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FOR THE NATIONAL INTELLIGENCER.

OBSERVATIONS ON THE CONDUCT OF GREAT BRITAIN—CONTINUED.

No. IX.

In a former number information was given of a section of a modern act of the British Parliament, relative to the dictation of rules and regulations for the prize courts which adjudged neutrals by the British King in Council.

This unjust act is entitled an act for the encouragement of the British seamen and manning their navy! For these purposes, it countenances the idea, that the king of Great Britain may direct the conscience and judgment of the courts of admiralty, in condemning our ships and cargoes, against treaty or the law of nations! It appears to have been a part of the new system whereof the treaty with Russia, of March, 1793, and the June and November orders of that government of the same year, made a part. The section to which we refer, is in vol. 39, p. 276, of the British statutes, and runs thus:—

Section 35. *Provided always*, and be it enacted, that nothing in this act shall be construed to restrain his majesty, his heirs and successors, from giving such further rules and directions from time to time, to his respective courts of admiralty and vice admiralty, for the adjudication and condemnation of prizes, as by his majesty, his heirs and successors, with the advice of his or their privy council, shall be thought necessary or proper."

In considering the above recited section of the British act of Parliament of June the 17th, 1793, the important reflection forcibly occurs, that no such provision of a statute ever occurred before that year.

A second and very important reflection occurs, that the *rules and directions to the courts*, which the king and council of Great Britain might think proper and necessary, might be, and sometimes were beyond or contrary to the universal law of nations.

A third and very important reflection occurs, that *those rules and directions to the courts*, might be contrary to existing treaties between Great Britain and other powers.

This was the case with respect to the Danes and Swedes, in the instance of her orders of November 6, 1793, for the treaties with England made enemies goods safe in their ships.

It is now intended to be shewn, that the *constitution* of Great Britain, as it was laid down by such jurists as the late lord chief justice Mansfield, did not allow the courts of admiralty or vice admiralty, to consider the rules and directions of the king and council as of governing force.

No case can be more correctly adduced than that of the *Silesia loan*, between England and Prussia to establish the doctrine, that, by the constitution of Great Britain, the law of nations and existing treaties formed the exclusive basis of the adjudications of their courts of admiralty and vice-admiralty. On that occasion the great law characters employed by his Britannic majesty, were Sir George Lee, judge of the British *prerogative* court, sir Dudley Ryder, the attorney general of Great Britain, Mr. W. Murray, (afterwards lord chief justice Mansfield) then the royal solicitor general, and Dr. G. Paul, the royal advocate general in the courts of civil law. These great characters, in the civil and common law, attached to the crown by offices of great honor and profit, held at its pleasure, will be found to have decidedly rejected all authority, but that of *positive treaties* between Great Britain and Prussia, whose subject's property was in question, and the *universal* or customary law of nations. Their language goes to the exclusion of the innuendo of the section of an act of parliament, as above recited.

Mr. Murray (afterwards lord Mansfield) and his able and learned associates state, that they are commanded to give their opinions, how far the king of Prussia's expectations are consistent with "*the established rules of admiralty jurisdiction, and the laws of this kingdom*" of Great Britain. They further state as "*clear established principles of law*, that by the maritime law of nations, universally and immemorially received, there is an established method of determination, whether the capture (of enemies goods on board of the ship of a friend, &c.) be or be not lawful prize; and that the condemnation thereupon, as prize, must be in a court of admiralty, judging by the law of nations and by treaties." They do not in the slightest manner or degree recognize the authority of an act of parliament, or of an order of the king in council, in virtue of such an act, or of any supposed royal prerogative, as legitimate or equitable, or as a rule to them in a tribunal, which concerns all foreign powers.

It is further stated by these wiso and learned officers of the British crown itself, that "if the sentence of the court of admiralty be thought erroneous, there is in every country a superior court of review, &c; and that this superior court judges by the same rule which governs the court of admiralty, viz. the law of nations, and the treaties subsisting with that neutral power, whose subject is a party before them." Nor one sided acts of a parliament, nor one sided orders of a king in council, acknowledged to be law or rule or direction to these courts, whose jurisdiction includes all sides, and all nations and their paramount universal law.

The British crown lawyers proceed to declare, that "in this method all captures at sea were tried during the last war by Great Britain, France and Spain, and submitted to by the neutral powers. In this method, by courts of admiralty acting according to the law of nations and particular treaties, say they all captures at sea have been immemorially judged of in every country of Europe. Any other method of trial (says Murray, lord Mansfield and his associates) would be manifestly unjust, absurd and impracticable." Such is the true character of the section, and of the doctrine it insinuates, as though it had been known and received, and sound.

In the next section, they speak of the law of nations, as the general rule capable of being varied or departed from only by mutual agreement, between two powers. Treaties and usage (the written and prescriptive law of nations) are recognized as the certain known and only rules of courts of admiralty in all cases of captures. They recognize the right of judges of the admiralty to be "left free, and to give sentence according to their *conscience*." "Every foreign prince in amity, say they, has a right to demand that justice shall be done his subjects, in those courts, according to the law of nations and particular treaties, where any are subsisting. If, *in re minine dubia*, these courts proceed upon foundations directly opposite to the law of nations or subsisting treaties, the neutral state has a right to complain of such determination. But there never was nor never can be any other equitable method of trial. All the maritime nations of Europe have, when at war, from the earliest times, uniformly proceeded in this way, with the approbation of all the powers at peace. They add those remarkable declarations, that in England the crown never interferes with the course of justice. No order or intimation is ever given to any judge: and that the British minister knew that it was the duty of the court of admiralty to do equal justice;"

It is again declared by these British judges and lawyers, that "all ships of war were bound to act, and courts of admiralty to judge according to the law of nations and treaties."

We have been carefui to make copious quotations from the formal official opinion and report of this British judge and these British crown lawyers, in this most famous, important and well considered case of the capture of neutral Prussian ships by the British public and private ships of war which gave rise to the question of the Silesia loan. They are conclusive.—But yet we must ask the utmost attention to their answer to the fourth Prussian article wherein the Prussian government states "that the British ministers have said that these questions (between the belligerent British and the neutral Prussians) were decided *according to the laws of England*."

The English judge and lawyers answer "that the British ministers must have been misunderstood; for the law of England says that all captures at sea, as prize, in time of war, must be judged of in a court of admiralty, according to the laws of nations, and particular treaties, where there are any." They add that "there never existed a case where a court, judging according to the laws of England, only,* ever took cognizance of a prize."

Such was the constitution and law of England, the law of Europe, the law of all the nations of the world, accurately laid down, after deliberate official examination, and consideration in the responsible characters of British judges and crown officers by William Murray (afterwards earl Mansfield) and his associates, in this important commission. This solemn proceeding was had in consequence of an express order of king George the Second of G. Britain, to those public characters, through his principal secretary of state, the duke of Newcastle. The duke's letter covering these law officers joint answer to Mr. Mitchell, the Prussian secretary of legation, contains some important confirmations, and declarations. In his second paragraph, he expressly and without qualification asserts, that "the law of nations is universally allowed to be the only rule, in such (neutral prize) cases when there is nothing stipulated to the contrary by particular treaties, between the parties concerned." The duke, as secretary of state, further declares, that the report or opinion of those crown officers, is founded on the principles of this law of "nations," and that the courts of admiralty, "including both the inferior courts and courts of appeal, always decide according to the universal law of nations only: except in those cases, where there are particular treaties between the powers concerned, which have altered the disposition of the law of nations, or deviated from them."

The duke of Newcastle also declared, that the alarm given by the Prussian conduct to the whole nation, and by the extraordinary nature of the subject, had determined the king of G. Britain to take time to have things examined to the bottom and maturely considered. Hence we see that the king, the prime minister, the admiralty judge, and the crown lawyers, (including one of the most extensive learning, profound wisdom and decided attachment to the legitimate prerogatives of the crown) have sanctioned the posi ion, that no power, right, or prerogative "to give rules and directions to the courts of admiralty, for the adjudication and condemnation of prizes" existed in the king and council of G. Britain—Such a power therefore could not be inferred from, recognized, saved, or confirmed, by the 35th section of the act of 33d of Geo. the 3rd, chapter 66. Nor do the words of that section grant such a power, or effectually recognize such a right or prerogative in the crown. It is therefore correct to assert, that all considerations of neutral American ships and cargoes made and confirmed by the British courts of vice admiralty, admiralty, and appeal against the law of nations, or beyond or without that law, upon the orders of the king (in council) only are unjust, illegitimate, matters of rightful complaint on the part of the neutral countries, & which authorise us "to demand that justice be yet done us, in those British courts, according to the law of nations" for all captures prior to Mr. Jay's treaty & since; and according to the law of nations and that treaty for all captures during its being and continuing in force. Never was there a fairer, sounder, or stronger ground to require that a commission be established to ascertain our damages and injuries, with costs, charges and interests, in all cases werein detentions, captures and condemnations have occurred, solely in consequence of those British executive orders. We have suffered deeply from this act; from British anti-neutral treaties, and orders of that crown, but the injurious consequences in the wars of 1793 and 1802, and in future wars cannot be estimated.

We have before remarked, that our original nation of the 3d of July, 1776, havingbeen divided in due form, we are full tenants in common with our late British compatriots in all the ground of the constitution and general laws of our former empire, *which we choose to occupy*—and we may add, that at the epocha of our separation, no such section existed. It cannot therefore in law, right, or conscience be used to affect us, but the settled doctrines of *Mansfield* and his associates may be specially pleaded in our favor. There can be no doubt that a foreign course of practice, under such orders, against the law of nations, is a sufficient cause of war, whenever it occurs, without redress. Nor can it be denied that this unprecedented section, and that of the British act of 1803, in the same words would give too much foundation for similar executive orders of other foreign governments, if they passed without protest.

JURISCOLA.

* *This is equally strong against pleas under British municipal law, in regard to impressment in our ships.*

CIRCUIT COURT OF THE UNITED STATES.

On the MOTION to commit Messrs. Burr, Blannerhassett, and Smith.

SATURDAY, SEPT. 26.

GEN. WILKINSON'S EXAMINATION, (CONTINUED.)

[Mr. *Wirt*. Are you acquainted with General Dayton's hand writing? A. Perfect. Mr. *Hay*. How did you become acquainted with it? A. From a long and familiar correspondence. Here is a letter from General Dayton to me, introducing his son, which will shew the similarity of the hand writing. [Here the General produced the letter of introduction.] On the same morning I received the following information from Natches, in a letter from James L. Donaldson, dated the 30th of November, 1806.—Here General Wilkinson offered to read the letter—but it was rejected by the court. See note F.] In consequence of the receipt of this letter from Mr. Donaldson, and my reflections on the letters from Col. Burr, I determined to concentrate my whole force at New Orleans, as soon as possible. [Mr. Hay said that he was willing in order to save time, to wave every thing which related to the operations of the army; and requested that General Wilkinson would proceed to relate what occurred at New Orleans.] I proceeded from Natchitoches to Natches and descending from that place reached fort Adams on the 18th of November—where I found Mr. Swartwout, who had been taken ill on his route from Natchitoches to New Orleans, and, for his accommodation, was invited by some one of the officers to that place. He informed me that Mr. Ogden had reached that place, on his way to Tennessee—but, being alarmed by the rumors which prevailed in that part of the country, he was afraid to proceed, and had halted there. I enquired of Mr. Swartwout whether Mr. Ogden had borne any letters. He said that he had not.—but that Lieut. Spence of the navy had been sent, some time before, from New Orleans, through the country, with letters from *Col. Burr*. I proceeded on, and reached New Orleans on the 25th of November, in the evening; and, on the 26th, in the morning, I received a letter from Dr. Bollman. [Here General Wilkinson produced the letter. See note G.] This letter reminds me of a circumstance which I had omitted. The morning after I had received the letter of Dr. Bollman at Natchitoches, I acknowledged the receipt of it in a short note, and informed him that I should be in N. Orleans about the 20th. I did not call on Dr. Bollman till the 30th. After the ordinary salutations, I enquired whether he had heard of col. Burr, since his arrival. He informed me that he had not. I asked him whether he had heard of lieut. Spence's arrival in Tennessee. He enquired how I came to know any thing of lieut. Spence. I informed him that it was through Mr. Swartwout. He assured me that he had sent dispatches for col. Burr by lieut. Spence, and that he had heard of his arrival at Nashville. He then enquired what part I meant to take? I observed that I felt myself delicately situated. It was impossible that I could take any part, while I held my commission; and I was so circumstanced that I could not get rid of it. He asked me what I thought of the competency of the force of the undertaking. I observed that it depended upon a variety of circumstances; such as winds, weather, composition and appointment of the troops, skill in conduct, the resistance of their opponents, and other causes on which the success of military operations depend. But I gave it as my opinion, that I thought the force insufficient. He said that col. Burr had gone too far to retract; that he had numerous and powerful friends in the U. States, who stood pledged to support him with their fortunes; and that he must succeed. He then enquired of me my opinion as to the state of the magazines of provisions in New-Orleans. I observed that, if Col. Burr descended with the force proposed, they would starve, unless he brought provisions along with him; for I had before ascertained precisely the quantity then on hand. He said that it was his opinion, also, that there would be a scarcity of provisions; that he had written to Col. Burr on the subject; and that he expected a supply from New-York and Norfolk, where col. Burr had many friends. He said that he had noticed in the public prints the sailing of some vessels with flour; and supposed that they might be destined for that place. I did not see Dr. Bollman, afterwards, till the 5th of December, the day after the arrival of the mail; and I called on him to enquire the news. He said that he had seen a letter from Col. Burr, of the 30th of Oct. in which he stated that he should be at Natchez, on the 20th of December, with two thousand men; to be followed by four thousand more; and that he could have raised or levied twelve thousand men, as easily as six, if he had thought them necessary. I then informed Doctor Bollman, that, if Col. Burr came to New-Orleans, I should oppose him. He replied, they must come there for provisions and equipments. He observed that Col. Burr had great confidence in me; but he did not know what had passed between us; and asked, if I could not make such a defence as would cover my reputation, and still permit him to come. I replied in the negative; and we then parted. Some few mornings afterwards, he called at my quarters; there was a gentleman in the room; and I took him into the Piazza. He said, that he wanted to know my determination. I expressed my surprize; and told him that he knew my determination.

Mr. Hay. While you were thus extracting from Doctor Bollman the secrets of his party, were you taking any measures for the security of N. Orleans? A. Yes. My orders and instructions will shew what measures I deemed it my duty to pursue. For these I am responsible to the executive of the U. S.

Mr. Martin. Are the cyphered letters filed? A. Yes. Q. Are the keys furnished? A. Here it is.

[*Mr. Botts* mentioned the situation of Mr. Tazewell who was summoned as a witness on the part of Col. Burr. He said that Mr. Tazewell had represented the situation of his family to be such as to require his immediate return home. Mr. Botts observed that, although he had introduced the request of Mr. Tazewell to be discharged, he should be compelled to oppose it.

Mr. Tazewell stated that he had been unexpectedly summoned, he well knew, to answer interrogatories as to certain proceedings before the grand jury? that he had just been informed of an occurrence in his domestic affairs, which made it indispensibly necessary for him to return immediately; that there were many gentlemen, in this place and its vicinity, of the grand jury, who were as competent to give evidence on the points to which he should be called upon to depose, as he possibly could be; and who would be subjected to no kind of inconvenience in attending. If he were to be examined at all, he requested that it might be immediately done; for the situation of his family was such that he should be compelled to return.

The *Chief Justice* said to Mr. Tazewell, that he knew full well that it was not in the power of the court to discharge him.

Mr. Botts said it was impossible to examine Mr. Tazewell till general Wilkinson had gone through his testimony. It was not possible to know the importance of his evidence till General Wilkinson was cross examined.

Mr. Hay observed that it was an unprecedented measure to introduce any member of the grand jury to prove what had passed in the jury room.

Mr. Botts. We have not said for what purpose we mean to introduce him.

Mr. Hay. I presume that I may be permitted to presume for what purpose.

Mr. Baker said that he meant to speak generally of the propriety and convenience of giving testimony as to