

1796.

September Term, 1796.

WATERS *versus* COLLOT.

CAPIAS. *Ingersoll* and *Lewis* had obtained a rule upon the Plaintiff to shew his cause of action, and why the defendant should not be discharged on common bail. *Dallas & Du Ponceau* now shewed cause.

It appeared that the Plaintiff was master of the *Kitty*, a brig, which, together with her whole cargo, belonged to *Stephen Girard*, an American citizen of *Philadelphia*, bound on a voyage from this port to *Jeremie* in the Island of *St. Domingo* and back again. The brig had arrived at *Jeremie*, and sold part of her cargo to the French government there, before the port and town were taken by the *British*; after which, having purchased some produce, the plaintiff was permitted by the *British* captors, to proceed to *Cayemite* to obtain the money due to him from the French government, and to compleat his return cargo. On the 3d of *November* 1793, he sailed from *Cayemite* for *Philadelphia*, but meeting with considerable damage on the American coast, he was compelled to bear away for the island of *Guadaloupe*. When he had arrived within three leagues of *Basseterre* (for which he was actually steering) he was boarded by a French privateer, carried into the road of *Basseterre*, and personally maltreated by the privateer's men. The vessel and her cargo being libelled before the tribunal for the district of *Basseterre*, the Judge, after a full examination of the ship's papers, pronounced a decree "that the brig *Kitty*, her cargo, and all her appendages, should be restored, and that the captors should pay the costs." But the defendant, who was the Governor and Commander in Chief of *Guadaloupe*, directed an appeal from this decree to be brought before him; and although the Court, and the National Commissary protested, in the strongest terms, against his power to take cognizance of the case, he proceeded to confiscate the brig and her cargo, for the benefit of the privateer. The Court attempted in vain to execute its decree, but the governor succeeded in enforcing his mandate. The defendant being obliged soon afterwards to seek an asylum in *Philadelphia*, the plaintiff (who had a considerable adventure on board the brig) arrested him in the present action, to recover the amount of his damages.

OR

1796. On arguing the motion, it was contended, by the defendant's counsel, that the defendant had acted in his official capacity, and was only responsible to his own government for his misconduct. That the remedy of any injured *American* citizen was by applying, likewise, to his own government, which is bound to protect his rights, and to procure a redress. That the commission of the defendant gave him a general superintendance over the affairs of the Island; and that many things were justifiable to be done by an Executive officer in a revolutionary period, for which it was not just, or reasonable, to make him answerable by any other, than the law of the country, in which he acted.

The counsel for the plaintiff observed, that on a preliminary motion of this kind, it was only necessary to shew a probable cause of action; and, they contended, that having proved the plaintiff's interest in the cargo of the brig, and the tortious seizure by the defendant, in direct violation of the decree, pronounced by a competent tribunal, it was matter of defence proper for a trial before a jury, to shew that the defendant's conduct was justified by his official authority or duty. But, it was urged, that there was no colour for such a defence. The commission of the defendant extends only to a military controul; it gives no appellate jurisdiction, from the tribunals of justice; and even state necessity could not be pretended, as the brig and cargo were not seized and appropriated to the public use; but were confiscated for the benefit of the owners of the privateer. The responsibility of a foreign magistrate to his own government exclusively, for his official acts, will not be disputed; but if a man, who happens to be the officer of a foreign government, does an injury to the property, or person, of an *American* citizen, without a public authority, motive, or object, he is responsible like any other individual, at the suit of the injured party. Whether the present aggression was a private, or an official, act, is the gist of the controversy; and, on that point, the plaintiff is entitled to a trial; which, however, he is not likely ever to obtain with effect, if the defendant, a traveller, is discharged on common bail.

BY THE COURT. We think, that there is sufficient cause shewn, for holding the defendant to bail. But, it must not be understood, that, by this decision, we give any countenance to an opinion, that he is ultimately liable. It is a question of great delicacy, in which our regard for the rights of a fellow-citizen, and our respect for the sovereignty of a foreign nation, are equally involved. When, therefore, the subject is judicially investigated, we shall be governed, as well by the law of nations, as by our municipal law.*

* The defendant complained of his arrest to the government of *France*, by which it was made a matter of public complaint against the Federal government; and, eventually, the plaintiff discontinued his action.