The Betsey.

1. Did the act of the State of Georgia completely vest the debts of Brailsford, Powell & Hopton, in the state, at the time of passing the same?

2. If so, did the treaty of peace, or any other matter, revive the right of the defendants to the debt in controversy?

In answer to these questions the CHIEF JUSTICE stated, that it was intended, in the general charge of the court, to comprise their sentiments upon the points now suggested; but as the jury entertained a doubt, the inquiry was perfectly right. On the 1st question, he said, it was the unanimous opinion of the judges, that the act of the state of Georgia did not vest the debts of Brailsford, Powell & Hopton, in the state, at the time of passing it. On the 2d question, he said, that no sequestration divests the property in the thing sequestered; and consequently, Brailsford, at the peace, and indeed, throughout the war, was the real owner of the debt. That it is true, the state of Georgia interposed with her legislative authority, to prevent Brailsford's recovering the debt, while the war continued, but that the mere restoration of peace, as well as the very terms of the treaty, revived the right of action to recover the debt, the property of which had never, in fact or law, been taken from the defendants; and that if it were otherwise, the sequestration would certainly remain a lawful impediment to the recovering of a *bonâ fide* debt, due to a British creditor, in direct opposition to the 4th article of the treaty.

After this explanation, the jury, without going again from the bar, returned a—

Verdict for the defendants.

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*The BETSEY. [*6

GLASS *et al.*, appellants, *v.* The Sloop BETSEY *et al.*

Consular jurisdiction.—Admiralty.

The admiralty jurisdiction exercised by the consuls of France, in the United States, was not of right; such jurisdiction could only be exercised by virtue of a treaty.

The district courts possess all the powers of courts of admiralty, both instance and prize; and may award restitution of property claimed as prize of war, by a foreign captor.

CAPTAIN Pierre Arcade Johannene, the commander of a French privateer called the Citizen Genet, having captured as prize, on the high seas, the sloop Betsey, sent the vessel into Baltimore; but upon her arrival there, the owners of the sloop and her cargo filed a libel in the district court of Maryland, claiming restitution, because the vessel belonged to subjects of the king of Sweden, a neutral power, and the cargo was owned jointly by Swedes and Americans. The captor filed a plea to the jurisdiction of the court, which, after argument, was allowed; the circuit court affirmed the decree; and thereupon, the present appeal was instituted.

The general question was—whether, under the circumstances of this case, an American court of admiralty had jurisdiction to entertain the complaint or libel of the owners, and to decree restitution of the property? It was argued by *E. Tilghman* and *Lewis*, for the appellants; and by *Winchester* (of Maryland) and *Du Ponceau*, for the appellee.

For the *appellants*, the case was briefly opened, upon the following principles. The question is of great importance; and extends to the whole judicial authority of the United States; for if the admiralty has no jurisdiction, there can be no jurisdiction in any common-law court. Nor is it material, to distinguish the ownership of the vessel and cargo; since, strangers, or aliens, in amity, are entitled, equally with Americans, to have their property protected by the laws. Vatt. lib. 2, § 101, 103, p. 267. There can be no doubt, that this is a civil cause of admiralty and maritime jurisdiction, and so within the very terms of the judicial act. Restitution or no restitution, is the leading point; that, necessarily, indeed, involves the point of prize or no prize, as a defence for capturing; but if the admiralty is once fairly possessed of a cause, it has a right to try every incidental question. That the vessel is a legal prize, may be a good plea to the suit; but it is not a good plea to the jurisdiction of the court; and the captor, by bringing his prize into an American port, has himself submitted to the American jurisdiction, which is, in this instance, to be exercised by the judicial, not the executive, department. Const. U. S. art. III., § 1; Jud. Act, § 9; Doug. 580, 584–5, 592–4; Carth. 474; 1 Sid. 320; 3 T. R. 344; 4 Ibid. 394–5; Skin. 59; T. Raym. 473; Carth. 32; 6 Vin. Abr. 515; 3 Bl. Com. 108; 1 Vent. 173; 2 Saund. 259; 2 Keb. 829; Lev. 25; Sid. 320; 4 Inst. 152, 154; 2 Bulst. 27–9; 2 Vern. 592; 3 Bl. Com. 108; 2 L. Jenk. 755, 727, 733, 751, 754, 755, 780.

*7] *For the *appellees*, the captors (after some exceptions to the regularity of the appeal, which were waived by consent),(*a*) it was observed, that this is not a libel for a trespass, and so within the jurisdiction of the district court; because a seizure as prize is no trespass, though it may be wrongful. Nor can any act, subsequent to the seizure, for securing and bringing the prize into port, give jurisdiction, if the seizure does not. Doug. 571. Neither can the question be, whether the taking was so illegal as to amount to piracy; and therefore, that there ought to be restitution; for piracy can only be decided in the circuit court. But the question raised by the libel is a question of prize; and the decision of that must precede the subsequent one of restitution; which, so far from being the main and original question, is the consequence of the former. Admitting, then, the present capture to be unlawful, because it is neutral property, still the district court has no jurisdiction of a question of prize, by the constitution and laws of the United States, nor by the laws of nations.

I. The district court has no jurisdiction by the constitution and laws of the United States (which form the only possible source of federal jurisdiction), for although it is admitted, that be the 1st and 2d sections of the 3d article of the constitution, and the judicial act, the jurisdiction of the district court extends to all civil causes of admiralty and maritime jurisdiction; yet, it is denied, that prize is a civil cause of that description; nor can the expression vest a power in the district court to decide the legality of a prize, even by a citizen of the United States. A citizen, indeed, can only make a

(*a*) The appeal had not been presented to any court or judge of the United States, but to a notary-public of Baltimore. The court directed, that the waiver of the exception, by consent, should be entered, as they would not allow any judicial countenance to be given to the proceeding before the notary.

prize, when the United States are at war with some foreign power; but being at peace with all the world, no such question can now be agitated; and of course, no jurisdiction, in such a case, can exist in any of its courts. By comparing the act of congress with the constitution, it is obvious, that the former does not vest in the district court, the same, or so extensive, a judicial power, as the latter would warrant. The constitution embraces admiralty cases of whatever kind—whether civil or criminal, done in time of peace or in time of war; but the act of congress limits the power of the district court to civil causes of admiralty and maritime jurisdiction; and the court can have no other or greater power than the act has given. Civil causes cannot possibly include captures, or the legality of a prize which can only be made in time of war. The words are used to denote that the causes are not to be foreign causes, or arising from, and determinable by, the **jus belli;* but are such as relate to the community, arising in the time of peace, and are determinable by the civil or municipal law; [*8 whereas, prize is not a civil marine cause; nor is it a subject of civil jurisdiction. Doug.; 2 Ruth. Inst. 595. The jurisdiction of the admiralty courts of England, and of the United States, arises from the same words; but it is manifest, that the latter has no other jurisdiction by law, than that which has been exercised by the instance court in England, which is widely different from the prize court, though the powers are usually exercised by the same person. The prize court can only have continuance during war, and derives its powers from the warrant which calls it into activity. Doug. 613; 2 Woodes. 452; Collect. Jurid. 72. The instance court derives its jurisdiction from a commission, enumerating particularly every object of judicial cognisance; but not a word of prize; any more than is contained in the act of congress, when enumerating the objects of judicial cognisance in the district court. The manner of proceeding in these courts is totally different. The question of prize or no prize, is the boundary line, and not the locality; and the nature of that question not only excludes the instance, but the common-law, and all other courts; so that, whenever a cause involves the question of prize, and a determination of that question must precede the judgment, they will decline the exercise of jurisdiction and refer it to the prize court. Besides, congress have not yet declared the rules for regulating captures on land or water (Const. art. I., § 8); and if the district court is now a court of prize, it is a court without rules, to determine what is, or what is not, lawful prize; for the rules of an instance court will not apply. If, upon the whole, the district court has no jurisdiction, under the act of congress, of a case of prize by a citizen of the United States, it cannot have jurisdiction of a prize by a citizen of France, which is the question raised by the libel.

II. The district court has no jurisdiction, by the law, usage and practice of nations. The injury, if any, by the capture, is done by a citizen of France to the subjects of the King of Sweden, and to a citizen of the United States; and the question is, whether that injury is to be redressed in any court of the United States, who are in peace and amity, by treaties, with France and Sweden, and who are neutral in the present war? Admitting, in the first place, that Sweden is also at peace with France, and neutral in the war, the injury, so far, is an attack upon the sovereignty of Sweden, which Sweden alone can take cognisance of: a neutral nation has nothing to

say to a capture, or any other injury perpetrated by a citizen of France on
*9] the subjects of Sweden. 2 Bynk. 177 ; Vatt. lib. 2, § 54, 55 ; *4 Bl. Com. 66 ; Vatt. lib. 2, c. 6, 18, p. 144, 249–52 ; 2 Ruth. Inst. 513–15 ; 9 Wood. 435, 439 ; Lee on Capt. 45–8. 2. If the government of the United States could not interfere, *à fortiori*, its courts of justice cannot. The same reasoning applies to the case of the American, whose property is alleged to be captured ; his application ought to be made to his government ; the injury he complains of being of national, not of judicial, inquiry ; and, indeed, the very case is provided for in the treaty between the United States and Sweden.(*a*)

Hitherto the case has been considered as it appears from the allegations in the libel ; but it is proper likewise to consider the law, as it arises upon the facts disclosed in the plea. This plea to the jurisdiction states formally the existence of war between France and England ; the public commission of the captor ; the capture of the vessel and cargo on the high seas, as prize, alleging the same to be the property of British subjects, and the bringing the prize into port, by virtue of the treaty between America and France. Upon this statement, two additional objections arise to the jurisdiction of the district court : 1st. That by the law of nations, the courts of the captor can alone determine the question of prize or no prize ; and 2d. That the courts of America cannot take cognisance of the cause, without a manifest violation of the 17th article of the treaty between the United States and France.

1. The right of a belligerent power to make captures of the property of the enemy is incontestable ; and to enforce that right, the law of nations subjects the ships of neutral nations to search, and, in cases of justifiable suspicion, to seizure and detention ; when the event of the inquiry, if an acquittal is pronounced, will furnish the criterion of damages. Doug. 571. By capture, the thing is acquired, not to the individual, but the state ; and the law of nations gives, as to the external effects, a just property in movables or immovables, so acquired, whether from enemies or offending neutrals ; and no neutral power can be permitted to inquire into the justice of the war, or the legality of the capture. 2 Wood. 446; Vatt. lib. 3, § 202; Lee on Capt. 82. The great case of the *Silesia loan* is a decided authority in support of this argument. It is there expressly stated, "that prize or no prize can only be decided by the admiralty courts of that government to whom the captor belongs," and consequently, "the erecting of foreign jurisdictions elsewhere, to take cognizance thereof, is contrary to the known practice of all nations in like cases—a proceeding which no nation can
*10] admit." Collect. Jurid. That an *American is a party to the suit, can make no difference, because, if the jurisdiction does not exist, it cannot be assumed or exercised, in any case. In proof of the practice, innumerable authorities may be adduced, from which, however, the following are selected : Treaty of 1699, between *Great Britain* and *Denmark ;* of 1763, between *Great Britain, France* and *Spain ;* of 1753, between *Great Britain* and *France ;* of 1786, between the same parties ; and the several treaties between the United States and *Holland, Sweden* and *Prussia*, respectively. Harg. Law Tracts, 466 ; Lee on Capt. 238 ; Doug. 616.

(*a*) See the second separate article. (3 U. S. Stat. 76.)

If, as has already been shown, the district court is not vested with any separate power as a prize court, neither can it, on the instance side of its admiralty jurisdiction, take cognisance of the question of prize, upon any principle or usage heretofore received as law. The question of prize is to be determined by the *jus belli;* whereas, the instance court is a court of civil jurisdiction, regulated by the civil law, the Rhodian law, the Laws of Oleron, or by peculiar municipal laws and constitutions of countries, towns or cities bordering on the sea. It is not bounded by the locality of an act; but regulates its decisions by the laws peculiar to the nation by which it is constituted, in matters happening on the sea, which, if they had happened on land would have been cognisable in the common-lawcourts. 1 Bac. Abr. 629; 1 Com. Dig. tit. Admiralty, E. 12; 4 Inst. 134. But a tort on the high seas, being merged in the capture as prize, the instance court cannot have jurisdiction, unless the main question is at rest, which will never be the case, whether the libel is for restitution or condemnation. 2 Lev. 25; Carth. 474.

It is urged, however, that the captor, by his own act, in bringing the thing seized into port, and coming himself within the territory of the United States, made it necessary to proceed in the present forum. But the original act derived its quality from the intention of the seizure, which was as prize; and the law precludes any court from deciding on the incident, that had no jurisdiction of the original question. *The Case of the Silesia Loan,* Coll. Jurid. Before the bringing into port, the legality of the capture was triable only in the prize courts of France; the bringing into port was lawful by the law of nations, and if the American courts had no jurisdiction at the time of the capture, a subsequent lawful act could give none. 1 Lev. 243; 1 Sid. 367; 2 Lev. 25; Carth. 474. The cases cited by the appellant's counsel do not militate against this doctrine. The cases in 2 Saund. 259; 1 Vent. 175; Sid. 120, did not involve the question of prize; the sole controversy was, whether the taking of the vessel was piratical or not, *and whether a [*11
subsequent sale on land transferred the jurisdiction from the admiralty to the common-law courts. The observation of Justice Blackstone (3 Bl. Com. 108) is not supported by the authorities to which he refers; and evidently arose from inadvertency or inaccuracy of expression. *Palache's Case,* 4 Inst. 154; 3 Bulst. 27–9, was founded on particular statutes, which facilitated the mode of obtaining restitution of goods piratically seized; the question of prize never occurred in the investigation. Sir L. Jenkins reports a number of cases before the King in council, upon captures within the limits of the government; but they do not instance the exercise of any judicial authority in effecting restitution. If the act of bringing the thing into the territory gives any jurisdiction, it is to the sovereign, not the judicial, power. 2 Wood. 439. And the captain of the French privateer has done no act which can authorize the exercise of jurisdiction over his person. The rule authorizing the exercise of jurisdiction over persons coming within the limits of a country, has been narrowed down, by the voluntary law of nations, to cases where there is either a local allegiance or voluntary submission. To this source might be referred the right of a government to punish faults and decide controversies between strangers, or between citizens and strangers; but such state has no right over the person of a stranger, who still continues a member of his own nation. Vatt. lib. 2, § 106, 108. Local

allegiance is not due from a stranger brought in by force, or coming by license; nor, if it does exist, does it give jurisdiction over faults committed out of the country, before a residence. Vatt. lib. 4, § 92. The captors, in the present case, came hither by license, under the sanction of a treaty; and therefore, it cannot be presumed, that they intended to submit to the municipal authority, unless the presumption arises from the treaty. It does not so arise from affirmative words, and any implication is rebutted by the provision of the treaty, that they shall be at full liberty to depart. But, on the other hand, the principle on which depends the right of the country of the captors to decide, whether the property captured is lawful prize, is, briefly, because the captors are members of that country, and because it is answerable to all other states for what they do in war. 2 Ruth. Inst. 594.

2. The interference of the American courts will be a manifest violation of the 17th article of the treaty with France. The terms of the treaty are clear and explicit, that the validity of prizes shall not be questioned; and that they may come into, and go out of, the American ports, at pleasure. To decide, in opposition to a compact so unequivocal and unambiguous,
*12] *would endanger the national tranquillity, by giving a just and honorable cause of war to the French Republic.

For the *appellants*, in reply.—The arguments of the opposite counsel present three objects for investigation: 1st. Whether the treaty between France and the United States prevents any arrest of the vessel and cargo, under the authority of our government? 2d. Whether the district court is a prize court; and 3d. Whether, even if it be a prize court, the remedy, in the present case, ought not to be sought through the executive, instead of the judicial, department?

I. The 17th article of the treaty expressly extends only to "ships and goods taken by France from her enemies;" and being in the affirmative, as to enemies, it affords a strong implication of a negative as to neutrals and Americans. If, indeed, the citizens of France may keep a neutral, as a prize taken from their enemies, they may likewise, anywhere abroad, seize American property and American citizens in vessels, and our government cannot interfere, even in our own ports, to prevent their being carried away; since, according to the opposite construction, the article prevents any interference in any case. The words, however, are directly against that construction; and even were it otherwise, the absurdity and injustice of the consequences which flow from it, would demand a different construction. Vatt. p. 369; Grot. § 22, p. 365; Puff. 544, § 19; Vatt. § 282, p. 380, 381. The sense must be limited, as the subject of the compact requires; and when a case arises, in which it would be too prejudicial to take a law according to the rigor of the terms, a restrictive interpretation should be used. Vatt. § 292, p. 391; Grot. § 27, p. 361; Vatt. § 295, p. 392.

II. It is admitted, that the constitution gives to congress, the power of vesting a prize jurisdiction in the federal courts; but it is urged, that this power has not been exercised, because "all civil causes of admiralty and maritime jurisdiction," which are the terms of the investment, do not include prize causes. In examining the judicial act, however, to discover the intention of the legislature, it is plain, that civil is used, upon this occasion, in contradistinction to criminal. In other parts of the act, the word "civil"

is dropped (§§ 12, 13, 19, 21), and in the 30th section, a provision is made expressly for a case of capture. The truth is, *admiralty* is the *genus*, *instance* and *prize* courts are the *species*, comprehended in the grant of admiralty jurisdiction. Doug. 580, 579, 582, 583, 594; 1 Sid. 367; 3 T. R. 323; 1 Dall. 105–6. Lord MANSFIELD does, indeed, say, that prize is not a civil and maritime cause (Doug, 592) ; but he also says, that it is a cause of admiralty jurisdiction. It is urged, that prizes can only be made in time *of war ; but it is sufficient to observe, in answer, that however just the abstract proposition may be, it is equally clear, that prize-courts [*13 may proceed, in time of peace, for what was done in time of war. Doug. 583; Carth. 474; 4 Inst. 154; Bulst. 13; 1 Lev. 243; Hume's Hist. of Eng vol. 7, p. 431; 2 Saund. 259; 2 Lev. 25. It is further urged, that the power of declaring war, and making rules respecting captures, is vested in congress ; and that congress has made no such rules ; but surely, whether the rules were made or not (and they are proper to be established for a division of captures), the property of an enemy, in case of a war, would be lawful prize. Those rules can have nothing to do with creating a jurisdiction. Nor is it available to say, that this question results from war, and therefore, is not of civil jurisdiction : for, taking the word *civil* as opposed to the word *criminal*, the consequence does not follow ; and the distinction appears in 4 Inst., where the property was libelled *civiliter*, after an ineffectual attempt *criminaliter*.

III. In Europe, the executive is almost synonymous with the sovereign power of a state ; and generally, includes legislative and judicial authority. When, therefore, writers speak of the sovereign, it is not necessarily in exclusion of the judiciary; and it will often be found, that when the executive affords a remedy for any wrong, it is nothing more than by an exercise of its judicial authority. Such is the condition of power in that quarter of the world, where it is too commonly acquired by force or fraud, or both, and seldom by compact. In America, however, the case is widely different. Our government is founded upon compact. Sovereignty was, and is, in the people. It was intrusted by them, so far as was necessary for the purpose of forming a good government, to the federal convention; and the convention executed their trust, by effectually separating the legislative, judicial and executive powers ; which, in the contemplation of our constitution, are each a branch of the sovereignty. The well-being of the whole depends upon keeping each department within its limits. In the state government, several instances have occurred where a legislative act has been rendered inoperative, by a judicial decision that it was unconstitutional ; and even under the federal government, the judges, for the same reason, have refused to execute an act of congress.(*a*) When, in short, either branch of the government usurps that part of the sovereignty which the constitution assigns to another branch, liberty ends and tyranny commences. The constitution designates the portion of sovereignty to be exercised by the judicial department ; *and, among other attributes, devolves upon it the cognisance of "all cases of admiralty and maritime jurisdiction ;" and renders it [*14 sovereign, as to determinations upon property, whenever the property is within its reach. Those determinations must be co-extensive with the ob-

(*a*) See Hayburn's Case, 2 Dall. 409.

jects of judicial sovereignty; which, according to the nature of the objects, will be regulated by common law, by statute law, and by the law of nature and nations. It is competent to execute its decrees; and can, if necessary, raise the *posse civitatis*. To the judicial, and not to the executive, department, the citizen or subject naturally looks for determinations upon his property; and that, agreeable to known rules and settled forms, to which no other security is equal. Why, then, recur to the executive, when the property, in the present instance, is on the spot, and in the hands of the judicial officers? By what rules is the executive to judge? What forms shall it adopt? And to what tribunal, shall we appeal from an erroneous sentence. Will it not be *novi judicii, nova forma?* As in Milo's case, the eye of the lawyer will, in vain, look for *veterum consuetudinem fori, et pristinum morem judiciorum.* But can the executive give complete redress, by assessing damages; or accomplish equal and final justice, by ascertaining the rights of different claimants? Will the injured have its assistance, of course and of right, or as it may please the officers of the state? And shall even American citizens be detained prisoners in our own harbors, depending for their liberty upon the will of a secretary of state? It will not be pretended, as the foundation for such a doctrine, that the executive is more independent, and less liable to corruption, than the judicial power. And where shall be the boundary to executive interferences in questions of property, if it is admitted in the present case, which is merely a question of that description?

If the property were to be removed from, or if it had never been brought within, the reach of the judicial authority, and it should be divested by an unjust sentence abroad, then the citizen must, of necessity, avail himself of the executive authority, through the medium of negotiation, or reprisal. 1 Bl. Com. 258; 2 Ruth. Inst. 513, 15; Lee 46, 6; Sir T. Raym. 473. But when the property is here, it is incumbent on the opposite party to show, that the general jurisdiction of courts, which applies, *primâ facie*, to everything within their reach, does not apply in the particular case of the property of one neutral power captured, and brought into the ports of another neutral power. In the cases cited from Lee 204; Coll. Jur. 135, 137, 153, there had been regular proceedings in England, which the king of Prussia attempted to undo, by erecting a court of his own to revise them. Lee 238–9. And the obligations of the treaties that *have been referred to, can only affect the parties; as they are matter of positive agreement.

*15]

But even in England, the judicial power possesses the jurisdiction which is asserted to belong to the judicial power of the United States. The question is restitution or no restitution, involving the question of prize or no prize, brought forward by the captured, and not by the captor. The question of prize or no prize, is emphatically of admiralty jurisdiction, exclusively of the common law; and must be determined agreeable to the law of nations: Doug. 580, 584–5, 592, 594; Carth. 32, 474; 1 Sid. 320; 3 T. R. 344; 4 Ibid. 394–5; Skin. 59; Raym. 473. The admiralty being once properly possessed of a cause, takes cognisance of everything appertaining to it, as incident: 3 Bl. Com. 108; 6 Vin. Abr. 515; 1 Raym. 446; 2 Ruth. Inst. 594. Besides, all these cases clearly establish a distinction between a want of jurisdiction, and a dismissal of the libel for good cause. The case in 4 Inst. 154, and that of 2 Co. 3, demonstrate, that where it is proved, 1st. That the sovereign of the complainant is in amity with our sov

ereign; and 2d. That his sovereign was in amity with the sovereign of the captor; the party may sue for restitution. The admiralty of England will decide, though a foreign power issued the captor's commission: 3 Bulst. 27–9; 2 Vern. 592; Sir L. Jenk. 755.

The act of bringing the vessel into an American port, must be regarded as a voluntary election to give a jurisdiction, which they might otherwise have avoided. If the American courts have no jurisdiction, the captors avoid all jurisdiction, as they avoid that of their own country; for, the attempt by a French consul to take cognisance in our ports, can never be countenanced. But shall they keep the vessel and cargo here *ad libitum*, and Americans, as well as neutrals, wait their motions? for, it is urged, that reprisals cannot issue, until the courts of the captors have refused justice; and those courts cannot inquire into the merits, until the vessel is brought within the jurisdiction of France.

The Court, having kept the cause under advisement for several days, informed the counsel, that besides the question of jurisdiction as to the district court, another question fairly arose upon the record—whether any foreign nation had a right, without the positive stipulations of a treaty, to establish in this country, an admiralty jurisdiction for taking cognisance of prizes captured on the high seas, by its subjects or citizens, from its enemies? Though this question had not been agitated, The Court deemed it of great public importance to be decided; and meaning to decide it, they declared a desire to hear it discussed. *Du Ponceau*, however, observed, that the parties to the appeal did not conceive themselves interested in *the point; [*16
and that the French minister had given no instructions for arguing it. Upon which, Jay, Chief Justice, proceeded to deliver the following unanimous opinion:

By the Court.—The judges being decidedly of opinion, that every district court in the United States possesses all the powers of a court of admiralty, whether considered as an instance or as a prize court, and that the plea of the aforesaid appellee, Pierre Arcade Johannene, to the jurisdiction of the district court of Maryland, is insufficient: therefore, it is considered by the supreme court aforesaid, and now finally decreed and adjudged by the same, that the said plea be, and the same is hereby overruled and dismissed, and that the decree of the said district court of Maryland, founded thereon, be and the same is hereby revoked, reversed and annulled.

And the said supreme court being further clearly of opinion, that the district court of Maryland aforesaid has jurisdiction competent to inquire and to decide, whether, in the present case, restitution ought to be made to the claimants, or either of them, in whole or in part (that is, whether such restitution can be made consistently with the laws of nations and the treaties and laws of the United States); therefore, it is ordered and adjudged, that the said district court of Maryland do proceed to determine upon the libel of the said Alexander S. Glass and others, agreeable to law and right, the said plea to the jurisdiction of the said court notwithstanding.

And the said supreme court being further of opinion, that no foreign power can, of right, institute or erect any court of judicature of any kind, within the jurisdiction of the United States, but such only as may be warranted by, and be in pursuance of treaties, it is, therefore, decreed and

adjudged, that the admiralty jurisdiction which has been exercised in the United States by the consuls of France, not being so warranted, is not of right.

It is further ordered by the said supreme court, that this cause be, and it is hereby, remanded to the district court for the Maryland district, for a final decision, and that the several parties to the same do each pay their own costs.

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*17] *FEBRUARY TERM, 1795.

UNITED STATES *v.* HAMILTON.

Bail.

A defendant committed on a charge of treason is bailable.

THE prisoner had been committed upon the warrant of the district judge of Pennsylvania, charging him with high treason; and being now brought into court upon a *habeas corpus*, *Lewis* alleged, that there was not the slightest ground for the accusation brought against the prisoner, who had been committed, without ever having been heard, and without knowing the name of any witness that had been examined, or the scope of any deposition that had been taken, against him: and he moved, that the prisoner should either be discharged absolutely, or, at least, upon reasonable bail.

Rawle (the attorney of the district) admitted, that in the single case of the prisoner, there had not been a hearing before the district judge, previously to the commitment; but when the state of the country is recollected, the number of delinquents, and the urgency of the season, he presumed, that this circumstance (independently of the established character of the judge) would not be ascribed to a want of vigilance, or a spirit of oppression. He insisted, however, that the discretion vested in certain judges, relative to a commitment for crimes, by the 33d section of the judicial act (1 U. S. Stat. 91), having been exercised by the district judge, on such depositions as satisfied him, this court, having merely a concurrent authority, can only revise his decision in one of two cases: 1st. The occurrence of new matter; or 2d. A charge of misconduct—neither of which is pretended. But after stating the general character of the insurrection, he read several affidavits, with a view to establish the prisoner's agency in it; and concluded with urging, that, if the prisoner was released at all, it should be on giving satisfactory bail to take his trial in the circuit court. 4 Bl. Com. 296; 2 Hawk. 176 (*n*).

Lewis examined the affidavits produced against the prisoner, to show,
*18] that although he attended at several meetings of the *insurgents, his deportment, upon those occasions, was calculated to restore order and submission to the laws; and he added the affidavits of several of the most respectable inhabitants of the western counties, in testimony of the propriety of the prisoner's conduct throughout the insurrection.

THE COURT, after holding the subject for some days under advisement,