

FEDERAL COURTS PRIOR TO THE ADOPTION OF THE CONSTITUTION.

I. COURTS OF APPEAL IN PRIZE CASES.

THE idea of a Federal Court, with a jurisdiction coextensive with the limits of what were then the United Colonies and Provinces of Great Britain in North America, originated with Washington some months before Congress put off British rule. On the 11th of November, 1775, he wrote from Cambridge, in Massachusetts, to the President of Congress, enclosing a copy of an act then just passed by the Council and House of Representatives of that Province¹ for the establishment of a Prize Court, and he added: “Should not a court be established by authority of Congress, to take cognizance of prizes made by the Continental vessels? Whatever the mode is which they are pleased to adopt, there is an absolute necessity of its being speedily determined on.”

This letter was communicated to Congress on Friday, the 17th day of the same November, whereupon it was “Resolved, That a committee of seven be appointed to take into consideration so much of the General’s letter as relates to the disposal of such vessels and cargoes belonging to the enemy, as shall fall into the hands of, or be taken by, the inhabitants of the United Colonies.” A committee was chosen, consisting of Mr. George Wythe of Virginia, Mr. Edward Rutledge of South Carolina, Mr. John Adams of Massachusetts, Mr. William Livingston of New Jersey, Dr. Franklin and Mr. James Wilson of Pennsylvania, and Mr. Thomas Johnson of Maryland.

Again, on the 4th of December, 1775, Washington, not having heard of this action of Congress, wrote to its President as follows: “It is some time since I recommended to the Congress that they would institute a court for the trial of prizes made by the Continental armed vessels, which I hope they have ere now taken into

¹ This act is remarkable as having been the first which was passed by any of the colonies for fitting out vessels of marque and reprisal, and for establishing a court to try and condemn the captured vessels of the enemy.

³ Sparks’ Washington, 154. See also 1 Curtis’ Hist. Constitution, 75-77.