

Letter to Mr. Pinckney, Minister Plenipotentiary of the United States to the French Republic.

[Continued.]

MR. Adet having briefly notified several cases by name, seems to refer those of the Vengeance and Cassius for a display of unwarrantable conduct in the government and courts of the United States, and therefore descants on them at some length; and with so many aberrations from the facts, and so many erroneous ideas concerning our jurisprudence, and so many injurious insinuations respecting our courts & their officers, it will be necessary that you should learn the true history of these cases from authentic documents.

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

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

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

Mr. Adet complains, that while one suit was pending for the prize, and another against the privateer, on which she was arrested anew, for having exported arms in violation of a law of the United States, which was in force when the Vengeance sailed from New York; and that this information was filed on the simple declaration of Mr. Giles, the Marshal of the court, who as informer was to share part of the prize. As Mr. Harrison remarks, it was in favour of the privateer, that this second prosecution was filed while the first was pending; and it layed time. Had he postponed the suit until the first had been decided there would have been some foundation for a charge of unnecessary delay. Mr. Harrison's state of

the case shows that this second information was not made on the declaration of the Marshal; but on the evidence that appeared on the examination of the first.

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

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

6th. Case of the privateer Le Cassius.
For the full history of this case, I must also refer you to the documents; and here only present you with a concise statement.

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

Les Jumeaux proceeded to St. Domingo. Samuel B. Davis, a citizen of the United States, there took the command of her, with a commission from the French government. Davis probably sailed from Philadelphia in *les Jumeaux* for the purpose of finally taking the command of her. Her name was now changed to *Le Cassius*; and on a cruise she took a schooner called the *William Lindsay*, belonging to Messrs. Yard and Ketland of Philadelphia; Mr. Ketland having purchased an interest in her after her sailing. The schooner and her cargo were condemned as prize at St. Domingo. In August 1795, Captain Davis, commanding *le Cassius*, came with her to Philadelphia. She was immediately known. Mr. Yard, with a view of obtaining an indemnification for the loss of the schooner and her cargo, libelled *le Cassius* in the district court, and caused the Captain to be arrested. Soon after, the supreme court, being in session, Captain Davis's Counsel applied for and obtained a prohibition to the district court, to stop its proceedings; by which the suits both against him and *le Cassius* were defeated. The prohibition was

granted on this principle; that the trial of prizes taken without the jurisdiction of the United States, and carried to places within the jurisdiction of France, for adjudication, by French vessels, and all questions incidental to it, belong exclusively to the French tribunals; and consequently that its vessels of war and their officers are not liable to the process of our courts, predicated upon such capture and subsequent proceeding within the jurisdiction of the French government.

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

In his letter of the 3d of June 1796, which you will find among the papers respecting the *Cassius*, Mr. Adet mentioned the affair of the *Favourite* at New York; and intimated an idea that the Executive might, in like manner, cause the prosecution against *le Cassius* to cease. But the proceedings in the case of the *Favourite* were wholly in the hands of the executive officers, who were under the President's immediate controul, and to whom, on evidence satisfactory to the Executive, orders were given to discontinue the process. In this affair of the *Favourite*, we are fortunate in finding one case in which Mr. Adet (contrary to his assertion in his note of November 15) acknowledges that justice was done by our government. You will observe in Mr. Fauchet's letter of the 23d of September 1794, a very formidable complaint in this affair of the *Favourite*; that it was pretended that a privateer, fitted for a cruise, had deposited arms on board her, and that this pretext was used for visiting and pillaging her; that she was a ship of war of the Republic, then serving as a store ship until she could be repaired; that the sovereignty of France was violated, and her flag insulted. Yet by the letter of John Lamb, Esq. Collector of the port of New York, of the 22d November 1794, you will see that at the time the seizure was made of the suspected articles on board the *Favourite*, "she having been totally dismantled, her crew sent on board other ships of war, and her sails, rigging, and other