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From the United States Gazette.

IMPORTANT DECISION.

We have obtained for publication the following opinion of the Supreme Court delivered by Chief Justice T. Johnson, on Saturday the 17th instant, which settles the law in Pennsylvania, on two very important points, relative to the right of abandonment in cases of insurance.

In the Supreme Court of the State of Pennsylvania, vs. Samuel Galtiff. Philadelphia, January 17, 1837.

On the 24th September, 1799, the Little Will sailed on her voyage from Philadelphia for Havana, and on the eighth day of October following she was captured by three British privateers and carried into the port of Nassau, New Providence, where she arrived on the thirteenth of the same month.

Upon her arrival in Nassau the said schooner was libelled in the admiralty court, and on the ninth day of November following was regularly acquitted; and in the whole she remained thirty-five days at Nassau, during thirty-five of which she was in custody of the captors; but the fact of her acquittal was not known to the plaintiff until after the abandonment hereafter mentioned, although it was known to John Duell, one of the owners and supercargo, who was with her at Nassau.

On the thirteenth day of November, the plaintiff wrote the letter of abandonment, enclosing the papers thereon returned to Great Britain, which was received by the defendant the same day.

On the 20th November the said schooner sailed from Nassau for Havana, where she arrived on the 21st of the same month, and found her cargo, except three boxes plundered at Nassau, safe. Afterward the said schooner sailed from Havana for Philadelphia, where she arrived on the 29th or 30th of February in the year 1836, with a cargo of sugars, on which freight became due and was received by Stephen Duell for the benefit of those who were entitled to such parts refusing to accept her, she was sold for warlike goods, and the whole proceeds of sale applied to the payment thereof.

The schooner Little Will was American property. The question for the court is, whether the plaintiff is entitled to recover as for a total loss. It is the opinion of the court that the loss was not a total loss, and that the plaintiff is not entitled to recover as for a total loss.

It is the opinion of the court that the plaintiff is not entitled to recover as for a total loss. The court is divided into two points.

1. Did there ever exist a total loss? 2. Supposing that there once existed a total loss, has any circumstance occurred which excludes the plaintiff from recovering for more than a partial loss?

The first point includes one of the risks expressly mentioned in the policy, a taking at sea. It is the opinion of the court that the taking is only for the purpose of searching for the property of his enemy, or goods contraband of war, and that in the end, justice will be done to the neutral. To a captain extent there is weight in this distinction; but it must not be carried too far. At the time when the capture in question was made the U. S. flag acknowledged the right of the British to detain their vessels for the purpose of a reasonable search. The bare taking of the vessel, therefore, could by no means constitute a loss; and if under suspicious circumstances the vessel should be carried into port to afford an opportunity for a complete investigation, perhaps even that ought not of itself to be considered as a total loss.

On this, however, I give no opinion. But when the captor, having carried the vessel into port, and completed the examination of the cargo and papers, instead of discharging her, proceeds to libel her, has a prize, I think the loss is complete. The property is no longer subject to the command of the owner, and it is unreasonable that he should wait the event of judicial proceedings, which may continue for years. The case of an embargo is less strong; because there the confiscation of the property is not intended, and a temporary interruption of the voyage is all that in general is to be apprehended. Yet the vessel is not obliged to receive the goods, but may abandon immediately on receipt of intelligence of the embargo. Where principles are strong it is sufficient that there have been no decisions to the contrary. It appears, however, that in the State of New York, the precise point has been determined. In the case of Mumford vs. Church, decided in the Supreme Court of New York, July term, 1799, the vessel recovered for a total loss where there was a capture, carrying into port and libelling by a British captor, although after the abandonment the property was restored. It is necessary that some general rule should be established; some line drawn by which the assured may know at what time he has a right to abandon. In most cases the voyage is extremely injured by proceedings in the court of admiralty, and the event is doubtful. For it cannot be denied, that of late years such extraordinary occurrences have taken place in war and politics, as have very much affected the principles and practice of foreign courts of admiralty. Whatever may be the law of the land, and whatever may be the immutability of the principles of justice, we see very plainly, that the courts obey the will of the sovereign power of their country; and this will fluctuate with the

circumstances of the times. I am therefore of opinion, that both by the words and spirit of a policy of insurance, the assured may abandon when he receives intelligence of the libelling of his vessel.

This brings me to the consideration of the second point. Has any circumstance occurred which limits the plaintiff to a recovery for only a partial loss?

It is contended, that such an event has occurred: that the vessel was acquitted by the decree of the court of admiralty; that after acquittal she proceeded on her voyage, and that one of the owners was on the spot, and knew of the acquittal. I do not think there is much weight in the circumstance of one of the owners being on the spot; because the general agent of all the owners was in Philadelphia. This general agent effected the insurance, and conducted all the business with the underwriters, and the owner who was in New Providence gave him intelligence of what occurred from time to time, and by no means intended, from any thing that appears, to restrain him from making an abandonment. It is true that the vessel proceeded on her voyage after she was restored; but it is not stated, nor can the court presume, that any of the owners acted in a manner inconsistent with the abandonment made by their agent. It was proper at all events, to pursue the voyage for the benefit of whoever might be interested in it. This is the usual practice and a practice authorized by the policy and very much for the advantage of the underwriters.

The only difficulty in the case before the court arises from this circumstance, that before the vessel was restored, she was restored, and even at the time of the abandonment, there was a decree of acquittal, although restitution does not appear to have been actually made till some days after. This counsel for the defendant have relied upon the opinion of Lord Mansfield in the case of Hamilton vs. Mendez, to establish this principle, that a policy of insurance, being in its nature a contract of indemnity, the plaintiff can recover no more than the amount of his actual loss at the commencement of the action. There is no doubt of the soundness of the principle; I mean that a policy is a contract of indemnity. The only question is, at what period the rights of the parties are to be tested by this principle; whether at the time of abandonment, or of the commencement of the action. I have considered attentively the case of Hamilton vs. Mendez. It must be obvious to every one that the decision in that case was perfectly right. It was simply this, that a man shall not be permitted to abandon, and recover for a total loss, when he knew at the time of his offer to abandon, that his property which had been lost, was restored, and voyage very little injured. But in reading the opinion of Lord Mansfield we find a want of accuracy with which that great man was seldom chargeable. Sometimes it appears as if he thought the period for fixing the rights of the insurers and insured was the commencement of the suit; sometimes the abandonment; and sometimes he even seems to extend his ideas so far as the time of the verdict. But finally, he explicitly declares, that he decides nothing but the point before him. He seems to have left a little more at the improper application of some general expressions used by him in the case of G. S. vs. Withers. Anxious to cut off all pretence for doing the same in Hamilton vs. Mendez, he hastens on much pains to avoid the possibility of misapprehension. Hence his argument confined in the case is not altogether clear and consistent. Upon the whole, I think it must fall to the ground, and the point actually decided, which was very different from that we are now considering. Some period must be fixed for determining the right of the parties.

To limit it to the time of commencing the action would be of little service to the cultivator; for the law being once established, an action will be brought in every instance on the first default of payment. The time of abandonment seems the most natural and convenient period; because the assurance is made, his election to abandon is not, in a reasonable and short time after he hears of the loss, and the property, being transferred by the abandonment, can never after be reclaimed by the assured. What of mutuality is wanted in justice. There is no reason why the assured should be bound, but the insurer left free to take advantage of events subsequent to the abandonment.

It has been contended by the plaintiff's counsel, that the right to abandon would not have been affected, even if the property had been restored at the time of abandonment, because the restitution was unknown to the plaintiff. As to this, I give no opinion. It is unnecessary; because it is stated that the vessel remained in the custody of the captors at the time of abandonment. The defendant's counsel have urged that this was the fault of the captain, or of one of the owners who was in New Providence; because, after a decree of acquittal, a writ of restitution might have been sued out. But it not being stated that there was any fault or negligence in the captain or owner, I do not think that a court can infer it. It being stated that the vessel remained in the custody of the captors, we must presume that the custody was legal. Whether for the purpose of giving the captors an opportunity of entering an appeal, or for what purpose it was that the restitution was delayed, we are at a loss to determine. But, as restitution was not actually made, and as the plaintiff was ignorant, even of the decree of acquittal, his right to abandon remained unimpaired.

Upon the whole, I am of opinion that the plaintiff is entitled to recover for a total loss.

CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, JANUARY 16.

Debate on Mr. Randolph's Resolution—continued.

Mr. Alston believed that no man in the House was more disposed than himself to receive any information from the executive government, that would enable them to take the necessary steps against foreign or domestic enemies. But where did they meet with any grounds to justify the opinion that a foreign attack was meditated? The contrary was his opinion. He had heard of no circumstance which justified the belief of such an attack being meditated, particularly by Spain on the west side of the Mississippi. What was known on this subject? That the commanding officers on the part of the U. S. and Spain had agreed not to violate the intervening territory, until fresh information was received from their governments. There was no ground therefore to believe that an attack would be made from that quarter. On the con-

trary, if newspaper information was to be credited, the attack was to be from our own territory and was contemplated against that very nation. If this were true what attack have we to believe in a foreign attack from any other quarter? Did evidence exist in the hands of the executive of any such foreign attack being contemplated? If so, is there not the strongest reason to believe that we should have received information of it without a demand. Let any gentleman examine this subject, and say if it is not wise to leave the business where it now is. Whether the measures adopted at the last session, or those which were proposed were the best, it is not said Mr. Alston, for me say. Time will determine. But this, I may say; if we had then passed an act for raising a few regiments, there would not have been one of them by this time on the Mississippi. We might have got, as heretofore, a regiment of officers; but there would have been no regiments of men.

We have been further told of the policy of taking a manly attitude against Spain. We had a resolution offered to us, which in my opinion amounted a declaration of war—not merely for defending the country on the frontier, but for carrying on a war against Spain. What was the situation of the country when this resolution was submitted? Defenceless indeed!—We might have acted here, but Spain would have acted there. If the persons alluded to by the gentleman from Virginia are now in a combination with Spain, might they not have also been in a combination then, and had we assumed a hostile attitude might they not have acted with more effect than they can now? There is not a doubt in my mind, that as soon as it is proper information will be laid before us without calling for it. If such a resolution be carried the President he will deem himself bound to communicate the whole information in whatever terms it may be couched. I have no apprehensions and feel no dread of any force that can be brought against us in the Western country. Our force there will be able to cope with any that shall be employed against the U. S. and the moment the man at their head shall declare himself hostile to the union, the very forces which he has raised will turn their bayonets against him; they will desert him. If this is all the ground that can be assigned, I think it best not to carry this resolution immediately to the President. In a few days we shall probably receive another western mail, and if the information then received shall not be satisfactory, or serious danger appears to exist, we may call for that information which is not now necessary.

Mr. J. Clay said this was the first time that he had ever heard it stated that newspaper information was proper for legislative action. For this reason we are to wait, it seems, until we get two or three more newspapers from the western country. He would ask if there ever were ideas so strange submitted to a legislative body? He said he knew that it was very fashionable for the majority to express a full confidence in the executive magistrate; but he would ask whether this was a correct doctrine? The constitution vested the important power of declaring war in the two branches of the legislature. When therefore, the peace and safety of the country were placed in the hands of the two Houses, did it contemplate that in the exercise of these powers they should depend on newspaper information? The gentleman says, if we had passed a law for raising additional troops at the last session, we should not have got the troops by this time. Mr. C. said this was the first time he had ever heard delay assigned as a sufficient reason for omitting to do any thing. The gentleman says we have every reason to believe that Spain entertains no hostile intentions towards us. But take the gentleman's own source of information, the newspapers, and we have every reason to believe, that from the year 1783, that government has been in a conspiracy against the peace and unity of the U. S. We know with what determination the minister of Spain, in 1783, endeavored to make our ministers accede to a more limited boundary of the U. S. than that established by treaty. Spain has never lost sight of this object, and sometimes by fair means and sometimes by foul means has continued to pursue it.

What is the object of this resolution? We find that great alarm exists, particularly on the Atlantic board. We find gentlemen from the westward either ignorant, or pretending to be ignorant of the existence of any thing alarming. Under these circumstances, the House are without official information. We are told that because we have confidence in the executive, we ought to rely on his giving us information as soon as it is proper. Mr. C. said he would submit whether this comported with the dignity of a representative, and whether it was proper for him to depend on newspaper information.

Mr. Alston said that all he had observed in relation to newspaper information was in reply to what had been said on this point by gentlemen on the other side.

Mr. J. Clay resumed his remarks; but after uttering a few words, declared himself too unwell to proceed and sat down.

[From the severe cold with which he was apparently oppressed, we with great difficulty collected his remarks,

which are probably but imperfectly given.] Mr. Burwell said, on attending to the resolution, he thought it one that was highly expedient to be adopted at this time. He viewed it as a call upon the executive for true and precise information of acts and measures on which the peace of the union, perhaps, depended. It was perfectly immaterial to him whether Spain, England, or France should be implicated in the information given; whether the whole or a part of these nations were concerned in the project. It was sufficient for him that the peace of the country was threatened, that the minds of our citizens were alarmed, and that this was the only branch of the government competent to preserve the peace of the country, and tranquilize the public mind. It was clear that danger did exist; that the peace of the country was threatened by a lawless banditti, whose object was to violate the laws of the country, and to dismember the union. It was important to know the extent of these measures that the legislature might be enabled to decide what steps it was proper to take to guard against them. There was a time, Mr. B. said, when he should have been opposed to such a resolution. That time was when the executive was endeavoring to gain information calculated to throw light on the plot; but that time had passed by. All those engaged in it must by this time be completely enlisted and embarked in it, and nothing which the executive shall now disclose could extricate them from being secured and punished as they deserved. If a resolution were laid on the table for an enquiry into the nature of the plot, as that might place the men concerned in it under their guard, he should be opposed to it. But was it not known to every gentleman, that the plan was so far matured that the information could not reach the conspirators in time to prevent its execution. Suppose the executive shall state to us that certain individuals were implicated. Can that enable them to elude punishment? No, they are fully embarked, and nothing remains for us to do, but to take such measures as the case requires. Another advantage would result from the resolution. Suppose the executive to have taken every necessary measure, and I believe, said Mr. B. that they have to defeat these projects, what will be the consequence? Will not this information tend to tranquilize the mind of every man in the country? Mr. Burwell said he repeated, that it was because he had confidence in the executive magistrate; because he wished for true and full information on the subject, because the disclosure of persons implicated could do no mischief, and because an official statement would tranquilize the public mind, that he was in favor of the resolution. For his part he was ready to say that if the executive gave information that required an augmentation of our forces, he was prepared to give him the necessary means for defending the country, under the impression that it was the duty of every member to protect the Union from internal injury or foreign danger.

Mr. Masters—Mr. Speaker. From the best information I have been able to obtain, the conspiracy is yet progressing with increased ardour and zeal.

If there was no conspiracy existing, and not a conspirator in the United States, I believe it high time to pursue more energetic measures for the safety, security and honor of this nation, and at least be prepared to act. Has not the government of Spain refused to ratify her solemn treaty, and for several years manifested hostile intentions towards the American nation, and actually put her troops in motion to invade our territory? Has she not refused to recall her minister, who has repeatedly insulted the nation, and whose recall has been demanded by the executive? Does she not continue to procrastinate and delay the pending negotiation, probably with a view to see the result of our negotiation with Great Britain, and stimulated by France to view that negotiation with a jealous eye, as though there were secret instructions to operate to her disadvantage, or some other pretence for aggression?

When the committee reported the bill to authorize the President to accept of volunteers, I must confess I was astonished, because the report contained no clause for raising regular troops. I therefore called on the committee, to know if that was the only measure contemplated by the committee. If it was, I thought it very inefficient in the present state of affairs, both internal and external. I obtained no direct answer, but was informed it was only a report in part.

I wish to get the necessary information from the executive, and to pursue active and efficient measures, and not drink of the cup of national degradation.

Mr. Smilie. We have had such a picture drawn of our situation, that I am willing to go any proper length. But I am surprised to hear such a representation made, as would lead us to believe we were on the eve of a war. If this representation be founded, it appears that certain persons have been perpetually intriguing, and have only waited for an opportunity to strike the most deadly blow. For one, however, I shall be indifferent, to go into measures of a warlike character, without the most sufficient reasons. My opinion is, that while the country is in a state of safety, we never should commit it to the horrors and hazards of war. On either side we have nothing but newspaper information with regard to the repre-

sentation that has been drawn. We know, however, from a different source, that a negotiation has been for some time depending with Spain; that that negotiation is not terminated; and that the troops of Spain, as well as our own, are on the frontier; and the commanders of those troops have made an agreement not to disturb each other until they shall have received special instructions. Does this look like being on the eve of a war with Spain? Surely not. And if not, why this extraordinary anxiety, on this occasion? I do not like the resolution, for this reason—I bespeak a want of confidence in the executive. Congress have the power to declare war, and to provide the means for carrying it on—when provided, it is the constitutional duty of the Executive to conduct it. Now, have we not already provided, or are we not providing all the means that have been required? Do we doubt the capacity of the Executive to judge of the means that are necessary to be given, or of his using them properly? Is it to be presumed that if the President thought it necessary to apply for further means, he would not have done so? Nobody can hold this opinion, who does not doubt the integrity or the capacity of the President. It is his duty to do this, and if he has not done it, we must consider him either incapable of judging what is necessary, or as guilty of something worse.

An allusion has been made to the measure of the late session. It is regretted by the gentleman from Virginia, that his opinions were not adopted; and he thinks he has a right to triumph, because the same measures, which he then recommended, are now found necessary. Suppose the same measures should now be necessary, which he then recommended—which, however, I am far from admitting—are the circumstances of the country the same? It will be recollected that one of the purposes for which that gentleman wished troops to be raised, was to chastise Spain. I was of opinion that it was then necessary to chastise Spain; and I am full of opinion that it is not necessary to chastise her. Another reason has been assigned by that gentleman for those measures—it seems those measures would have prevented this internal conspiracy. It does not, however, appear, that we knew of the existence of, or foreknew any conspiracy, or had any expectation of such a thing; nor did the gentleman himself apprehend or predict it. If he had entertained such opinions, it would certainly have been kind to have told us. If, then, every thing on this subject was vague, are we to be told that it was necessary to raise troops to guard against a conspiracy that might happen seven years afterwards? In my opinion we ought not to have raised additional troops the last year, nor ought we to raise them this year, so long as things remain as they are. At all events, I will never give my consent, during a time of peace, to raise additional troops, unless necessary for garrison duty. I believe the militia and volunteers are abundantly sufficient for all exigencies. I will however say this, that if it should be found necessary, from the extension of our territory, to raise a few additional troops, for garrisoning our posts, I do not know that it will meet with any opposition. As to raising additional forces, with which to go to war with Spain, I have no idea of it; and as to raising troops to crush any conspiracy that may exist, or be apprehended, I feel no necessity for it. It is remarkable, that we should entertain any opinions in favor of such a measure, when the President, on whom the great responsibility rests, does not consider it necessary.

Mr. S. repeated his former alarm of the alarming picture which had been drawn of our situation, &c. his opinion that no necessity existed to adopt the resolution at this time. If he believed the President inadequate to the performance of his duty, he might be the more ready to accede to it; but, believing him fully competent, he should vote against it.

(To be continued.)

Article of Foreign Politics.

FIFTEENTH BULLETIN.

Wittenberg, 23d October, 1806.

The following is the information we have been able to collect on the causes of this strange war. General Schmetten (died a prisoner at Weimar) drew up a memorial, written with much energy, in which he proved, that the Prussian army in its inactive situation ought to look upon itself as dishonored; that it was rather than in a situation to beat the French, and that war ought to be declared. The generals Ruelch (dead) and Blucher (who only saved himself by a subterfuge in abusing the good faith of the French) subscribed this memorial which was drawn up in the form of a petition to the king. Prince Louis of Prussia (killed) supported it with all kind of assurances; the rage took possession of all heads; the duke of Brunswick (secretly wounded) a man known to be without character, was enrolled in the war faction; in a word, the memorial thus supported, was presented to the king. The queen took upon herself to dispose the mind of this prince, and to let him know what was thought of him; she told him that it was said he was not brave, and that he did not make war because he was afraid to put himself at the head of his army. The king, who is as really brave as any Prussian prince, has suffered himself to be drawn into the vortex without ceasing to preserve the opinion that he was committing a great fault. We must now point out the men who did not partake of the illusions of the partizans of war; these are the respectable field-marshal Mollendorf, and general Kalkreuth.

We are assured, that after the handsome charge made by the 9th and 10th regiments of hussars at Saalfeld, the king said, "you pretend that the French cavalry is of no value: see, nevertheless, what the light cavalry has done, and judge what the cuirassiers will do. These troops have acquired their superiority by fifteen years of combats; it will require as long a time to equal them; but who of us is so equal an enemy to Prussia as to desire this terrible proof?"

All the mistakes of this war are due to the duke Brunswick; he misconceived, and badly directed the movements of the army; he believed that the emperor was at Paris, when he found him in his flanks; he thought he possessed a knowledge of all the movements, and he was