

NATHANIEL GODDARD ET AL.

[To accompany bill H. R. No. 39.]

FEBRUARY 29, 1840.

Mr. RUSSELL, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the petition of Nathaniel Goddard and others, report :

That the claim in this case was first presented to Congress in January, 1818, and referred, in the House of Representatives, to the Committee of Ways and Means, and a report made thereon, by the Hon. William Lowndes, chairman of the said committee, in favor of the prayer of the petitioners, and introduced a bill for their relief, which failed to become a law. In 1824, said petition was again introduced and referred, but no further action at that time appears to have been had thereon. In December, 1837, it was again introduced into the House of Representatives and referred to the Committee of Claims, and a favorable report made thereon and a bill introduced for the petitioners' relief; but no final action appears to have been had thereon. This committee have examined the claim and reviewed the preceding reports made thereon, and concur in the conclusions to which the respective committees arrived, and adopt the report made on the 22d day of December, 1837, as a part of this report, and herewith present a bill for the petitioners' relief.

DECEMBER 22, 1837.

The Committee of Claims, to whom was referred the petition of Nathaniel Goddard and others, owners of the ship Ariadne, and shippers of her cargo, praying a remission of the forfeiture and a return of the avails, so far as they have been realized by the United States, respectfully report :

The petitioners state that they are American citizens, and were sole owners of the ship Ariadne and her cargo, which sailed from Alexandria, in the District of Columbia, in the month of September, 1812, with a cargo of flour, bound to Cadiz, a Spanish port; that, on her direct voyage thither, and on the 15th October, 1812, she was captured by the United States brig of war Argus, and brought into the district of Pennsylvania, and there libelled in the district court by the captors as prize of war; that the sole cause of her capture and of her condemnation, as hereinafter mentioned, was, that she had on board, at the time of her capture, a British license (see appendix 1); that the petitioners gave bonds, on the delivery of the Blair & Rives, printers.

vessel and cargo to them, in the usual form, and the Ariadne again proceeded on and performed her original voyage, and arrived at her port of destination in February, 1813; that the libel was heard and tried in the district court of the district of Pennsylvania, when, after a full hearing, the transaction was pronounced innocent, and the vessel and cargo ordered to be restored to the petitioners, and the captors to pay damages. From this decree the captors appealed to the circuit court, where the decree of the district court was reversed; and from this decree the petitioners appealed to the Supreme Court of the United States, where, at the term of that court in 1817, the decision of the circuit court was affirmed, and a final decree of condemnation passed on the vessel and cargo; whereupon, the petitioners and their sureties paid the amount of their bonds, to the end that distribution might be made to the United States and the captors according to law. That there was no suggestion or suspicion that the property belonged to the enemy, or of its having been shipped with intention of promoting his views or object; that the whole offence, if any there was, consisted in having said license on board said vessel; that they had no intention of violating any law of their country, nor did they know or believe that having on board said vessel said license was in violation of the law of the land, or any principle of public or private duty; that this opinion was entertained in common with other citizens, and particularly the most distinguished functionaries of the Government, the then President and Attorney General of the United States; that, if they erred, it was unintentional, and the penalty of sequestration of their property was too severe an infliction for the violation of an unwritten rule of conduct, at that time never promulgated by the Government or known to the citizen. While they concede that the law itself will admit of no justification for its violation, on the ground of ignorance of its existence, yet they contend that when a forfeiture has been inadvertently incurred, without involving the accused in any dereliction of moral obligation, it is no less an exercise of wisdom than of justice to remit such forfeiture; and this, they contend, is their case.

The testimony taken by the respective parties while the litigation was in progress, was very full, and from those most likely to possess correct information on the subject; which, with the petition, the ship's papers, and other documents, have been referred to the committee, and are herewith submitted. Among other testimony is that of the commander of the Ariadne, her supercargo, the consignees, and other confidential agents and individuals consulted with reference to the nature and objects of the original enterprise, with the correspondence relating thereto, the bills of lading, and the final account current rendered by the consignees at Cadiz to the owners, properly authenticated, showing, among other things, the manner in which the cargo was disposed of, and to whom; also, the written opinions of distinguished civilians, among whom was that of the then Attorney General of the United States, justifying, in a legal point of view, the use of the license complained of; also, the written communication of Henry Dennison, the prize-master of said Ariadne, after her capture by the Argus, in which, after giving an account of the capture to the Secretary of the Navy, he says: "I was ordered to take charge of her (the Ariadne), and bring her into the first port I could make in the United States. On the passage I fell in with two British cruisers, viz: the sloop of war Tartarus and the brig Calibre, and was strictly examined by each; but, by making use of the license and a little finesse, we escaped capture," &c. See appendix 2.

These documents are herewith submitted and made a part of this report; from all which, the committee have no hesitation in coming to the following conclusions:

1st. That the petitioners were the owners of the ship *Ariadne*, and shippers of her cargo on the voyage hereinbefore described.

2d. That her true port of destination was Cadiz, in Spain, which was then a neutral port.

3d. That her cargo (which was flour) was consigned to a mercantile house in Cadiz, composed of native American citizens, with a *bona fide* intention of furnishing the inhabitants of that city with this necessary article of provision.

4th. That she was captured by the American brig of war *Argus*, libelled, bonded, condemned, and the amount of the bonds paid, in the manner, for the cause, and under the circumstances, hereinbefore stated.

5th. That the owners and shippers, before entering upon the enterprise, resorted to every reasonable precaution which prudence could dictate, to ascertain the law of the land upon the question of their final condemnation. They consulted civilians of distinguished talent, learning, and integrity, and were advised by all that it was not in violation of any law or commercial regulation, either of nations or the United States, for an American vessel, clearing from an American port to Cadiz, in Spain, to have on board a license or passport of the description of that found on board the *Ariadne* at the time of her capture by the *Argus*.

6th. That the voyage was undertaken *bona fide*, and without any intention of aiding, abetting, comforting, or in any way or manner howsoever furthering the views or objects of the enemy, and without any design of violating any law or commercial regulation of the United States.

7th. That the distributive share of said prize, to which the Government was entitled, has been duly received.

8th. That the artifice made use of by the prize-master, on the passage from the place of capture to the port of Pennsylvania, to avoid the capture of the *Ariadne* by the British sloop of war *Tartarus*, and the British brig *Calibre*, prevented her capture by them, and should inure to the benefit of the owners of the ship *Ariadne* and her cargo.

When the committee also take into consideration, that a considerable portion of the supplies of breadstuffs for Cadiz, during the siege of that city by the Spaniards, was obtained from the United States, transported in American vessels, sailing from American ports destined for Cadiz, and probably after the declaration of war with Great Britain—all of them, sailing under passports like that for which the *Ariadne* was condemned, and *that* without seizure or complaint; and that this vessel and her cargo *alone*, were condemned for the *single* cause of *sailing with such license, without regard to the object of the voyage, or the port of destination*; they think themselves called on, in the discharge of those high obligations which appertain to them and to the Congress of the United States, to recommend a remission of this forfeiture, and a return of the proceeds, as far as they have been realized by the United States.

At the time this enterprise was conceived, the whole peninsula was in a state of great political agitation; the regular and accustomed pursuits of the inhabitants were interrupted; military aspirants were struggling for domination; and the peaceful, robust, and industrious cultivators of the soil were subjected (under color of authority), to the most invidious, arbitrary,

and oppressive exactions. Under these circumstances, the public mind there became excited; discontent, and the most extreme apprehensions for personal safety, prevailed; and a desire for a reform in the fundamental principles of the Government became universal.

A knowledge of the free institutions of America animated their exertions and strengthened their hopes; and their predilection for liberal, if not republican principles, in many of the States was openly avowed. And in Spain, particularly, after the treacherous imprisonment of their legitimate sovereign, indications of a reform, and an approximation towards that political toleration which laid the foundation of the free institutions of this republic were avowed, and witnessed with peculiar satisfaction by our citizens. Thus Cadiz, in the course of events, became a point of attraction. It was one of the most strongly fortified seaport towns in Spain; it was the headquarters of those who claimed to be patriots, who were in favor of reform, and who were struggling to sustain the constitutional government in the hands of the *Cortes*; possessing, too, a redundant population, cast there by the casualties which had involved their country in the multiplied horrors of civil war, numbering from two to three hundred thousand souls—more than double their usual population; and most of the agricultural districts and important towns in that country, from which bread-stuffs and other provisions were usually obtained, were possessed by French troops. Thus, the natural and usual source of supplies for this important town was greatly diminished, if not entirely dried up. The city, too, having been for years closely besieged, by which all supplies by land were cut off, it was believed that this crowded population were suffering for provisions, the natural consequence of which would be a ready sale and reasonable profits. Under these peculiar and afflicting circumstances, there were few, if any, who were Americans, who did not sympathize with the inhabitants of Cadiz, and breathe the purest aspirations for their comfort and deliverance.

The committee cannot but indulge the opinion that, under such circumstances, it was rather an exercise of humanity than obnoxious to censure, to have furnished the inhabitants of Cadiz with the necessaries of life. It is conceded that you cannot, with positive certainty, ascertain the *final* use of a cargo of this kind, and, therefore, with absolute certainty, declare that it *has entered* into the *civil* consumption of the place of destination; yet, in consequence of that very impossibility, which must be so apparent to all, the well-known and universally applied rule, which deduces the *final use* from the immediate *destination*, has been established as furnishing *prima facie* evidence of the *use*. Thus, where the articles were calculated for the ordinary use of life, articles of human food, or for the use of mercantile ships, and immediately destined to a neutral port, they are circumstances which are received as equivalent proof to that of civil consumption, and cast upon the captors the necessity of producing countervailing circumstances. This they may do, by producing evidence of the intention of the shippers to apply the cargo to military or naval use. Here, too, the difficulty of adducing testimony to establish that *intent* will be perceived; but, by applying the rule hereinbefore suggested of deducing the intent from given facts, the difficulty is overcome. Showing that the ship's papers present a *false* port of destination, that the true port is blockaded by an enemy's squadron, or is possessed by an enemy, are countervailing circumstances, and show with reasonable certainty that the intent of the shippers must have been to apply the cargo to the military or naval use of the enemy.

Applying this doctrine to the case under consideration, the committee apprehend the opinion may reasonably be indulged that this enterprise was undertaken for the purpose of relieving this superabundant population for a pecuniary equivalent; and that the intent of the shippers was that the cargo should enter into the civil consumption of Cadiz. In this view of the subject, the claim of the petitioners would seem to merit a favorable consideration; but the petitioners have been pronounced guilty of a violation of national law, or of a duty which they owed to their own Government, by possessing themselves of this passport or license; and the effect of this condemnation is a confiscation of the captured property, and the consequent transfer of a portion of the avails to the use of the public. And it is now submitted to Congress, to determine whether this penalty shall be exacted under the circumstances accompanying this case.

At the time this voyage was undertaken, the *principle that sailing with a license, protection, or passport* of this kind, constituted in itself an act of illegality, sufficient to subject the ship and cargo to confiscation, as prize of war, *disregarding the object of the voyage and the port of destination, was not admitted; nor was it known to exist even to the Government itself.* Were the petitioners, then, chargeable with a criminal design for being ignorant of that of which no one else possessed a knowledge.

The question for the consideration of the Government now is, not whether this hitherto undefined national law, "or duty to Government" (of which, until the promulgation of the decision of the Supreme Court, in this case, all were ignorant), has been violated; but whether it has been violated knowingly, intentionally, and wilfully, with a *design* to evade or violate it; and with the intention that this cargo should enter into the military or naval consumption or use of the enemy, and thereby further his views and objects.

The committee, after a careful examination of the voluminous documents, and the numerous facts which have been referred, and are herewith submitted, have come to the conclusion that the *idea* of an intentional violation or evasion of the law, in the conception or prosecuting of the voyage in question, is entirely repelled.

In courts of criminal jurisdiction, when convictions have taken place for violations of municipal regulations, which involve no moral turpitude, and which have been the result of ignorance or inadvertence, unaccompanied with gross negligence, the moral sense and just expectations of the community have been met by reducing the punishment to that merely nominal; or remitting the fine, penalty, forfeiture, or disability altogether; and in most cases, if not all, when the intention to do wrong, which is a necessary ingredient of guilt, has been wanting, it has been the uniform practice of the Executive department of this Government to remit the condemnation: and the committee apprehend that the practice of the various departments of the Government, in cases involving a principle of this kind, will not be disregarded. Uniformity in legislation is essential to the enjoyment of equal rights; and it is believed that the principle of the case now under consideration is not distinguishable from those referred to. When questions involving this principle have been submitted to Congress (and the instances have been many), on convictions for having violated the commercial regulations of the country, and it has been made to appear that the act complained of was done ignorantly, and without any *intention* of violating those regulations, or defrauding the Government, the penalty,

forfeiture, or disability has been uniformly remitted. In furtherance of this principle, the act of the 11th February, 1800, was passed by Congress, authorizing the Secretary of the Treasury, in certain cases, to remit fines, penalties, and forfeitures; and this identical case was submitted to Mr. Crawford, then Secretary of the Treasury, and his answer to Mr. Lowndes is herewith submitted (see appendix A), showing that he would have remitted the forfeiture if it had been a case within his jurisdiction; and he proceeds to state that, "admitting the facts stated by the petitioner to be correct (and they have not been controverted), he does not appear to have incurred the penalty from which he asks to be relieved, by wilful negligence, or by any intention of fraud."

At a circuit court of the United States for the district of Massachusetts, held in the year 1816, the Swedish ship *Mercurius* and cargo were condemned for a violation of the law of the United States interdicting commercial intercourse between the United States and Great Britain and France and their dependancies; and on the 3d of March, 1817, Mr. Madison, President of the United States, remitted all interest of the United States in the said condemnation or forfeiture upon its having been made to appear that Christian Borden, the petitioner in that case, and the captain of the *Mercurius*, was not actuated by any "fraudulent motives or wilful neglect" in the transaction which led to the said condemnation; but which was the result of ignorance on the part of the captain.

This case, in its essential features, strongly resembles the one under consideration; and, in carrying out in practice the principle of it, the committee are of opinion that the prayer of the petitioner ought to be granted. For the purpose of showing the great uniformity which has prevailed, and how ready Congress has always been to respect the motives of individuals charged with violations of the law, the committee submit the annexed schedule of laws passed on this subject (see appendix C). These cases establish the principle, that, when it was apparent that a forfeiture had been incurred without "wilful negligence or intention of fraud," it ought to be remitted or refunded.

It is a principle universally conceded, that war gives a right to capture the goods of an enemy, but gives no right to capture the goods of a friend; yet a friend may place his goods in such a position as to form an exception to this rule, and render them liable to seizure and condemnation as prizes of war; and the Supreme Court have incorporated into the jurisprudence of our country one exception to this general rule, when they say, that sailing with this license on board the *Ariadne*, was sufficient cause for confiscating the cargo, without regard to the object of the voyage or the port of destination. Now, if the possession (without using) of this license was sufficient cause of confiscation, how much more reprehensible was the conduct of the prize-master, in using it as he did. By the artifice which he resorted to, and by misrepresenting the destiny of the vessel, he prevented her capture by the enemy. Applying, then, to this case, the principle that a willing participant in the perpetration of an act of perfidy and fraud cannot, in equity and good conscience, be permitted to profit by it; and, considering the Government as identical with the prize-master (and in theory, at least, it is so), the question is, will it adopt a transaction which has been consummated in direct violation of truth? or will it distinguish between that sense of morality which demands from an individual an obedience to the obligations of truth, justice, and humanity, in his intercourse with

others, and that which rests upon Government? If they both are to be regarded as resting upon the same unyielding basis, to whose benefit shall this violation of truth, above referred to, inure? It cannot to the Government, because it was a principal transgressor; and, from the peculiar situation of the enemy, he cannot avail himself of what otherwise would be his right. The property, then, would seem to remain to be possessed by some one who, in equity and good conscience, has a superior right. It once belonged to the petitioners, and still does, unless they have forfeited it; and, in the view herein taken, and by analogy to the cases referred to, it is believed that no such forfeiture ought to be enforced.

Under these circumstances, the petitioners ask that so much of the avails as have been realized by the Government may be returned to them.

It is a fact in proof, and was of general notoriety, that ships sailing at the period alluded to, from this country to a neutral port, were in the habit of procuring these licenses; and the use of them was considered not only innocent and lawful, in the prosecution of such voyage, but a prudent precaution in trade, until after Congress passed a law prohibiting their use, which was on the 13th August, 1813. And the fact is not unworthy of notice, that this law, from motives of policy, was repealed by Congress on the 3d of March, 1815. That these passports or licenses were in general use, was well known to the Government; and the attention of Congress was called especially to the subject by the President of the United States. Under all these concurring circumstances, who would have hesitated in coming to the same conclusion which the petitioners say they did, that the use of this license or passport was not only lawful, but in every respect innocent?

Immediately after the final decree was pronounced, and the amount of the bonds paid, as hereinbefore stated, the petitioners presented their petition to Congress for relief; and, in January, 1818, it was referred, in the House of Representatives, to the Committee of Ways and Means, and by them referred, for information, to the Secretary of the Treasury, Mr. Crawford, whose answer to the chairman of the committee was in favor of the application, and is hereinbefore referred to, and herewith submitted. On the 10th day of February, 1818, Mr. Lowndes, chairman of that committee, reported in favor of the application, and introduced a bill for the petitioners' relief; which failed to become a law. In 1824 the petition was again presented, and referred; but no further action appears to have been had upon it.

With these views, and under the circumstances attending the case, the committee are of opinion that the distributive share which has been realized by the Government, ought to be paid over to the petitioners; to accomplish which, the committee ask leave to introduce a bill.

APPENDIX.

No. 1.

OFFICE OF HIS BRITANNIC MAJESTY'S CONSUL.

I, Andrew Allen, junior, his Britannic Majesty's consul for the States of Massachusetts, New Hampshire, Rhode Island, and Connecticut, hereby certify that the annexed paper is a true copy of a letter addressed to me by Herbert Sawyer, Esq., vice-admiral and commander-in-chief of the Halifax station.

Given under my hand and seal of office, at Boston, in the State of Massachusetts, this 9th day of September, A. D. one thousand eight hundred and twelve.

ANDREW ALLEN, Jr.

HIS MAJESTY'S SHIP CENTURION,

At Halifax, the 5th of August, 1812.

SIR: I have fully considered that part of your letter of the 18th ultimo, which relates to the means of ensuring a constant supply of flour and other dry provisions to Spain and Portugal, and to the West India islands, and being aware of the importance of the subject, concur in the propositions you have made.

I shall, therefore, give directions to the commanders of his Majesty's squadrons under my command, not to molest American vessels so laden and unarmed, *bona fide* bound to Portuguese or Spanish ports, where papers shall be accompanied with a certified copy of this letter, under the consular seal.

I have the honor to be, sir, your most obedient humble servant,

H. SAWYER, Vice-Admiral.

ANDREW ALLEN, Esq.,

British Consul, Boston.

To the commanders of any of his Majesty's ships of war or private armed vessels belonging to subjects of his Majesty:

Whereas, from a consideration of the great importance of continuing a regular supply of flour and other dry provisions to the ports of Spain and Portugal, it has been deemed expedient by his Majesty's Government, that, notwithstanding the hostilities now existing between Great Britain and the United States of America, every protection and encouragement should be given to American vessels laden with flour and other dry provisions, and bound to the ports of Spain and Portugal; and, whereas, in furtherance of these views of his Majesty's Government, and for other purposes, Herbert Sawyer, Esq., vice-admiral and commander-in-chief of his Majesty's squadron on the Halifax station, has directed to me a letter, under date of the 5th of August, 1812 (a copy whereof is hereunto annexed), and wherein I am instructed to furnish a copy of his letter, under my consular seal, to every American vessel so laden and bound, either to any Portuguese or Spanish ports, and which is designed as a safeguard and protection to such vessel, in the prosecution of such voyage: now, therefore, in pursuance of these instructions, I have granted unto the American ship Ariadne, Bartlett Holmes, master, burden three hundred and eighty-two and two ninety-fifths of a ton, now lying in the harbor of Alexandria, laden with flour, and bound to Cadiz or Lisbon, the annexed document, to avail only for a direct voyage to Cadiz or Lisbon, and back to the United States of America. Requesting all officers commanding his Majesty's ships of war, or private armed vessels belonging to subjects of his Majesty, not only to suffer the said ship Ariadne to pass without any molestation, but also to extend to her all due assistance and protection in the prosecution of her voyage to Cadiz

or Lisbon, and on her return thence, laden with such other merchandise to the net amount of her outward cargo, or in ballast only.

Given under my hand and seal of office, at Boston, this fifth day of September, A. D. eighteen hundred and twelve.

ANDREW ALLEN, Jr.,

His Majesty's Consul.

No. 2.

PHILADELPHIA, November 11, 1812.

SIR: I have the honor to inform you that I arrived here last evening in the ship *Ariadne*, of Boston, cleared from Alexandria for Cadiz, with a cargo of about 5,000 barrels of flour, but detained by the United States brig *Argus*, Captain Sinclair, for being under British license.

The *Argus* fell in with her on the 15th ultimo, in latitude 35 degrees 45 minutes, longitude 56 degrees 56 minutes; and, by boarding under British colors, obtained possession of her passport. I was ordered to take charge of her and bring her into the first port I could make in the United States.

On the passage I fell in with two British cruisers, viz: the sloop of war *Tartarus*, and brig *Calibre*, and was strictly examined by each; but, by making use of the license, and a little finesse, we escaped capture. The *Tartarus* even put on board of us nine American seamen, prisoners, to assist in working the ship.

All the papers found on board I have submitted to Mr. Dallas, district attorney, but as yet he has not given me any decided opinion relative to the case.

The *Argus* separated from the squadron on the 13th ultimo; and when I left her, she had fallen in with nothing but the *Ariadne*.

I have the honor to be, most respectfully, sir, your obedient servant,

HENRY DENNISON.

Hon. PAUL HAMILTON.

A.

TREASURY DEPARTMENT, January 23, 1818.

SIR: I have the honor to acknowledge the receipt of your letter, enclosing the petition of Nathaniel Goddard, and requesting to be informed—

1. Whether the Executive authority is competent to grant the relief which the petitioner asks.
2. If competent, whether the character of the case is such, that, under the principles upon which the remission of fines and penalties is ordinarily granted, the Executive Government might not be expected to remit, if it had the power.

To the first question I have the honor to state, that it has been determined by the Executive authority that relief cannot be granted, in this case, by the Executive department of the Government.

In answering the second, it is proper to state that the power of the Secretary of the Treasury to remit or mitigate fines, penalties, and disabilities, is confined to cases arising under the revenue laws, and those which concern the registering and licensing vessels of the United States; and, in those cases, it must appear to his satisfaction that the penalty or disability has been incurred without wilful negligence, or any intention of fraud.

The power of the President to grant reprieves and pardons extends to all offences against the United States, except in cases of impeachment. In the exercise of this power, greater latitude will necessarily be assumed, inasmuch as it is not limited, as in the power given to the Secretary of the Treasury, to cases which have occurred without wilful negligence or any intention of fraud.

It is therefore presumed that the Executive power of pardon, in all cases within its competency, will not only be exercised where the violation of law has not been the result of wilful negligence, or any intention of fraud, but in many cases where this entire innocence of intention cannot be pleaded.

Admitting the facts stated by the petitioner to be correct (and they have not been controverted), he does not appear to have incurred the penalty from which he asks to be relieved, by wilful negligence, or by any intention of fraud.

If the penalty incurred by the petitioner had been within the jurisdiction of the Secretary of the Treasury, and the facts stated in the petition had been legally established, the penalty would have been remitted upon the principles upon which remission has been ordinarily granted by the department.

I have the honor to be, your most obedient and very humble servant,
WM. H. CRAWFORD.

HON. WILLIAM LOWNDES,

Chairman of the Committee of Ways and Means.

B.

LAW OPINION.

Question. Would a trade by American citizens, from a port of the United States to Lisbon, under the protection from British capture of such a British license as accompanies this paper, be a breach of any law of the United States?

We are not aware of any law of the United States which can be supposed to interdict to American citizens the trade abovementioned, either with or without such a license as has been shown to us.

It seems to be clear that, without such a license, our merchants have a perfect right to carry on their ordinary commerce between this country and Lisbon, so long as the local authorities of Portugal allow it. Lisbon is not a British port, possession, colony, or dependancy. The armies of Great Britain are in Portugal as allies, not as conquerors. The native Government remains, and we are at peace with that Government. The ordinary American trade to Lisbon, therefore, cannot be affected by the act of Congress declaring war against the United Kingdom of Great Britain and Ireland; or by the act entitled "An act to prohibit American vessels from

proceeding to or trading with the enemies of the United States, and for other purposes."

Then, as to the effect of the British license upon the trade in question, the only act of Congress which can be imagined to touch the point, is the act last mentioned; by the first section of that act, an American vessel cannot clear out or depart from "any port or place within the United States, to any foreign port or place, till bond and security have been given that she shall not proceed to or trade with the enemies of the United States;" and the same act makes it penal to depart, without giving such bond and security. This provision has nothing to do with this case, if we are correct in supposing that Lisbon is not a port of the enemies of the United States.

The second and third sections of the act relate merely to the transportation, by citizens of the United States, to the British provinces of Canada, Nova Scotia, and New Brunswick, of naval or military stores, arms, or munitions of war, or provisions from any place in the United States, and, consequently, have no bearing on this; and as to the fourth, fifth, and sixth sections, it is manifest that they have no sort of relation to it.

The seventh and last section is the only one that has reference to the sailing of American vessels under British license; and it will be seen, upon the slightest inspection, that it wholly excludes the case under consideration. This section enacts that "every person, being a citizen of the United States, or residing therein, who shall receive, accept, or obtain a license from the Government of Great Britain, or any officer thereof, for leave to carry any merchandise or send any vessel into any port or place within the dominions of Great Britain, or to trade with any such port or place, shall, on conviction, for every such offence, forfeit a sum equal to twice the value," &c.

Lisbon is not a port or place within the dominions of Great Britain; and, of course, this section does not, in any manner, look to a trade with it.

There is no other act of Congress which even approaches this matter; and it would be ridiculous to apply to it the law of treason as defined by the Constitution. To trade directly with an enemy, has never been supposed to be treason at the common law, or under the statute of the 25th, Edward III.: and it has only recently been settled in England to be a misdemeanor. Whether it could be held in this country to even a misdemeanor, to be inferred from a state of war, by the aid of speculative considerations of expediency, may justly be doubted; but it is quite impossible that a trade with a neutral port should ever be so held, on the mere ground that the enemy forbore to molest it. The single effect of the British license, on this occasion, is to place the commercial adventurer in a state of security against British capture on the high seas. It amounts to a *waver pro hac vice* of the belligerent right of Great Britain to seize, as prize of war, American property embarked in commerce to which the license relates. How far it might be wise to forbid, by act of Congress, the use of such license by American merchants, we do not undertake to determine; but we feel confident that, at present, it is not forbidden in any manner. We are further of opinion, that the license will not subject the property to capture as prize by American cruisers.

It may occasionally be a circumstance, among others, to produce a suspicion of a latent British interest; but it can have no other effect upon the question of prize or no prize.

JOHN PURVIANCE,
WILLIAM PINKNEY.

BALTIMORE, October 12, 1812.

The following cases will show some of the instances in which Congress has remitted fines, forfeitures, and penalties; and the principle which has controlled in such remission; they not having fallen within the range of discretionary power given to the Secretary of the Treasury by the act of 3d March, 1797. This act, though limited in duration to two years, was afterward made perpetual by the act of 11th February, 1800:

1809, June 28. All claim of the United States to any money arising from the sale of the ship *Clara*, sold in pursuance of a decree of the district court for Orleans district, be, and the same is hereby, relinquished and remitted to Andrew Foster and John P. Geraud, late owners of said ship; any thing in any former law to the contrary.—Laws U. S., vol. 4, page 237.

1814, March 31. The Secretary of the Treasury is authorized to remit the penalty incurred by Joseph W. Page, of Charleston, South Carolina, as surety in an embargo bond for Bernard Lafon.—Laws U. S., vol. 4, page 676.

1814, April 6. The fines, penalties, and forfeitures incurred by Jonathan Davis and others, who imported into Providence a cargo of merchandise from Havana, in 1813, are remitted.—Laws U. S., vol. 4, page 677.

1814, April 18. The penalty imposed on the owners of the schooner *Industry*, for illegally unloading merchandise at Edgartown, is remitted and refunded.—Laws U. S., vol. 4, page 707.

1817, March 3. Forfeitures incurred by Robert Burnside, for illegally importing goods from Liverpool into New Orleans, in 1811, remitted and refunded.—Laws U. S., vol. 6, page 182.

1818, April 20. Moneys received by the United States, in consequence of condemnation of ship *Edward*, refunded to Jonathan Amory and Thomas C. Amory.—Laws U. S., vol. 6, page 348.

1822, May 7. Forfeiture of property of Peter Cadwell and James Britten, imported into New York, and seized and sold for breach of law, remitted and refunded.—Laws U. S., vol. 7, page 66.

1824, May 17. Forfeiture of merchandise illegally imported by David Beard, remitted and refunded.—Laws U. S., vol. 7, page 249.

1824, May 24. Forfeiture incurred by J. Ottramare on four packages of jewelry, condemned in New Orleans, remitted and refunded.—Laws U. S., vol. 7, page 280.

1825, March 3. Amount received by United States on account of sales of sloop *Mary*, condemned for violation of law, remitted and refunded to Elisha Snow.—Laws U. S., vol. 7, page 355.

1826, March 20. Amount received by United States on account of sale of goods imported from Liverpool, in violation of law, remitted and refunded to J. Dickson & Co.—Laws U. S., vol. 7, page 501.

1828, May 24. Penalty incurred by Nathaniel Briggs, under act providing passports for ships, remitted.—Laws U. S., vol. 8, page 156.

1830, April 7. Penalty incurred by Thomas Sheverick, for not renewing license of his vessel, remitted and refunded.—Laws U. S., vol. 8, page 284.

1830, April 15. Proceeds of wine belonging to C. H. Hall, improperly condemned and sold, remitted and refunded.—Laws U. S., vol. 8, p. 285.

1830, April 24. Amount received for forfeiture of schooner *Volante*,

condemned and sold, remitted and refunded to John Burton and others.—Laws U. S., vol. 8, page 293.

1830, May 31. Amount received for sale of goods imported by David Beard, in violation of law, remitted and refunded.—Laws U. S., vol. 8, page 368.

1831, March 2. Amount received for sale of schooner Anna and her cargo, condemned for violation of revenue laws, remitted and refunded to Peters & Pond.—Laws U. S., vol. 8, page 433.

1833, March 2. Penalty imposed on Robert Eaton, for neglect to comply with a requirement of revenue laws, refunded.—Laws U. S., vol. 8, page 844.

1833, March 2. Amount received from sale of schooner Mary and cargo, condemned and sold, remitted to John Dauphin's heirs.—Laws U. S., vol. 8, page 860.

