

# Gazette of the United States

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TUESDAY, February 18, 1794.

[Whole No. 516.]

In the Supreme Court of the United States.

The State of Georgia,

vs.

Brailsford, Powell  
and Hopton.

THIS cause came before the Court under the following leading circumstances:

On the 20th of May 1782, the state of Georgia passed an act, in which, among other things, she confiscated the estates, and debts of persons, whose property had been confiscated in other states, in like manner and form of forfeiture, as they were subjected to in the states respectively, of which such persons were delinquent citizens: And, with respect to British merchants, or others residing in Great-Britain, it was declared, "that all debts dues and demands due or owing to them be and they are hereby sequestered, & the commissioners appointed by this act, or a majority of them are thereby empowered to recover receive and deposit the same in the Treasury of this state, in the same manner, and under the same regulations, as debts confiscated, there to remain to the use of this state, until otherwise appropriated by this or any future house of Assembly."

Brailsford was a British merchant, residing in Great-Britain; and Powell and Hopton, were delinquent citizens of South Carolina, whose estates had been confiscated in pursuance of an act of that state, passed on the 25th of February 1782, in the following terms; "that all the real estates either in possession, in reversion, or remainder of the several persons &c. shall be vested in 5 commissioners, and all the personal estates (debts excepted) of such persons &c. are hereby vested in the said commissioners &c."

In the year 1774 Kelsall and Spalding, citizens and merchants of the state of Georgia, had executed a bond for a considerable sum to Brailsford, Powell, and Hopton; upon which, after the war, a suit was instituted by the obligees against Spalding, the surviving partner, in the Circuit Court, for the district of Georgia, returnable to October term 1791. The defendant pleaded the above mentioned confiscation laws in bar of the present action; the plaintiffs demurred to the plea, and the defendant joined in a demurrer: but at April term 1792. Judgment was given for the former by Judges Iredell and Pendleton. An application made by the state of Georgia, for admission to defend her rights in the suit instituted by Brailsford, Powell, and Hopton, being rejected, a bill was filed on her behalf, on the equity side of the Supreme Court of the United States, against all the parties to the suit below, representing her claim to the debt in question under the confiscation laws of Georgia and S. Carolina; and praying that an injunction might issue to prevent an execution being taken out on the judgement obtained by Brailsford, Powell, and Hopton, until the merits of that claim were heard and decided. After two arguments by Mr. Ingersoll and Mr. Dallas for the State, and Mr. Randolph for the defendants, the injunction was granted; and the present issue was joined, under the recommendation of the Court, to try the general question, whether the debt due from Spalding, and the right of action to recover it, now belonged to the state of Georgia, or to the original creditors?

On the 4th of Feb. 1794, a special jury was qualified to try the cause, which during four days, was argued by Mr. Ingersoll and Mr. Dallas for the state of Georgia, and by Mr. Bradford, Mr. Tilghman, and Mr. Lewis, for the defendants. As we understand that a full report of the record and the pleadings, is preparing for the press, we shall only add on this occasion, the charge of the Court, which was delivered by Jay, Chief Justice on the 7th of February in the following terms.

"Gentlemen of the Jury,

This Cause has been regarded, as of great importance; and doubtless it is so. It has accordingly been treated by the Counsel with great learning, diligence, and ability; and on your part, it has been heard with particular attention. It is, therefore, unnecessary for me to follow the investigation over the extensive field, into which it has been carried: You are now, if ever you can be, completely possessed of the merits of the cause.

The facts comprehended in the case, are agreed: the only point that remains, is to settle what is the law of the land arising from those facts; and on that point, it is proper, that the opinion of the Court should be given. It is fortunate on the present, as it must be on every occasion, to find the opinion of the Court unanimous: We entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver.

We are then, Gentlemen, of opinion, that the debts due to Hopton and Powell, (who were citizens of S. C.) were not confiscated by the statute of S. Carolina: the same being therein expressly excepted: That those debts were not confiscated by the statute of Georgia, for that statute enacts, with respect to P. and H. precisely the like and no other degree and extent of confiscation and forfeiture with that of South Carolina. Wherefore it cannot now be necessary to decide, how far one state may of right legislate relative to the personal rights of citizens of another state, not residing within their jurisdiction.

We are, also, of opinion, that the debts due to Brailsford a British subject residing in G. Britain, were by the statute of Georgia subjected, not to confiscation, but only to sequestration; and, therefore that his right to recover them, revived at the peace, both by the law of nations and the treaty of peace.

The question of forfeiture in the case of joint obligees, being at present immaterial, need not now be decided.

It may not be amiss here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the Jury, on questions of law, it is the province of the Court, to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the Court: For, as on the one hand, it is presumed, that Juries are the best judges of facts; it is, on the other hand, presumable, that the Court are the best judges of law. But still both objects are lawfully, within your power of decision.

Some stress has been laid on a consideration of the different situations of the parties to the Cause: The state of Georgia, sues three private persons. But what is it to justice, how many, or how few; how high, or how low; how rich, or how poor; the contending parties may chance to be? Justice is indiscriminately due to all, without regard to numbers, wealth or rank. Because to the state of Georgia, composed of many thousands of people, the litigated sum cannot be of great moment, you will not for this reason be justified, in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favorable verdict, if in justice they are entitled to it.

Go, then, Gentlemen from the Bar,

without any impressions of favor or prejudice for the one party, or the other: weigh well the merits of the case; and do on this, as you ought to do on every occasion, equal and impartial justice."

The jury having been absent some time, returned to the bar, and proposed the following questions to the court.

I. Did the act of the state of Georgia, completely vest the debts of Brailsford, Powell and Hopton, in the state, at the time of passing the same?

II. If so, did the treaty of peace, or any other matter, revive the right of the defendants to the debt in controversy?

In answer to these questions, the chief justice stated, that it was intended in the general charge of the court, to comprise their sentiments upon the points now suggested; but as the jury entertained a doubt, the enquiry was perfectly right. On the first question, he said it was the unanimous opinion of the judges, that the act of the state of G. did not vest the debts of B. P. and H. in the state at the time of passing it. On the 2d question he said, that no sequestration divested the property in the thing sequestered; and, consequently, Brailsford at the peace, and, indeed, throughout the war, was the real owner of the debt. That it is true, the state of Georgia interposed with her legislative authority to prevent B's recovering the debt while the war continued, but, that the mere restoration of peace, as well as the very terms of the treaty, revived the right of action to recover the debt, the property of which had never in fact or law been taken from the defendants: And that if it were otherwise, the sequestration would certainly remain a lawful impediment to the recovering of a bona fide debt, due to a British creditor, in direct opposition to the 4th article of the treaty.

After this explanation, the jury, without going again from the bar, returned a Verdict for the Defendants.

### CONGRESS.

House of Representatives.

January 27.

In committee of the whole on Mr. Madison's resolutions.

(Mr. Ames's Speech continued.)

A question remains respecting the state of our navigation. If we pay no regard to the regulations of foreign nations, and ask, whether this valuable branch of our industry and capital is in a distressed and sickly state, we shall find it is in a strong and flourishing condition. If the quantity of shipping was declining, if it was unemployed, even at low freight, I should say it must be sustained and encouraged. No such thing is asserted. Seamen's wages are high, freights are high, and American bottoms in full employment. But the complaint is, our vessels are not permitted to go to the British West-Indies. It is even affirmed that no civilized country treats us so ill in that respect. Spain and Portugal prohibit the traffic to their possessions, not only in our vessels, but in their own, which, according to the style of the resolutions, is worse treatment than we meet with from the British. It is also asserted, and on as bad ground, that our vessels are excluded from most of the British markets.

This is not true in any sense. We are admitted into the greater number of her ports, in our own vessels: and by far the greater value of our exports is sold in British ports into which our vessels are received, not only on a good footing, compared with other foreigners, but on terms of positive favor—on better terms than British vessels are admitted into our own ports. We are not subject to the alien duties, & the light money &c. of 1/9 sterling per ton, is less than our foreign tonnage, not to mention the ten per cent. on

the duties on the goods in foreign bottoms.

But in the port of London our vessels are received free. It is for the unprejudiced mind to compare these facts with the assertions we have heard so confidently and so feelingly made by the mover of the resolutions—that we are excluded from most of the British ports, and that no civilized nation treats our vessels so ill.

The tonnage of the vessels employed between Great Britain and her dependencies and the United States is called 220,000, and the whole of this is represented as our just right. The same gentleman speaks of our natural right to the carriage of our own articles, and that we may and ought to insist upon our equitable share. Yet, soon after, he uses the language of monopoly, and represents the whole carriage of imports and exports as the proper object of our efforts, and all that others carry as a clear loss to America. If an equitable share of the carriage means half, we have it already, and more, and our proportion is rapidly increasing. If any thing is meant by the natural right of carriage, one would imagine that it belongs to him whoever he may be, who having bought our produce, and made himself the owner, thinks proper to take it with him to his own country. It is neither our policy nor our design to check the sale of our produce; we invite every description of purchasers, because we expect to sell dearest when the number and competition of the buyers is the greatest. For this reason the total exclusion of foreigners and their vessels from the purchase and carriage of our exports is an advantage, in respect to navigation, which has disadvantage to balance it, in respect to the price of produce. It is with this reserve we ought to receive the remark, that the carriage of our exports should be our object rather than that of our imports. By going with our vessels into foreign ports we buy our imports in the best market. By giving a steady and moderate encouragement to our own shipping, without pretending violently to interrupt the course of business, experience will soon establish that order of things which is most beneficial to the exporter the importer and the ship owner. The best interest of agriculture is the true interest of trade.

In a trade mutually beneficial it is strangely absurd to consider the gain of others as our loss. Admitting it however for argument sake, yet, it should be noticed that the loss of 220,000 tons of shipping is computed according to the apparent tonnage. Our vessels not being allowed to go to the British West-Indies and their vessels making frequent voyages, appear in the entries over and over again. In the trade to the European dominions of Great Britain, the distance being greater, our vessels are not so often entered. Both these circumstances give a false shew to the amount of British tonnage, compared with the American. It is however very pleasing to the mind to see that our tonnage exceeds the British in the European trade. For various reasons, some of which will be mentioned hereafter, the tonnage in the West-India trade is not the proper subject of calculation. In the European comparison, we have more tonnage in the British than in the French commerce—it is indeed more than four to one.

The great quantity of British tonnage, employed in our trade, is also, in a great measure, owing to the large capitals of their merchants, employed in the buying and exporting our productions. If we would banish the ships, we must strike at the root and banish the capital. And this, before we have capital of our own grown up to replace it, would be an operation of no little violence and injury, to our southern brethren especially.

Independently of this circumstance, Great-Britain is an active and intelligent rival in the navigation line. Her ships are dearer, and the provisioning her sea-