

# Fayetteville Gazette.

A TOWN AND COUNTRY PAPER; PRINTED every TUESDAY, BY ALEXANDER MARTIN, FOR JOHN SIBLEY.

VOL. I.—[NON ACTI PARTE]

TUESDAY, JULY 16, 1793.

[JUSTITIAM SPECULAMUR.]—(No. 49.)

## MISCELLANY.

FOR THE FAYETTE GAZETTE.

### HERMIT.

No. III.

"Where must old age find indulgence, if it do not meet with it in the piety and partiality of children." PALBY.

WHAT virtue renders its possessor more amiable than filial respect? What duty can we discharge, which yields so much real comfort and delight to those who are the objects of it? The truly benevolent will answer, there is none. A parent who has felt trouble and anxiety on account of a child, whose care had sheltered it from the rude blasts of misfortune, and instilled into its mind virtuous principles; has a claim upon its affections and services, which none but the unfeeling or abandoned can refuse; and he who is unmoved at the distresses of a good parent, or slow to relieve them, has little virtue of any kind to console him:

Some such reflections were presented to my mind by an event, which, altho' simple in itself, gave me a feeling of delicious melancholy; which no former occurrence of my life had produced—

Returning from a visit to one of my neighbors, I observed a person sitting by the side of the road, whose appearance struck me with reverence and amazement; age had furrowed his cheeks and robbed his forehead of all but a few white locks, which hanging loosely down, pointed to an honorable scar over his left eyebrow.

A tattered regimental coat and a patched wallet, which had no stores to boast of, called forth all my sympathy for a fellow soldier; and the extreme distress and hunger, under the pressure of which his body seemed to be fainting, awakened every sentiment of pity and respect. But, as if Providence had destined the weakest of her children, his eyes had lost their sight; and his tremulous voice, murmuring the sad language of distress, touched at once the tenderest strings of my heart. The singular appearance had hitherto riveted my silent amazement, but I could wait no longer; his cup of misery seemed to be full, and I rejoiced at the idea of giving comfort to a fellow creature, who wanted it so much.—

"My good old man, what is your affliction," said I. "Alas! Sir, have you seen my child—I allighted from my horse—" "I pray you inform me, have you no one to conduct you to a hospitable roof, or wipe the tear of misery from your cheek?" "No one," answered he, raising his snow white head. The tone in which he uttered these last words, seemed to be a complaint against the justice and humanity of the world. "Alas! Sir," continued he, "my four children, all, all have deserted me; my poverty, my age and my blindness have driven them away—but I forgive them—but—my daughter—my daughter," repeated he with a sigh which seemed to burst force of the finest vessels of his heart—"she is my child, my friend, she whom I least regarded when the sunshine of fortune beamed upon me; and now when I am borne down by a might of misery, she is the only one who will give me comfort." "When did she leave you?" "Yesterday, for the first time." "You have not surely been unhappy from your youth—you could not have arrived at so advanced an age, if sorrow had been your constant companion." The poor old man sighed, and gave me his history in a few words. (To be continued.)

## LAW INTELLIGENCE.

INTERESTING TRIAL OF THE SHIP WILLIAM, AND HER CARGO, Mentioned in a former paper to be captured by a French privateer, and libelled by her former, British, owners.

PHILADELPHIA, ON Friday, the 9th JUNE 26, inst. came on before hon. Judge Peters, the cause of the libellants against the ship William, of Glasgow—And on Friday the 21st, the libel plea and replication being first recapitulated by the judge, as well as the

pleadings of the council, he proceeded to deliver his Decree upon the plea to the jurisdiction, as follows—

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

Robert Findley, jun. and others, subjects of the King of Great-Britain, versus, the ship William and her cargo, now in the port of Philadelphia.

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

It is difficult for a neutral nation, with the best disposition, so to conduct itself, as not to displease one or the other of the belligerent parties heated with the rage of war, and jealous of even common acts of justice or friendship on its part. Neither is it easy for the nations at war to restrain their subjects from acts of violence, even in the territories of their friends. The least under control, are those whose objects is not honorable conflict or patriotic exertion. These are actuated by a spirit of lucre, which not only incites to plunder, the safe and lawless freebooters, but tarnishes even heroism, by seducing into unjustifiable sections the bravest men. It would be for the interest of nations and the happiness of mankind, if by universal consent, the quarrels of nations were prevented from being turned to the purposes of private advantage. But the swords of those who fight for gains, will not in our days, be beaten into plough sheares.

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

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

Under this view of the matter before me, I have given a patient hearing to both sides, and have particularly attended to the arguments by which a jurisdiction has been endeavoured to be established in this court. I must certainly be allowed by the advocates for the libellants, that they have not been able to shew any direct authority upon the point. For the two cases of the Duke of Tuscany, seizing the vessel committing the outrage near the Port of Legnon, and that of the King of England, ordering restitution of the effects taken out of the houses of the inhabitants, and belonging to a ship of a friendly

power, driven by its enemies on his shore, appear to have been acts of power and not done in consequence of decrees, or orders of courts of admiralty.

Yet these jurisdictions existed in both the countries above-mentioned.

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

If it be consistent with treaties, and otherwise right, our legislature can vest the executive in future with similar powers, I should suppose too, that the liberty of selfish prizes, in a neutral country is not perfect by right, and may also be considered by our national legislature, as a subject of regulation. If any captures are made within our limits, and the vessels or plunder is brought within our ports, the sale may be forbidden; they must then be either abandoned, or carried within the jurisdiction of the Captors; where the proper courts will consider of their legality. Yet that is a matter not of judicial but of political arrangement and must be left to those who have the authority to direct. The Sovereignty of our nation is as complete as that of any other.

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

In Palache's case, I am aware that it

only said the vessel "was taken at sea" but if not, it rather appears that it would be more proper for a diplomatic than a judiciary examination. The general principle as to the capture is agreed; and is similar to that established in our treaty with France, which ought to have its proper weight.

It was resolved, by the whole court of King's Bench upon conference and deliberation, that the Spaniards whose ship had been taken by the enemy, and brought into England, a friend to both parties, had lost the property of the goods forever and had no remedy for them in England. And relied principally on the books, in 2. R. 3. ubi supra being of so great authority, for by that book he that will sure to have restitution of goods robbed at sea; ought by law to prove two things, 1st. that the sovereign of the plaintiff was, at the time of taking, in amity with the king of England; 2d, that he who took the goods was, at the time of taking in amity with the sovereign of him whose goods were taken, then was it no depraedation or robbery, but a lawful taking, as every enemy might take from another." 4. ins. 154.

It is true that by the laws and customs of nations, the capture if taken in neutral bounds, is not a lawful prize; but I do not see that this court can get at that circumstance, without holding plea as to the lawfulness of the prize. It is the original question and not collateral of all matter which determine jurisdiction. The courts of common law in England will not take cognizance of any thing arising out of the question prize or no prize, "because the original cause must all come into question again." And yet the admiralty had determined that the ship was no prize.

This will be a proper subject of enquiry on the part of our government, or in a court of the country of the captor. Every nation has established these courts, and knowing that, if war, they are answerable to a nation at peace or in amity, if violation of territory happen in captors, care is taken to examine into this circumstance. If on this account, the capture is illegal it is so adjudged: and the party taking is liable to damages. Whether such damages shall exceed the amount of the security given by commanders of private ships of war, whether one nation is answerable to another for injuries done by its subjects to others, contrary to or without its orders, is a matter in which there are differences of opinion amongst civilians, and which it is unnecessary for me now to investigate.

It is doubtless contrary to the instructions of the French government, that any of the ships commissioned by them, act in a hostile manner, in a friendly and allied territory. It is to be expected by one power from another, that her courts and her administration will do justice to the rights of sovereignty and neutrality. It will be the more to be lamented if a friend and ally should disappoint this expectation.—But should this be the case, it is not for me to say what proceeding should be had. I have subjoined to this decree from the "Exposition of the Motives," &c. from the Duke of Newcastle, the British minister's letter to Mr. Mirchell the minister of Prussia, and from the report and opinion of Sir George Lee, Doctor Paul, Sir Dudley Rider and Mr. Murray, the late Lord Mansfield, on the subjects, I have mentioned, which are to be found in Maggen's 463, 482, 437, 391, 496, 505.

Other authorities from British and other writers might be added, by which it appears, that when two powers have any difference between them, the affair must be treated by negotiation, and not through the instrumentality of their courts of justice.

That affairs of prizes are only cognizable in the courts of the power making the capture; these courts being generally styled courts of admiralty; and that it never was attempted, before the subject of that controversy happened, to erect in a neutral state, courts for the trial of prizes taken by belligerent powers, even where neutrals were concern-