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IN SENATE OF THE UNITED STATES.

JANUARY 28, 1806.

Mr. MITCHILL, from the committee to whom was referred, the memorial of the merchants of New-York, submitted a report on that part of the same, which relates to "the defenceless situation of the port of New-York."

Early in the history of North America, the harbor of New York was discovered by the Dutch to be a convenient place of resort for ships. Subsequent experience has proved the judgment of the Hollanders to have been good. The place where the North river forms a junction with Long Island sound, is as well if not better adapted to navigation and trade than any which the Atlantic coast affords.

The city at the head of the harbor, is about 27 miles from the ocean, the ebb and flow of the tide is about 6 feet. The saltness of the water is not much inferior to that of the neighboring sea.

The harbor is a bay or bason, surrounded chiefly by islands. Though the space from the foot of the Neversunk hills, to the mouth of the river Raritan, and another space from Bergen point, to Hoboken are parts of the main land, which skirt the shores between the insular positions. The land is mostly low and is composed principally of gravel, sand, and loom; and in certain spots strata of solid granite appear.

The island of Sandy Hook, where the light house stands, is little more than a beach rising not far above the level of spring tides. Staten island swells into moderate hills, and presents especially on its eastern side several bold elevations. Long island whose western extremity loses its ridges and hills in the plains of Flatlands and New Utrecht, still retains at the Narrows where its cliffs are somewhat abrupt and prominent, several positions of considerable strength. In these shores of the two last mentioned islands, the army of the enemy was landed in 1776, and a repetition of such an invasion might be discouraged by the erection of suitable works to oppose it. Governor's Island has been already much improved by military works and is the spot on which fort Jay and the principal other fortifications have been erected. Bedlow island, though very small, has also been considered proper for defensive operations, and in some degree prepared to annoy an enemy. On Manhattan island, where the city of New-York stands, there was once a fort and battery. These have been demolished of late years, under a conviction of their unfitness, as have likewise some more recent breast works and parapets, which tho' constructed but 8 or 9 years ago, were within a twelve month, destroyed by the people who made them.

Between these islands there are deep channels and rapid currents. Ships of large force may be brought in from sea and anchored in safety abreast of the town. And having once reached that station, there is water enough to convey frigates or even larger ships, quite to the city of Hudson.

To the saltness, depth, and swiftness of the current, is to be ascribed the openness of the harbor of New York during the winter. In 1780, its surface was covered by a thick and strong covering of ice. The like has never happened since, not even during the rigorous winter of 1805. And it is remarkable that while the Delaware, Patapsco, and Patomac are frozen, and Philadelphia, Baltimore, and Alexandria are secured thereby from the fleets of an invader, the bay of New York, though situated further to the northward, possesses commonly no such protection, but is accessible from the ocean with but trifling impediment.

The insecurity of the city is evinced by other facts. With a small squadron of ships in 1674, the English took it from the Dutch. Shortly afterwards it was retaken with almost equal ease. No cause of attack occurring until the commencement of the revolutionary war, it was found utterly incapable of defence against a hostile fleet and army in 1776, and abandoned to the enemy by the troops arrayed for its protection. And that very foe, which then gained the possession, held it as a garrison until 1783, when on its evacuation, the inhabitants were enabled to return to their homes, after an exile of 7 long years.

Since the revolution, New York has greatly increased in population, extent, capital and enterprize. The memorialists state that there one third of the national revenue is collected. They hope so important a sea port may be thought worthy of an efficient defence. And they beg that a portion of the public treasure accumulated in that place may be expended in rendering, both that treasure and the city in which it is kept, more secure.

For the further information of the Senate, the committee beg leave to observe, that a piece of land has been already purchased by the state, on Staten island, comprehending the high point on which the signal poles of the merchants are erected. The greater part of Governor's island is understood to be the property of the state, a small part of it only having been purchased by the nation. On these parcels of ground the labor of constructing works is the principal matter of expense. And it is in this posture of affairs that the memorialists, after the state has done so much, ask the nation to bear a proportional part of the charge, necessary to provide more formidable means of defence and offence.

Extravagant estimates have been made by certain jobbers and projectors. Artificial islands, and immense piers, and enormous floating batteries, and vast chevaux de frises, have been talked of; enough to absorb the whole revenue, and to terrify all sober calculators of the cost. The committee have dismissed those schemes, as favoring rather of the visionary and magnificent, than of the useful and feasible. They content themselves with recommending an appropriation to a moderate amount, for making further military improvements on the sites already purchased, and which the state may hereafter purchase and surrender; in full confidence at the same time; that a due proportion of the heavy artiller, armed ships, and gun boats of the nation, will be stationed at the harbor of New-York.

Under these impressions, the following proposition is submitted:

Resolved, That it is expedient to appropriate the sum of dollars, to be laid out in such manner, and under such direction as Congress shall judge proper, in fortifying the harbor and city of New-York.

The committee have deemed it to be within the limits assigned them, to recommend another proposition, in favor of the capital of South Carolina:

Resolved, That it is expedient to appropriate the sum of dollars, to be laid out in such manner, and under such regulations as Congress shall judge proper, in fortifying the port of Charleston in South Carolina.

And for the purpose of providing for other defenceless places, if any such there be, the committee submit another proposition:

Resolved, That it is expedient to appropriate the sum of dollars, to be laid out in fortifying such ports and harbors, other than New-York and Charleston, as the President of the U. States shall think most conducive to the public security.

Committee room, Jan. 27, 1806.

[*In Senate of the United States.*]

JAN. 28, 1806.

Mr. LOGAN, from the committee appointed to consider the bill to suspend the commercial intercourse between the United States and certain parts of the Island of St. Domingo; reported the bill amended as follows:

A BILL

To suspend the commercial intercourse between the U. S. and certain parts of the island of St. Domingo.

BE IT ENACTED, *by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all commercial intercourse between any person or persons resident within the U. S. and any person or persons resident within any part of the island of St. Domingo, not in possession, and under the acknowledged government of France, shall be, and from and after due notice of this act at the custom houses respectively, is hereby prohibited: And any ship or vessel, owned, hired or employed, wholly or in part, by any person or persons resident within the U. S. or by any citizen or citizens thereof, resident elsewhere, and sailing from any port of the U. S. after that time, or from any other port in America, after the day of next; or from any other port whatever, after the day of next; which, contrary to the intent hereof, shall be voluntarily carried, or shall be destined to proceed, whether directly, or from any intermediate port or place, to any port or place within the island of St. Domingo, and not in possession, and under the acknowledged government of France; and also any cargo which shall be found on board of such ship or vessel, when detected or interrupted in such unlawful purpose, or at her return from such voyage to the U. S. shall be wholly forfeited, and may be seized and condemned in any court of the U. S.

Sec. 2. *And be it further enacted*, That after due notice of this act at the several custom houses, no ship or vessel whatever shall receive a clearance for any port or place within the island of St. Domingo, and not in the actual possession of France; nor shall any clearance be granted for a foreign voyage to any ship or vessel, owned, hired or employed, wholly or in part, by any person or persons, resident in the U. S. or by any citizen or citizens thereof resident elsewhere, until the owner or the employer for the voyage, or his factor or agent, with the master, and one or more sufficient surety or sureties, to the satisfaction of the collector of the district, shall give bond to the U. S. such owner, employer or factor, with the master, in a sum equal to the value of the vessel and of her cargo; and such surety or sureties in a sum equal to the value of the vessel and of one-third of her cargo, when it shall not exceed ten thousand dollars; and if it shall exceed, then in that sum, with condition that the ship or vessel, for which a clearance shall be required, is actually destined, and shall proceed to some port or place without the limits of such part of the island of St. Domingo, as shall not be in the actual possession, and under the acknowledged government of France, and during the intended voyage shall not be voluntarily carried or permitted to proceed, whether directly, or from any intermediate port or place, to any port or place within such part of the island of St. Domingo, as shall not be in the actual possession, and under the acknowledged government of France, and shall not, at any such port or place, voluntarily sell, deliver or unlade any part of such cargo; and generally that such ship or vessel, whilst on such voyage, shall not be employed in any traffic or commerce with or for any person resident within any part of the island of St. Domingo, not in the actual possession, and under the acknowledged government of France.

Sec. 3 *And be it further enacted*, That all penalties and forfeitures incurred by force of this act, and which may be recovered, shall be distributed, and accounted for, in the manner prescribed by the act, entitled* "An act to regulate the collection of duties on imports and tonnage;" and may be mitigated or remitted in the manner prescribed by the act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties and disabilities, accruing in certain cases therein mentioned."

* *Vol. 1. page 240.*

From the New York Evening Post.

Another Judgment of Sir Wm. Scott.

The following case, of which the manuscript copy has been handed us by a friend, will be read with no ordinary share of interest, as it contains the latest decision pronounced by *sir Wm. Scott*, on the *former* criterion as to what should be a discontinuance of a voyage, and which is directly in the teeth of the *latter* criterion at this time acted upon.

At present we confine ourselves to a single observation: Had it not been that the extremities of this country as a neutral nation, has driven her to examine, with the eye of severe criticism, the juridical decisions of this celebrated civilian, his fame might have been left to stand on a broader basis than that of an *eloquent judge*.

COURT OF ADMIRALTY.

DOCTORS' COMMONS.

Saturday, Jan. 21, 1804.

THE ELIZA, HAFF, MASTER.

[*Before the right hon. sir Wm. Scott.*]

SENTENCE.

Court....The only question in this case is, whether there had been sufficient bona fide importation of the bulk of the cargo in America to break the continuity of the voyage?

There is no question as to the property; but, under all the circumstances, it is fit the court should call for proof of the continuity of the voyage, (taking it in the most favorable view) which began at Martinique, had been broke by the entrance of this ship in a port in America. As to laying down any rule, an actual payment of duties, and a landing must, in my mind, constitute a full and fair importation, and in general where that appears, the court will look no farther; and where the papers are fair, it might induce the court not to put the parties to further expence. But are there not circumstances in the present case, which tend to deduct from the apparent credit of the transaction? The court would be inclined to shew indulgence when there are no special circumstances to raise a surmise that the fact might be otherwise.

Now, in this case it certainly does appear, that the sugar was brought from Martinique, and with this addition, that the master says he does not know of what country it was the growth or produce. I do not impute to the master any thing, but he being connected with, and employed in the ship in the manner he has been, it is rather singular that he should labour under such an utter ignorance of this fact; it is a circumstance disadvantageous to the case, and it would have been more satisfactory if the master had fairly stated that in the former part of the voyage the bulk of the cargo had come from Martinique. It appears something of reserve which seems to take off the credit which otherwise would be due to the documents.

There is proof of a reshipment in America, and that supplies the chasm with proof of the unloading, and there is proof of a change of the crew in this case. That is a circumstance which might be interpreted into an unfavorable conclusion—namely, a plan of concealment and suppression of the real destination of this cargo being from Martinique to a French port, and this reshipment in the American port might be done with some intention of throwing a cloud over the fact. I think these circumstances of weight sufficient to overthrow the favorable interpretation it otherwise would be entitled to. The court, therefore, is not quite in possession of the facts fully disclosed, to which it can at present apply any principle of law, but the principle of law must be applied to those facts when fully disclosed. My present inclination is, although the original intention might be to bring goods from the colony to the mother country, yet, if in fact there has been an actual payment of duties, and landing with no engagement to return, that that was a breaking of the voyage, and that they must be considered as two distinct voyages.

On the other hand, it would not necessarily follow that any indulgence which the government of America might grant to its own subjects, for the benefit of their commerce, would bind this court, which acts upon general principles, and therefore suppose America should declare in favor of its own subjects, that they might bring cargoes from a colony, and carry them, after landing in France, without payment of duties. I don't conceive such a declaration (feeling all the respect due to the commercial interests of all other civilized communities) would constitute a rule for this court, or that it should not decide such to be an entire voyage; therefore I shall call for further proof, namely, what duties were paid in America; and also, a precise statement of facts, in which mode these goods were imported and exported.

THE MEMORIAL

OF THE

MERCHANTS AND TRADERS

OF THE

CITY OF BALTIMORE,

TO THE

PRESIDENT OF THE UNITED STATES,

And the Senate and House of Representative of the United States of America in Congress assembled.

Your memorialists beg leave respectfully to submit to your consideration the following statement and reflections, produced by a situation of our public affairs in a high degree critical and perilous, and peculiarly affecting the commerce of their country.

IN the early part of the late war between Great Britain and France, the former undertook to prohibit neutral nations from all trade whatsoever with the colonies of the latter. This exorbitant pretension was not long persisted in. It was soon qualified in favor of a direct trade between the U. S. and these colonies, and some years afterwards was farther relaxed in favor of European neutrals. The U. S. being thus admitted, by the express acknowledgment of Great Britain, to a direct trade, without limit, between their own ports & the colonies of the opposite belligerents, another trade naturally and necessarily grew out of it, or rather formed one of its principal objects and inducements. The surplus of the colonial produce, beyond our own consumption, imported here, was to be carried elsewhere for a market, & it was accordingly carried to Europe, sometimes by the original importer, sometimes by other American merchants, either in the vessels in which the importation was made, or in others. In the course of this traffic it was understood to be the sense of Great Britain, and was explicitly declared by her courts of prize, that, although she had not expressly allowed to the merchants of the U. S. by the letter of her relaxations, an immediate trade between the colonies of her enemies and the markets of Europe, yet that a circuitous trade to Europe, in the production of those colonies was unexceptionable, and that nothing more was necessary to make it so, than that the continuity of the voyage should be broken by an entry, and payment of duties, and the landing of the colonial cargo in the U. S. During the greater part of the late war, and the first years of the present, this trade was securely prosecuted by our merchants, in the form which Great Britain had thus tho't fit to give to it. The modification of a traffic in itself entitled to be free, was submitted to on our part, without repining, because it presented a clear and definite rule of conduct, which, although unauthorised in the light of restriction, was not greatly inconvenient in its practical operation; and your memorialists entertained a confident hope, that, while on the one hand they sought no change of system, by which the assumption of Great Britain to impose terms, however mild in their character and effect, upon their lawful commerce, should be repelled: on the other hand it would not be desired that the state of things, which Great Britain had herself prescribed, and which use and habit had rendered familiar and intelligible to all, should, be disturbed by oppressive innovations; far less that these innovations should by a tyrannical retrospection, be made to justify the seizure and confiscation of their property, committed to the high seas, under the protection of the existing rule, and without warning of the intended change. In this their just hope, your memorialists have been fatally disappointed. Their vessels and effects, to a large amount, have lately been captured by the commissioned cruisers of G. Britain, upon the foundation of new principles, suddenly invented and applied to this habitual traffic, and suggested and promulgated, for the first time, by sentences of condemnation by which unavoidable ignorance has been considered as criminal, and an honorable confidence in the justice of a friendly nation pursued with penalty and forfeiture.

Your memorialists are in no situation to state the precise nature of the rules to which their important interests have thus been sacrificed; and it is not the least of their complaints againts them that they are undefined and undefinable, equivocal in their form, and the fit instruments of oppression, by reason of their ambiguity.

Your memorialists know that the circumstances which have heretofore been admitted to give legality to their trade, in colonial productions, with their European friends, protect it no longer; but they have not yet been told, and are not soon likely to learn, what other circumstances will be suffered to produce the consequence. It is supposed to have been judicially declared, in general, that a voyage undertaken for the purpose of bringing into the U. S. the produce of the belligerent colonies, purchased by American citizens, shall, if it appears to be intended that this produce shall ultimately go on to Europe, and an attempt is actually made to re-export and send it thither, be considered, on account of that intention, as a direct voyage to Europe, and therefore illegal, notwithstanding any temporary interruption or termination of it in the U. S.

Your memorialists will not here stop to enquire, upon what ground of law or reason the same act is held to be legal, when commenced with one intention, and illegal when undertaken with another; but they object in the strongest terms against this new criterion of legality, because of its inevitable tendency to injustice, because of its peculiar capacity to embarrass with seizure, and to ruin with confiscation, the whole of our trade with Europe in the surplus of our colonial importations. The enquiry which the late system indicated was short and simple, and precluded error on all sides, but the new refinement substitutes in its place a vast field of speculation, overshadowed with doubt and uncertainty, and of which the faint and shifting boundaries can never be distinctly known. Intention as to the object of our colonial voyages may be inferred from numerous circumstances more or less conclusive. To anticipate them all is obviously impracticable, and of course to guard against the inferences in this respect, which British captors and British courts may be disposed to draw, will be impossible. Our property is, therefore, menaced by a great and formidable danger, which there are no means of eluding; for, even it it should chance to escape the condemnation which this pernicious novelty prepares for it the wound inflicted upon our commerce, by arrestations on suspicion and detentions for adjudication, will be deep and fatal. The efforts of our merchants will be checked and discouraged by more than ordinary inquisitions; our best concerted enterprises broken up, without the hope of retribution, or even reimbursement for actual costs, upon the footing of an intention arbitrarily imputed, and the only alternative which will be presented to our choice, will be either to refrain at once from a traffic which enriches our country, while it benefits ourselves, or to see it wasted and in the end destroyed by a noxious scheme of maritime depredation.

Your memorialists are the more alarmed by this departure from a plain and settled rule, in favor of a pliant and mysterious doctrine, so eminently suited to the accomplishment of the worst purposes of commercial jealousy, because the injuries and vexatious qualities of the substituted rule must have been known to those who introduced it, and because if these qualities did not recommend it to adoption, it is difficult to conceive why it was adopted at all. If it is meant that our trade to Europe shall, notwithstanding this rule, be allowed to continue without being subjected to extraordinary difficulties, operating as actual reductions and mischievous restraints; if it is meant that a few facts, known and comprehended, shall, as heretofore, form a standard by which the lawfulness of our European voyages may be unequivocally ascertained; if a wide range has not been designed for the inquiry after intention, and a real effect expected from that inquiry; if, in a word, the late regulation has not been supposed to be capable of bearing upon our trade in a manner new and important, we should hardly have now been called upon to remonstrate against a change. It is not pretended that the rule, now enforced against us, is levelled against any practice, to which we may be supposed to have lent ourselves, of disguising as our own the property of the enemies of Great Britain. That is not its object; and, if it were, we are enabled to assert, solemnly and confidently, that our conduct has afforded no ground for the injurious suspicion which such an object would imply. The view is professedly to regulate and affect our traffic in articles fairly purchased by us