NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

VOL. V. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | NO. DCCXII.

FIVE DOLLARS PER ANNUM. | WEDNESDAY, MAY 1st, 1805. | PAID IN ADVANCE.

From the Enquirer.

REPORT OF A DECISION, IN THE High Court of Appeals.

Robert Reed, Collin Reed, Hugh Ballentine, and Frances his wife, } Plaintiffs.
vs.
Margaret Reed, Defendant.

(*Concluded.*)

3. In considering the operation and effect of the TREATY of PEACE upon the present case, three distinct views may be taken of the rights of British antenati:

1st. In relation to lands actually holden by them in this country, at the epoch of our declaration of independence; but as no right of this sort exists in the present case, this topic will be very slightly and incidentally considered.

2nd. In relation to lands purchased by them since that epoch, and which, if they be aliens, will accrue to the commonwealth, by way of 'forfeiture.'

3rd. In relation to such lands as have descended to them since that epoch, and which, if they be aliens, will accrue to the commonwealth by way of 'escheat.' In this class, the present case is found to fall.

As the case of a right accruing by way of forfeiture is a stronger one than the case of a right accruing by escheat, it is properly entitled to a preliminary investigation.

1. It is the 6th article of the treaty of peace which has been relied upon by the plaintiffs in this suit, for one of the foundations of their title: And the words of that article, which are supposed to have a principal bearing upon the question, are 'that there shall be no future confiscations made.' What then is the import of the term confiscation, here employed.

The right of the commonwealth to lands purchased by an alien is an ordinary right derived from the common law. It exists at all times. It is independent of, and does not arise out of a state of war. In the present case, it resulted to the commonwealth from the establishment of a new government here, to which the plaintiffs had not acceded. Although in fact the plaintiffs were enemies to this country from the commencement of our hostilities with Great Britain, they were not, legally speaking, aliens until the erection of the new government. Prior to that event, the right in question would not have accrued to the commonwealth: so on the other hand if the erection of our new government had preceded or been unaccompanied by, a state of war, the right in question would have existed before as well as after the commencement of hostilities. This is not a right therefore arising *jure belli*; it results from a mere municipal regulation. It exists not, because the person purchasing from an enemy, but because he is an alien. It is not as that extending over the subjects of a particular power only with which we may chance to be at war, but over the subjects of all foreign nations at all times whatsoever.

This is the right which by the common lawyers is technically denominated a "forfeiture." "Forfeitures of lands and goods for offence" a right founded on the offence of the alien in presuming to purchase lands contrary to law, says Blackstone 1 Bl. 372. Bl. 2. 274 "are called by the civilians bona confiscata, because they belonged to the Fiscus or imperial treasury, or as our common lawyers term them, 'bona foris acta.' Indeed lord Coke seems in one place to consider confiscation and forfeiture as synonymous terms, 3 Ins. 227; and Blackstone also in a few passages appears to have used the term confiscation to signify a forfeiture into the treasury: but preserving the distinction which this learned commentator has taken between the two terms, as above stated, the one being a civil law, and the other a common law term, and discovering also that he has expressly treated of the right now in question in a chapter under the head of 'title by forfeiture,' 2 Bl. 267, is it not fair to conclude that the technical and appropriate term descriptive of this right is forfeiture and not confiscation? At least is not this the most familiar and proper term to designate the right in question? And cannot we also fortify this definition by a most respectable authority; by the constitution of this state, which in transferring this among other powers from the king to the commonwealth employs the terms 'escheats, penalties and forfeitures' art. 20, without making any mention of confiscations? The term 'forfeitures' was used, because the article related to forfeitures by the common law only: but it omitted the term confiscation, which is appropriated to the description of civil law, and jure belli forfeitures, because forfeitures of that class were not then within the contemplation of the convention.

Besides this ordinary right of forfeiture, there is an extraordinary one accruing to belligerent nations, by right of war, of confiscating the property of their enemies. This right does not await and attend on the contingent event of a purchase by or a descent to an alien; it affects property then actually holden by the enemy; nor is it carried into effect by the ordinary course of the municipal laws: the property is seized and confiscated by an extraordinary act of the government of the belligerent nation. It is seized not because it belongs to an alien, but to an enemy. To this right it is that the term confiscation is technically and properly applied.

Here then are two senses, in which the term confiscation may be applied: the one restricted to a mere seizure by a belligerent nation in right of war; the other an extensive sense covering not only the right which has just been mentioned, but also comprehending a mode of acquiring property by the commonwealth under a permanent municipal regulation. In which of those acceptions is the term to be employed in the 6th article of the treaty of peace? becomes therefore a most important question.

This article, it is to be recollected, is contained in a treaty of peace; which, according to Vattel b. 1, page 34. 'naturally and of itself relates only to the war which it puts an end to, and therefore it is only in such a relation that it is to be understood.' Such a treaty therefore does not naturally relate to a mere municipal regulation. In fact, a treaty of such extensive application could not at that time have been formed by the American commissioners; because the government under which they acted had been very much circumscribed in its powers by the articles of confederation. It may be seen by referring to the documents attached to Mr. Jefferson's letter to Mr. Hammond, No. 7, 8, 9, 10, and 11, that the American commissioners had disclaimed all power in Congress to "interfere in matters appertaining to the internal polity of the several states; and even declared that the power of Congress did not authorise them to stipulate for a restoration of the confiscated estates of real British subjects, much less those of refugees, because those acts had taken place under the authority of the several states. The most that they could or did perform was modestly to recommend such a restitution to the several states: and the British commissioners acquiesced in this restricted arrangement. Congress claimed and exercised the power of interdicting all future confiscations, i. e. jure belli confiscations, but they disclaimed any power of restoring even the property which confiscations of this kind itself had thrown into the state treasuries. Congress had the power of peace and war: they had a right to make any treaty, which should convert enemies into friends, and remove all the disabilities that were attached to the former character; but Congress had no power to invade the ordinary rights of the states, and make citizens of Virginia out of those whom the 'internal polity' of her laws had thrown into the class of aliens.

The term *confiscation* then when occurring in a treaty of peace naturally means a confiscation *jure belli*, and does not extend to the common law right of Escheat and forfeitures. Two circumstances conspire to fortify this construction.—1st. The *confiscations here* prohibited are connected in the same article, and in the same sentence of that article with *prosecutions* on account of the part taken in the war; 2dly, the history of the revolution clearly proves that many *such confiscations* were made on the part of the state governments. See the references of Mr. Hammond's letter to Mr. Jefferson of 5th March, 1792. To *what class of persons*, these confiscations and prosecutions related, it will be of considerable importance to determine.

The 6th article of the treaty of peace, which contains these terms, upon the whole context of it taken together, can only relate to those, who being once American citizens, afterwards *became refugees*, and joined the enemy. It *cannot* relate in a *collective* point of view to real *British subjects*. For would it not have been absurd to stipulate, that after peace had taken place between the two nations, we should not commence prosecutions against real British subjects for the part they had taken during the war? Had there been no such article in the treaty of peace, and America had commenced such prosecutions against such British subjects, Great Britain would justly have considered them as acts of hostility against herself. In regard to British subjects therefore, this provision would have been wholly superfluous and unnecessary. But with respect to the American refugees; it was strictly necessary and proper. They had become citizens of these states, and without expatriating themselves had joined the standard of the enemy.—They had exposed themselves to the severest penalties, which the states might chose to inflict upon them after the peace for their treachery during the war: and the humanity and the honor of the British nation were deeply interested in their protection. It was to them, therefore, that the latter part of this article exclusively applies. The interdiction of prosecutions for the part they had taken in the war, sufficiently secured them from such common law forfeitures, as were incident to attainders or prosecutions for treason. Not being aliens, though enemies and traitors to the United States, they were safe independently of the treaty, from the ordinary effect of the laws of escheat and forfeiture. It is only then in relation to legislative acts of confiscation and seizure, that the first part of this article is to be understood even as it respects the refugees. Why therefore should we give a construction to the treaty, which will entrench upon the municipal systems of the several states, when every end necessary to be attained in relation to the refugees can be completely effected by the interdiction of extraordinary acts of confiscation and seizure?

This article, taken collectively, does not then relate to real British subjects; and as to that particular part of the article which interdicts future confiscations, it is superfluous and unnecessary to apply it to them; for such interdiction had already arisen from the mere conclusion of the treaty of peace.

2. With respect to lands holden here at the time of our separation, i. e. at the epoch of our independence, by British subjects, it would be unnecessary to express any opinion, because the present case stands on a much weaker foundation than that. Such lands are safe in the hands of these holders, by the principle of the common law, literally understood, in relation to escheat and forfeiture for alienage; that law not permitting a subject to become an alien. If then it be true, that the lands of those holders are safe under the operation of the laws of escheat and forfeiture, the treaty need not receive such an extended construction as will protect them from confiscation, and as such lands are also protected from extraordinary confiscations by the mere signature of the treaty, that instrument need not to be applied at all to the lands so holden by real British subjects.

But even if a contrary opinion should prevail; if it should be even deemed necessary to give to the treaty a strained interpretation in regard to vested rights, the same necessity does not exist in relation to contingent possible rights. The cases of this class occurring during the war were probably very few, because all intercourse between the two countries being prohibited and interrupted, few would wish to purchase a title to real property in either country; and we must impute a very gross ignorance to our people, on the subject of alienage, before we can suppose that many devises were made, or many descents were permitted, to such aliens. Besides whatever obligations there may have been upon the British government to guarantee to its subjects property held in the enemy's country at the commencement of hostilities, it was not equally bound to protect all future, possible or eventual acquisitions. With respect to such acquisitions as may have accrued *since the date of the treaty*, it would have been most unreasonable for the British king to have expected us to grant, such inestimable privileges to his subjects, as the people of no other power upon earth are permitted to enjoy, although they render us no services, and owe us no allegiance. An analogous illustration may be drawn from the subsequent treaty of 1795; which although it has expressly established the title to lands *then actually holden* in either country, has suffered these eventual rights, or in other words, this famous doctrine of *legitimation* to be cast into that fathomless vortex prepared by our revolution for all those parts and principles of the *common law of England*, which refuse to be blended with our republican institutions.

3. But every observation which has been advanced to establish a discrimination between *forfeiture* and *confiscation*, applies with much greater force to the discrimination between an *escheat* and confiscation. It would be doing much more violence to the signification of the latter than the former term, to confound it with the term *confiscation*. And yet the right now in question, is a right accruing by escheat.

The construction of the 6th article of the treaty of peace may now be collected into one general point of view. It appears, that that part of it which prohibits all future confiscations relates only to American refugees, and perhaps also through abundant caution to real British subjects; that it was intended to secure *no other* privileges even to these men, than a future indemnity from all extraordinary acts of seizure and confiscation—and that under all these considerations, that construction of it can no longer be admitted, which under the cover of its general expressions, would attempt to prostrate all the ordinary rights of escheat and forfeiture, which the several states have claimed over the mere contingent and future acquisitions of British subjects.

The claim of the plaintiffs therefore is to be supported neither by the principles of the common law, nor by the 6th article of the treaty of peace.

The court affirmed the decision of the district court, and the defendant retains the property.

ENGLISH HOUSE OF COMMONS.

MONDAY, FEBRUARY 11.

SPANISH WAR.

MR. PITT commenced the debate with a review of the relative situation of the two countries at the beginning of the war. "I need hardly say more to characterise that situation than barely mention the treaty of St. Ildefonso, and the stipulations it contained. Spain was bound to France by a treaty, on the face of it both offensive and defensive; and, in fact, a treaty which was by the contracting parties so entitled. Besides guaranteeing neutrality, their territories, &c. they agree to assist each other with fifteen ships of the line and 24,000 men; and this assistance, too, as appears from the 8th article, is to be given upon the demand of the requiring party, and the demand is to be taken as conclusive evidence of the necessity, precluding the party required from making any investigation or enquiry as to the justice of the war, or the policy of the object for which the succors were to be granted. Nay, by the 11th article of this treaty, the contracting parties are to assist each other with their whole forces in case the stipulated succors should be insufficient. Such a treaty, said Mr. Pitt, unless virtually disclaimed by Spain, was a just cause of hostility against her, and such was the relation of the countries at the moment when the present war broke out. In any other circumstances, had it not been believed that the heart of the Spanish government could not be concerned in such a treaty, the government of this country could not have been justified, unless they had in the very outset demanded the renunciation of it, or made it a cause of war. But they felt that the engagement of Spain were not of choice but necessity. It did appear, indeed, that the Spanish government, at the commencement of the war, felt a disinclination to enter into it, with a view to elude the stipulations by which they were bound to France. On the other hand, without distrusting the sincerity of Spain, we had reason to fear that she might be driven by the overbearing ascendancy of France into hostilities fatal to her own interests, at any moment it suited the policy of the Ruler of France to avail himself of her resources. It therefore became their duty to watch with peculiar jealousy the conduct of Spain—to take care that during the period of neutrality she could not be enabled to fill her coffers and to replenish her arsenals, that her recruited means might be employed against us at the nod of our inveterate foe. If France was entitled to call for 15 ships of the line and 24 000 land forces, what security would there have been that Spain would not have been farther required to put forth all her strength? And for what purpose? For an object avowed even before the commencement of the war, and never abandoned since but in practice, the utter extinction of Great Britain as a nation, and her reduction to even worse than that state of subjection and dependence in which Spain was placed. Having stated these general principles as applicable to the state of our relations with Spain, it remains to consider how they have been followed up. Gentlemen will see in the papers on the table the instructions by lord Hawkesbury to our minister at Madrid, so far back as October, 1802. They will there see that the first object of our policy was, if possible, to detach Spain from her degrading connection with France, and if that was impracticable, at least to endeavor, that in case of any future war, either a system of neutrality should be settled, or at least that hostilities with her might be deferred. In June, 1803, instructions were given to Mr. Frere, to demand from the Spanish government a renunciation of the treaty of Ildefonso, nor will any man, I believe, dispute that the instructions to which I allude, as the points to be insisted on, are fully justified by the laws of nations. It is needless for me to dwell upon the question, how far the limited succors in the treaty of Ildefonso would have been consistent with the neutrality of Spain, as that makes no part of the case. I must say however, that it never was admitted that we were bound to acquiesce in these succors being given, so that all argument founded upon the commutation of assistance into pecuniary aid are inapplicable, because, if we did not admit the one, we were certainly no way bound to acquiesce in the other. The conduct which a nation is bound to follow in the case of limited succor furnished in pursuance of a defensive treaty, must depend upon the extent of the assistance, and that extent must be taken in proportion to the whole strength and resources of the nation furnishing. Much will depend, too upon whether the treaty is recent or ancient, whether it is general in its provisions, or concluded with direct reference to hostilities with a particular state. But while the moderation of this country was unwilling to drive Spain into war, it was unquestionably necessary to obtain some pledge that the treaty of Ildefonso should not be acted upon. If they did not make it a specific ground of war, they were entitled to insist that its hostile principle should be abandoned." Mr. Pitt then went through the general progress of the negociation with Mr. Frere and the Spanish ministers,—the demand that the treaty of Ildefonso should be renounced, that all conventions with France should be laid open, and that the specific sum which was paid by them in lieu of the treaty should be unreservedly declared. These sums amounted to no less than three millions of money. "Now then," said Mr. Pitt, "can it be maintained in this house, that a war subsidy of three millions is not an infringement of neutrality, and does not render Spain a principal in the war? The Spanish government, indeed, all along contended that the subsidy, the extent of which they refused to communicate, was only an equivalent for the succours stipulated; but we were not told whether it was to be considered an equivalent for the limited or the unlimited succours. If to the latter, nothing can be more absurd; and if as to the former, on what principles of calculation is the equivalent estimated? Under the name of an equivalent, any sum might have been paid. In different nations different estimates of that equivalent would be formed. In this country, owing to circumstances connected with our prosperity, though sometimes burthensome in their operation, the pecuniary equivalent for military aid would be higher than in any other country probably in the world. What then might be the rated equivalent in England for 15 sail of the line and 24,000 land forces? At the highest estimate, the pay and charges for 15 sail of the line for a twelvemonth, would not exceed one million, leaving two for the land forces. This would be allowing between 80 and 90 pounds for every man. It is well known that this is infinitely beyond the allowance necessary in any service or in any treaty. Of what is allowed as pecuniary commutation for service in kind, we may take an instance from the treaty between this country and Holland in the year 1788, in which it is stipulated that between 9 and 10 pounds shall be paid for each man in the infantry, and 11 and 12 pounds for each man in the cavalry. By this calculation of equivalent, however, Spain pays between 80 and 90*l.* for each man; an allowance extravagant and unreasonable in the extreme. Can it be doubted, then, that a pecuniary subsidy to the annual amount of 3,000 000*l.* made by Spain a principal in the war, & could never be considered as a fair equivalent for any moderate extent of milita-