

shadowed by the Trojan horse, in Virgil's *Æneid*, where a very few men, within the city, did more mischief, in a few hours, than ten thousand men without her walls in ten years.

It is our misfortune, that we have already too many *strangers* among us, who, although by remaining in our government, must be considered as *subjects*, yet are *Britons* in their hearts; who betray our secrets; counteract our measures; oppose our laws; and propagate the seeds of sedition; whose aid with it is to see our liberties subverted, and British tyranny triumphant. Shall we, then, blindly court our ruin, by inviting, into our state, a still greater number of our enemies, and bribe them to destroy us, by enabling them to inherit, and bestowing upon them those lands, and that property, which is the undoubted right of the public? Of the dangerous and destructive consequences, which would probably result from so doing, the *Plebeian* has kindly given us a caution; for, says he, if the subjects of this state and Great-Britain can mutually hold lands, and the children of persons born before the declaration of independence, could, by some means, which might be devised, for that purpose, inherit in the several respective countries, "it might be a great means of restoring our former happy connection." And though the *Plebeian*, affecting to be an enemy to confiscation, and conforming himself to the language of Tories and British subjects, calls it a *happy* connection, yet it is evident that, in his *real* sentiments, he, and every other friend of the United States, would think that event one of the severest punishments, which could be inflicted, for our sins, by an offended deity; for which reason, it must be the ardent desire of every Whig, that our legislature, as the faithful and uncorrupt guardians of our rights and liberties, will, at once, cut off all hopes which our enemies may entertain of that event, by appropriating all British property to the use of the public, and thereby still further securing us against all possibility of so dangerous a connection.

Having shewn, that British subjects cannot, by the common law, hold or inherit any real property, in this state; and having assigned some of the reasons, on which the common law is founded, and pointed out the dangerous tendency of the contrary doctrine; I now proceed to examine, whether British subjects can support any claim or right to *personal* property in this state; and whether they can maintain suits, in our courts of justice, for the recovery of such property. Upon looking into this subject, I find, that although an *alien friend* may reside among us, and acquire *personal* property, yet, if, in consequence of a war breaking out between this state, and the nation of which he is a subject, he becomes an *alien enemy*, he cannot, by the common law, sue for, or recover *debts*, or any other personal property, "because both are forfeited to the state, as a *reparation* for the damages committed by the dominion in enmity with it." And that any subject may seize upon the property which alien enemies may have in their possession, within the state, wherever he can find it; whether the alien enemy has come of his own voluntary choice, or has been driven by tempests, with his property, into the state. From whence it follows, that British subjects cannot sue for, or recover, in our courts of justice, any personal property, not even their debts, upon the strict principles of the common law; but that all such property, debts included, are forfeited to the state, as a satisfaction for the damages sustained, and the expences incurred by the war. Nor does the common law make any distinction between the *guilty* and *innocent* subjects of Great-Britain, as the Senator is pleased to stile them, but considers every individual of that nation equally answerable, as far as the damages and expences sustained; which evidently appears from the form of the plea, in discharge of an action commenced, by an alien enemy; for in the plea it is only alleged, that he is an alien enemy, subject of such a king, in enmity with the state; without setting forth that he, who brings the action, is himself personally criminal, by assisting in, voting for, or approving of the war.

From the above observations, we find, that all British property, within this state, of every kind whatsoever, is equally liable to be confiscated; and that there is no exception, as some have ignorantly imagined, in favour of lands; these, on the contrary, may lawfully and justly be appropriated, to the use of the public, for two reasons; the first, in consequence of the incapacity of aliens, whether friends or foes, to hold or inherit lands among us; and secondly, because lands, as well as personal property, are answer-

able for the damages and expences of the war. And if instances cannot readily be referred to, where, upon the commencement of a war, the real property of the enemy has been seized and confiscated, it is because, by the policy adopted by nations, the subjects of one state cannot, even in time of peace, hold, or inherit lands, in another; and consequently there can be no real property of the enemy's subjects for the state to seize and confiscate in time of war. Leases for years, possessed by aliens, in Great-Britain, are liable to seizure and confiscation.

From the above observations also it is clearly proved, that the right to seize and confiscate the goods of the enemy, in compensation of the damages and expences of the war, is not confined, as the Senator would wish to represent, "to goods forcibly taken from the enemy, on the high seas, and during inroads made into their territories." On the contrary, all the common law principles, which I have mentioned above, are exactly applied, to the regulation of the conduct of the state, with respect to "the goods, moveable or immovable, which may happen to be in the country of the injured, and be possessed by, or belonging to some of the members of the injuring nation."

This right, which the state possesses, of seizing and confiscating the property of every British subject, indiscriminately, whether personally guilty, or not, being vested in the state for the purpose of reimbursing itself the damages and expences of the war, may justifiably be extended to the seizure and confiscation of as much property as will, at least, be sufficient for that purpose. But the Senator declares the supposition, "that the value of all the goods of British subjects, which this state can seize, may exceed the damages and expences of the war, is inadmissible in fact, or course, idle in theory;" therefore it follows as a necessary consequence, that this state may, justifiably, extend her right to the seizure and confiscation of all the goods of British subjects, whether moveable or immovable, which may be within the state.

Thus far I have investigated the justice of seizing and confiscating British property, upon the principles of common law; I shall now shew it to be equally consistent with, and justifiable by the laws of nations.

I might refer to the message, by the house of delegates, to the senate, where this doctrine is fully established; and to Grotius, Puffendorf, Hutchinson, Burlamaqui, Rutherford, Vattel, and all the most eminent writers, on the subject, ancient or modern; but, on the present occasion, I rather confine myself to an authority, which, with the Senator, must be conclusive, even if it could be questioned by others, I mean, the authority of *The Senator himself*. In his first number he observes that the delegates, in their quotation from Rutherford, kept back a part, as not answering their purpose; and subjoins, that "it is pretty remarkable, that the message enumerates only two of the ways of acquiring property, in the goods taken from an enemy, and mentions nothing of the third." That is, he thinks it "pretty remarkable" that, after the message had enumerated two ways, by which property might be acquired, in goods taken from an enemy, and had, incontestably, proved, that by those two ways, we might take the goods of British subjects, and acquire property in them, it had not gone farther, and enumerated a third way, which was nothing to the purpose, nor any way applicable to the question! The Senator undertakes to supply this defect, and gives us the following paragraph from that author: "Thirdly, a nation which has committed a crime may be punished, in the same manner with an individual, in the liberty of nature, by being deprived of its goods. Grotius confines this way of acquiring property, in war, to such goods only as belong either to the collective body of the state, or to the criminal members of it; and this restriction is a very proper one, for though an injury, which is done by a nation, is communicated to all the members of it, as far as that injury produces an obligation to repair damages, yet the guilt of it, as it implies a disposition to do harm, is conferred to the collective person of the nation, and to those particular members of it, who have made it their own act, by their immediate and direct consent." Thus far Rutherford; now let us hear the Senator himself: "There is a plain distinction set up by Grotius" (yet plain as it is, in the very next page the Senator as entirely forgets it, as if no such distinction had ever been made) and approved by Rutherford, between the goods belonging to the collective body of the state, or its representative, or the criminal members of it, and the goods of such persons as are unoffending, as far as the injury done lays the injuring nation under an obligation to repair damages, the injury is communicated to all the members of that nation," (the unoffending as well as others)

"but the guilt or criminal intention is confined to the collective person of the nation, &c."

Here then we see the Senator himself exactly coinciding in sentiment with the message; he declares, that as far as the injury done to the state, by Great-Britain, lays that nation under an obligation to repair damages (and the expences of the war is part of the damages) it is communicated to every British subject indiscriminately; and that the goods of every British subject, without distinction, may be taken by this state, and a property in those goods may be acquired, as far as the amount of those damages. He says, writers upon the law of nations distinguish between seizing goods of an enemy, for reparation of damages, and the seizing them by way of punishment; that in the first case, the goods of all the members of the state, although such members may be unoffending, are liable to be seized; but, in the last case, the seizure ought to be confined to the goods, either of the collective body of the nation, or of the criminal members of it.

We do not contend for the seizure and confiscation of the goods of British subjects, by way of inflicting a punishment, either upon themselves or the nation, however well they, or the nation, might merit it; we contend for it, in order to compensate, in some small degree, the damages and expences of the war; and the Senator himself acknowledges, that all the goods we can seize will not be sufficient for that purpose. And yet, so strangely inconsistent is the Senator, that, immediately after, entirely forgetting of this distinction, so plainly pointed out by Rutherford, Grotius, and himself, he declares that to be unjust, which he had acknowledged to be just, and calls that "principle erroneous;" which he had himself established. Where was the candour of the Senator, when he endeavoured to cast an imputation upon the house of delegates, because in their message they did not insert a paragraph, which so far from contradicting the authority, relied upon by them, expressly agrees with, and confirms those authorities, and inconceivably supports the rectitude and justice of seizing and confiscating British property? At that unlucky moment, I fear, that, like the god Baal, it was "asleep, or had gone a far journey;" but such is the weakness of humanity, or, to speak with more propriety, such is the nature of error, that writers, of the most exalted abilities, when engaged in its support, scarce ever fail to plunge themselves into contradictions, absurdities, and inconsistencies, which would scarcely be excusable in a child of the tenderest years.

AN INDEPENDENT WHIG.  
Baltimore, March 18, 1780.

To the SENATOR.

I SHALL not enter, with you, into the discussion of the question, whether the private property of the innocent subjects of Great-Britain is liable to confiscation, by the law of nations. I am convinced by the reasoning and authorities cited in the message of the house of delegates, that the measure may be supported, on principles of justice, and the law of nations, and that you are entirely mistaken in your opinion. You allege, "that the delegates originated the bill for confiscation of British property, on this principle, that all British subjects became aliens to this state, by the declaration of independence; and on that ground principally rest its defence." This principle you positively deny; vainly imagining, that if you could destroy it, you would thereby carry your point, and save British property from confiscation. Here I would remark, that the delegates have assigned several other reasons to justify the confiscation, each of which is sufficient; RETALIATION alone must justify the measure, in the opinion of every sensible Whig in America. When you deny, that all British subjects are not aliens, I wish you had explained yourself. Do you mean to admit, that the criminal subjects of Great-Britain, i. e. those who have been engaged in the war, &c. are aliens, and to deny, that those, you call innocent or unoffending members, are not aliens? If you do not mean such admission, or denial, be pleased explicitly to declare what British subjects you admit, and what you deny, to be aliens? You positively pronounce, that the delegates were mistaken; I as positively affirm you are. Be pleased, Sir, to attend to the argument, you adduce, to prove, "that the Americans born before the declaration of independence, are not aliens in Great-Britain, and that they may still inherit, or sue to recover, lands in that kingdom." You have discovered, in Calvin's case, that persons, born within the duchies of Normandy, &c. while under the actual obedience of the kings of England, could inherit lands there. You also find, that the judges of James I, determined, that Calvin, born after his accession of James to the crown of England,

\* Gibb. Hist. Com. Pleas, 166.

† Bro. Forcett & Tertius, 57. Property, 38.

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