NATIONAL INTELLIGENCER
AND
WASHINGTON ADVERTISER.

VOL. VI. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | No. DCCCXVIII.

FIVE DOLLARS PER ANNUM. | MONDAY, JANUARY 6, 1806. | *PAID IN ADVANCE.*

The following decision, and comments are taken from a Newport print, decidedly Federal.

Ship Hope, Robinson, of Newport, R. I.

We present the following decision of Sir William Scott, as an important document—Although it is a case of restoration, yet the new principle of the English Admiralty Courts is fully displayed. The argument of the Judge evinces how flexible, for their own purposes, the English can make the law of Nations—Though a rule may be laid down this year and acted upon, and neutral property to the amount of millions be afloat in full faith of its continuance, yet it is by no means certain, that it will be the rule of adjudication the next year.

Sir William Scott had heretofore declared himself satisfied, that landing the cargo and paying the importation duties, constituted ample proof of a legal importation, and that a cargo so imported, might be exported. The Lords of Appeal, have, however, decided otherwise. For this Court it can hardly be expected, that we should feel the same respect, as for the English Courts of ordinary common law jurisdiction. For unlike these, it is not composed of men who hold a permanent office by an independent tenure, but mostly of the confidential members of the existing administration. These men are generally of high rank and distinguished talents: but they are members in the Cabinet of a nation at war, and they carry with them from the Cabinet to the Bench, the plans and the projects of war. Judicial decisions destructive of the rights of neutrals, are one of their means of distressing the enemy, & aggrandising their own nation. What they establish becomes, however, binding upon all subordinate Courts, and consequently the principle established by the Lords of Appeals, has been adopted by Sir William Scott, against his own sense of its equity and propriety. The lately announced principle was argued by the Counsel in the following case, in its utmost latitude; and though it was decided that it did not apply, as the cargo in this instance was purchased in time of profound peace, yet the principle was admitted and strenuously supported—And although the capture in this case was confessedly illegal, and upon trial it appeared that even a court of admiralty could find no pretence for condemnation yet damages were denied, and costs and expences, to a large amount, paid by the claimants. The English admiralty courts seem to adopt at the present day, respect to neutral property, the same maxims of law and evidence as were formally, in a corrupt and bloody period of their history, adopted by their criminal courts, in respect to high treason. They make intention a crime, and prove the intention by conjecture. They make a charge, alledge criminalty, but feel no obligation imposed on themselves to prove it. The accused is called on to disprove it, and if he fail in the almost impossible task of shewing he had not such an intention, he is condemned. Such doctrine we hope the wisdom and prudence, if not the justice of Great Britain, will lead her to disavow. At any rate, it is the duty and the right of this country to deny and resist it. This is a point on which all parties are united. All questions of petty controversy ought now to be avoided. If the present administration will, by spirited and dignified measures, save our widespread commerce from its impending ruin, vindicate our violated rights and insulted honor, procure indemnity for the past, and security for the future, we ought to throw a veil of oblivion over its past follies and offences, and encourage by our approbation, their late, but we hope not insincere, conversion to federal measures and principles.

DECISION

Of the right hon. Sir William Scott, in the British Court of Admiralty, Doctors Commons, Thursday, September 12th, 1805, in the Case of the Ship Hope, of this Port, Robert Robinson, master.

"This case is pressed, upon the part of the captors, on the ground of its being a cargo taken in at an enemy's colony (Manilla) and after touching in America is brought on to the enemy's country in Europe, without breaking the continuity of the voyage, by any act done; and in respect to this question, there is no evidence here, that the continuity of the voyage was sufficiently interrupted.—*Since the case of the Essex, Orne, a mere importation with the intent of exporting* again, is not to be taken as a discontinuity of the voyage; and I am surprised at the observation made, as if this was a novel rule, a new rule introduced. I apprehend it is a clear and ancient principle, and perfectly justifiable. It is not going to a neutral port, and saying you have called at that port in passing, but it must be a *bona fide* importation, and established by evidence, that the continuity of the voyage is solemnly broken with respect to the cargo; in that case the court will look no further. The time of a vessel staying is of importance, as it shews the intention of the parties. If it is extremely short the presumption arising is that it is merely of an evasive nature. At the same there have been cases in which it has appeared, notwithstanding the shortness of the time, there was sufficient evidence to prove that they went there for the purpose of importation; and it was only in consequence of not finding a market, that the cargo was re-shipped and the court has fairly tho't it its duty to hold that the voyage was interrupted. The mere payment of duties, if there is clear evidence that the importation was for the purpose of immediate exportation, and that the cargo was carried there for the purpose of evading the consequences of coming from the colony of the enemy, to the country of the enemy, that has been held a continued voyage. The case of the Essex, Orne, is an authority upon the subject, and which is absolutely binding upon myself, because it has its foundation upon every just principle of law; and therefore it must be understood, at least in the present holding of the courts upon the subject, that is the doctrine which they think themselves warranted in applying. But the question here is, whether in fact in the origin, they can supply any ground upon which this sort of reasoning can be applied. If it was not a shipment from the enemy's colony, there is an end of the case. Now it is admitted, that this transaction takes place before the commencement of the war, that the exportation from Manilla was in September, and it was not till November that war broke out between Spain and England. But it is said, if it was done in contemplation of war, it would have the same effect; so it would, where it appears that such contemplation was at the bottom of the transaction, where there is evidence from the correspondence, or other wise to shew that the parties did act in contemplation of the war: In such cases, where the contemplation of the war was established by satisfactory evidence, the court has applied the rule, and that it shall operate exactly the same as in actual hostilities; but nothing of that sort appears here, and the fact being, that war did not commence at Manilla till after the vessel had sailed, it is extremely unlikely that a prospect of a war with this country should be entertained with any degree of credit to induce the Americans to speculate upon this subject—but supposing it was an importation from Manilla to Amsterdam at this period, it would be an importation perfectly legal, and all transactions in America may be laid out of the case. Upon these grounds there being no dispute about the property, I shall think myself bound to restore the ship and cargo."

CONGRESS.

SENATE UNITED STATES.

FRIDAY, DECEMBER 20.

Debate on the Motion of Dr. Logan for leave to bring in a bill to suspend the commercial intercourse between the United States and St. Domingo.

[CONTINUED]

GEN. S. SMITH—

Mr. President. Had the honorable mover produced any new document, or given us any new information, I certainly should have given my vote that he should have the leave required. Or had the Senate been composed of the same members as those of the last year, I should have contented myself with giving a silent vote on the question. An addition being made to Senate of several new members, it may not be improper to state, that this subject was at the last session presented to the view of Congress by the President. A bill was predicated thereon, and after great consideration and lengthy discussion passed into a law. Has the mover produced to the Senate any document to shew that France is not satisfied with what has been done? Does the gentleman know that any new complaint has been made? I know of none, and I therefore think it fair to presume that France has been fully satisfied with the law already passed. The gentleman has said that both the French and British ministers have considered the Trade to St. Domingo as contrary to the Law of Nations. I see nothing of the kind in the Note from the British minister. I have no doubt of the British being disposed to interdict that branch of Trade as they have done almost all our other most lucrative commerce. Had the gentleman brought forward a bill to interdict all trade with Great-Britain, he might have produced many more reasons in its support than he has been pleased to offer in support of the bill proposed—But what is this Law of Nations? Is it the written law, or that law assumed by the nations who have the most power? If the gentlemen mean the written law, I must believe they are mistaken. I have somewhere read, that when a part of a state separates itself, and is capable of supporting that separation, forms for itself a government, and fully conducts its own affairs—that other nations do not infringe this law by trading or commencing a friendly intercourse with such part.

We are told that a celebrated French general since here has said, that had gen. Le Clerc succeeded, he meant to have landed all the blacks of St. Domingo on our southern shores. This may be—but, sir, it is not probable. If such however had been his intention, they could not have arisen from resentment on account of our commerce, for we had been of the greatest utility to him and his army, and had then carried on no commerce that was not fully sanctioned by France—Nay, I might say, that owing to the supplies from the U. S. the colony of St. Domingo had been preserved to the mother country until the arrival of gen. Le Clerc.—Unless, Mr. President, the honorable mover shall produce some new information, I shall be under the necessity of voting against leave to bring in this bill.

DR. MITCHILL, in a speech of considerable length and detail stated his objections to giving leave.

He complimented his friend from Pennsylvania for the purity of his motives in bringing forward the present motion. But he could not refrain from an expression of his surprise, and even his regret, that the subject had been moved again in the Senate.

During the last session of Congress, the whole of the intercourse with St. Domingo had undergone a full investigation. While the bill regulating the clearance of armed merchant vessels was under discussion, that part of our foreign commerce had been minutely examined. It would be remembered that the bill had been committed, recommitted, amended, and modified with the utmost labor and skill. Besides the talents which the Senate afforded, all the sources of executive information had been drained, to aid their researches. And the letters of the British and French ministers, complaining of the conduct of our merchants in forcing this trade, were opened to our view. The crude material of the bill had been hammered at and worked upon so elaborately, as to have at last received the complete burnish of a law. With all the knowledge that could be derived from so many quarters, the bill was at length passed to check the violence of our navigators, and to restrain the adventurous zeal of our merchants. The provisions of this law, were such as it was deemed just and proper that a neutral nation should take. And this was a liberal condescension to the wishes of the two great maritime and belligerent powers without forgetting the respect that we owed to our own. With both these he wished to cultivate peace and good understanding; but to neither of them would he consent to yield any portion of our neutral and national rights.

The difficulties exhibited in the ministerial correspondence, Dr. M. said were thus removed. With a promptitude that deserved to be admired, Congress interposed its authority, for the purpose at once of doing justice to our neighbors, regulating our commerce, and tranquillising the Mexican seas. With these salutary provisions, he believed the two complaining nations, had been satisfied. At least we had done so much that they ought in all reason to be content. Congress had already manifested a due regard to all that France and Great-Britain had offered upon the branch of West-Indian commerce, and in the true spirit of good neighborhood, and correct principle, had modified and restricted the intercourse with Hayti. And so fully did the Europeans seem to acquiesce in our conduct, that he had not heard any further remonstrances made by either of them about it. He thought the observations of the gentlemen from Massachusetts (Mr. Adams) very much in point. Under a conviction that we had done as much as public faith and national honor required, he had given his vote against the introduction of a similar bill during the last session. Nothing had occurred from that time to this day, to alter the circumstances of the case, or to make it necessary for him to change his conduct. He thought now, as he did then, that there was danger of overacting our part and of doing too much; of being good to our neighbors, to such a degree, and in such a manner as to be very cruel to ourselves.

After all this condescension on our part, after inquiring into the alledged misconduct of our people, and taking immediate measures to prevent the repetition, and after having done all that we politically could or that we honorably ought, the subject is once more introduced to the Senate. It comes now, not from the executive department, not from the cabinets of the nations concerned, nor from the recommendation of a Senatorial committee, but from the suggestions of an individual member of our own body.

The commerce of the United States, he said, was an astonishing spectacle. It reached from Artic to Antarctic; and was co-extensive with the circumference of the globe. Most of the inhabited countries of the earth were visited by our navigators, and the striped flag of the union fluttered in the remotest harbors. Our countrymen have made material additions to the science of Geography. They have found markets unknown to commercial men before. They have derived cargoes from the depths of the ocean, and laid the cod, the seal and the whale under contribution. They have exported the productions of their own happy country, so fertile in the articles which sustain and cherish life, to all places where they were wanted, and brought home the crude materials or the manufactures of those regions in return. By an energy and enterprize unexampled in the history of the human species, they have excited the jealousy of foreigners, who are not only behind them in mercantile exertion, but who cannot weigh an anchor or reef a top-sail equal to them.

Such was our situation, peaceful, industrious, and desirous of measuring out liberal justice to all our neighbors. But this was no protection against commercial rivalship. *Emulation and competition existed in all callings and professions.* Mercantile jealousy had been alarmed by it. Experience had shewn to the most active of them that they were unsuccessful competitors. What was the consequence? They had endeavored to interrupt by force or stratagem, that predominant trade which they could not outdo or equal by fair means. In the havens of Britain the port-charges were of the most exorbitant kind. The money paid by us for passing their light-houses was excessive. The fees for performance of quarantine, were out of all proportion to the good expected or service done. Convoy-duties were also frequently exacted. And the custom houses collected a higher rate of charge upon merchandize exported to the United States than to any part of Europe. In addition to all this the cruisers of that nation had made the most ungenerous abuse of the power of searching our vessels. They had taken out and impressed into their service, emigrants coming to our country. They had violently drawn into their service, our seamen, natives of our land. Naturalised foreigners had not been spared. Our neutrality had been violated by their forcing our impressed citizens to fight against the political friends of their country. Our ships had been frequently detained and spoiled on the high seas; and their officers and crews grossly insulted. Vessels bearing the variegated stripes and constellated stars of our union had been sent to distant British ports for adjudication. Cargoes had been condemned under the most arbitrary pretexts, and our merchants and underwriters by the process of an *exparte* trial stripped of their property. Our ports had been blockaded. The public authority in our very harbors had been defied, and the armed vessels of the nation had been fired at. And to crown the whole, the same nation, instigated by the like jealous and invidious considerations seem bent upon prohibiting our carrying-trade in colonial produce, and resolved to reduce us once more to the dependence of provinces.

Are we, sir, already come this? You *(the Vice President Mr. Clinton was in the chair)* well remember the effects wrought by the injurious proceedings of the British Parliament in 1774. You bore a noble and manly part in the struggles of freemen against oppression at that day. Thirty years ago, you and your patriotic associates could form a general non-importation agreement, and despising the luxuries of the mother country and superior to her prowess, you, spirits of freedom, atchieved our glorious revolution. If the case requires it, may we not do this again? If we must curtail our commerce by our own statutes, it is certainly a better policy to retaliate upon an adversary in that way, than to abandon to her, as the proposed bill contemplates, a lucrative portion of our trade. Surely, laboring as we do, under all these embarrassments, a proposition for lessening our navigation and forbidding our ships to frequent the open ocean, would hardly have been expected from one of our own body.

For my own part, said Dr. M. I think the St. Domingo commerce is no great thing in itself. We might do exceedingly well without it; and I am very far from approving the means by which it has been carried on; but, I dislike the idea of forbidding it at the mandate of a foreign power. Like our revolutionary patriots, let us put our foot here, and hence refuse to budge. It is not for us to legislate at the nod or bidding of any nation. I hope we understand our business better than to register edicts for them—while we pay due respect to others, it becomes us also to respect ourselves. The precedent is a dangerous one. If we agree to interdict this intercourse, we may at the next session be informed that we ought to withdraw from some other important port or region. When we are found to be so complying to one nation, we shall be subjected to a like request or menace from another, until, sir, our flag shall be furled in one foreign port after another, and nothing be left us but the coasting trade at home. The sad consequences have been ably portrayed by the gentleman from Maryland (Mr. S. Smith).

There was another reason evincing the unseasonableness of the proposition at the present time. This was a disastrous and eventful era of our commerce. The merchants in every sea-port of the nation were assembling to consider their losses from the rapacity of the belligerent powers, and submit them to the consideration of Congress. It would be better to wait for the statements that such a practical class of men should make. Our judgments would be aided by the facts which their memorials would contain.

Dr. M. then considered the prohibition in the constitution on Congress as to the laying of export duties; and said that the exportation of our domestic productions so necessary to our country, and so cautiously guarded, ought not to be interrupted by any spontaneous regulations of our own. He was an advocate for the *mare liberum*. He wished a wide and open market for the beef, pork, fish, flour, rice and cotton of the country.

He then adverted to the operation which a restrained commerce would have upon agriculture. With the ceasing of exports, this great spring to the planters and graziers' industry is at once taken away; the plough would stop; and it would be melancholy to see the fair and enchanting face of our country, degenerate to the savage state, and yield nought but the unthrifty crop of weeds and brambles.

Turning then to ship-building and its cluster of attendant trades and arts, he feared that it would fall into neglect. That employment, which gives perhaps, the grandest idea of the skill of man, would be discontinued, and the inhabitants of our sea-ports be forced back to the country to keep them from starving.

Nor was the revenue to be omitted in this enumeration. As far as the imports from Hayti are consumed by our citizens, so far the revenue is aided; &, if exported under drawback, the carrying trade is helped by the transportation, and the return cargo, whether of brandy, wines, hardware or dry goods, may be expected to afford an *ad valorem* or specific contribution to the treasury.

A word or two concerning the situation of France in this affair, he should beg leave to offer. The coffee and sugar of that productive island had reached the ports of that empire in American bottoms. And in return the productions and manufactures of France had been carried by the same conveyance to the revolted colony of black freemen. It was presumable such an intercourse would give to France several of the benefits of a direct commerce. And as our act of the last session had yielded to her the sovereignty, he did not think that in the existing intermediate state between rebellion & revolution among the Haytians France had any just cause of displeasure against us. If she had, the numberless captures and depredations done under her flag, must have given her the most ample satisfaction. Under these impressions he judged it neither politic nor necessary to legislate further on the subject; and should consequently say No to the motion.

MR. HILLHOUSE said he hoped the question would be taken by yeas and nays, because he confidently expected there would be a great majority of the Senate opposed to giving leave to bring in the bill, for he considered the measure not only as improper, but as ill-timed.

We are informed by the message of the President of the U. S. and the documents before us, that depredations are made on our commerce on all quarters, and our citizens not only robbed of their property, but in some instances subjected to personal insult and injury; it is also well known that Congress have received confidential communications from the President, and are deliberating with closed doors—The general expectation is that something energetic & spirited will be done in defence of our neutral rights and national honor. How great will be the surprize if the first step taken by the Senate of the U. S. is found to be a further restriction, or a total prohibition of a lawful and lucrative branch of our commerce? As to restricting or prohibiting this trade to St. Domingo (which no gentleman has produced a single authority from the law of nations to prove to be unlawful) for the purpose of securing our citizens from the personal insults and injuries to which they are exposed in the West-Indies, he could not approve it; a more proper and dignified course he thought would be to send armed ships into those seas, to capture or demolish those bucaniers and pirates, who rob us of our property, and insult and murder our citizens. They are a banditti whom no nation will own, or admit to be acting under their authority, though sailing under their flag, and whom it is not in the power of such nation to restrain.

The gentleman from Georgia has told us that the conflict in St. Domingo is that of masters attempting to reclaim their slaves, and that if the U. S. suffer the trade to be carried on, we shall be considered as aiding and upholding those slaves, and give offence to France. And that when peace shall take place in Europe, the French will transport those negroes by thousands to the shores of South Carolina and Georgia, to the endangering the lives of the citizens of those states. This Mr. H. considered as a bugbear with which we ought not to be frightened, for, as to the warfare in St. Domingo being a mere conflict between master and slave, i[t]