

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 counsel 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 *vivâ voce*. *United States v. Hamilton.*

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\*121]

\* AUGUST TERM, 1795.

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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 prohibition 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*.