

deminish and must defeat the Provision held out for securing the Interest as the inducement for assenting to the propositions contained in the said Act, and therein deceptious and derogatory to the Dignity of the State, and we do accordingly instruct you not to allow any Draw-back of the Duties imposed by the said recited Act. We are etc.

W. Smallwood”

To the Naval Officers

To which the Honorable John Kilty Esquire entered the following dissent :

Dissentient,

1st Because the allowance of Draw backs is a part of the *Commercial law* of the State; and must therefore obtain in all Cases where it is not expressly prohibited.

By the Commercial Law I mean the Act of November 1785 “to alter and amend the laws respecting Commerce” etc., together with such parts of former Laws as [p 248] remain unrepealed, and the System thus composed must operate in all its parts until it shall be explicitly changed or abolished. The act imposing the duties in question bears not the smallest mark of an intention to exempt them from the operation of any rule which regards duties in general; and the only reference to the commercial law which it contains, is a direction to the Officers to be guided thereby in the manner of receiving or securing, and paying these additional duties into the Treasury, and while the general regulations were in contemplation, it is reasonable to suppose that any one of them not intended to affect those duties would have been noticed and mentioned in the Act.

2nd. Because the present decision does not agree with the practice of the Executive in a case entirely similar.

The argument that “the allowance would certainly diminish and might defeat the Provision held out” etc. applies equally to the authority of remitting fines and forfeitures, which the Board still retains and exercises, although they are with a few exceptions sacredly appropriated to the two Colleges the trustees of which might as well as Messrs. Vanstaphorst complain that the provision intended for them was diminished or defeated. But my Opinion in both cases is that the parties entitled to the benefit of these provisions have no right in them until they are paid into the Treasury, after having undergone the operation of prior Laws. Holding therefore the present construction to be erroneous, I have thought it expedient to record my dissent to the order given to the Naval Officers on the subject.

John Kilty  
July 10. 1787

The Council adjourned till tomorrow morning 11 o'clock.