated equally in folly and blindness to their own interests; and all that we can at present hope from their earnest desire to negotiate, is, that having seen their error, they will make ample reparation. But what shall we say of the captures of our vessels lately made by the British cruizers in the Bahama and the West India Islands? It has so astonished me, and appears so contrary, either to the policy or interests of *their* government, that it is with difficulty I can believe they are warranted by its orders. They have become however, so numerous and alarming, and amount to so serious a sum, that they loudly call for the interference of *our* government—first, to remonstrate, calmly to enquire into the reasons, and, still presenting with sincerity the *olive branch*, to ask for redress. I know too well the value of peace to my country, to wish it risked for trifling causes; growing as we are in wealth, in population, and in consequence, its continuance to her citizens is, of all things, the most valuable, except their national honor. This however, must at any rate be preserved. With states as with individuals, to punish the first insult is of infinite importance. Our government, with respect to France, has properly chosen this conduct, and it would be as impolitic as *dishonourable* for her to deviate from it with regard to Great-Britain. Far am I from hoping that we shall be ever driven to the painful necessity. We trust, that a nation which speaks so loudly of her justice, a nation which declares she has entered into the contest with France with no other view, but to secure the order and peace of Europe, only wants to be informed upon the subject that the moment she knows her cruizers have violated the rights of a friendly and unoffending power, she will not only make ample reparation for our losses, but punish the aggression of her officers in an exemplary manner.

Understanding, as she well does, her interest, she must know that the conduct of the American government towards her, has not only been strictly just and impartial, but that they have been charged by other nations with being *too condescending*. At no period, more than the present, must she feel the importance of our commerce. Possessing as we do, articles of the first necessity, and valuable materials for her manufactures, and unbounded in our use of them, where has Great Britain so excellent a customer, or one whose

trade she should more encourage and protect? One from whom so much is to be made and so little apprehended? We have no formidable army or navy to threaten conquests, or invade her maritime rights—we have more territory than we can settle for ages; and our remote situation, the nature of our government, and the temper of our citizens, forbid the idea of our *even wishing* to acquire distant possessions. Throwing therefore justice, and the rights of neutrals out of view, surely, a safe and extensive intercourse with such a people, must be of infinitely more value to Great-Britain than any temporary advantage which may accrue from suffering her cruizers to enrich a few *licentious individuals*; at the expence of our friendship and connection.

However fallacious the idea has hitherto been, I still entertain the hope, that the nations which have injured our commerce, will be convinced that their interest, as well as their honor, require a different behaviour: that much greater and more solid advantages will arise from an open and fair trade, an honorable and just conduct, than the little degrading system of private plunder; that the capture of harmless and unarmed neutrals, and the ruin of innocent and unoffending families, is unworthy the policy of a great nation: that although they may enrich a few individuals, they never increase the public wealth: that the benefits to be derived from them are, in a national point of view, at any rate small; but that when compared with the ingratitude, and too frequently perjury they occasion in unprincipled mariners, the corruption which it is said they sometimes carry upon the bench of justice, and the spirit of licentiousness and robbery they introduce, they are trifling indeed. It is therefore to awaken them to a sense of their true interest, to allay the spirit of retaliation and revenge, which is rapidly growing in every part of the union, and before it is too late, to open the way to such explanations as can alone preserve to both the blessings of peace, that these remarks are submitted with the best and most amicable intentions.

When a nation censures the acts, or complains of the injustice of another, it is proper for their government, or its citizens, to shew, not only that they have been *just and upright themselves*, but that the injuries they have sustained have been produced by unjust and illegal measures on the part of those they complain of, and such as are not warranted by the law of nations, or the treaties existing between them.

The subject, therefore, I intend to discuss in the present number, is the immense amount of American vessels and

property taken by the British cruizers and carried into the Bahama and West-India Islands, and other parts of their dominions, and the reasons given by their judges for their condemnation.

The captures made by the British cruizers, have for a considerable time been extremely ruinous to the American commerce. Their depredations, which they have never ceased, even since the formation of the treaty, have lately become so numerous and important, as to oblige the merchants to look to their own government for redress and protection. Many of them, to my knowlege, are enquiring the best means of applying for this redress, and they will no doubt be heard with the attention due to so important a class of our citizens. The real merchants, the men who trade on their own capitals, and are not the factors or agents of others, are of such consequence to our commerce and revenue, that it is impossible to separate their interests from that of the owners of the soil, or indeed from the government itself: they are so intimately connected, as in a great measure to depend upon each other. The value of our exports depends upon the capitals, and the number of merchants who are to purchase them; the competition they create, and the safety with which our produce can be shipped. A great part of our revenue depends upon the same circumstances: for without safety to the transportation, and proper prices for our exports, our importations must decrease and the revenue be lessened. Hence arises the unavoidable necessity of our government interfering to protect their merchants, whenever they find their property exposed to seizures and condemnations unwarranted by the law of nations. To shew this will be my endeavour. I shall not apply to the passions, but to the judgments of my readers. I have already said it is equally my intention and wish to allay, and not to provoke; to produce redress by amicable negociation, to smoothe the way to that uninterrupted commerce which I well know to be among the greatest blessings either nation can enjoy or secure.

Amidst the variety of captures which have been lately made. the number condemned in the month of August at New-Providence is the most formidable we have seen; it amounts to a sum little short of 300,000 dollars. If any thing like the same number of captures is made in one month, and carried into and condemned in the ports of Jamaica, Antigua, Barbadoes, Martinico, and the other British Islands in the West-Indies, and at Halifax, and they capture and condemn, for the same reasons, all our vessels they

may meet going to any of the ports in Europe of the powers at war with them, the American commerce, and so much of its revenue as is dependent upon it, is in a fair way of annihilation; and no prudent people will censure the interference that is claimed.

Out of the numerous condemnations which have been made by the British court of vice-admiralty, I shall select the following, as they contain their own statements, with the reasons of the judge.

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MACKAY AND NICKS,

VERSUS

*The Polacre Ship Adams and Cargo.*

The Polacre ship Adams was captured on a voyage from New-York to New-Orleans, and was condemned with her cargo as prize to the captors.

It appeared, that the owner, who was on board at the time of capture, was born in Ireland, had removed from thence and settled in the United States of America, in 1792, and had been admitted a citizen in due form of law, in March, 1796.

*Condemnation was urged on three grounds.*

1st. That the claimant was not an American citizen, but a British subject.

2d. That the vessel was an adopted vessel of the enemy.

And lastly, that the property was enemy's, and the claimant only covered it in his name.

The judge, in his decrees confined himself to the consideration of the first point, and declared that the claimant being a natural born subject of his majesty, and not having been admitted a citizen of the United States of America, until March, 1796, could not be considered, with respect to Great Britain, as a citizen of the United States, so as to entitle him to trade with the enemies of the king.

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THE KING,

VERSUS

*The Brigantine Felicity and Cargo.*

The Felicity and cargo were owned by an American citizen and were arrested on a voyage from New-York to Havanna.

A part of the cargo turning out, upon search, to be contraband of war, both vessel and cargo were condemned as lawful prize.

It results from these statements, that a British subject, who since the commencement of the present hostilities, that is February, 1793, has obtained letters of citizenship, or in any manner been admitted a subject or citizen of a neutral power, trades with any of the nations at war with Great Britain, he is liable to have his property engaged in such commerce seized and condemned.

That contraband goods found on board a vessel, make all other articles in the same vessel belonging to the owner liable to confiscation; and that contraband articles, if shipped by the owner of the vessel in which they are found, subject the vessel to condemnation.

In discussing the opinions and pretences upon which the commerce of our country is so much plundered at present, and on which its future safety so essentially depends, I shall first, consider the question “*respecting the right of a citizen to leave his country and change his allegiance, and what is the law of nations on this subject.*” No question is more celebrated in the ancient and modern world than this. Among the ancients, there was no doubt a citizen had a right to leave his country whenever he thought proper.—As Rome, from her power and influence, and her knowledge of public affairs, unquestionably dictated and fixed the general opinion, I shall consider it necessary, with respect to the sentiments of the ancients, to give the usage of the sole mistress of the world as collected from Cicero, the most learned and eloquent of her statesmen. He says, “that by the constitution of the Roman commonwealth, no citizen could be forced *to leave the commonwealth*; or, if he pleaded, *not to leave it*, when he was made member of another he preferred to it. That a little before his remembrance several citizens of Rome men of credit and fortune, voluntarily left that, and settled in other commonwealths—*and the way,*” says he, “*is open from every state to ours, and from ours to every state.*”

This was the opinion of the Roman Republic, and of its luminary, Cicero—than whom the world has not seen a greater man, either as a writer, or an orator.

In examining the leading modern authors on the law of nations, we shall find a general concurrence, at least so far as to establish the opinions necessary to my present purpose.

Grotius, in treating of this subject, says, “Nor are we speaking of going out of one part of the state into another part of the same; but out of the whole state or extent of the sovereign. That we ought not to go out in troops or large companies, is sufficiently evident from the end and

and design of civil society, which could not subsist if such permission was granted; and in things of a moral nature, what is necessary, to obtain the end, has the force of a law; but the case seems quite different when a single person leaves his country, as it is one thing to draw water out of a river, and another thing to divert the course of a part of that river. Tryphonius expressly says, that every man has a right to choose the state of which he has a mind to be a member. And Cicero, in his plea for Balbus, commends that privilege which every one has, of *not staying in any state against his inclination*; and he calls the power of either *keeping or parting with one's right, the foundation of liberty*.

Vattel, in his dissertation on the same subject, allows, that many distinctions are necessary in order to give a solution to the question. "*Whether a man may quit his country, or the society of which he is a member?*" 1st. The children have a natural attachment to the society in which they are born: Being under the necessity of acknowledging the protection it has granted to their fathers, they are obliged to it in a great measure for their birth and education; they ought then to love it, express a just gratitude, and return the benefits they have received. *But every man born free, the son of a citizen arrived at years of discretion, may examine whether it be convenient for him to join in the society for which he was destined by birth.* If he finds that it will be no advantage to remain in it, he is at liberty to leave it, making a return for what it has done in his favor, and preserving, as much as his new engagement will allow him, the sentiments of love and gratitude towards it.

In another place Vattel says, "a citizen may quit the state of which he is a member, *provided* it be not at such a conjuncture when he cannot abandon it without doing it a remarkable prejudice." And in a third, "every man has a right to quit his country, in order to settle in another, when, by that step, he does not expose the welfare of his country."

The result of these opinions is, that among the ancients the right of a citizen to quit his country when he pleased *was unquestioned*. That among the moderns the right is admitted at all times, except at a conjuncture when, "he cannot abandon it without doing it *a remarkable prejudice*;" that is, in time of *extreme danger*, when an enemy has actually invaded the country, or is about immediately to do so.

This is the utmost latitude the meaning of the words; "*without remarkable prejudice*," will admit. It is allowed,

that the citizens who in this situation abandon their country, endeavoring to secure themselves, instead of defending it, manifestly violate the pact of society, and are deserters which a state has a right to punish; but it must be in cases of *extreme necessity and danger*; in no other, by the law of nations, is the restraint admitted.

When a country is engaged, merely in a naval war, or in *distant expeditions*, and no danger threatened at home, her subjects or citizens have then as perfect a right to expatriate themselves as at any other. England has been more than one half of the last hundred years at war, and not above once or twice during that period has she been attacked at home, and that by her own subjects, in attempting to place another monarch on the throne; these insurrections lasted but a short time, and for the remainder of the century the country was in security and tranquillity.

If, therefore, the opinion was to prevail, that, during any war, whether naval or otherwise, or however *distant in its operations*, her subjects could not change their allegiance, notwithstanding their affairs, their necessities, or even *their healths*, might require, being for half a century, imprisoned and deprived of their rights—confined like plants to the spot where they happened accidentally to spring, and compelled to vegetate there at the will of their sovereign.

It is said that the law of England does not permit a subject ever to change his allegiance. There is, I am informed, a similar regulation in Russia. I have proved the law of nations allows it in all cases, except in times of extreme danger and difficulty. It is necessary for every independent people to have laws or regulations of their own, respecting the admission of citizens; in determining upon these, it would be improper for them to be governed by the laws or opinions of particular nations. These vary so much, that it would be impossible to frame any system that would suit the whole. The law of nations being the antient and established usage, and paramount to all local laws, was the safest and most proper criterion. It knows no distinction, and acts upon general principles; it teaches us that all men have a natural right, except in the cases alluded to, to change their residence and leave their country for another; that, as Cicero says, *the way lies open to all, and that the keeping or parting with this right is the foundation of liberty*. It considers it as a cruel and unjustifiable restraint, that men should be so much supposed the property of the sovereign, in whose dominions they happen to be born, as to be obliged either to live there constantly, or if they emigrate, that the



duties or obligations of subjects should still follow them; that although they might live in other countries, it would be under the *degrading disability* of still being considered as subjects of the power they had left, and that they therefore would be incapable of mixing in the councils of the country to which they had removed. *Despising such a state of bondage*, the law of nations gives to every one, as it ought, the right of living where he thinks proper; instead of being fixed to one spot, of becoming, if he pleases, a citizen of the world. Nor is this a new doctrine: it is as old as the Athenian Republic. "I would rather" says *Socrates*, "*be a citizen of the world, than of any particular commonwealth,*" Nay, so fixed was this opinion among the ancients on the right of a citizen to leave his country, that in discussing it, *Demaratus* exclaimed, *he would prefer liberty in banishment, to servitude at home.* The opinions of all the best modern writers are, as I have quoted, that, except in times of extreme danger, a citizen has a right to change his situation and residence, and it is on this opinion that the United States have founded their law. Considering their habits and principles, it was impossible to frame it upon any other. Every American citizen is born free, and glories in it with reason. The first lesson he receives from his father, and the first he transmits to his son, is, that independence is his inheritance; he is proud of being himself, capable of thinking, feeling, and acting for himself; he can have no idea of being confined to one country, or one allegiance, if he thinks proper to change them. In their act, therefore, it was impossible for them to make any distinction or to pay any attention to the local laws of particular states. They have been obliged from circumstances to vary the time necessary to entitle an applicant to citizenship; the residence previously necessary, in the year 1793, was two years; so that all the citizens made in that year, must have been in this country *two years* before. Many of them have been here a much longer time, as it is well known that there are at this moment a great number of the natives of Britain, resident in the United States, who have been so long before 1793, and who still continue subjects of that power. All those who became citizens in 1793 or 1794, must have, from the law admitting them to citizenship, been here so long as to prove at once that they left their country before the war, and in a time of profound peace; and yet by the decree of the judge of New Providence, they are not to be considered as citizens, and are liable, if they attempt to trade under the American flag, to have their property engaged in such com-

merce seized and condemned. I will ask, under what pretence, under what colour of law, or of reason, can these condemnations take place or be justified?

It is universally admitted by all the writers, ancient and modern, that in time of profound peace a man has a right to leave his country, I have shewn, from the residence previously necessary to qualify for citizenship, all those who were admitted in 1793, and 1794, must have left Great-Britain when at peace, and therefore, with respect to those, there can be no doubt, among well informed judges, that the Providence judge has *violated our neutral rights*, and that it is the duty of our government to seek redress. I am not without hopes that the policy of amicably granting it, will be seen and pursued. It might also lead to explanations on the subject in general; for under the law of nations, I hold it to be a clear and undoubted right, the subject, or citizen of every power possesses, to change his residence and allegiance, except when his country is actually invaded by a foreign force, or is in imminent danger of being so, or has a contest amounting to war raging within it; that it is a privilege founded in the law of nations and the reason of things; and that the laws of Great-Britain, Russia, and the other countries which differ, are unnatural infringements of a right their Creator must have intended every human being to possess: that the United States, having acted upon this right, it is their duty to protect the lawful commerce of those they have created citizens; that otherwise *their grant* of citizenship is a *public deception*, ruinous to the interests of those their laws upon this subject have entrapped, and unworthy the justice and honor of the American nation.

I come now secondly to consider the determination given by the judge, respecting the condemnation of all the goods on board any vessel, belonging to the same owner, who may have shipped any contraband goods, even of the smallest value; and that contraband goods, shipped by the owner of the vessel, renders such vessel liable to condemnation.

The property of American citizens depending upon this construction, being to a very great amount, and as it may hereafter materially affect them, I have considered the subject with all the care and attention I could; I have searched into every authority within my reach; and, after the most deliberate and impartial examination, do not hesitate to pronounce it a most unjust and illegal decision—one as unwarranted by the law of nations, as it is by the laws of Eng

land, or the decisions and opinions of their ablest statesmen and judges.

As the question is of infinite importance, I trust my countrymen will not consider me as unreasonably trespassing upon their patience in making the following observations.

It is agreed by all writers, that ships of war, or privateers, are not to attempt *any thing against the law of nations*; —they are not, by assaulting within the port of a friend, to disturb the peace of the place, for it must be inviolably preserved; they are carefully to attend to the leagues of their *allies, neutrals, and friends*, according to their various and several treaties; and therefore, by a marine treaty, between Charles II. and the states of Holland, the commanders of privateers are to give security for their behaviour, exactly in the manner of the treaty of Great Britain with the United States; indeed, it appears to me that the whole of the 19th article of that treaty, is copied nearly verbatim from that of 1674.

By other articles in the said treaty, if torture, cruelty, or any barbarous usage after capture, be done to the persons taken in the prize, the same shall discharge said prize although she was lawful, and the captains shall lose their commissions, and they, and the offenders, be subject to punishment. This agreement between the English and the Dutch ought to be a standard to all nations; and by the treaty of Utrecht, there is an article with France to the same purpose.

Ships carrying powder, shot, guns, swords, and other warlike instruments for sea or land, bound for an enemy from a neuter nation, or state, in amity with both the belligerent powers, shall be taken as prize, provided they are wholly laden with them. Money, provisions, &c. can only be interrupted in time of extreme necessity, when the war is so severe that a prince cannot possibly defend himself, or damage the enemy, *without intercepting such things*; and it is now agreed and settled by numerous treaties, that those things which may be used out of war, or in war, (except ships) shall not be called prohibited nor liable to condemnation; unless carried to places besieged; and it is universally considered as a rule not to be questioned, that goods made use of for pleasure and luxury only, are free in neutral ships. But the part of the law of nations established on this subject, which claims peculiarly the attention of every American citizen, is, “that in case part of the lading of a ship is prohibited or contraband, and the other

part merely for pleasure, the goods prohibited only, shall be judged prize, and the ship and the remainder of the cargo be discharged, which may proceed in the voyage on delivering up the other goods, without being even brought into port. But if a ship be *wholly laden* with contraband goods, then, and only then, both the ship and the goods may be made prize."

These are the settled and established rules which govern all well-informed and impartial tribunals, in deciding upon prizes; and I shall examine how far they are consistent with the treaty made by Great-Britain with the United States, and whether that treaty has not, with respect to contraband, expressly stipulated that a conduct shall be observed by the British tribunals exactly the reverse of the decrees of the Nassau judge."

The 17th article stipulates, that if any vessels are detained on suspicion of having enemy's property, or contraband goods on board, they shall be carried to the nearest port; and that which belongs to an enemy shall be made prize of only, and the vessel shall be immediately at liberty to proceed with the remainder. The 18th article declares what shall be contraband, adding to the usual list, timber for ship building, tar, copper in sheet, sails, hemp, and cordage, and generally whatever may serve for equipping vessels, except unwrought iron, and fir planks. The same article expressly declares, that whenever provisions, or other articles, not generally contraband, may by the existing law of nations be considered so and be seized, the same shall not be confiscated, but the owners shall be speedily and completely indemnified, and the captors, or, in their default, the government under whose authority they act shall make full compensation, adding a reasonable mercantile profit, and freight and demurrage, incident to such detention.

Although I have ever disapproved of these articles in the British treaty, and clearly foresaw the evils which have arisen from our giving a colour to the British cruisers to take and detain our vessels on any pretence, the extending the list of articles declared contraband of war, and yielding to their seizing our provision ships; yet, upon comparing these regulations with the decrees and condemnations of the Judge at Nassau, we are astonished beyond expression, that so open a violation of justice, of the laws of nations, and of existing treaties, should be attempted by any judge acting under the authority of a nation which boasts so much of the purity and impartiality of her tribunals.

No one can now for a moment doubt, that not only by the laws of nations, the laws and adjudications of England and her courts, but by the express provisions of their treaty with the United States, the British cruisers are bound not to touch any part of an American cargo, except such as is enemy's property, or undoubtedly contraband according to the laws of nations: that it is stipulated in the most positive manner, in the case of provisions and articles not generally contraband, but which may by the existing law of nations be considered so, and be for that reason carried into port, that they shall not be confiscated or condemned; but that the owners thereof shall be completely indemnified, and with a reasonable mercantile profit. The judge therefore at Nassau, or any English judge, was bound by the most powerful reasons to respect all American property, except ammunition or implements of war. The treaty expressly forbids their condemning any other part of it; and it was his duty in all the cases mentioned, only to have confiscated the military stores, or what was clearly proved to be enemy's property. As a judge, instead of tarnishing, he should have considered himself the guardian of the public honor of his government, the preserver of her treaties, and the protector of those rights she had solemnly promised to maintain inviolate towards a neutral and friendly power.

I had proceeded thus far in the present number, when I received information that the spoliations upon our trade, and the number of the vessels carried into Kingston in Jamaica, exceeded those carried into New-Providence; and that the list expected from Martinico, Mountserrat, St. Kitt's, and Tortola, were comparatively large. In this distressing dilemma, it becomes every friend to his country to unite in endeavoring to obtain the fullest information. The merchants, who must be the most interested, are earnestly called upon, and requested to furnish particular and authentic documents of their respective losses; it would perhaps be best to send duplicates, transmitting one copy to the secretary of state's office, and the other to one of their representatives in congress. This should be done throughout *all the ports of the United States*. No time is to be lost; the meeting of Congress approaches, and they should have the fullest information. The merchants should recollect, that the reasons given by the judge, and which we are to presume are the reasons which govern all the British courts of admiralty in the West-Indies, go almost to the annihilation of our commerce, particularly in the West-Indies. That which respects British subjects made citizens since February,

1793, is highly important ; but the doctrine respecting contraband, is absolutely the most ruinous and illegal that they could have devised.

We know that the list of contraband articles, as established by the law of nations, is frequently altered by agreement between different powers. I have examined a variety of treaties in which these articles have been altered, some treaties lessening and others encreasing them. The treaty between Great Britain and the United States, enlarges them very much ; there is scarcely one between commercial nations in which it is not an important article. To know therefore exactly the state of contraband articles, as they stand between different countries, requires researches and examinations to which none but men in the habits of public business are much accustomed. It is not to be expected that every merchant, or supercargo, or master of a vessel, is a man of letters ; that he is to be acquainted with the law of nations, or to understand in what particular situation parts of their cargoes may become contraband. Nine tenths of the articles shipped by a merchant may be proper, and the remainder may through ignorance be contraband ; nay, a single article may have inadvertently been shipped ; and for this trifling mistake, is he to forfeit perhaps his all ? Can this be just, or is it consonant to those principles on which the laws that govern states in their intercourse with each other, are founded ? The cases which sometimes occur on the subject of what is, or what is not, under existing circumstances, contraband, require the nicest distinctions ; the most able and experienced judges have often differed upon them : how much more reasonable then *is that law*, which does not expect from every one concerned in trade an accurate knowledge upon the subject, and only forfeits the article that is contraband ? I will still indulge the hope that upon a serious and attentive consideration of the subject, Great-Britain will find it her true policy to remove and correct the injuries which determinations like these produce. It must always be her interest to protect the just rights of commerce, to support those principles which promote the labors of mankind, since she herself, like the United States, can only be great from the virtuous industry of her inhabitants.

The project of having alone the empire of the sea, and not only monopolizing, but treating all kinds of commerce as she pleases, is not less chimerical, or less destructive than that of universal dominion on the continent. It is to be wished, for the happiness of mankind, the English were

convinced of this truth, before they learn it by their own experience. France has already repeated many times, that it was necessary to establish a balance of power at sea, and has yet persuaded nobody because they supposed she wished to be the ruling power, and, by lessening the force of the English, more surely to give laws to the continent: but if England continues to abuse its strength and exercise a tyranny on commerce, all the other states, that have ships and seamen, will be compelled to unite against her and assert their rights.

The United States are probably soon to take a new station. They are about to enter upon a negociation with France; and the present uncertain state of their commerce with Great Britain, the difficulties which have arisen respecting the immense claims, amounting to millions, made by British subjects under Mr. Jay's treaty, and the secession of the American commissioners, must open a negociation with that power; one in which every interfering claim, whether of commerce or otherwise, can be amicably adjusted. Thus will all the important relations which this country has with the two most powerful maritime states, and those with whom she has the greatest intercourse, be again submitted to negociation. It will be opened, too, at a time when, being more experienced, and better understanding her true interests, she will probably have it in her power to form treaties upon principles which may remove the objections to the present, and possibly reconcile and conciliate all parties.

That all these difficulties may thus end in producing the blessings of a free commerce, and domestic harmony, must be the wish of every friend to his country.

I will here conclude, with indulging the hope, that those who may direct our affairs, or represent our citizens in the councils of the union, will upon every occasion suffer themselves to be alone governed by the principles of impartial justice to all nations, by an upright and steady attention to the true interests of their own country—that they will encounter no improper partialities for some nations, and dislike to others; that they will by no means permit their public opinions to be influenced by the hope or expectation of what might happen in Europe; that of all things the most changeable and uncertain; that so much depends upon success, or misfortune in war, nay, frequently upon the event of a single battle, upon the ability and fidelity of a general, the zeal of his troops, or the enthusiasm of a

people, that it was almost impossible in one year to say what may be the state of things the next.

The termination of the war is no doubt of the highest importance to the civilized world ; it is difficult to say how or when it will end. At present it is our duty to guard our rights, and be just and impartial in our public conduct. The event we must leave to him, in whose hands is the fate of nations, and under whose protection we have hitherto been a free and fortunate people.

A SOUTH-CAROLINA PLANTER.

Charleston, Oct. }  
3. 1799. }



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 LETTER III.

*My last addresses to "The Citizens of the United States," were on the subjects of the case of Jonathan Robbins, and the captures of our vessels by the British Cruizers. The following is on the Mutual Claims of the two nations, the secession of their commissioners, and the eventful state to which things are reduced: a subject which will no doubt claim the serious attention of every friend to the rights and peace of his country.*

FELLOW CITIZENS.—

WHEN a difference respecting the construction of treaties is about to take place, between nations long in the habits of intimacy, and an important commerce with each other, it is of infinite consequence to a government, or its citizens, to be able to shew that they *are not in the wrong*: that the construction they insist upon is a proper one, and that they are governed, not only by the principles of the most exact justice, but also of the most honourable and liberal policy: that disdaining to be bound by narrow and rigid limits, they are willing to give to the instrument every latitude its intention will justify. But that the points contended by their opponents, being neither within its letter or meaning, they are obliged to resist them for reasons which, with deference and respect, they submit to their countrymen, and to an enlightened and impartial world.

It will be always painful for a people so unambitious and so little disposed to controversy as the United States, to contend with any nation upon points on which they could with truth be charged with the smallest departure from the most exact and honourable justice; or with not complying with stipulations solemnly entered into and ratified by their government.

The relative situation of Great-Britain and the United States is such, as to make this difference peculiarly disagreeable: they are so connected by commerce, and their trade

is so reciprocally beneficial; that except the preservation of their national honor, I know no object that is to be put in competition with it. There are few countries whose situations enable them mutually to extend and receive so many advantages, and certainly few who ought to have less apprehensions of danger from each other. The benefits to be derived to each from peace and an undisturbed commerce, are incalculable. To blessings like these, all subordinate considerations should yield. Separated as they are by an ocean of great extent, and differing in climate and situation, where I will ask again, has Great-Britain so excellent a customer? They, a great manufacturing people, we, a nation of planters, sending them our valuable materials and productions, and taking from them in return their manufactures and superfluities. Her minister has often boasted, that in losing America they lost nothing but territory: that our trade with Great Britain was greater than ever: and a late writer confesses that in purchasing six millions annually of her manufactures, we were the best foreign customers the English had. How important an object then is it to them to secure so great and so growing a purchaser? one not much inferior to them at present in population, and whose unparalleled increase will make them every day a better?

While possessed of so much more territory than we can people, it must for many years be the interest of the United States to be a land of husbandmen: they can purchase cheaper than they can manufacture, and the rapid extension of their agriculture will prove the most solid means of promoting the strength and riches, and protecting the morals of their citizens.

On every ground of policy as well as humanity, in which the situation of the two countries can be viewed, it is so much their interest to be in peace with each other, that it becomes all their true friends to interpose their best services, and by moderation and conciliatory measures prevent the most dreadful calamity that can happen to either.

I well know I have been frequently accused of improper partiality to one nation, and undeserved enmity to another. Convinced of the purity of my motives, and that the opinions and measures I have advocated, were founded in a wish to promote the real interests of our country, I have long been accustomed to despise both public and private calumny. Believing truth and reason to be on my side, I have always used them as my shield against the

shafts of error and deception. Well knowing the consequences of war, I have exerted myself as much as my feeble influence would permit, to assist in averting its evils from our citizens, and in doing so have differed from many whose sentiments I shall respect. Consistent as I trust my public opinions have always been, I shall upon the present occasion use the same unwearied diligence to arrest the hand of violence, and prove to both people the error of that opinion which could prefer hostility to peace, or force to temperate discussion.

It is the character of monarchies to delight in war: the pride of conquest and desire to rule invariably govern their councils. To love peace and cherish all its milder arts, should be the true policy of every wise republic: for none but the most important reasons ought they to fly to arms. It is only in the last resort it ever should be thought of. When moderation and discussion have been exhausted, and every honorable means to prevent a difference have failed; when points unfounded in justice and ruinous in the extreme have been urged, and nothing short of an unconditional compliance will be accepted: then, but not until then, can a republic be justified in committing their interests to the uncertain events of war: *then*, and probably not before, will all their citizens be convinced of the moderation and equity of their government, and be ready to support and defend its rights.

These reflections have been occasioned by the awful and alarming state to which things are reduced between Great Britain and the United States. Finding that our citizens seem not to be apprised of their situation, and anxious that they should be prepared for an event, which in my judgment nothing but the utmost prudence and forbearance on both sides will prevent; I consider it as my duty to inform them, that in drawing for the fifth commissioner under the 6th article of the treaty with Great-Britain, the British commissioners have been successful: that in consequence of obtaining this decided majority at the board, such principles have been established by them as have opened a door to claims amounting to many millions—claims so great indeed, and the principles so ruinous to the interests of the United States, and so clearly not within the meaning of the treaty, that the American commissioners have *seceded* from the board. It is mentioned in the papers, that one of the British commissioners has returned to England; and it is said with great appearance of truth, that the commissioners in London under

the 7th article for deciding upon the cases of the vessels captured by the British cruifers, in 1793 and 1794, have also feceded;\* if they have not already, as foon as they hear of the feceffion of the American commissioners in Philadelphia, there is no doubt they will retire as a matter of courfe. The increafe of the captures of our vessels by their cruifers, I ftated in my laft addrefs to you; and our fubfequent accounts do not warrant a belief that they will be leffened. Thus are things returned to the fituation in which they were in the fpring of 1794, when the then Prefident (General Washington) fent Mr. Jay as envoy extraordinary to London to adjust them; at leaft fo far as refpects British claims for debts, claims for captures of American vessels, and *the violated honor of our government*.

It is true the British government are fince in poffeffion of a treaty, under which they have attempted to fupport thefe claims, but as they are ruinous and totally inadmittible on our part, the exiftence of the treaty only contributes to increafe the delicacy and difficulty of our fituation, and to make the adjustment of differences lefs eafy.

In order to give a correct view of this fubject, it will be neceffary to ftate the 6th article of the treaty, which is in thefe words:

“ Art. VI. Whereas it is alledged by divers British merchants and others his majesty’s fubjects, that debts to a confiderable amount, which were *bona fide* contracted before the peace, ftill remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments fince the peace, not only the full recovery of the faid debts has been delayed, but alfo the value and fecurity thereof have been in feveral instances impaired and leffened, fo that by the ordinary courfe of judicial proceedings, the British creditors cannot now obtain, and aétually have and receive full and adequate compenfation for the loffes and damages which they have thereby fuftained: it is agreed, that in all fuch cafes where full compenfation for fuch loffes and damages cannot, for whatever reason be aétually obtained, had and received by the faid creditors in the ordinary courfe of juftice, the United States will make full and complete compenfation for the fame to the faid creditors: but it is diftinctly underftood, that this provision is to extend to fuch loffes only as have

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\* See the *President’s Speech*, opening of firft feffion of fixth Congress, 1799.

been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors, or other cause as would equally have operated to produce such loss, if the said impediments had not existed, nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

“For the purpose of ascertaining the amount of any such losses and damages, five commissioners shall be appointed, and authorized to meet, and act in the manner following, viz. Two of them shall be appointed by his majesty, two of them by the President of the United States by and with the advice and consent of the Senate thereof, and the fifth by the unanimous voice of the other four; and if they should not agree in such choice, then the commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the four original commissioners. When the five commissioners thus appointed shall first meet, they shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other; which oath or affirmation being so taken and duly attested, shall be entered on the records of their proceedings, viz.—I *A. B.* one of the commissioners appointed in pursuance of the 6th article of the treaty of amity, commerce, and navigation between his Britannic majesty and the United States of America, do solemnly swear or affirm, that I will diligently, impartially, and carefully examine, and to the best of my judgment, according to justice and equity, decide all such complaints as under the said article shall be preferred to the said commissioners; and that I will forbear to act as a commissioner in any case in which I may be personally interested.

“Three of the said commissioners shall constitute a board, and shall have power to do any act appertaining to the said commission, provided that one of the commissioners named on each side, and the fifth commissioner shall be present, and all decisions shall be made by the majority of the voices of the commissioners then present; eighteen months from the day on which the said commissioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless authorized in any particular cases in which it shall appear to them to be reasonable and just, to extend the said term of eighteen months, for any term not exceeding six months, after the expiration thereof. The said commissioners shall

first meet at Philadelphia, but they shall have power to adjourn from place to place as they shall see cause.

“ The said commissioners in examining the complaints and applications so preferred to them, are empowered and required in pursuance of the true intent and meaning of this article, to take into their consideration all claims, whether of principal or interest or balances of principal and interest, and determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof and as equity and justice shall appear to them to require. And the said commissioners shall have power to examine all such persons as shall come before them, on oath or affirmation touching the premises; and also to receive in evidence according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies or extracts thereof; every such deposition, book, or paper, or copy, or extract being duly authenticated, either according to the legal forms now respectively existing in the two countries, or in such other manner as the said commissioners shall see cause to require or allow.

“ The award of the said commissioners or any three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant: and the United States undertake to cause the sum so awarded to be paid in specie to such creditor or claimant without deduction; and at the same time or times, and at such place or places as shall be awarded by the said commissioners; and on conditions of such releases or assignment to be given by creditor or claimant, as by the said commissioners may be directed: provided always, that no such payment shall be fixed by the said commissioners to take place sooner than twelve months from the day of the exchange of the ratifications of this treaty.”

From an attentive examination of this article, it will be found that none but *British merchants* and other subjects of his Britannic majesty, are entitled to recover under it: that they must prove their losses have been sustained by lawful impediments arising from the public authority of the government: that they have not arisen from the insolvency of the debtor; not occasioned by these impediments, but owing to causes unconnected with them; that they have used *due diligence* to recover these debts; and that no wilful negligence, omission, or delay could be imputable to them in their attempts to *sue* and recover in the courts of the several states. These must appear to every unprejudiced examiner to be the duties

established by the treaty as necessary to entitle the claimant to recover. Indeed it seems not only to confine the description of claimants to debtors, but to render it absolutely incumbent on them first to have brought suit, and legally proved that the parties or their representatives, who were their debtors, were insolvent, or that their property was removed or not to be discovered, or made liable. This is so clear an explanation of the article, that I was astonished to find in the case of *the Right Reverend Charles Inglis*, bishop of Nova Scotia, and who was formerly a clergyman of New-York, and whose estate was confiscated there, the three British commissioners, *Mr. Macdonald*, *Mr. Rich*, and *Mr. Guillemard*, had by force of their majority attempted to establish *in substance* the following decision. That the date of the treaty *was the point of departure*\*; and it should depend upon the board, under the circumstances of every case that may come before them, to agree or not as they should think proper to admit the claim of a British subject who had been banished and his estate confiscated, although he had not sued his debtor in the courts of the state where he was resident, and although it was presumed, and indeed alledged the debtor was insolvent: in short, that the board would always leave themselves at liberty to judge of the circumstances under which claims like this might be sustained, and how far it was or was not incumbent on a claimant to have previously ascertained in a legal manner the insolvency of his debtor. And in the case of *Cunningham and company*, they expressly declare, that the board would in all cases in which they thought proper, exercise the right of granting to claimants *full compensation* from the United States for all *the interest during the war*, which had been denied to them by the American judicials; and they termed this *denial of interest during the war by our judicials*; that "lawful impediment" which brought the claim within the letter of the treaty.

Had the board continued to sit or to decide upon claims under the latitude and extent of the principles above stated, the three British commissioners, being upon all occasions a decided majority, would have loaded the treasury of the United States to an amount *in millions*, that our citizens can

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\* *Vattel*, lib. 4. sec; and *Wolf* sec. 1229; both contend that a treaty only binds subjects or citizens of a country from its publication.

at present have no idea of. It is for this reason our commissioners, Mr. Fitzsimons and Mr. Sitgreaves have seceded; and I am only astonished that Lord Grenville and Mr. Jay, who formed the treaty, or that either the British or American government could have expected from such an article any thing but disagreement and secession: but that instead of healing, it would widen the breach, and open such a door to fraud, imposition and perjury, as had not yet been witnessed among us. How was it possible for men the least acquainted with the feelings and partialities of the human mind, to suppose that British and American commissioners could meet to arbitrate upon claims springing from our revolution, but with the most discordant opinions? Could the consequences of exile, confiscation, or suspension of the rights of British subjects, which the pressing situation of affairs frequently rendered inevitable, be viewed by them with the same eyes? Or ought it not to be expected as has proved to be the case, that they would carry into their arbitrations all those passions and prejudices which have so invariably actuated the subjects and citizens of the two powers, whenever those points have come into controversy? In constructing this article, the negociators seem to have been less guarded and explicit, than they should have been on questions of such great consequence, and in which such differences in opinion were to be expected.

It is from this consideration I hope the forbearance and conciliatory temper of both governments will derive the experience that is now found to have been necessary to the amicable adjustment of our mutual claims. They will hereafter be convinced, that the nature and limits (as to date) of the claims, with one particular description of the creditors who are to be entitled as it respects the British debts, and the nature of the claims and proof as it respects the American demands for spoliations, *must be exactly defined and settled*, by negociators, possessing liberal and well-informed minds—by men incapable of being prejudiced by past transactions, or the former situation of the two countries, and who will take an enlarged view of the subject as it ought *now* to be considered. To ministers like these, the adjustment will not be difficult. To the *British negociator* particularly it will at once appear, that it can never be the interest of his government to risque the loss of their best customer and endanger the peace of his country for claims *like these*:—that the acquisition of the object sought is not worth the hazard or expence of attempting it: that most



of the claims which were presented were either unjust or fraudulent, or would not have been thought of had not the last treaty with Mr. Jay unexpectedly given rise to them: that the denial of most of them, or the renewing any right to claim, except in very particular and clear cases of real British creditors, to be distinctly specified, would create little or no disappointment, and effectually shut the door to innumerable frauds: that while, as I have just observed, the subject was really in a national point of view of little consequence to Britain, it was of the utmost importance to the United States; and would involve, if the resolution intended by the British commissioners were to operate, the increase of a debt little short of one half of the amount of their *original* one: that the taxes to defray it would fall entirely on *the landed* interest, and amount to a sum extremely inconvenient to our citizens: that the evil would not stop here; but that with the increase of taxes, every article and necessary of life would rise;\* and thus a lasting, and indeed a growing misfortune to our country be fixed upon it, perhaps for ages.

In the extensive and enlightened view such negociators would take of it, they certainly would differ from the British commissioners, and determine in all cases where the insolvency of the debtors was insisted upon, that such insol-

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\* To shew the evils produced by the increase of taxes, as operating upon every class in the community, the following are the remarks of a late English writer on that subject, as it respects Great-Britain;

He says, "The evils already produced by the taxes to pay the interest of the funds, are likely to prove fatal to our national prosperity, by the enormous advance they have occasioned in every article of expenditure. This advance will appear by the following table of prices in the years 1732 and 1780, taken from the most authentic accounts.

Prices in	1732	1780	1798
Beef, Mutton, and Veal. }	1 $\frac{3}{4}$ d.	3 $\frac{1}{2}$ d.	6d. to 8d.
Butter,	3d.	7d. to 8d.	1s. to 1s. 3d.
Straw per load,	9s.	20s.	30s.
Hay per ton,	21s.	45s.	62s.
Pt. Wine in 1754.	24l.	50l.	70l.
Raw sugar,		5d. to 6d.	9d. to 1s.

vency of the debtors was insisted upon, that such insolvency should have been legally and previously proved in the courts of the state where the debtor was resident, or those of the United States since their establishment, and where it was practicable: that where this was not done, it was to be presumed the reason for not doing it was, that the creditors knew they were either already paid, or that although the charges were made against persons known to be solvent, they were so improper as not to be capable of support: that trusting to the partialities and prejudices of a board consisting of a majority of British commissioners, they flattered themselves they would be more likely to succeed than before a court of justice.

I do not mention this to question the proper decisions of the British commissioners, because we are to hope they would have rejected them; but from the list of claims that have been already published, there is no doubt that thousands of them have been exhibited, which are neither founded in truth nor justice; that thousands have been transferred from the original holders, who were American citizens, to British subjects, to entitle them to claim before the board. Besides, where can any demands or claims be so fairly or thoroughly investigated, as in courts on the spot, or in the states where the debts have accrued? From the appointments by the United States of agents in the different states, it is to be presumed the board are always to sit at the seat of government; therefore unless these claims are first legally examined by some court where the proofs can be questioned and the witnesses cross examined, how is it possible the United States can have complete justice done them? The agents of the United States are, I have no doubt, very able and diligent, but any examination by *an individual*, must be extremely unequal to that cross examination and rigid and solemn enquiry which can alone take place in the presence of a court, where every eye is upon the witness and every ear open to his testimony.

It has been urged, that most of the debtors being under banishment and confiscation, they had not the means of suing: that the courts were shut against them; and that it would be hard the personal incapacity to sue and recover in our courts under the 4th article of the treaty of peace, arising from the acts of attainder and confiscation, should now be urged as negligence on their part, and prevent them from recovering before the board.

It is fortunate for the United States, that this charge is easily removed by a reference to the proceedings of the seve-

ral states, and to the judicial of the United States. Although no one can doubt, that under the law of nations *enemies' debts can be confiscated*;\* yet from principles of generosity, and not to injure, as might be the case in many instances, innocent men, whose opinions were favourable to our revolution, most of the states forbore during the war to confiscate British debts. In North-Carolina and New-York only, that I recollect, were they confiscated. In Virginia they were sequestered—and if I am not mistaken, in the other states they were untouched. This is the statement made by Ellsworth, Chief Justice, in the case of *Hamilton vs. Eaton*, and I believe it to be correct. Hence it appears that in very nearly all the states, British creditors or their agents were capable of suing whenever they thought proper, and that their not doing so is imputable to them as negligence. Whether they have been banished or otherwise, the fourth article of the treaty removed every lawful impediment and authorised them to sue. The treaty was the supreme law of the land, and every state judge was bound to consider it as such, and as authorising “*creditors on either side,*” to sue and recover in the courts. Can any instance be produced where application has been made by a British creditor, to the judicial of a state, and in which he has been refused? If not, we are to presume the fact to be as has been stated, that the courts were always open to them: that British creditors under the treaty had a right to sue at all times, and if they had properly contended the point to have sustained and carried through every legal and well founded claim. If they did not, and have suffered from their commission, it would be unjust to expect the United States will indemnify them for their neglect.

To remove however all doubt on the impropriety of the British commissioners' resolutions in this case, and to shew, that since the organization of the federal judiciary in 1789, the courts of the United States have been constantly open to every claim under the treaty. I take the liberty of referring my readers to the important case of *Warre*, administrator of *Jones*, plaintiff in error, against *Hylton* and others, *3d Dallas' Reports*, 199, adjudged in the supreme court of the United States, in February 1796, on a writ of error from the circuit court of the district of Virginia, after solemn arguments and great consideration, by the opinions of four judges, a-

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\* See *Bynkershoek, Quest. Jur. Pub. l. 1. c. 7.*

against the opinion of judge Iredell, who decided the cause in the circuit court. The judges delivered their opinions at great length, and this authority on perusal will be found full and conclusive on all the points drawn into controversy on this claim. I lament it is not within the compass of this publication to insert them; but as *the reports* are easily to be had, there will be less occasion for it.

Upon the whole of the claim of Bishop Inglis, it will be found these were the facts that were produced to the board:—That the claimant possessed the evidence of his debts; his debtors are still solvent; the debts were secured by a lien on lands of adequate value; the constitution of the United States has repealed all laws repugnant to the treaty which interposed between the creditor and his remedy; the state of New-York has adopted the constitution—the federal courts have cognizance of the demand: justice is administered in these courts with impartiality and effect, and the claimant can obtain in them a complete and adequate remedy according to the full extent of his right; he has neglected to seek his remedy from his debtors in the ordinary course of judicial proceedings, and is on every account precluded from demanding it of the United States. The American commissioners were therefore right to prevent by their *secession* the adoption of so dangerous a resolution—one neither within the letter or meaning of the treaty, and which would have opened a door for claims on the treasury, the amount or extent of which cannot at present be calculated.

I come next to the resolution proposed by the British commissioners on the subject of *interest during the war*. In the case of Cunningham and Co. the British commissioners moved a long and *general resolution* ending in this manner:—That no sufficient cause had been shewn why, in awarding full and adequate compensation for such debts as had been proved, the United States should not *be liable for all such interest during the war*, as should be awarded according to the nature and import, express or implied, of the several contracts on which the claim is founded.

The extent and consequence of so general a resolution, and the very large sum it would load the treasury of the United States with the payment of, will be considered as sufficient reasons for giving this subject the examination its importance requires.

To those who are acquainted with it, and have had access to the letters and journals of our ministers during the negotiation for peace, it is well known this subject occasioned

considerable difficulties: that our ministers expressly under their hands in forming the definitive treaty, acquainted the British plenipotentiary, that the *omission of interest* in the 4th article was intended. Congress declares the same thing, and their declaration was communicated to Mr. Hartley. No idea was entertained that the article was meant to intend any thing more than that the *principle of the debt should be recoverable*, and that the question of interest should be reserved for the determination of *a jury*, on the particular circumstances of each case in which it may be claimed.

This is the state in which things stand at present with respect to claims against individuals. Numerous trials have taken place on the subject, and I believe in all the states, but I speak with certainty of this state, interest has been uniformly denied, as being unjust and improper; nay, so uniform and numerous have been the decisions denying it, that I am informed some of the federal judges who had doubts in their own minds on the question, have nevertheless directed the juries to strike out the interest during the war. The reason they gave was an unanswerable one: that at this day to authorise a contrary decision, would be to introduce such an irregularity of proceedings in our judicial, as would hereafter destroy the confidence of our citizens in their decisions:—that each succeeding court might vary the opinions which were supposed to have been so often established as law:—that it would be impossible to go back to, or unravel or expose again to legal investigation, all the settlements which have amicably taken place in consequence of former decisions: that it would be the most flagrant injustice, after having in this state particularly, in every case that had been tried, exonerated the debtor from interest, in one or two, or in the very few that may still remain for decision, to charge them with the payment of it: that therefore it has been the uniform practice, and of course will continue so in all trials on questions of interest during the war, for the juries to strike it out from the commencement of hostilities to the establishment of peace. It will be my endeavor to shew, in a summary manner, that this denial of interest is founded on the strictest justice; regretting, as I have just done upon another occasion, that I cannot from the nature of publications of this kind, go as fully into it as the subject would allow.

The decisions in England, from which country we have in a great measure borrowed our jurisprudence, have established that no interest shall be allowed on arrears of rents,

profits or annuities; on *book debts, open accounts, or simple contracts*; for goods sold and delivered, or monies advanced without a note, on inland bills of exchange without protest, and on bonds after twenty years where no payment or legal demand can be proved within that period. There are many other demands which according to the laws of England, carry no interest; but those abovementioned, particularly for book debts, open accounts or simple contracts, or goods sold and delivered, are sufficient to prove, that even according to the laws of England, a great proportion of the demands before the board ought not, according to impartial justice, to be allowed interest during the war, and compensation from the United States.

The reasons which have been generally urged against the claim of interest during the war, are the rules of construction established by the law of nations for the interpretation of obscure and ambiguous facts:

The meaning of the word debts in the 4th article of the treaty of peace, as not comprehending interest, because interest is recoverable at law in the technical form of damages for the detention of the debt, "being what is given more than the principal, that the creditor may not be a loser."

The inference to be drawn from the demand of a deduction of interest during the war, which had been made on the part of the United States in the course of the negotiation, previous to the formation of the treaty, and from a conversation subsequent to it, to wit, in the year 1786, between the British secretary of state for foreign affairs and the American minister at London, in which the latter suggested "the policy of giving up the interest during the war, and agreeing to a plan of payment by instalments;" and the former, "after some slight expressions concerning the interest, wished that the courts were open for recovering the principal," and observed "that the interest might be left for an after consideration."

The nature and causes of the war, in the course of which "the products of the land were indispensably necessary for defence against that which on the side of the Americans was a war for life, liberty, and property; a war attended with such circumstances of desolation, as that after the application of what was thus necessary for defence, there was nothing left to an individual for paying interest on his debt:"

The interdiction of commerce to the United States by acts of the British Parliament, and the stoppage of access

between the American debtors and British creditors, by which the detention of the debt during the war was unavoidable:

The departure of creditors and their factors from the state, with their books and papers, so that nobody remained to receive payment of the debt:

The striking analogy between the present case and that quoted from Viner's abridgment, in which it is stated "that where by a general and national calamity nothing is made out of lands which are assigned for the payment of interest, it ought not to run during the time of such calamity:"

The equity, as between debtor and creditor, of denying interest during the war, whereby the creditor and debtor will be put upon a more equal footing, and a loss will not be incurred by a debtor for the sake of a gain to the creditor:

This evidence of such equity, arising from the uniform practices of the courts and juries of the United States, which I have already alluded to, and who in all cases disallowed interest during the war—at least in all in this state, and in such of the rest as have come to my knowledge:

In order to explain the reasons which I suppose have influenced these decisions, in addition to those already mentioned, it will be necessary to view the situation of the debts due to the British merchants previously to the war, and also that of their debtors at the commencement, during the war, and at its conclusion. I do this to enable me to make some comparison between the British merchants and others trading to or having debts due them in America, and their debtors, American citizens; to shew that although Great Britain was unsuccessful, and the United States triumphant how preferable the situation of a British creditor was at the conclusion of the war, to the American merchant or creditor: that although his country was successful, the fortune of the latter was destroyed, while the rights of the former remained unimpaired: that this unparalleled public honor of the American nation, in preserving the rights not only of foreigners and aliens, but of enemies, while it sacrificed those of its own citizens by tender laws and profuse emissions of depreciated paper; this nice and scrupulous attention of her government, instead of exciting the admiration of the British cabinet, as it has done of the rest of the world, seems only to give rise to new demands and to decisions unwarranted even by their own courts.

The British commissioners must surely have been acquainted with the manner in which our citizens became indebted

to their merchants before the war; being subjects of the same power, and their trade confined to the British dominions and merchants, there was an assurance and a confidence established between them which can only exist in similar situations and among subjects of the same government. From this arose the extensive credits and claims of the British merchants—claims so large, that at the time our exportations were limited it was impossible for the American merchants to remit their creditors the sums they owed. In this situation the war found them. The events during that period in which they were not only exposed in common with others to the loss of their negroes, and deprived of deriving any income from their lands, but the unparalleled destruction of that part of their fortunes which consisted of securities for money, by the operation of severe and unequal tender laws, are too well known to require my illustrating them.

Let us here for a moment pause, and compare the situation of the British creditor with that of the American merchant or creditor at the end of the war, and see how far in the eye of reason or of justice, I was going to say in that of decency, he has a right to complain; or how far he had a right to expect, that while our merchants and monied men lost by the war both principal and interest, he was not only to be secured in his principal, but completely indemnified by compensation in interest for even being kept out of it during the war—a detention which, as has been proved, was owing to their own government and merchants—the first by driving us into the war and destroying all intercourse, and the latter by removing themselves and their papers out of the reach of their debtors.

Where, may be asked, could we have found an American merchant or monied man, who would not at the peace have joyfully accepted the proposal of losing all interest during the war, and being placed in point of principal in the situation he was at its commencement? Look into the melancholy list of decayed families in every state; at the thousands of your own citizens who have been ruined by your tender laws and depreciated paper, and who have not received or ever will receive any satisfaction, except that of reflecting that it was done to save their country; and tell me whether you could view with serenity your public treasure drained, and your citizens, taxed as they are already, still farther harrassed to pay a demand so unexpected and unjust as this is.



The equity of the English decisions has established the principle, that even in the case of lands assigned for the payment of interest, if by the interference of a national calamity nothing can be made out of them, there interest shall not be chargeable. If therefore, by their own decisions in the case of lands, a solid immoveable property, on which, although the improvements may be destroyed, the land itself must remain, this equitable decision has taken place; if this is universally acknowledged as English law, how much more applicable is the principle in the case of the American merchants, whose funds to pay their European creditors being destroyed by the operation of laws the consequence of war, and that war occasioned by Britain, not only the means of raising the interest, but the principal assigned for that purpose and for the payment of the debt, is forever swept away!

Can the British commissioners, or their nation, be unacquainted with the situation of the United States at the formation of the peace; and in deciding whether interest ought or not to be charged, is not this an important consideration? Are they to be told that the invasion of their armies and the destruction of our commerce had reduced our citizens to a greater degree of poverty than they had ever experienced? That in the southern states particularly, where their fortunes had been totally unproductive for the first six years, and either actually sequestered by the British government or within their power for the last two or three, they were an expence and not a benefit to their owners? Or can they be ignorant, that from the peculiar situation of our merchants and monied men, who relied altogether on the sums due them in America for remittances to their European creditors, that it was on them the war, with all its losses and consequences, fell with unusual severity?

If it be an established rule, "*That in case of accidents which happen without any fault of the party, he will not be liable to reparation for damages, by the rule that nobody is to answer for accidents except there be some fault on their part.*"\* If it is another rule, "*that where misfortune has happened without the fault of either party,*" there is no reason to throw off the loss from one innocent man to another innocent man; and that in such case the condition of the defendant is the prefer-

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\* See Domat, lib. 3.

able one :” † If “ it would be unreasonable, that those things which are inevitable, which no industry can avoid, no policy prevent, should be construed to the prejudice of any person in whom there is *no laches* : ‡” If these are the established rules of *English* law—to what war or to whom can they be more strongly applicable than to our revolution and our citizens? They have governed our courts in all their decisions, and so strong is their equity, that they will, I trust, be the principles on which our differing claims may yet be amicably adjusted.

The British commissioners, from their reasoning, seem to be of opinion, “ *that the debts existed, and that all their rights and obligations, whether of interest or otherwise, remained attached during the war* : that the laws of war do not destroy private contracts.”

In the present civilized state of mankind, it is true a war between different *and independent* nations, whose subjects or citizens *are aliens* to each other, does not destroy *private contracts*. It is however only for a few ages that this refinement has existed : formerly, not only all contracts were annihilated, but the fortune *and even persons of the conquered* were considered as the property, and at the disposal of the *conqueror*. Among civilized nations it is now different. The interference of war, although considered as a national calamity, and as suspending all intercourse between the parties, leaves the principles of private justice inviolate, and an accommodation revives every contract that existed before the rupture. But the late war differs extremely from a common war between nations independent of each other before its commencement, where *the government and laws remained unaltered*, and war has only occasioned a temporary stoppage of intercourse. *In revolutions* more important reasons occur : here, not only *all private*, but the higher and more solemn, the *public or social compact*, the relation between the two people being destroyed, involved in its destruction all others ; the powers of the government were taken into the hands of the people, and it was from the confederation and the state constitutions, and afterwards from that of the United States, our present laws and policy have originated and been established. In many instances it has been altered and accommodated to the nature of our government ; but, wherever it could without inconvenience, *the common law of England*

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† 3d Burr, 1357.

‡ Powell on contracts, 446.

was adopted—the debts therefore depending on the former laws and *the relation* between the two people, being destroyed with them, could only have received *a new existence from the treaty*; § the claim *was dormant* during the war. If their rights remained unimpaired, and by the laws of nations each party was obliged to view them in their original situation, why the necessity of making it an article of the treaty? Such articles are I believe *unusual in treaties* of peace; but the *true reason* no doubt was to prevent the argument of the debts *being extinguished*; and the anxiety with which Great Britain insisted upon it, is a proof that they were aware of its force.

But even if the debt did exist, the charge of interest is certainly unfounded. Interest is a rent, or sum paid for the use or detention of money. If, as has been already stated, from the interference of a national calamity, and war is such, the principal cannot be used, or by the operation of law becomes destroyed, there, interest shall not be charged, not even if it was expressly specified and inserted in that contract. If the fourth article, instead of merely saying “debts,” had gone further and stipulated “debts with lawful interest”—even then the interest during the war would not have been recoverable, because the claim is not a lawful one. Our courts, governed by principles of the strictest justice, and sanctioned by English precedents, have determined that interest during the war was not recoverable according to law; and therefore in my judgment, the British commissioners have exceeded their powers, or attempted to do so, in the general resolution I have quoted. They ought to have known that the question, whether interest is or is not allowable on contracts, belongs exclusively to juries: that it is one of those that cannot properly be tried otherwise: that it is what the law calls *an action sounding in damages*, and which can alone be ascertained by a jury of the vicinage: that being acquainted with the defendants and their circumstances, they are the best judges on occasions of this sort: that being chosen by lot, and indifferent to the persons concerned in the suit, and acting upon oath, it was much more likely there would be impartiality in the mode of assessing damages, than in any other: that it was a known

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§ Grotius says, “To whomsoever a thing is conceded by the peace, to him also the profits are conceded, from the time of the concession, but not back.”

and established rule of law, that all actions of damages must be tried by a jury; and that in every attempt that has been made to have the question of interest during the war determined by the judges of the United States, as chancellors or *judges in equity*, they have invariably refused, and referred it to the decision of a jury. No question certainly is more proper for the exclusive determination of a jury, than that of *interest during the war*. It is one which must depend upon it in many domestic circumstances springing from the war, and which can alone be known to persons resident in the same state with the defendant; that to decide upon it without a knowledge of these circumstances, and a personal examination of the witnesses, would be to depart from that course of proceeding which can alone produce substantial justice: that from the construction and character of our courts, the ability of the judges, and the integrity and disinterestedness of our juries, there was no reason to doubt the propriety of their decisions: that in all cases where the claim had been solemnly argued and denied, the commissioners should be convinced the interest ought to have been recovered: that it was the practice of all nations to suppose, that justice was ably and faithfully administered in the courts of each other; to give full credit to their proceedings, and, where the jurisdiction was admitted, to be bound by their decisions: that the intercourse necessary between them rendered this mutual confidence in their tribunals indispensable: that therefore, in all cases where interest during the war had been denied by our judicials, it was the duty of the British commissioners to have acquiesced, and confined themselves only to the examination of the principal and interest since, where it was admitted; and to the legal impediments that have been interposed: that so tender were our citizens on this subject; and on the *sole and exclusive right* of juries to determine the question of interest during the war, that even in the circuit courts of the United States, when once the question was decided there by a jury of *the vicinage*, our citizens have constantly denied the right of the judges to grant an appeal on this *particular question*, even to *the supreme court* to be held at the seat of government: that the reason of an appeal from the opinion of one of the judges of the supreme court to that of the whole was, that in cases of consequence and difficulty, it was to be presumed there must be more knowledge and experience, and certainly more safety in the opinions of *six* judges, than in that of *one*; that therefore in all cases in equity, and on all points proper for the decisions of the judges, appeals ought

to be allowed; but that in actions founding in damages, and particularly in this of interest during the war, no appeal can be granted, because, being exclusively reserved for the opinion of a jury, it would only be an appeal from one jury to another jury; from one of *the vicinage* who can alone be acquainted with the parties and their circumstances, and partake of the qualities juries are intended to possess, to another of strangers, totally unacquainted with them, before whom no persons could be brought and cross examined, and who as a jury must from the distance of the residence of the parties, the inevitable absence of witnesses, and the difficulty and danger of transporting books and papers, be without the means of deciding either with safety to themselves or with justice to the concerned.

I know of no attempt to have such an appeal as this granted. If it should be made, we are to suppose the wisdom and integrity of the judicial will reject it. From the little doubt there is on the point, it is to be presumed no such attempt will be made. I have introduced it here merely to convince the British commissioners, that this is a subject they ought not to have touched: that substantial justice to the United States required them on this point to have acquiesced in the decisions of our juries:—that it was improper for our judges *without a jury* to decide on it, even in *the States where the defendants resided*; it was extremely so indeed, for the commissioners, to whom it must have been much more inconvenient, indeed to whom it must be impossible to obtain the necessary testimony, either by the presence of witnesses, or the production of papers: that where the parties were not, or did not consider themselves personally interested *and were not to pay*, but knew the United States must, they would be inattentive to the collection or the transmission of evidence: that where the distance was great, it would be impossible to obtain personal attendance, as the commissioners could issue no compulsory process to oblige it: that all the vigilance and care of the ablest agents would be insufficient to remedy these defects; and that the examination by commission was open to so many errors, that it was not upon the loose and vague testimony which was to be thus obtained, the United States should be loaded with the payment of so considerable a debt: that for all the reasons which have been urged, the attention of the commissioners should have been directed to examine only the nature and amount of the principal at the commencement of the war, the interest where legal since, and the legal impediments;

and having done this, they would find, that in all cases where they had a right under the treaty to secure to their merchants and subjects payment from the United States for the principal of their debts at the beginning of the war, and the interest since its conclusion, they would then be in a situation to which even the hopes of our distressed merchants and creditors, whose families have been ruined by our tender laws, have never yet been permitted to aspire.

There are some other points in controversy between the British and American commissioners, which I have not leisure at present to discuss. My intention is to induce the British government to attend to the arguments which may be used in support of our claims; and to convince them that so far as their subjects are justly entitled, the United States will make ample compensation: that they will expect it in return for the losses of their citizens: and that they are ready again to treat upon these points with the sincerity and candor which have ever distinguished them.

If Great-Britain wishes to continue on friendly terms with us, she will agree to this and attend to our reasonings; but if elated with success she is so impolitic as to look to this country with other eyes than those of peace and commerce, she will magnify her claims and render an adjustment as difficult as possible. If such is her ultimate object, it would perhaps be wise in her to consider our distance and the inconveniences of even a serious controversy with us: that although it is to be confessed, licentiousness, avarice, and rapine have but too often stained the cause of republicanism in Europe: it is at the same time to be remembered, that public virtue, honor and justice, have always graced its annals here: that the rights of suffrage, representation, and of jury, are sacredly preserved to us: that corruption is as yet a stranger: that although there may, as in all others, be errors in the administration of government, yet by slight changes they can be soon made to vanish, and leave it in its original purity: that enjoying unquestionably the greatest political happiness upon earth, mild and gentle in their deportment to all nations, and unwilling again to tread the thorny path of war, our citizens are still always prepared to defend their public honor, and cherish their government and its rights with the attachment and affection due to so excellent a system.

A SOUTH-CAROLINA PLANTER.

Charleston, Oct. }  
25, 1799. }

# A P P E N D I X.

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*(From a Connecticut Newspaper.)*

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DANBURY, September 16, 1799.

WE, the subscribers, select men of the town of Danbury, in the state of Connecticut, certify, that we have always been inhabitants of said town, and are from forty-five to fifty-seven years of age, and have never known an inhabitant of this town by the name of Jonathan or Nathan Robbins, and that there has not been, nor now is, any family known by the name of Robbins, within the limits of the town.

ELI MYGOTT,  
EBEN. BENEDICT.  
JUSTUS BARNUM,  
BENJAMIN HICHCOK.

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DANBURY, September 16, 1799.

The subscriber, late clerk for the town of Danbury, in the state of Connecticut, certifies that he kept the town records for 25 years, viz. from the year 1771, until the year 1796; that he is now fifty-six years of age, and that he never knew any person by the name of Robbins, born or residing in the said town of Danbury, during that term of 25 years, before or since.

MAJOR TAYLOR.

(From a Charleston Paper.)

Facts, relative to THOMAS NASH, alias NATHAN ROBBINS.

Charleston, Nov. 27, 1799.

SIR,

IN consequence of the very great opposition made to the delivering up, under the 7th article of the treaty of Amity, &c. Thomas Nash, alias Nathan Robbins, one of the principal mutineers on board his Britannic majesty's late ship *Hermione*, and of the numerous publications on that subject, as well in this as others of the United States, I wrote to admiral sir Hyde Parker, requesting he would send me minutes of the court martial, meaning to communicate the contents to you; but being informed that a compliance with such request would have been contrary to the rules of the British navy, I beg leave to enclose you a copy of the admiral's answer, which I consider fully adequate to the purpose I intended.

Whilst on this subject, I cannot help remarking, that about the time my counsel moved for a *habeas corpus*, I happened to be in the court of Common Pleas, when Mr. Ker, a gentleman of the bar, addressed me, and mentioned his intention to oppose the delivery of the prisoner, under an idea of his being a citizen of the United States of America; on this I expressed some surprize, that a person should at so late a day interest himself in behalf of the prisoner, particularly, as his majesty's cutter *Sprightly* had been here a very short time before for the purpose of carrying him off; and that it was from your opinion of the transaction being an executive one, that he was not then delivered up; he answered that Mr. Sasportas\* had spoken to Colonel Moultrie and himself.

I have the honour to be, Sir,

Your most obedient humble servant,

BENJAMIN MOODIE.

The hon. THOMAS BEE, Esq.

\* Mr. Sasportas was the agent for the French Republic at the time their cruizers were permitted to sell their prizes in this port. The records of the district court in admiralty causes will prove this.



*Extract of a letter from Admiral Sir HYDE PARKER, to BENJAMIN MOODIE, Esq. his Britannic Majesty's Consul in Charleston, dated on board the Abergavenny, in Port Royal harbour, Jamaica, 13th September, 1799.*

“ SIR,

“ I have received your letter of 21st of last month, with a copy of another, (not yet received) of the 3d of same month; and in answer to both am to acquaint you, that Nash has been executed, and hung in chains, agreeable to the sentence of a court martial; and that he confessed himself to be an Irishman: and it further appears by the *Hermione's* books,† that he was born at Waterford; on the 21st December, 1792,‡ entered a volunteer on board the *Dover*, received 3l. bounty money; and was removed to the *Hermione* 28th January, 1793. And with respect to transmitting minutes of his trial, that is not in my power, but rests with the lords of the admiralty only.”

CHARLESTON, Nov. 27, 1799.

I was present at the court martial on board his majesty's ship *Hannibal*, at Port Royal, Jamaica, for the trial of Thomas Nash, a seaman, late of the *Hermione* frigate, for piracy and murder.

The evidences which were produced against him, (four in number) who belonged to the *Hermione* at the time the murder and piracy took place, knew him always by the name of Thomas Nash, nor did he to their knowledge ever assume any other name; the witnesses also fully prove, that Thomas Nash was the person who killed lieutenant Foreshaw. Nash made no defence, nor did he at any time of the trial call, or endeavor to prove himself, a subject of the United States of America. On the scaffold, a few minutes before he was run up to the fore yard arm of the *Acasto*, he addressed the crew of that ship, advising them to take timely warning by his fate.

† Copies of the ship's books and accounts, of the British navy, are made up every two months, and transmitted to the lords of the admiralty. The admiral procured transcripts of this ship's books, in order to describe the persons and names of the crew.

‡ Jonathan Robbin's certificate was dated at New-York, 20th May, 1795.

I had the command of the boats of the Squadron on the the day of his execution, and attended with them to see his body hung in chains, agreeable to an order for that purpose from Sir Hyde Parker, Kt. commander in chief, &c. &c. at Jamaica.

GEO. HANS BLAKE,

*Late commander of his majesty's  
sloop L' Ameranthe.*

The foregoing was duly attested before me this 29th November, 1799.

JOHN MITCHELL, Q. U.

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To Benjamin Moodie, *Esq. his Britannic Majesty's Consul in  
Charleston.*

SIR,

Having discharged my duty as a counsellor in the case of Jonathan Robbins, and having but little time to bestow on newspaper altercations, it was neither in my expectation nor my wish, to be called forth further on this subject, and especially, as the author of a publication in a newspaper: but, sir, I find I am indebted to your politeness, and moderation, or the zeal of your printer (if he is your commentator) for this occasion of my coming forth, in this publication.

In your letter of the 27th ult. to Judge Bee, respecting the case of Robbins, you conclude by saying, you were informed by Mr. Ker, that Mr. Sasportas had spoken to Mr. Ker and myself as Robbins' counsel; and with an asterism annexed to the word Sasportas, refering to an annotation below, this brilliant note is in Italics, as follows: '*Mr. Sasportas was the agent for the French Republic at the time their cruisers were permitted to sell their prizes in this port. The records of the District Court in Admiralty causes will prove this.*'

If I understand right, and can read right; and if I understand the sentiments and views of the advocates of your nation in this country, (and I think I have contemplated them since the dawn of our revolution) this bright note and those capitals, are intended as an insinuation to the world, that

French influence was at the bottom of Robbins' defence, consequently was the mover of his counsellors. If I am mistaken, sir, in my sentiments, you will pardon me, and I hope at the same time correct the error; but sir, these sentiments are the natural impressions of your conduct, and I will hold them till properly effaced.

The cry or insinuation, sir, of French influence, may be an admirable engine of British policy in this country, and serve to promote many of their purposes: but as to myself, or any injury it may work towards me in this case, you have lost your aim, sir. The *mens conscia sibi recti*, defies your attack; your shaft has no sting, sir; its poison is ineffectual; and your own disappointment shall be your own punishment.

When I was first called on in Robbins' case, I considered it generally; and gave my opinion, that I thought such was the prevailing influence of opinions and sentiments of those in power, that every effort would be vain: he had not then been represented to me as an American citizen, and I considered the case on the point of *jurisdiction* only. I gave it but a short consideration, and soon determined, and thought no more of it. Matters rested thus for some days 'till the day before Robbins was tried: I was then accidentally informed in conversation with a friend, that Robbins was an American; I was struck, and alarmed, to think I had deserted him. I immediately went to Mr. Ker, and desired him to prepare himself for the argument next morning. I went home and considered the case, and met Mr. Ker in court the next day.

I had never yet seen Robbins, nor had I ever any intercourse with him, 'till he was pointed out to me, and I went up and spoke to him in court the day of his trial; nor had I till then ever seen one of his papers. On my coming into court, amongst the first things I did, I asked the clerk for the papers, and amongst them found *Robbin's certificate of nativity and citizenship*: I examined it, and found it had every mark of authenticity, no erasure, no obliteration: that its colour and appearance were natural, and correspondent with its date, and that the hand-writing of the Notary was genuine, and can be proven here. But one thing further struck me: on enquiring of the clerk, if this paper was found on Robbins when first taken, and being informed it was, I was of opinion 'twas genuine; and was clear, if 'twas not, 'twas no fabrication in Charleston.

Under these circumstances, sir, I undertook the cause of Robbins; a cause, sir, in which the rights of mankind and

those of my country were deeply involved; a cause, sir, which I held myself bound in duty, as an American, to defend and support; which pointed at the constitution and vital principle of American independence. And give me leave further to tell you, that in this cause, I neither undertook it from French influence or an idea of advancing their interest, nor from the promise or expectation of any fee or reward; and that I never have received any such. Every one, sir, who knows me, knows my politics; they have been uniform, since 1775, and I hope will continue so to my latest hour; I honor and respect all nations—but I hate tyrants; I love my country, and will defend its freedom.

I am sir, with due consideration,

Your humble servant,

ALEX. MOULTRIE.

Messrs. FRENEAU & PAINE,

The unexpected attack of Mr. Moodie, the British consul, in Timothy's paper of Monday last, I am induced to notice; not from any apprehension of its injurious effects on the public mind, respecting my conduct in the case of Robbins, because the publication bears its own insignificance on the face of it, but as he has thought proper to arraign the motives which induced me to employ counsel in his behalf, I shall briefly relate the circumstances which brought Robbins under my observation.

Being drawn to serve as a grand juror for the district of Charleston, we were requested by the court to visit the gaol, in order to make a report of the state of the same.—In the exercise of this duty, I saw Robbins, confined in irons, who communicated to me the cause of his commitment, and his defence to the charge, viz. that of his being an American citizen, impressed by the English. From his relation, and his certificate of citizenship then shewn to me, I was induced to employ counsel in his behalf, in order that his innocence or guilt might be established by an appeal to the laws of the country. The world must be at a loss to trace any connection between my conduct on this occasion, and my having acted as commercial agent for the Republic of France, upwards of six years since. Hence it follows, that Mr. Moodie can have no other object in view,

than a desire to establish a prejudice against me in the eyes of my fellow-citizens.

Mr. Moodie states, that he expressed his surprize to Mr. Ker, that at so late a day he meant to oppose Robbins' being delivered up. The fact is, I had spoken to the counsel the very day I saw the prisoner in gaol; but his avocations, I presume, did not permit him to attend to the case, The consequence was, that rather than the cause should be wholly neglected, I applied to other counsel, with whose exertions I have no reason to be dissatisfied. But I presume this is the first instance where a prosecutor has assumed to himself the right of dictating to the accused party, when, and how he shall seek redress.

I am, Gentlemen,

Your most obedient servant,

ABRAHAM SASPORTAS.

N. B. No one knows better than Judge Bee, that I was agent to the French Republic, and no one knows better than myself, that Mr. Moodie was agent for the British government: by the repeated vexatious impediments which were raised up by him in every case, without the colour of a legal defence. The numerous decrees of the supreme court of the United States, in favor of the captors, prove the fact.

F I N I S.