

United States v. Peters.

costs of the circuit court be recovered, one-half against George Wentworth, and the other half against the other plaintiffs in error; and that, in this court, the parties pay their own costs.

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RULES.

FEBRUARY TERM, 1795.

ORDERED, That the gentlemen of the bar be notified, that the court will hereafter expect to be furnished with a statement of the material points of the case, from the counscl on each side of a cause.

ORDERED, That all evidence, on motions for a discharge of prisoners upon bail, shall be by way of deposition, and not *vivā voce*. *United States v. Hamilton.*

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\* AUGUST TERM, 1795.

A COMMISSION, bearing date the 1st of July 1795, was read, by which, during the recess of congress, JOHN RUTLEDGE, Esquire, was appointed CHIEF JUSTICE, until the end of the next session of the senate.

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UNITED STATES v. RICHARD PETERS, District Judge.

*Admiralty jurisdiction.—Prohibition.*

The district court has no jurisdiction of a libel for damages, against a privateer, commissioned by a foreign belligerent power, for the capture of an American vessel as prize—the captured vessel not being within the jurisdiction.

The supreme court will grant a writ of prohibition to a district judge, when he is proceeding in a cause of which the district court has no jurisdiction.<sup>1</sup>

THIS was a motion for a probibition to the District Court of Pennsylvania, where a libel had been filed by James Yard, and process of attachment thereupon issued, against the Cassius, an armed corvette belonging to the French Republic, and Samuel Davis, her commander. The libel was in these words :

“To the honorable Richard Peters, Esquire, judge of the district court of Pennsylvania: The libel and complaint of James Yard, of the state of Pennsylvania, in the United States of America, humbly sheweth, That the said James Yard is the owner of the schooner William Lindsey,

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<sup>1</sup>The writ of prohibition only lies, where the district court is proceeding as a court of admiralty. *Ex parte Christy*, 3 How. 292; *Ex parte Graham*, 10 Wall. 541; *Ex parte Easton*, 95 U. S. 72; and it can only be used as a preventive remedy, not for an act already com- pleted; if nothing remains to be done, either by way of executing the decree, or otherwise, no prohibition can be granted. *United States v. Hoffman*, 4 Wall. 158; *Ex parte Easton*, *ut supra*.

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and her cargo: That on or about the \_\_\_\_\_ day of \_\_\_\_\_ last, the said schooner sailed from the island of St. Thomas, to the city of St. Domingo, in the island of Hispaniola; commanded by a certain Walter Burke, and laden with about one hundred and forty-two barrels of flour, six puncheons of rum, and other merchandise, of the value of two thousand dollars, the said vessel and cargo amounting in all to ten thousand dollars, lawful money of the United States of America, all regularly cleared out, from the said island of St. Thomas, and furnished with all documents, \*usual, necessary and proper, and being on a voyage to the said port of St. Domingo, on the <sup>[\*122]</sup> twentieth day of May, in the year of our Lord one thousand seven hundred and ninety-five, the said schooner William Lindsey, was forcibly, violently, tortiously, and contrary to the laws and usages of nations, attacked and taken by a certain armed vessel called the Cassius, commanded by a certain Samuel Davis, pretending an authority from the French republic, but then, and now, a citizen of the United States of America; and being so taken, was, by the said Samuel Davis, forcibly, violently, tortiously, and contrary to the laws of nations, carried into Port de Paix, where the said schooner William Lindsey, with her cargo, tackle, apparel and furniture, still are, forcibly, tortiously and illegally, detained: And your libellant does not admit, that the vessel called the Cassius, was authorized, by the French Republic, to capture vessels belonging to the United States, who were, at that time, and still are, at peace with the said French Republic: That the vessel called the Cassius, was originally equipped and fitted for war, in the port of Philadelphia, in Pennsylvania, one of the United States of America, contrary to the laws of the said United States, and the laws and usages of nations: That your libellant has never received compensation for the damages he has suffered, and has not been able to retrieve the said vessel, with her tackle, apparel and furniture: That the said vessel called the Cassius, and the said Samuel Davis, are now in the port of Philadelphia, and within the jurisdiction of this court: In order, therefore, that your libellant may be compensated for the damages he has incurred by the aforesaid illegal and tortious taking and detention of the said schooner William Lindsey, with her cargo, tackle, apparel and furniture; and that all may be done touching the premises, which to your honor may seem just and right, may it please your honor, to cause to be issued process for seizing the said vessel, called the Cassius, with her tackle, apparel and furniture; and for arresting the body of the said Samuel Davis, so that he be and appear, &c."

The suggestion, on which the motion for a prohibition was founded, set forth—"That on the 21st day of August, in the year of our Lord, one thousand and seven hundred and ninety-five, before the honorable John Rutledge, Esquire, chief justice, and his associate justices of the supreme court of the United States, at Philadelphia, comes Samuel B. Davis, by Benjamin R. Morgan, his attorney, and gives this honorable court, now here, to understand and be informed, that whereas, by the laws of nations, and the treaties subsisting between the United States and the Republic of France, the trial of prizes taken \*on the high seas, without the territorial limits and <sup>[\*123]</sup> jurisdiction of the United States, and brought within the dominions and jurisdiction of the said republic, for legal adjudication, by vessels of war belonging to the sovereignty of the said republic, acting under the authority

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of the same, and of all questions incidental thereto, does, of right, and exclusively, belong to the tribunals and judiciary establishments of the said republic, and to no other tribunal or tribunals, court or courts whatsoever: And whereas, by the said laws of nations and treaties aforesaid, the vessels of war belonging to the said French Republic, and the officers commanding the same, cannot, and ought not, to be arrested, seized, attached or detained, in the ports of the United States, by process of law, at the suit or instance of individuals, to answer for any capture or captures, seizure or seizures, made on the high seas, and brought for legal adjudication into the ports of the French Republic, by the said vessels of war, while belonging to, and acting under the authority and in the immediate service of the said republic. And whereas, by the laws and treaties aforesaid, the district courts of the United States, have not and ought not to entertain jurisdiction, or hold plea of such captures made as aforesaid, under the above circumstances. And whereas, by the laws of nations, the vessels of war of belligerent powers, duly by them authorized to cruise against their enemies, and to make prize of their ships and goods, may, in time of war, arrest and seize the vessels belonging to the subjects or citizens of neutral nations, and bring them into the ports of the sovereign under whose commission and authority they act, there to answer for any breaches of the laws of nations, concerning the navigation of neutral vessels in time of war; and the said vessels of war, their commanders, officers and crews, are not amenable before the tribunals of neutral powers for their conduct therein, but are only answerable to the sovereign in whose immediate service they were, and from whom they derived their authority. And whereas, on and before the twentieth day of May, now last past, the said Samuel B. Davis, was and now is a lieutenant of ships in the navy of the said French republic, and commander of a certain corvette or vessel of war, called the Cassius, then and now the property of the said republic, and in her immediate service, and on the said twentieth day of May, was duly commissioned by, and under the authority of, the said republic, to cruise against her enemies, and make prize of their ships and goods (as by his commission, and the certificate of the minister plenipotentiary of the said republic, to the United States, to the court now here shown, fully appears): Nevertheless, a certain James Yard, of the city of Philadelphia, merchant, not ignorant of the premises, but contriving \*124] \*and intending to disturb the peace and harmony subsisting between the United States and the French Republic, and him the said Samuel B. Davis, wrongfully to aggrieve and oppress, and draw to another proof, him the said Samuel B. Davis, and the said corvette or vessel of war of the French Republic, the Cassius, in the port of Philadelphia, under the protection of the laws of nations and of the faith of treaties, has, by process out of the district court of the United States in and for the district of Pennsylvania, attached and arrested him, the said Samuel B. Davis, and the said corvette or vessel of war, the Cassius, and before the judge of the said district court, contrary to the said law of nations and treaties, and against the form of the laws of the United States, hath unjustly drawn in plea, to answer to a certain libel, by him, the said James Yard, against him the said Samuel B. Davis, and the said corvette or vessel of war, the Cassius, her tackle, apparel and furniture, exhibited and promoted, craftily and subtly there alleging, articulating and objecting, that on the said twentieth day of May, now last

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past, the said Samuel B. Davis, then commanding the said corvette or vessel, the Cassius, did forcibly, violently and tortiously take, on the high seas, a certain schooner or vessel, belonging to the said James Yard, called the William Lindsey, and brought her into Port de Paix (in the dominions of the French Republic), where she still remains, and also alleging and articulating, that the said corvette or vessel, called the Cassius, was originally equipped and fitted for war, in the port of Philadelphia, in the United States, and that the said Samuel B. Davis was, at the time of the said capture, and now is, a citizen of the United States, without this, however, and the said James Yard, not in any manner alleging or articulating, that the said capture was made within the territory, rivers or bays of the United States, or within a marine league of the coast thereof, or that the said corvette or vessel, the Cassius, was so fitted or equipped for war, in the United States, by the said French Republic, her agent or agents, with their knowledge, or by their means or procurement, or by the said Samuel B. Davis, or that at the time of her being so equipped, or fitted for war in the United States (if ever, there, she was so, in any manner fitted or equipped), she was the property of the said French Republic, or that the said Samuel B. Davis was, in any manner, in the said equipment or fitting for war, concerned; and without this also, and the said James Yard, not in any manner alleging, that the said Samuel B. Davis was retained, or engaged in the service of the French Republic, within the territory or jurisdiction of the United States: And the said James Yard, him, the said Samuel B. Davis, and the said corvette or vessel of war, called the Cassius, by force of the process aforesaid, [\*125 out \*of the said district court, had and obtained as aforesaid, still wrongfully detains, and the said Samuel B. Davis, and the French Republic, owner of the said corvette or vessel of war, thereupon, in the said district court, to answer, and in the premises, cause to be condemned, with all his power endeavors, and daily contrives, in contempt of the government of the United States, against the laws of nations, the treaties subsisting between the United States and the French Republic, and against the laws and customs of the United States; to the manifest violation of the said laws of nations and treaties, and to the manifest disturbance of the peace and harmony, happily subsisting between the United States and the said French Republic; and this he is ready to verify. Wherefore, the said Samuel B. Davis, the aid of this honorable court, most respectfully requesting, prays remedy, by a writ of prohibition, to be issued out of this honorable court, to the said judge of the district court of the United States, in and for the district of Pennsylvania, to be directed, to prohibit him from holding the plea aforesaid, the premises aforesaid anywise concerning, further before him.

MORGAN.

Samuel B. Davis, being duly sworn, on his oath, doth say, that all and singular the facts by him in this suggestion stated, are true.

Sworn in open court, }  
August 22d, 1795. }

S. B. DAVIS.

I. WAGNER, D. C., Sup. Ct. U. S."

The motion for the prohibition was supported by *Ingersoll*, *Du Ponceau* and *Dallas*, and opposed by *Tilghman* and *Lewis*: And the controversy turned principally upon this point—whether the district court could sustain

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a libel for damages, in the case of a capture as prize, made by a belligerent power, on the high seas, when the vessel captured was not brought within the jurisdiction of the United States, but carried for adjudication, *infra praesidia* of the captors?

*Dallas*, in opening the argument for the prohibition, contended: 1st. That a prohibition will lie in this case: 2d. That on the face of the libel, it was evident, that the district court had no jurisdiction: 3d. That on the facts disclosed in the suggestion, the district court ought not to be allowed to take jurisdiction: 4th. That the allegations of the libel itself would not support the proceedings below.

I. A prohibition will lie in this case. The three great objects of the judicial power are an authority—1st, to administer justice; 2d, to compel the unwilling or negligent magistrate to perform his duty; and 3d, to restrain <sup>\*126</sup> the ministers of justice <sup>\*</sup>within the regular boundaries of their respective jurisdictions. The judicial power is, therefore, either abstract or relative; in the former character, the court, for itself, declares the law and distributes justice; in the latter, it superintends and controls the conduct of other tribunals, by a prohibitory or mandatory interposition. This superintending authority has been deposited in the supreme court, by the federal constitution; and it becomes a duty to exercise it upon every proper occasion. The writ of prohibition is said, indeed, by the English books, to be grantable *ex debito justicæ*, 1 T. Raym. 3, 4; and it is certain, that the constitution and laws of the Union fix no limitation to the exercise of the power of this court upon the subject, but, by way of implication, that it shall be warranted by the principles and usages of law. Judicial Act, § 18. The principles and usages of law warrant, that a prohibition shall issue: 1st, where the cause does not originally belong to the inferior court; and 2d, where the collateral matter arising from the cause is not within the jurisdiction of the inferior court. Nor does the writ issue merely to forbid proceeding in such cases as belong to the common-law courts; for it equally issues to forbid proceeding in cases that do not belong to the inferior court, though the courts at common law can give no remedy. Wood's Inst. 570; F. N. B. 106; 1 Woodes. 142. There is, however, some diversity, whether a prohibition will issue to an admiralty court, until sentence; but this clearly arises on cases originally within the jurisdiction of the court; for, in admiralty, as well as in ecclesiastical courts, if it appears on the face of the proceedings, that there is no jurisdiction, the court will not permit an attempt to exercise one. 3 Burr. 1922.

II. On the face of the libel, it is evident, that the district court has no jurisdiction.<sup>1</sup> The prominent facts are, that the vessel was taken as prize, carried *infra praesidia* of the captor, and, at this time, actually remains there. There is no trespass stated, distinct from the capture as prize; and this is not a question of restitution, since the vessel is not within our jurisdiction. Besides, from the very nature of things, the question of damages must be determined by the same tribunal that determines the question of prize: it is an incident, and whoever takes cognisance of the principal

<sup>1</sup> The right to a writ of prohibition depends upon the facts stated upon the record; the court cannot consider matters *dehors*, though

set forth in the petition. *Ex parte Easton*, 98 U. S. 68.

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question, must likewise take cognisance of that. In the French court of admiralty, the captor and the captured will stand on a fair and equal footing—the one, to show the grounds of condemnation, or, at least, of justifiable suspicion for searching and seizing a neutral vessel—the other, to repel the allegation, to obtain restitution and to recover damages. By the law of nations, the right of judging is vested in the courts of the captor; the principles \*of justice enforce the rule in the present instance; for all the [\*127] witnesses and documents are with the prize. If, then, the courts of the captor have a right to decide the question of prize, and their decision is binding on all the world, can damages be obtained here, when condemnation has been, or may be, decreed there? In the *Silesia* case, the British lawyers remonstrated against the appointment of a Prussian court of commissioners, to re-examine and rejudge the sentences of their admiralty. Collect. Jurid. Let the facts be as they may, the sentence of the French court must be conclusive. Thus, where an Englishman's vessel was taken by a French privateer, England and France being at peace, and condemned as Dutch property, the court would not examine into the sentence. Sir T. Raym. 473; 1 Dall. 78. The very statement in the libel establishes the presumption that the vessel captured was carried into Port de Paix, for legal adjudication; and if justice requires, she will not only be restored, but damages will be there awarded. Where the cause of prohibition appears on the face of the libel, it need not be pleaded below. 2 Salk. 551.

III. On the facts disclosed in the suggestion, the district court ought not to be allowed to take jurisdiction. The constitution of the United States might have rendered the individual states, nay, the Union itself, amenable as defendants, at the suit of individuals; but it could not, in that way, bind other sovereign nations, not parties to the compact. Even, indeed, with respect to the states, the language of the proposed amendment, is, that "the judicial power of the United States shall not be construed to extend to any suit, &c.", by individuals against a state; which furnishes, at least, a legislative opinion of the exemption of sovereigns from such process. But the law of nations is express on the subject (Vatt.); and Pennsylvania has heretofore judicially recognised the doctrine. (1 Dall.) The Cassius being then the property of a sovereign and independent nation, cannot be attached for any supposed delinquency of her commander, committed on the high seas: it would be making public property responsible for private wrongs. What would be the consequence of an acquiescence in the jurisdiction now set up? Every privateer, every national vessel of war, would be liable to seizure, at the instance of every individual, who pretended he was injured. Could the American citizens, who have suffered by spoliation, seize the British frigates or privateers, upon their entrance into our port? Could Captain Bliss, whose pilot boat was seized, and rifled of the public papers of the French minister, within the waters of the United States, attach the Africa, or arrest Captain Holme, who had perpetrated \*the outrage. [\*128] The abuse of a public trust is cause of complaint to the government of the offending party; but to retaliate by seizure, without first demanding redress, is contrary to the general rights and laws of nations, as well as contrary to the existing treaty between the United States and France.

IV. The allegations of the libel itself cannot support the proceeding. 1st. It is alleged, that the captured vessel was neutral property: but this

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is a fact to be proved in the French admiralty; for the neutral vessel might be carrying contraband articles to an enemy of the captor; she might be sailing to a blockaded port; she might have defective papers; or she might act in a suspicious and ambiguous manner. In any of these cases, the right of search, and carrying into port for further examination, may be exercised by a belligerent power: they are subjects for the consideration of the court of the captor, but they give no jurisdiction here. 2d. It is alleged, that the captain of the corvette was, in fact, an American citizen; but it is answered, that there is no proof of the allegation; and even, if proved, a citizen of the United States may expatriate himself; and afterwards, in a foreign country, enter into a foreign service. It is true, that some of our treaties abandon him to be punished as a traitor; and that the fact might be examined here, with a view to punish him personally, for any infraction of our laws; but it is not a matter that can give jurisdiction to our courts, on the question of prize or no prize. 3d. It is alleged, that the *Cassius* was illegally fitted out in the United States: but it is answered, that there is no allegation, either that she was illegally fitted out by the captain, or after she had become the property of the French Republic. An illegal outfit is a positive offence, highly penal; every man will be presumed innocent of it, until the contrary is proved. In ordinary cases, where there is a sale in *market overt*, no man is entitled to restitution, until conviction; nor can there sooner be a forfeiture of an illegally outfitted vessel. But it is conclusive, that the libel filed in this case, is not for the forfeiture, under the act of congress of June 1794; but for damages, in consequence of the capture as prize, which can only be given by the court having cognisance of that question. Any other interpretation of the law would be attended with intolerable inconveniences. Every owner, freighter, master or seaman of a vessel taken as prize, might sue the captor in every court of every country. No precedent of such a proceeding exists; and the universal silence on this subject, amounts to a denial of its legality.

The adverse counsel stopped *Dallas*, and mentioned, that they had just received, but had not had time to examine, some French papers from Port de Paix, which, they believed, would show, that the court of admiralty [129] there had actually \*taken cognisance of, and decided upon the case; and they said, that if such was the fact, they would voluntarily withdraw the libel. An adjournment until the evening took place, in order to afford an opportunity for examining the papers referred to; but the translations not being complete, at the meeting of the court, and the judges declaring their intention to break up, *sine die*, the next morning, a desultory argument ensued, in the course of which, the motion for the prohibition was opposed on three grounds: 1st. That the district court had jurisdiction: 2d. That even if that point were doubtful, the prohibition ought not to issue, until after sentence: 3d. That on a plea to the jurisdiction, the party injured by the sentence might have an adequate remedy on appeal. In support of these positions, were cited, 1 Sid. 320; T. Raym.; Vent. 173; Carth.; Hard. 406; Skin. 20; Holt.

The judges intimated, that they would again adjourn, in order to give a further opportunity to consider the expediency of withdrawing the libel;

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but no compromise having taken place, on the 24th of August, the Chief Justice delivered their opinion :

BY THE COURT.—We have consulted together on this motion ; and though a difference of sentiment exists, a majority of the court are clearly of opinion, that the motion ought to be granted. Therefore—

Let a prohibition issue.

The prohibition issued, accordingly, in the following form :

*“United States, ss.*

The President of the United States to the honorable Richard Peters, Esquire, judge of the district court of the United States, in and for the Pennsylvania district : It is shown to the judges of the supreme court of the United States, by Samuel B. Davis, that whereas, by the laws of nations, and the treaties subsisting between the United States and the Republic of France, the trial of prizes taken on the high seas, without the territorial limits and jurisdiction of the United States, and brought within the dominions and jurisdiction of the said republic, for legal adjudication, by vessels of war belonging to the sovereignty of the said republic, acting under the same, and of all questions incidental thereto, does, of right, and exclusively, belong to the tribunals and judiciary establishments of the said republic, and to no other tribunal or tribunals, court or courts whatsoever : And whereas, by the said law of nations, and treaties aforesaid, the vessels of war belonging to the said French Republic, and the officers commanding the same, cannot, and ought not, to be arrested, \*seized, attached or detained in the ports of the United States, by process of law, at the suit or instance of individuals, to answer for any capture or captures, seizure or seizures, made on the high seas, and brought for legal adjudication into the ports of the French Republic, by the said vessels of war, while belonging to, and acting under the authority and in the immediate service of the said republic : And whereas, by the laws and treaties aforesaid, the district courts of the United States have not, and ought not, to entertain jurisdiction or hold plea of such captures, made as aforesaid, under the above circumstances : And whereas, by the laws of nations, the vessels of war of belligerent powers, duly by them authorized to cruise against their enemies, and to make prize of their ships and goods, may, in time of war, arrest and seize the vessels belonging to the subjects or citizens of neutral nations, and bring them into the ports of the sovereign under whose commission and authority they act, there to answer for any breaches of the laws of nations, concerning the navigation of neutral ships, in time of war ; and the said vessels of war, their commanders, officers and crews are not amenable before the tribunals of neutral powers for their conduct therein, but are only answerable to the sovereign in whose immediate service they were, and from whom they derived their authority : And whereas, on or before the twentieth day of May, now last past, the said Samuel B. Davis was, and now is, a lieutenant of ships in the navy of the said French Republic, and commander of a corvette or vessel of war, called the Cassius, then and now the property of the said republic, and in her immediate service ; and on the said twentieth day of May, was duly commissioned, by and under the authority of the said republic, to cruise against her enemies, and make prize of their ships (as by his commission and the certificate of the minister plenipotentiary of the said republic to the

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United States, to the court shown more fully appears) : Nevertheless, a certain James Yard, of the city of Philadelphia, merchant, not ignorant of the premises, but contriving and intending to disturb the peace and harmony subsisting between the United States and the French Republic, and him, the said Samuel B. Davis, wrongfully to aggrieve and oppress, and draw to another proof, him, the said Samuel B. Davis, and the said corvette or vessel of war, of the French Republic, the Cassius, in the port of Philadelphia, under the protection of the laws of nations, and of the faith of treaties, has, by process out of the district court of the United States in and for the district of Pennsylvania, attached and arrested him, the said Samuel B. Davis, and the said corvette or vessel of war, the Cassius, before the judge of the said district court, contrary to the said law of nations, and treaties, and

\*131] \*against the due form of the laws of the United States, hath unjustly drawn in plea, to answer to a certain libel, by him, the said James Yard, against him, the said Samuel B. Davis, and against the said corvette or vessel of war, the Cassius, her tackle, apparel and furniture, exhibited and promoted, craftily and subtly therein alleging, articulating and objecting, that on the said twentieth day of May, now last past, the said Samuel B. Davis, then commander of the said corvette or vessel, the Cassius, did, forcibly, violently and tortiously, take on the high seas, a certain schooner or vessel belonging to the said James Yard, called the William Lindsey, and brought her into Port de Paix (in the dominion of the French republic), where she still remains ; and also alleging and articulating, that the said corvette or vessel called the Cassius, was originally equipped and fitted for war, in the port of Philadelphia, in the United States, and that the said Samuel B. Davis was, at the time of the said capture, and now is, a citizen of the United States : Without this, however, and the said James Yard not in any manner alleging or articulating, that the said capture was made, within the territory, rivers or bays of the United States, or within a marine league of the coast thereof, or that the said corvette or vessel, the Cassius, was so fitted or equipped for war in the United States, by the said French Republic, her agent or agents, with their knowledge, or by the means or procurement, or by the said Samuel B. Davis, or that at the time of her being so equipped or fitted for war, in the United States (if ever there she was so in any manner fitted or equipped), she was the property of the said French Republic, or that the said Samuel B. Davis was, in any manner, in the said equipment or fitting for war, concerned ; and without this also, and the said James Yard not in any manner alleging, that the said Samuel B. Davis was retained or engaged, in the service of the French Republic, within the territory or jurisdiction of the United States : And that the said James Yard, him, the said Samuel B. Davis, and the said corvette or vessel of war, called the Cassius, by force of the process aforesaid, out of the said district court, had and obtained as aforesaid, still wrongfully detains, and the said Samuel B. Davis, and the French Republic, owner of the said corvette or vessel of war, thereupon, in the said district court to answer, and in the premises, cause to be condemned, with all his power, endeavors and daily contrives, in contempt of the government of the United States, against the laws of nations, and the treaties subsisting between the United States and the French Republic, and against the laws and customs of the United States; to the manifest violation of the law of nations and treaties, and to the manifest

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disturbance of the peace and harmony happily subsisting between the \*United States and the French Republic: Wherefore, the said Samuel B. Davis, the aid of the said supreme court most respectfully requesting, hath prayed remedy by a writ of prohibition, to be issued out of the said supreme court, to you to be directed, to prohibit you from holding the plea aforesaid, the premises aforesaid any wise concerning, further before you: You, therefore, are hereby prohibited, that you no further hold the plea aforesaid, the premises aforesaid in any wise touching, before you, nor anything in the said district court attempt, nor procure to be done, which may be in any wise to the prejudice of the said Samuel B. Davis, or the said corvette or vessel of war, called the Cassius; or in contempt of the laws of the United States: And also, that from all proceedings thereon, you do, without delay, release the said Samuel B. Davis, and the said corvette or vessel of war, called the Cassius, at your peril. Witness the honorable John Rutledge, Esquire, chief justice of the said supreme court, at Philadelphia, this 24th day of August, in the year of our Lord, one thousand, seven hundred and ninety-five, and of the Independence of the United States, the twentieth.

I. WAGNER, D. C., Sup. Ct. U. S. (a)

TALBOT, appellant, v. JANSEN, appellee.

[\*133]

*Expatriation.—Prize.—Restitution.*

If the right of expatriation exist, under our laws, not only a renunciation of citizenship, but an actual removal, for a lawful purpose, and the acquisition of a foreign domicil are necessary.<sup>1</sup>

The capture of a vessel of a friendly nation, by a privateer fitted out in one of our ports, and commanded by an American citizen, under a commission from a foreign belligerent power, is illegal; and if the captured vessel be brought within our jurisdiction, the district court may decree restitution and damages.

The granting of a commission to serve as a privateer, against the commerce of a nation at peace with the United States, by an officer of a foreign belligerent power, within our jurisdiction, is a flagrant violation of the sovereignty of the United States. PATERSON, J.

War can alone be entered into by national authority; no hostilities of any kind, except in necessary self-defence, can lawfully be practised by an individual of a nation, against an individual of another nation, at enmity with it, but by virtue of some public authority.

Jansen v. The Vrow Christina Magdalena, Bee 11, affirmed.

THIS was a writ of error, in the nature of an appeal from the Circuit Court for the district of South Carolina; and the following circumstances appeared upon the pleadings:

(a) The proceedings on the libel for damages in the district court, were accordingly superseded; but an information, Ketland, *qui tam*, &c., was immediately afterwards filed in the circuit court, against the corvette, for the illegal outfit in violation of the act of congress, and the vessel being thereupon attached, an application was made to Judge PETERS, to discharge her, on giving security, but the judge was of opinion, that he had no power, as district judge, to make such an order in a cause depending in the circuit court. The French minister then, deeming (as I have been informed), this prosecution to be a violation of the rights and property of the republic, delivered a remonstrance to our government; and converting the judicial inquiry into a matter of state, abandoned the corvette, and discharged the officers and crew. See Ketland *qui tam*, v. The Cassius, 2 Dall. 365.

<sup>1</sup> The right of expatriation is by no means a settled question in this country. It has been