THE

CLAIM AND ANSWER

WITH THE

SUBSEQUENT PROCEEDINGS,

IN THE CASE OF THE

RIGHT REVEREND CHARLES INGLIS,

AGAINST

The United States;

UNDER THE SIXTH ARTICLE OF THE TREATY OF AMITY, COMMERCE AND NAVIGATION, BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

PHILADELPHIA:
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MDCCXCIX.

The Claim

To the Commissioners for carrying into effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, between his Britannic Majesty and the United States of America.

The Memorial of the Right Reverend Charles Inglis, D. D. Bishop of Nova Scotia,

RESPECTFULLY SHEWETH,

THAT he is and ever has been from his birth a subject of his Britannic Majesty: That on the second day of May, one thousand seven hundred and seventy-five, Hezekiah Mills, a citizen of the United States, was justly indebted to him in the sum of three hundred pounds lawful money of New-York, for the payment whereof with interest from the date, he did on that day duly seal and deliver his bond in the penal sum of six hundred pounds like money. That on the sixth day of June 1776, Nathan Barlow, a citizen of the United States, was indebted to him in the sum of one thousand pounds like money, for the payment whereof, with lawful interest from the first day of September then next, he did duly seal and deliver three several bonds, in several penalties, amounting to the sum of two thousand pounds—That the full payment of the said sums was amply secured by legal mortgages upon sufficient real estates in the State of New-York. The original bonds and mortgages will be produced, delivered, or assigned as the board shall direct.

Your memorialist further shews, that by an act of assembly of the State of New-York, passed 22d November 1779, he was *ipso facto* attainted for adhering to the king of Great Britain, and all his estate real and personal was declared to be forfeited to and vested in the people of the said State.

Your

Your memorialiſt further ſhews, that he or any perſon to for his uſe and benefit has never received any part of ſaid debts or intereſt, but that by virtue of another act of the ſaid State, paſſed in May 1784, commiſſioners were appointed to receive, and if occaſion, to ſue for and recover the ſame for the uſe of the State.

Your memorialiſt further ſhews, that under the directions of the ſaid act, and ſundry other laws of the ſaid State allowing deductions of intereſt, and longer time of payment to the debtors, the ſaid Hezekiah Mills did on the 24th day of May 1785, pay into the treaſury, three hundred and twenty-two pounds three ſhillings, in public ſecurities in diſcharge of the bond and mortgage due from him to your memorialiſt; and that on the 27th November 1789, the ſaid Nathan Barlow did pay into the ſaid treaſury the ſum of one thouſand three hundred and ninety-nine pounds fourteen ſhillings and ten-pence half-penny, in diſcharge of the bonds and mortgages due from him to you memorialiſt.

Your memorialiſt further ſhews, that by an act paſſed the 27th November 1785, the clerks of the reſpective cities and counties in the State of New-York are directed to cancel the records of the mortgages made and executed to perſons whoſe eſtates were forfeited, on a certificate from the treaſurer of the State that payment had been made as above, which it is declared ſhall operate as a full and abſolute bar to ſuch mortgages—although the original mortgages remain in the hands of the mortgagees.

In as much therefore as your memorialiſt cannot now, in the ordinary courſe of judicial proceedings actually recover his ſaid debts, as his ſecurity has been impaired by a law paſſed ſince the peace, cancelling his mortgages and diſcharging the lien he had upon the mortgaged premiſes, as no law can conſtitutionally be made again to charge them, and as no proceſs can be had againſt the State for the recovery of the ſum paid into the treaſury, he prays there may be awarded to him as well the ſum of one thouſand three hundred pounds York money, equal to Sterling money of Great Britain, as intereſt thereon from the reſpective times the ſeveral ſums bear intereſt at the rate of ſix *per cent. per annum.*

Wm. MOORE SMITH,
General agent for claimants.

Philadelphia, Feb. 28, 1798.

PAPERS ACCOMPANYING THIS MEMORIAL.

A. The affidavit of the claimant together with copies of the bonds of Hezekiah Nathan Barlow.

B. Certificate of the payments into the treaſury of New-York.

The laws of New-York are ready to be produced if neceſſary.

To

To the Commiſſioners for carrying into effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, concluded between his Britannic Majeſty and the United States of America, on the 19th November, 1794.

The Anſwer of the United States by their Agent, to the Memorial of the Right Reverend Charles Inglis.

THAT the claimant is a Britiſh ſubject within the meaning of the treaty of peace, is a fact which the agent for the United States cannot admit. To have entitled the claimant to the expectation of this admiſſion; a fair and candid ſtatement of facts ought to have been made. The ſituation of the claimant before and at the war, the circumſtances under which he left the State of New-York, and the time when he claimed the protection of the Britiſh government ſhould have been part of his memorial. If the proofs offered are to be relied on, it may be reaſonably inferred from one of them (the act of the State of New-York which attainted him and forfeited his preperty) that he was a citizen or inhabitant of that State, and it will require ſatisfactory evidence to prove the inference untrue. The queſtion to which nation the claimant belonged cannot now be diſcuſſed, as there are no facts to reaſon on, that muſt be reſerved, until he ſhall attempt to ſhew his right as a Britiſh ſubject, and in that character aſk for compenſation under the ſixth article of the treaty of 1794.

The act of the State of New-York, paſſed the 22d of October, 1779, by name attainted the claimant of the offence, of adhering to the enemies of the State, and for that offence confiſcated all his real and perſonal eſtate, and declared it to be forfeited to and veſted in the people of the State. This act was a complete and abſolute confiſcation of the debts of the claimant and on the paſſage of it, the State was *ipſo facto* poſſeſſed of them. It diveſted the claimant of all intereſt or pretext to the debts, and every right exerciſed by the State over them after the forfeiture, was an exerciſe of ownerſhip. The State was the creditor and Hezekiah Mills, and Nathan Barlow were the debtors, and the State could offer terms of payment, or abſolutely releaſe or diſcharge the debts forever.

The confiſcation of the debts of the reverend Charles Inglis, was by this act abſolute and complete.

It has been ſatisfactorily proved in the anſwer on the part of the United State, to to the claim of Putnam's executors, to which the agent for the United States, begs leave to call the attention of the board in their *conſideration of this claim;* that where confiſcations are complete on the return of peace debts of themſelves do not revive, but that an expreſs ſtipulation is neceſſary to reinſtate them, and that no ſtipulation was made in the treaty of peace for debts, the confiſcation of which was complete and abſolute. The debts of the claimant by an act of the legiſlature of New-York were confiſcated, and the treaty of peace did not revive them, he can therefore have no

no pretext to ask for compensation for them from the United States ; And further if he is a royalist or refugee, as the agent for the United States believes, and expressly charges, the recommendatory words of the fifth article of the treaty of peace, shew his case was not provided for, but left to the justice of the State if they deemed him a fit object of attention or recompense.

The agent for the United States submits, that the claimant has not availed himself, as he ought to have done, of the ordinary course of judicial proceedings to recover his debts. It appears that all the original evidences of the debts remained in his possession unaltered. There could be no reason why he did not proceed at law to recover these debts, when he could legally prove every thing necessary to sustain suits on them in the first instance. Had the claimant considered his right good at law, a remedy always remained open to him for redress in the State courts, and since the 4th April 1790, in the courts of the United States for the district of New-York. In those courts justice has been uniformly rendered with great impartiality. The claimant would have experienced a fair and reasonable interpretation of the treaty, and whatever rights he had under that instrument they would have been regarded and protected.

The agent for the United States further observes, that if the payments by Mills and Barlow into the treasury of New-York of those debts were, *contrary to the treaty of peace*, those payments were illegal and void, Mills and Barlow are yet debtors having paid the debts to persons unauthorized to receive them. If there was no authority in the State to receive the debts, and the right of action existed from the treaty of peace, it was incumbent on the claimant to have sued for these debts. If those payments were lawful as to the debtor, and discharged him, the State must be considered as having received the debt of the claimant to his use, and liable to be sued for the money so received.

Until the late amendment to the constitution of the United States, a State could be made defendant at the suit of a private person, and was obliged to submit to all those rules of practice and law which govern individuals when parties to a suit. Instances occurred where States were sued, and where they have been decreed to pay the debt, and have actually so done. In which ever point of view the debts of the claimant are considered, whether as due by the individuals from the treaty of peace to this moment, or whether due by them until the payment into the treasury, and from that time due by the State, we discover a manifest neglect of these debts, and a wilful abandonment of them. To what else is attributable the inactivity and delay, and the total silence respecting the debts? Can it be considered otherwise than a dereliction of them? It is fairly and unequivocally to be inferred when debts of this magnitude are suffered to remain so long, when full and ample justice would have been done the claimant at law, that they were considered by him as rightfully confiscated, and would have so continued to be considered but for the treaty of 1794. Under it claims can be preferred without expense or trouble, and payments immediately demanded of the United States. These motives will no doubt encourage many applications to your board, and often for debts like the present, legally and rightfully extinguished in the struggle between the two nations. The

The agent for the United States ſubmits, that the affidavit made by the claimant before Thomas Barclay the 13th September 1797, wants an important mark of authenticity, the ſignature of the deponent's name: The truth of the paper offered, which cannot legally be called an affidavit without this neceſſary part of it, reſts on the atteſtation of the officer before whom it is made, and his atteſtation ought not to be credited unleſs proved by a public ſeal. When the name of the witneſs in his own hand writing, is not a part of his depoſition proof cannot be furniſhed againſt him, if he has committed perjury, nor can his depoſition be legal; if the terrors of perjury are removed, the temporal obligations to truth are taken away. This obſervation the agent for the United States hopes the board will ſeriouſly conſider as a neceſſary check to the evidence which may be brought before them, and as a mean to prevent impoſitions, which may prove a public injury.

The agent for the United States obſerves, that it requires explanation how the three bonds given by Nathan Barlow, dated 6th June 1776, and which were given as collateral ſecurities ſhould be dated at different times from the mortgages. The mortgages as ſtated in the certificate from the treaſurer of New-York were dated the 2d May and the 2d June 1776. The mortgages and original bonds ſhould be produced and ſatisfactory proof offered, that the payments made into the treaſury, and the debts now claimed are the ſame, and evidenced by the ſame deeds or ſecurities.

The agent for the United States requeſts of your board that this claim may not be proceeded on, but may be diſmiſſed as not being within the intent and meaning of the treaty of 1794.

JOHN READ, jun.
Agent general for the United States.

Agent general's office, United States,
12th March, Anno Domini, 1798.

The Reply.

The Reply of Charles Inglis, D. D. to the Anſwer of the United States, to his Memorial.

ALTHOUGH the claimant cannot perceive of what conſequence to the diſcuſſion of his caſe, the facts are, which are called for by the agent for the United States, he will fairly ſtate them.

Before the war, during the war, at the peace, and continually ever ſince, he was, has been, and is a natural born ſubject of the king of Great Britain, and as he never has transferred his allegiance to any other power on earth, he does not believe

believe any discussion need take place on the question to what nation he belonged, It is not incumbent upon him to prove a negative, that he never did transfer his allegiance; the strange inference therefore, drawn from the act of attainder, requires no answer—That act attainted him for adhering to his natural allegiance, which in his opinion was perpetual and unalienable,* and due at all times and in all places—The act attainted him in company with Sir Henry Clinton, the earl of Dunmore, and governor Tryon, and if the act had *ipso facto* attainted every inhabitant of Great Britain, and every officer and soldier in the British army, the inference would be the same.

In the middle of September 1776 the British forces took possession of the city of New-York where the claimant resided—The constitution of New-York was not formed until the 20th April 1777.

A reply to the observations on who is a creditor on the side Great Britain has been anticipated in the case of D. Dulany—The agent for the United States still reasons as if he had shewn that the words "the Atlantic" had been left out after "either side" in the 4th article of the treaty of peace.

As the agent of the United States has cited the opinions of several respectable writers on the law of nations which have not the most distant application to this claim, as he has referred to some decisions in England which might be cited‡ for a purpose diametrically opposite, and as he relies on a† decision in an American court which involves him in a palpable contradiction, it may not be amiss to shew why the first do not apply, to shew how opposite inferences are to be drawn from the second, and to remark upon the contradiction flowing from the application of the third.

The claimant remarks in this answer, and (to borrow the language of the agent for the United States) "*he wishes the remark to be attended to in others under like circumstances*," that a term of reproach is used which the commissioners of the two countries carefully and delicately avoided at a time, when "it pleased the Divine "Providence to dispose the two countries to forget all past misunderstanding and "differences, and to establish such a beneficial and satisfactory intercourse between "them upon the ground of reciprocal advantage and mutual convenience as might "promote and secure to both perpetual peace and harmony."

The 4th article of the treaty made with the above views, provided aganist impediments to the recovery of debts due to creditors on either side—it stands alone.

The 5th article alludes to estates, rights and properties different from debts, and includes three descriptions of persons.

* Foster 7. 59. 183—7. Co. 7. 9. Calvin's case. ‡ Wright *v.* Nutt—Folliot *v.* Ogden.
† Camp *v.* Lockwood.

1. All

1. All perſons born in the allegiance of the king of Great Britain, and who had not voluntarily and without dureſs abjured the ſame and taken the oath of allegiance to the State.

2. Citizens of the United States, who on the invaſion of part of the country being unable to remove with their families remained inoffenſively within the diſtricts poſſeſſed by the Britiſh troops.

3. Perſons of all other deſcriptions—Here the commiſſioners who negotiated the treaty which was to reſtore good correſpondence and friendſhip, diſdaining to uſe the term refugee, or any term of reproach, meant to include ſuch perſons as had become citizens of the United States, and afterwards bore arms againſt and even committed ravages upon that country to which they had ſo recently vowed allegiance.

The agent of the United States is peculiarly unfortunate in quoting the 5th article, as it overſets all his own reaſoning. The words "eſtates, rights, and properties" occur four times in the article: the laſt time ſettles with preciſion their meaning. It is to be recommended that the eſtates, rights, and properties of ſuch laſt mentioned perſons ſhall be reſtored to them, they refunding to the perſon *in poſſeſſion* the *bona fide* price where any has been given, which ſuch perſons may have paid on purchaſing any of the ſaid lands, rights and properties, ſince the confiſcation—Thus the eſtates, rights and properties here meant, were clearly ſuch as could have been ſold by the public and poſſeſſed by ſome individuals at the peace. Debts were paid or collected, *not ſold or poſſeſſed*.

The agent for the United States is ſtill more unfortunate in the inference he draws from the latter part of the fifth article which he very properly calls a ſtipulation which the United States were bound to perform. The expreſſion is general—*all perſons*, (not confining it to any particular deſcription of people) who have any intereſt in confiſcated lands, either by debts, marriage ſettlements or otherwiſe, ſhall meet with no lawful impediment in the proſecution of their juſt rights. It is a well known fact that few if any creditors reſiding in Great Britain had any intereſt in confiſcated lands by mortgages, or marriage ſettlements, but many Britiſh ſubjects who had reſided in America and who were attainted for adhering to their allegiance had ſuch intereſts. It frequently happened that both creditor and debtor were named in the ſame act of confiſcation, as Kemp and Antil, Folliot and Ogden, and there can be no doubt if the debt from Ogden to Folliot had been ſecured by mortgage; an injunction would (if applied for) have been iſſued, until that fund had been reſorted to and found deficient, unleſs it had been made apparent by ſuch deciſions as Moore *v.* Patch—Camp *v.* Lockwood—Douglaſs *v.* Stirk *et als.* that the States refuſed to remove the legal impediments.

The caſe of Wright *v.* Nutt forms a contraſt to theſe deciſions, honorable to the chancery of England—Sir James Wright had been attainted and his immenſe eſtate confiſcated by the legiſlature of Georgia—He was prohibited from recovering debts due to him in America—An action was brought and judgment rendered againſt

him in England, for a debt due to an American citizen. What is the language of the court to the American creditor? " Although your debtor is prohibited by your laws, from recovering his juſt debts, although his whole eſtate, among the reſt, the very property for which this debt was contracted, has been confiſcated, although your country has pledged itſelf to pay you this debt out of that eſtate, and you have a right to demand it, and although it is impoſſible for you to aſſign over that right to your debtor here in order to make it available, ſtill you are entitled to juſtice in this country—all we require of you, is to do juſtice—Apply to the State of Georgia who has ſeized his eſtate and promiſed to pay this debt, or ſhew that you have applied and been refuſed, or ſhew that the confiſcated eſtate of the debtor is not ſufficient to pay this and every other demand againſt it, and then, although the proviſion made for your debtor is the bounty of government to a faithful ſervant, who has loſt his all in its ſervice, even that you may tear away to ſatisfy your demand.

The caſe of Ogden *v.* Folliot, in error, ſhould have been reſorted to, and the true principles of the final deciſion will be found to be diametrically oppoſite to what are ſtated by the agent of the United States—Lord Kenyon obſerves,* that he was induced to think that the word "*not*" had been left out in that part of the judgment where the acts of the State of New-York, paſſed during the war, are ſaid to be of as full validity as the act of an independent State.

The claimant wiſhes not to ſwell this reply with copying, but he muſt beg leave to refer to the reaſoning of the judges in that caſe.

While the agent of the United States relies on the caſe of Camp and Lockwood, to ſhew that perſons in the claimant's ſituation are without remedy, he admits the exiſtence of legal impediments to the recovery of what is not denied to be a *bona fide* debt contracted before the treaty of peace.—Where then can be the neceſſity of an appeal in the caſe of Putnam's executors, or of a ſuit by the claimant, ſince it is inſiſted that the judgment in the firſt caſe is agreeable to law and would therefore be confirmed, and that the claimant in this caſe is incapable of ſuſtaining a ſuit.

It ſhould be recollected that the mortgaged premiſes are diſincumbered, the record cancelled, the lands may poſſibly have paſſed through the hands of many innocent and *bona fide* purchaſers, and no *poſt facto* law can again charge it—it would be impairing the contract between the State and the mortgager, that the mortgaged premiſes ſhould be for ever diſcharged of the incumberance.

The caſes cited to ſhew the power of a government to confiſcate enemies' property can not apply by any means to this claim, becauſe of the expreſs ſtipulation of the 4th article of the treaty of peace, which it has been clearly proved embraces this claim—They would not apply to debts, if a public war between two independent nations had been cloſed by a treaty like this—much leſs do they apply here:—
" Civil war, (ſays Ch. I. Ellſworth) which terminates in a ſeverance of empire,
" does perhaps, leſs than any other juſtify the confiſcation of debts becauſe of the
" ſpecial

* 3 Term Rep: 731.

" ſpecial relation and confidence ſubſiſting at the time they were contracted"—As for the " eſtate, rights and properties" of the claimant, other than debts, he knows he had nothing but recommendations to truſt to; and although the murmurs of a reluctant or unwilling ſubmiſſion may have eſcaped him, he does ſubmit that on the concluſion of the treaty of peace they were confiſcated fully.

It need only be added, that the act for cancelling the records of the mortgages, and the payment into the treaſury were ſubſequent to the peace, this was a new confiſcation. The ſame State paſſed a law ſince the peace, taking away the writ of error to reverſe erroneous attainders of perſons who had adhered to the Britiſh. The erroneous attainder was as no attainder; this act therefore amounted to new proſecution and new attainder.

The whole affidavit is in the hand writing of the claimant, and as his name is in it, it is immaterial whether it is at the top or bottom.

The original bonds and mortgages ſhall be produced, accidents of the ſea excepted. The general agent's inſtructions to the claimant were not to forward the originals until notified that copies were received.

The deciſions of American courts referred to in the courſe of this diſcuſſion while they prove the exiſtence of legal impediments, ſhew in a very ſtrong light the proof of this general maxim on the ſubject of the interpretation of treaties; " *That neither one or the other of the contracting parties has a right to interpret " the act or treaty at his pleaſure." Let this be exemplified; a perſon whoſe eſtate was confiſcated in America, applies to the Britiſh government for compenſation for his loſſes; he is anſwered, " we will make you an allowance for your eſtate forfeited," but it has been ſtipulated in our treaty that all debts ſhall be recovered. He applies to the tribunals of the debtor country and is told, " true it is we promiſed that *no* legal impediments ſhould exiſt, but you were excepted from the general ſtipulation becauſe you had lands in this country as well as debts."

If this is to be looked upon as the proper conſtruction, it is putting words into the mouth of Great Britain which ſhe never meant to uſe. " It is true that the plain meaning of the words of the fourth article comprehends, all debts due to all my ſubjects, but it was intended only to amuſe a great part and to include a few, it was intended to ſecure payment to ſome merchants who remained inactive on this ſide the water; but, in lieu of their ſervices to abandon to their ſorrows and their loſſes, thoſe who in the hour of danger and at the riſque of life and fortune adhered to their allegiance."

The claimant truſts that it appears evident that he is a Britiſh ſubject, and the creditor of a *bona fide* contracted before the peace, and ſtill due and owing to him.

That his debtors were citizens of the United States. That

* Vattel, b. 2d. ch. 17.

That his debts were amply secured, that by the operation of legal impediments his security has been totally impaired, without any fault of his; and if those impediments had been removed, no other cause would have operated to produce his loss.

WM. MOORE SMITH,
General agent for claimants.

March 22, 1798.

Observations on the part of the United States by their Agent on the Reply of the Reverend Charles Inglis.

BEFORE the agent for the United States enters on an examination of the reply, it will be necessary to remove a wrong impression which the agent for the claimant has received. The term *refugee* was not, as he supposed, used as a term of reproach, but to define with precision a certain description of persons. It is to be found in most of our statute books during the war. It is an expression frequently repeated by the commissioners who negotiated the treaty of peace, and it is used in the correspondence between Mr. Jefferson and Mr. Hammond without the least complaint on the part of the British minister that it was reproachful. It was used from the best intentions by the agent for the United States, and with a belief that no disrespectful idea would be conveyed by the expression.

The observations made on the cases cited of Wright and Nutt, and Folliot and Ogden, claim some attention. The first of them, Wright and Nutt, the agent for claimants greatly commends, and considers the decision as just. Unless a similar opinion had been entertained by the agent for the United States the case would not have been cited. The weight of authority which this case acquires by the reply shews the propriety of adducing it for the purposes used in the answer, to wit—to shew that the *confiscation acts of the States were the acts of sovereign nations.* This case not being denied, it was unnecessary for the agent for claimants to remark on it, nor would he have remarked on it, but for the sake of comparison. He has drawn it in contrast with the courts of America. As this forms no argument and leads to criminations, his cooler judgment ought to have directed him to have avoided it. In a comparison the American courts will not suffer.

The remarks on the case of Sir James Wright are thus concluded: "If the "confiscated estate of the debtor is not sufficient to pay this and every other demand "against it; and although the provision made for your debtors is the bounty of "government to a faithful servant who has lost his all in its service, even that you "tear away to satisfy your demands." No better answer need be given to the observation than what Lord Thurlow has said on this subject. His opinion is expressed

expreſſed in theſe words. " The circumſtances of converting the charity of this " country to individuals ruined in its ſervice, to the purpoſes of paying the creditors " of thoſe individuals in the other country is a conſideration which ſhould have " belonged to *thoſe* who thought proper to *offer them* that charity, and the *terms* on " which it was offered ſhould have been regulated accordingly. It is nothing to " me."

The caſe of Folliott and Ogden in error, the agent for the claimant ſays, ſhould be reſorted to for the true principle to govern the board The reaſon for this opinion is, that in common law courts the laſt deciſion reverſing a former is to prevail. " We " are not however before a court of law, but before a court of commiſſioners mu- " tually appointed by the executive of each nation. Before ſuch a tribunal legal " niceties can never prevail. The laws of different countries differ materially from " each other, in ſome countries principles originally founded in error and even " abſurdity have been ſanctioned by the acquieſcence of ages and are yet adhered " to (though their foundations have been exploded or derided) only becauſe ſome " inconveniences might ariſe, if they were now to be reverſed or ſhaken. The " very word law is properly and carefully avoided in the treaty." *Obſervations by the agent for claimants in the claim of Strachan and M'Kenzie.* None of the caſes cited by the agent for the United States are expected to be authorities binding on the board, they are only offered for information as the opinion of ſenſible men.

Folliott and *Ogden* was decided in the common pleas by Lord Loughborough, the 10th February 1789. Wright and Nutt had been decided in chancery before it on the 23d January 1788. Both theſe caſes correſponded in principle, and Lord Loughborough declared he agreed fully in the opinion with the Lord Chancellor. When Wright and Nutt was decreed, Lord Kenyon, then maſter of the rolls, aſſiſted the Lord Chancellor, and their ſentiments correſponded. Afterwards when preſiding in the king's bench, Lord Kenyon expreſſed a different opinion. In Wright and Nutt he obſerves, " Upon the general points of the caſe I cannot hope " to add to what my Lord Chancellor has ſaid, I can only expreſs my full concur- " rence with every part of what has fallen from his Lordſhip." On the 11th June 1790, the defendant in Folliott and Ogden, removed the cauſe into the king's bench by writ of error. It was on this occaſion Lord Kenyon remarked that he was induced to believe that the word " not" was omitted. Mr. Erſkine obſerved to him from the beſt *authority* the report was accurate, meaning, it is ſuppoſed, that he had ſo underſtood it from Lord Loughborough, who was the beſt authority. It is worthy of remark that the caſe of Wright and Nutt was brought again before the Lord Chancellor on a motion for an Injunction a year after the judgment reverſed by Lord Kenyon, when no alteration in the former opinions of the Chancellor took place. Time appears to have confirmed, not to have altered them.

It is ſaid " it ſhould be recollected that the mortgaged premiſes are diſencum- " bered the record cancelled and the lands poſſibly in the hands of innocent pur- " chaſers." The agent for the United States wiſhes it alſo to be recollected, that if the land ſubject to the mortgage, for the ſake of argument, has paſſed into the

hands

hands of innocent perſons, that the *debts* was alſo evidenced by *bonds*, which were always in the claimants poſſeſſion. It can be no excuſe for the creditor if his remedy on the mortgage was taken away that he ſhould not ſue on the bonds, the debt was ſatisfied if either was paid and both evidenced the ſame right. It is in no part of the reply even hinted that the leaſt diligence was uſed to recover the debts, no ſuits inſtituted and not one reaſon is aſſigned why redreſs at law has not been ſought for. The claimant muſt ſhew this to bring himſelf within the ſixth article; and unleſs it is done and ſatisfactorily too, the board are bound by the power they act under to reject the claim.

It is aſſerted with much confidence by the agent for claimants, that the principles of the law of nations ſtated in the anſwer, to ſhew the power to confiſcate enemies' property do not apply. The authorities themſelves are not queſtioned, only their application. It is admitted they prove *this poſition*, that where *debts* as well as other property of an enemy are actually confiſcated in war, the right to them, on the return of peace does not revive.

The rule of national law is ſaid not to be applicable to the claim before your board, becauſe it is ſuppoſed the treaty made between the two nations has reinſtated the objects which the rule would otherwiſe embrace. That part of the treaty then which in the opinion of the claimant thus proſtrates national acts, is the fourth article of the treaty of peace: This article is confined ſolely to debts, no exceptions to it as the claimant contends are admitted from other parts of the inſtrument, it is ſaid to be inſulated in its nature and ſtipulations. But on the part of the United States it is hoped a true conſtruction of it has ſhewn that though confined to debts, it cannot reach thoſe legally confiſcated by the governments of the ſeveral States.

The fourth article it is remarked ſtands alone, as an article it is conceded that it does ſo, as part of a compact it muſt be conſidered as connected. * "We ought to "conſider the whole diſcourſe together in order perfectly to conceive the ſenſe of it; "and to give to each expreſſion not ſo much the ſignification it may receive in itſelf, "as that it ought to have from the thread and ſpirit of the diſcourſe."

In the fifth article the words *eſtates rights and properties*, are as general and comprehenſive as language can be. They include in their common import debts as well as lands and other property. "In the interpretation of treaties, pacts and promiſes, "we ought not to deviate from the common uſe of language at leaſt if we have not "very ſtrong reaſons for it." It is ſaid thoſe words are to be found four times in the article. If they were to be found four and twenty times no difference of conſtruction could be raiſed on it. The fourth time in the opinion of the agent for claimants ſettles with preciſion their meaning. This opinion is not well founded. The ſame expreſſions though repeated in the ſame article may take and neceſſarily muſt take their meaning from the words they are connected with, and when they are once uſed and explained by the words of their connection, to give them the ſame meaning in other parts connected with different words, would be to give them a meaning

* Vattel B. 2d, Chap. 17th, § 285.

meaning not intended. It is worthy of obſervation on this article and diſproves the inference drawn by the agent for claimants, that eſtates, "rights and properties uſed "in the article did not mean *debts* from the words *on purchaſing*, which are uſed in "this part of it, which cannot refer to debts they not being ſold or poſſeſſed"; that the expreſſion in this part is varied and *lands*, rights and properties are uſed when eſtates, rights and properties occur before, which will furniſh an explanation for the word *purchaſing* it evidently referring here to *lands*, which may be ſold and poſſeſſed. The *variation of the expreſſion* plainly diſcovers the purpoſe for which it was deſigned, to wit, to ſhew that *eſtates* as before uſed meant *lands* and that *eſtates* meant ſomething different from *rights* and properties Nothing was more deſirable to the loyaliſts than to repoſſeſs the lands which had been rightfully taken by the States. And it was generally known to them that the *bona fide* price paid for the lands by our own citizens, who were purchaſers, was general leſs than the taxes aſſeſſed during the war. If the recommendation of Congreſs in the article, could have had the effect propoſed to the loyaliſts, they would after the peace have held their lands on a better footing than before the war, and leſs burthened than our own citizens held theirs. It was of importance to them to effect this purpoſe, they would get their lands paying for them a ſmall ſum of money and where *no price* had been given for them, they were to have them back without paying a conſideration for them.

The treaty of peace reſulting from the wiſhes of the two nations and arranging important and eſſential differences between them, ſhould, it is ſuppoſed, with clearneſs and preciſion have ſettled the terms of compromiſe and written in plain and unequivocal characters, the ſacrifice each was to make as the price of peace. If America was to retribute all confiſcations that her neceſſities impoſed on her as a moral duty, the treaty would have ſo expreſſed it, not in ambiguous but in unequivocal language, for they were not *rights* that on a return of peace *revive* by a *kind of poſt liminy*.

In ſeveral treaties before that of 1783 between different nations, *where* the property of their enemies was *confiſcated* and *exacted* on the return of peace; they *ſtipulated expreſsly* that *debts* and *rights confiſcated* and *exacted* ſhould be deemed *loſt* and *extinct*, if *not exacted* they ſhould *revive*. It was ſo ſtipulated between the kings of France and Spain by their treaty of the 17th September 1678, England and Spain 21ſt September 1667, and between Frederick 3d king of Denmark and Charles the 2d king of England, concluded at Breda 21ſt July 1667. By the fifth article of the laſt treaty it is provided, that "whatever *debts* of this kind "unto the tenth day of May, old ſtile, and twentieth new ſtile, by virtue of con-"fiſcations or repriſals have been by ſubjects paid and received, do remain utterly "aboliſhed and ſatisfied; and that it be not lawful for the creditors of ſuch debts "for the future to pretend any thing upon this account, much leſs to urge the pay-"ment of ſuch for any reaſon, or under any pretence whatſoever. But of ſuch "debts as on the ſaid day have not been paid and received, it ſhall be lawful for the "creditors, ſubjects of the king of Great Britain, to demand and proſecute the "payment by the *ordinary way of juſtice*."

From

From the principles of the law of nations that confiſcated and exacted debts do not revive, and from the proviſions in various treaties confirming this, from the expreſſions in the treaty of 1783, it is fairly to be inferred that as an expreſs contrary ſtipulation does not appear, it was intended that the law of nations ſhould have its full and proper effect.

Every queſtion which appears neceſſary to the fair deciſion of claims will always be brought before the board where it depends on the agent for the United States. He will make the ſame effort when facts which ought to be known depend on claimants. In theſe attempts he expected the full concurrence of the agent for claimants, when a common wiſh prevailed to execute the intent and meaning of the treaty. With this opinion it was natural for the agent for the United States to inquire of what deſcription of perſons the claimant was under the treaty of peace, to be informed whether he was entitled to compenſation under the treaty of 1794. The agent for claimants has admitted one claſs of perſons not within the treaty, which ſhews the enquiry propoſed was reaſonable. To ſatisfy this enquiry facts were proper to be known, and when they were called for they were not as fully ſtated as could be wiſhed.

It appears that the Reverend Mr. Inglis *remained in the* United States at the *declaration of independence*, and in his uſual place of reſidence until it was taken poſſeſſion of by the Britiſh forces. After the important act of the 4th July 1776, which ſeparated for ever the two nations, the claimant made his election to which party he would unite himſelf. That election was fully manifeſted by his own act, he reſiding under the juriſdiction of the United States. It was not for him to enjoy in the United States their protection and rights and when an inauſpicious cloud darkened the horizon, to claim the protection of Great Britain. The 4th July 1776 was the era of independence. * "When a nation becomes divided into two "parties abſolutely independent, and no longer acknowledging a common ſuperior, "the State is diſſolved, and the war between the two parties, in every reſpect, is "the ſame with that of a *public* war between two nations." Great Britain by ſeveral acts acknowledged the independence of the United States, long before the treaty of peace. In the year 1776 commiſſioners were ſent out to treat with them, and perſons taken in arms were conſidered as priſoners of war. The courts in England have conſidered the United States as independent from that time, and *Lord Loughborough*† very properly obſerved that the *acts* of the *States* from that period were the *acts* of *ſovereign* and *independent nations*. In this opinion he fully concurred with the lord chancellor who had given a like opinion. It was from this inſtant that the United States aſſumed a new character with all the privileges and rights of an independent nation. The declaration of the 4th July was long foreſeen. Every one believed in it as a conſequence of the meaſures purſued, and there was full notice to prepare for the event. Where the claimant reſided, as much information could be acquired as in any part of the United States, and he was fully apprized of the circumſtances which lead to the event itſelf.

* Vattel, p. 629. † H. Blackſtone's reports, p. 149.

On

On the 4th July 1776 Mr. Inglis was residing in the State of New-York, subject to its laws and those of the United States and not to the laws of Great Britain, which did not prevail there. His submission to the laws and acquiescence in the acts of our government continued until the 20th of September following. From that time until after the passing of the act of the 22d October 1779, he resided and was domiciliated within the limits of the State of New-York.

These circumstances put it beyond doubt that Mr. Inglis is not a *real British* subject, which is the description of persons meant by the fourth article of the treaty of 1783, and if he even had been, that treaty does not reinstate his confiscated debts.

The opinion of chief justice Elsworth, part of which has been cited in the reply by the agent for claimants, supports the principle here contended for by the agent for the United States. *The chief justice remarks, " That there is no doubt " but the debt in question was a *bona fide* debt, and theretofore contracted y. e. " prior to the treaty. To bring it within the article it is also requisite, that the " debtor and creditor should have been on different sides with reference to the " parties to the treaty, and as the defendant was confessedly a citizen of the " United States, it must appear that the plaintiffs were subjects of the king of " Great Britain, and it is pretty clear from the pleadings and the laws of the State " that they were so. It is true that on the fourth of July 1776, when North-" Carolina became an independent State they were inhabitants thereof though " natives of Great Britain, and they *might have been claimed* and *holden as citizens*, " *whatever* were their *sentiments* or *inclinations*." The Reverend Mr. Inglis might have been *claimed and holden as a citizen, whatever were his sentiments* or *inclinations*, and by the act of the 22d October 1779, the legislature of New-York legislated on his rights and debts in that character.

Authorities from the reports of Foster and Coke were produced to shew that a British subject cannot part with his allegiance, however powerful his inclinations may be, to become the citizen of another country. Those authorities have no application to the peculiar situation of the United States. British lawyers have contended against their application to American citizens, and British courts, dating the independence of the United States from 4th July 1776, considered that act as a lawful renunciation of all allegiance. The moment the ligature was cut, all the duties and rights of subjects ceased.

Before the 4th July 1776, and after that time until the 20th April 1777, when a constitution was formed for the State of New-York, a government existed in that State, which furnished protection and punished all offences against it. The authorities and powers there exercised were afterwards confirmed by the constitution of that State, which in the 35th article declares " That the resolves or resolutions " of the congresses of the colony of New-York, and of the convention of the "State

* Hamiltons *v.* Eaton—decided in the circuit court of the United States for North-Carolina district, at the June term, 1796.

" State of New-York, now in force, and not repugnant to the government esta-
" blished by this constitution, shall be considered as making part of the laws of this
" State."

A change of government in a State is a change of the *constitutional compact*, and not of the *social*, through all its variations, that compact remains the same, and is the ligature that binds the members of a community to each other until a new constitution is formed. A State loses no right nor is it discharged from any of its obligations by a change in the form of its civil government, the social compact during those changes remains the same, and there is a full power in the society under this compact to punish all offences against it. Had no government, for the sake of argument, existed for the United States, or in the State of New-York, the Reverend Mr. Inglis would have been punishable for any offence against the independence of either, under the social compact which bound the members of the State of New-York to each other, and that State to the other members of the United States.

The agent for claimants, resorting to legal niceties, maintains that the affidavit being all in the hand writing of the claimant, is good without the signature of his name: for when in his hand writing it is no matter whether the name is at the top or bottom. To what a strange conclusion this would lead; the law as stated applies to wills, written by the testator and not signed; but wills signed or not signed to have any force must be proved, and that proof makes them evidence: To make an unsigned affidavit evidence it must also be proved, for who can tell whether a man who does not sign his name to an affidavit, wrote it. The board cannot possibly know that Mr. Inglis wrote his affidavit, for they are not acquainted with his hand writing: To make it then any kind of evidence, there must be an affidavit to prove his hand writing, and if that is unsigned, another to prove it, and so on to infinity, if mankind reached it. These conclusions shew the propriety of the remark in the answer, that Mr. Inglis ought to have signed his affidavit.

In the conclusion of the reply it is observed, that the decisions in the American courts prove this general maxim on the subject of treaties, " That neither one or
" other of the contracting parties has a right to interpret the pact or treaty at his
" pleasure."

The passage in *Vattel* from which the rule is taken, contains a *just* and *useful principle* of the law of nations, but from the manner in which it is used by the agent for claimants it seems not to be understood. Its true meaning is this, that if either nation in the construction of the treaty, puts that interpretation on it which is manifestly wrong, and contrary to its intent, the other nation who has an equal right of interpretation may except to it, and unless the nation putting the wrong interpretation will alter it, it amounts to a breach of the treaty. Not that the courts of either nation could not interpret the treaty, so strange a doctrine would create manifest wrong and injustice, and would ever have prevented in the United States a judgment in favor of British creditors. Scarcely a suit at the instance of a British creditor could

could take place, without the treaties being in queſtion in ſome ſhape, and if the courts could not conſtrue it, they could never render a judgment.

It is ſufficient here to recapitulate, that the debts of Mr. Inglis have been proved to be legally confiſcated, that he was of the deſcription of perſons called royaliſts; that had he been a real Britiſh ſubject his debts would not be revived by the treaty of 1783, that he has been guilty of great delay and negligence. And that the courts of the State and diſtrict of New-York, were always open for him to purſue his rights in and that the payments of his confiſcated debts into the treaſury, were under an act of the legiſlature; which if contrary to the treaty of peace, there was full and ample redreſs from at law, and that application ought to be made to the State of New-York, which may be done by petition, for reſtitution of the money received from the debtor to the claimant, and if a balance ſhall thereafter remain due to him that he ſhould reſort to judicial proceedings againſt the debtors reſpectively.

JOHN READ, Jun.
Agent general for the United States.

April 3, 1798.

COMMISSIONERS' OFFICE,
Philadelphia, 21ſt May, 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. INNES and
Mr. GUILLEMARD.

IN the caſe of the Right Reverend Charles Inglis.—The board having reſumed the conſideration of this caſe, came to the following reſolutions, viz.

RESOLVED, That the claimant's character of Britiſh ſubject was not affected or impaired by the act of attainder and confiſcation, paſſed by the State of New-York on the 21ſt of October, 1779, attainting him with the Earl of Dunmore, Governor Tryon, Sir Henry Clinton and many other Britiſh ſubjects, who are therein deſcribed, not as ſubjects of the State, but as "perſons holding or claiming property within the State;" and forfeiting and confiſcating their whole eſtates real and perſonal for their adherence to his Britannic majeſty: but that on the contrary the ſaid act

aćt of attainder and the defcription of loyalift or refugee applied to the claimant, on the part of the United States, in confequence of his faid adherence, are conclufive evidence that he ftill maintained his original allegiance: that therefore he is entitled to claim before this board, under the fourth article of the definitive treaty of peace, and the fixth article of the treaty of amity between his faid majefty and the United States.

Refolved, That the confifcation of the debts in queftion before the peace is no bar to the claim; and that the board have fo determined upon the fame grounds and principles of interpretation refpecting confifcations before the peace, which were adopted and declared by the judges of the United States when (in the cafe of Hamiltons againft Eaton) they decided in their circuit court for North-Carolina diftrict, that debts due to Britifh fubjects who refided in the province now State of North-Carolina at the date of the declaration of Independence and continued there to refide, till the 20th day of October, 1777, when they were obliged by law either to take an oath of abjuration and allegiance to the State or to depart; and which debts had been confifcated or forfeited to the State before the peace, were neverthelefs due and owing by virtue of the treaty.

Refolved, That the terms of the faid fourth article of the definitive treaty of peace, are in themfelves plain, explicit, and unambiguous; and do not require or admit of any conftruction or explanation from the fifth article, to which the fourth article bears no relation whatever.

Ordered, That the general agent for claimants and the agent for the United States, be furnifhed with copies of the foregoing refolutions.

Extracted from the proceedings of the board,

G. EVANS, *Secretary.*

Commiffioners'

COMMISSIONERS' OFFICE,
Philadelphia, 28th May, 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the caſe of CHARLES INGLIS.

ORDERED, that the agent for the United States have leave on or before the firſt day of June next, to ſhew cauſe why the act of attainder and confiſcation paſſed by the State of New-York againſt the claimant before the peace and the other acts of that State ſubſequent to the peace, with the ſtatement given on the part of the United States, of their operation and effect as neceſſarily diveſting the claimant of all right at law, ought not to ſatisfy the board that at law he could not recover, and why the additional expenſe and delay of reſorting to a courſe of judicial proceedings by which the eventual loſs might be greatly increaſed, ſhould now be incurred.

Extracted from the proceedings of the board,

G. EVANS, *Secretary*.

In the caſe of the REVEREND MR. INGLIS.

IN conſequence of the order made the 28th inſtant, that the agent for the United States ſhould ſhew cauſe, " why the act of attainder and confiſcation paſſed " againſt the claimant before the peace, and the other acts of the State of New-" York, ſubſequent to the peace, with the ſtatement given on the part of the United " States, of their operation and effect, as neceſſarily diveſting the claimant of all " right *at law*, ought not to ſatisfy the board that at law he could not recover; " and why the additional expenſe and delay of reſorting to a courſe of judicial " proceedings, by which the eventual loſs might be greatly increaſed ſhould now be " incurred:" The agent ſheweth for cauſe; that Hezekiah Mills and Nathan Barlow,

Barlow, the original and real debtors, are now ſolvent and reſident in the State of New-York, from whom in the ordinary courſe of judicial proceedings, it is in the power of the claimant to recover his whole debt, and whatever intereſt thereon he ought to recover in equity. If the fact of their preſent ſolvency be denied, or required to be proved, the agent for the United States will prove the ſame to the ſatisfaction of the board.

The confiſcation laws of the States have been judicially determined to be impediments to the recovery of Britiſh debts which the fourth article of the treaty of peace removed. The board conformably to this doctrine have already determined in this caſe, that the confiſcation of a debt by a law of the State was no bar to a creditor, but that it was one of the impediments which the treaty removed. Wherever then there has been confiſcation of debts without an attainder of the creditor there can be no doubt but the creditor ſince the peace could maintain an action for his debt. The only doubt which ſeems to remain with the board is, whether the treaty of peace annulled as well that part of the ſtatute which attainted the claimant, and diſabled him from ſuing, as that part which confiſcated his debts,

When the board decided contrary to the poſition advanced by the agent for the United States that the confiſcation of the debts of the claimant did not bar his right to them by reaſon of the treaty of peace, they ſeem alſo to have decided, that the *diſability ariſing from the attainder* was removed by the ſame treaty. To reſtore the right without reſtoring the remedy for that right is to ſuppoſe the treaty would ſtipulate a thing ſhould be done without furniſhing the means to do it. If a ſtatute confiſcating a debt be annulled by the treaty, and thereby the confiſcation avoided, of neceſſity the ſame ſtatute diſabling the creditor, muſt be deemed to be annulled alſo. With ſubmiſſion the ſame reaſons which ſupport the former, will maintain the latter; for why ſhould the treaty of peace be effectual to caſſate one ſtatute, and not another, or one part of a ſtatute and not another, both of them impeding the legal recovery of a debt? This operation of the treaty of peace muſt be admitted, or an attainted creditor muſt have continued diſabled, and without remedy to recover his debt from the debtor after the treaty was ratified.

That an attainder is ſet aſide by the treaty of peace, is a propoſition that muſt either be admitted or denied on the part of the claimant.

If it be admitted that all impediments produced by the ſtatute of attainder and confiſcation before the peace (the legiſlative acts of the State of New-York ſubſequent and contrary to the treaty of peace being void) have been removed, then the debt may be rocovered in the ordinary courſe of judicial proceedings from the debtor, and ſurely in ſuch a caſe, it ought not to be determined that under the treaty of 1794 the treaſury of the United States is liable, but if it be denied that the treaty of peace removed the impediment of attainder, then the preſent claimant has not been hindered contrary to the treaty of peace from proſecuting his demand; with reſpect to him there cannot have been a violation of the treaty of peace, and it is contended on the part of the United States, that they are not liable under any circumſtances

circumſtances whatever, to anſwer for any loſs, which has not proceeded from a violation of the treaty of peace.

The board appear to have been influenced in the reſolutions they have paſſed in this claim by the reaſons given for the judgment in the caſe of Hamilton and Eaton, and therefore, the agent for the United States will beg leave to remark on a paſſage in the argument of chief juſtice Elſworth, which with relation to the queſtion propoſed by the board, is liable to be miſapprehended. The Chief Juſtice obſerves, " That legiſlative interference to exonerate a debtor from the performance of his " contract, whether upon or without conditions, or to *take from the creditor the* " *protection of law*, does not in ſtrictneſs deſtroy the debt, though it may locally " the remedy for it, the debt remains, and in a foreign country payment is frequently " enforced." This obſervation is made by the Chief Juſtice without reference to the ſtipulation in the treaty of peace, the force of which in repealing the State laws, is afterwards fully illuſtrated by him.

From the terms of the rule to ſhew cauſe in this inſtance it ſeems neceſſary to beſtow ſome attention upon the defence already attempted on the part of the United States to this claim.

The defence was ſtated on two grounds : Firſt, that the debts were confiſcated, and that the confiſcation was a bar to the claimant, which the treaty of peace did not remove. Secondly, if this was overruled, and if the treaty of peace annulled the impediments ariſing from the laws of New-York, then the claimant had been guilty of negligence in not proſecuting the debtors from whom he might have recovered his money, and conſequently the United States are not reſponſible.

The firſt ground of defence, the board have determined to be inſufficient and have overruled it, but this determination of the board, is conceived for the reaſons that have been urged, to affirm the ſecond ground of defence, and not to preclude it, the debtors being always ſolvent, and plainly eſtabliſhes that the claimant has been guilty of neglect, by not having purſued his claim at law, againſt the debtors before he applied to the board.

The board having determined upon the like reaſoning which has influenced the American judges, the efficacy of the treaty of peace in abrogating and avoiding the legiſlative acts of the States confiſcating debts, it was not expected that the doctrine would be denied. The reſolution of the board is in the following words, " Reſol- " ved, that the confiſcation of the debts in queſtion before the peace is no bar to " the claim ; and that the board have ſo determined upon the ſame ground and " principles of interpretation reſpecting confiſcations before the peace, which were " adopted, and declared by the judges of the United States (when in the caſe of " Hamilton *v.* Eaton) they decided in then circuit court for North-Carolina " diſtrict, that debts due to Britiſh ſubjects who reſided within the now State of " North-Carolina, at the date of the declaration of independence, and continued " there to reſide until 20th October 1777, when they were obliged by law either to

" take

" take an oath of abjuration and allegiance to the State, or to depart, and which
" debts had been confiſcated or forfeited to the State, were nevertheleſs due and
" owing by virtue of the treaty."

After the board had thus determined the firſt ground of defence made by the United States not to be good and available againſt the claim, the agent for the United States is ſurprized to find it ſtated as a correct principle for any purpoſe whatever. In the deciſion that the confiſcation by ſtatute was an impediment, which the treaty of peace removed, the agent acquieſced, although he had endeavored to prove the contrary poſition, his reaſoning being overruled by the board, can it be permitted, that the poſition negatived by the deciſion of the board may be now affirmed? Is it conſiſtent with the reſolution that has been cited, to decide that the treaty of peace did not annul an act of the legiſlature of New-York which diſabled the claimant by attainder?

The agent for the United States further will obſerve, that the former argument and ſtatement, made by him in this caſe relative to the operation of the laws of New-York have been rejected by the board, as unſound and invalid, and therefore they ought not to ſatisfy the board that at law the claimant could not recover. It is contended that the claimant can recover at law from his debtor, and juſtice requires that he ſhould be obliged to reſort to judicial proceedings againſt the debtors, for thus the claimant may obtain complete ſatisfaction from them who ought to pay. The debtors if injured by the State of New-York may obtain indemnity, and the United States remain uncharged with claims of this kind, as has been expreſsly agreed in the treaty of amity, as it is underſtood by their agent.

JOHN READ, Jun.
Agent general for the United States.

June 1, 1798.

COMMISSIONERS' OFFICE,
Philadelphia, June 1, 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the caſe of INGLIS.

AN argument on the part of the United States, purſuant to the order or rule to ſhew cauſe of the 29th ult. having been read. Reſolved,

Refolved, That the faid order has been mifunderftood; the queftion being, whether there is good ground *by the law of the land,* and not under any refolution of the board (which cannot affect the law of the land or the courts of juftice) for now proceeding judicially in the recovery of the debt on which the claim is founded.—Therefore, Ordered, That the agent for the United States, have leave on or before the 6th current to add to the argument which has been read, what he may think material on that queftion.

Extracted from the proceedings of the board,

G. EVANS, *Secretary.*

COMMISSIONERS' OFFICE,
Philadelphia, June 4, 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the cafe of INGLIS.

THE board having obferved from the argument read at the laft meeting, on the part of the United States that the word "interpretation" made ufe of in the refolution of the 21ft May laft, wherein they refer to the principles of interpretation refpecting the confifcation of debts before the peace, which were declared by the judges of the United States in the cafe of Hamilton againft Eaton, has been mifunderftood.

Refolved, for the prevention of future argument on that mifapprehenfion, that in adopting the word *interpretation* the board had in view the proper fenfe of the word, namely—the meaning of the article as to the right thereby given to Britifh creditors, notwithftanding fuch confifcation of their debts without deciding (upon the operation of that article) whether it did, or did not of itfelf repeal the exifting law of particular States. Ordered, that both the agents be furnifhed with copies of the foregoing refolution.

Extracted from the proceedings of the board.

G. EVANS, *Secretary.*

In the case of the Reverend MR. INGLIS.

PURSUANT to the order of the board of commissioners in this case, dated on the first day of June last, the agent for the United States offers the following observations in addition to what he has already advanced upon the particular point, whether there "is good ground by the law of the land for now proceeding judi-" cially in the recovery of the debt on which the claim is founded."

1. The agent for the United States prays leave to observe, that he has on several occasions, and in his former argument in this case, stated it as a proposition supposed undeniable, that to bring a case within the *treaty of amity* it must appear that the loss has arisen from the violation of the *treaty of peace*. In Mr. Inglis's case, if the impediment of attainder and confiscation was not an impediment which the *treaty of peace* intended to remove, no loss in this instance is within the meaning of the *treaty of amity* and it is argued if the *impediment of attainder*, was meant to be removed by the treaty of peace, that according to judicial opinions on the operation of this treaty in removing impediments, this species of impediment is to be construed to have been also removed. The judicial opinions to which he alludes are given in the case of Hylton, in the supreme court, and in the case of Eaton in North-Carolina district. The treaty of peace is paramount to every *State* law passed either before or after its ratification. This is declared by the constitution of the United States, and by every judicial decision where the question has occurred, and is therefore uncontrovertible before any tribunal, and it is contended, that an act confiscating, is not distinguishable on legal grounds, from an act attainting, when the force of the treaty on them is the point to be decided. The treaty which repeals the former repeals the latter. It has been adjudged in the case of Eaton, that the treaty has repealed the former, and therefore it may be contended it has repealed the latter. Moreover, the agent for the United States takes the liberty to refer to the consideration of the board the act of New-York, passed the 22d of February 1788, repealing all laws or parts of laws in that State which may contravene the treaty of peace, and requiring the courts of law and equity in that State to judge according to the true intent and meaning of the treaty notwithstanding those laws. A correct copy of the act is filed with this argument.

2. If it *be but doubtful* whether the creditor can in the ordinary course of judicial proceedings recover from the debtor the amount of his debt, it is contended on the part of the United States, that the creditor ought to seek his remedy in a court of justice previous to any application to the board for an award against the United States. In a doubtful case, how can it be satisfactorily proven that the debt is not recoverable in the ordinary course of judicial proceedings, unless application be previously made to the tribunals of justice? Is not every case doubtful more or less till the experiment of recovery before a court in that or some similar case has been tried?

The agent, to avoid repetition, begs leave to refer the commissioners to his argument in the case of Cunningham and company, on the true intent and meaning of the

the treaty of 1794, and to his laſt argument in this caſe, which was meant to embrace this particular point; and alſo his argument in the caſe of Dulany.

JOHN READ, Jun.
Agent general for the United States.

June 6, 1798.

COMMISSIONERS' OFFICE,
Philadelphia, 25th June 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the caſe of INGLIS.

ORDERED, That the general agent for claimants have leave within eight days to make ſuch obſervations on the two arguments on the part of the United States in this caſe purſuant to the orders of the board of the 28th ultimo and the firſt current, as he ſhall think proper.

Extracted from the proceedings of the board.

G. EVANS, *Secretary.*

In the caſe of DR. INGLIS.

IN obedience to the order of the board of the 25th inſtant, the general agent for claimants will make a few obſervations upon the two arguments on the part of the United States in this caſe, and in doing this he is not apprehenſive of involving himſelf or the claimants at large, or this claimant in particular in the ſmalleſt contradiction, or of being under the neceſſity of receding from any one poſition he has hitherto taken.

If this caſe ſtood alone, (without having others depending upon one very important principle, to wit—*the neceſſity at this late day of reſorting to the courts of the United*

United States, as a previous ſtep to any application to the board) a ſingle obſervation only would be repeated—"*The claimant's ſecurity is impaired, leſſened—abſolutely* "*deſtroyed.*" When this debt was contracted, the credit was not given to the perſon of the debtor: The bonds are the evidence that the debts were ſolemnly contracted, but the mortgage was the ſecurity.—This aſſertion has not been denied, it will therefore be taken as admitted, at leaſt as far as the agent for the claimants ever meant it; that is, ſuppoſing the lands to have paſſed, poſitively diſincumbered by law, into the hands of *bona fide* purchaſers. He will admit that if this had been a caſe of ſequeſtration *only*, and the lands were in poſſeſſion of the mortgager, his heirs or deviſees, there would be a difference; he might go farther and ſay that, in his own opinion, even if a purchaſer in this latter caſe was to make the mortgagee defendant in a ſuit in equity to compel a ſurrender and a cancelling of the mortgage, the court might ſay, "do equity yourſelf by diſcharging the debt "before you demand a ſurrender of the ſecurity"—The claimant ought not now, on principles of juſtice, (ſuppoſing it certain, inſtead of doubtful, that the attainder is no bar to a ſuit) to be driven after the perſons of the debtors; thoſe perſons were not what he truſted to—and although it is not certain, it is doubtful, whether, when they ſee any probability of a decree againſt them, they might not follow the example of John Syme, the claimant might then be told, he muſt proceed to ſet aſide the fraudulent conveyances—if after ſucceeding in this ſuit he happened to levy upon ſufficient property in the poſſeſſion of one grantee or donee, all proceedings would be ſuſpended (at leaſt if it is not certain, it is doubtful) until proceſs for contribution could be had againſt all the reſt—This would be as bad as the old replevin bond law of Virginia, which was at laſt repealed "*becauſe thereby the creditor might be prevented from ever recovering his debt,*"

In the outſet of the argument of the agent of the United States in this claim, it was ſtrenuouſly contended that the claimant was an American citizen, that the confiſcation of his debts was complete, and abſolute, and that no ſtipulation in the treaty revived the right of the claimant.

It ought not to have been contended that confiſcations were not removed by the treaty; that point had been ſettled by the court of the United States, and the agent for the claimants cannot preſume that the law officers of the United States were unacquainted with that deciſion or with the principles on which it was decided—But when the board decided the ſame point and on the ſame principles, it does not follow that the board would not have adopted ſimilar principles, and decided in the ſame way, even if the deciſion of Hamilton *v.* Eaton had been diametrically the reverſe of what it has been, nor could it be expected that the opinion already given in the preſent claim would be altered or ſhaken, if Eaton was, on a writ of error to obtain a reverſal of that judgment.

Here the general agent for claimants muſt make a few obſervations upon a maxim frequently cited already—"It belongs not excluſively to the courts of either coun- "try to interpret treaties," and he aſſures the board that he perfectly underſtood the only meaning this maxim can bear, notwithſtanding the ſuppoſition of the agent for

for the United States to the contrary. He well knew that in which ever country a defendant is profecuted for a caufe in which the conftruction of a treaty is to be decided, the court having the caufe before them are neceffarily to decide upon the treaty—Their decifion, if they are a court of fupreme or fuperior jurifdiction, fettles the conftruction and interpretation of their own country only. If that decifion and conftruction is agreed to by the other country, it muft be deemed the true one, if different from, and the object is of magnitude, it may end ; according to the temper of the nations, in expoftulation and reparation ; in negotiation and arbitrement, or in war.

Before a board, conftituted as this is, oppofing decifions or opinions of the two countries have no more binding authority in fettling the true interpretation, than they would have with generals at the head of contending armies—There is however one happy difference between the cafes—cool argument, and friendly difcuffion, are at prefent to fupply the place of bayonets and balls, and that the conftruction is to be fettled by the weight of reafon, not the weight of metal.

Still however, decifions of courts of competent jurifdiction in each country, upon queftions arifing upon the treaty are, while unreverfed by a fuperior tribunal, are to be deemed and taken as the law of that country, and are fufficient evidence of the interpretation which the government of that country gives to the treaty. To go further in fearch of evidence would be to draw it from impure fources ; and where an uniform train of decifions on the fame point are produced, both in the courts of the different States and of the United States, that evidence muft be conclufive.

The board are to take that evidence as they find it at the prefent time, not as binding upon their confciences to decide the fame point the fame way, but as amply fufficient proof that if other claimants go to the fame court with the fame caufes, their fate will be the fame. The board are not to fuppofe that the decifions of American judicatures are " to be worked upon by the temper of the times, to rife and fall with the tide of events ; that they will bend to every governmental exigency, or vary and be blown about by every breeze of political intereft"—Nor can the experiment of commencing fuits to try the queftion again, be decently infifted upon by the agent for the United States—it amounts to little fhort of a declaration that the courts of the United States *would* do, what he has already accufed a learned and illuftrious judge of having done—*Make decifions from motives of governmental policy.*—Befides, before a board of arbitrators felected from the two countries, the decifions of the courts of each country on the fubject in controverfy are to be proved as other facts—What then would be their opinion, if, after a claimant had fatisfactorily proved any fact, the agent for the United States was to fay, " It is true, you have produced an hoft of unexceptionable and pofitive witneffes"—it is true I myfelf not only admitted but infifted upon the fame fact ; but its confequences have been exactly oppofite to what I intended ;—I infift therefore upon your examining every citizen in the Union, until you find one who can contradict all the reft.

In

In this caſe the board have decided, that the claimant's character of Britiſh ſubject was not affected or impaired by the act of New-York, and that the confiſcation of the debt is no bar to his claim.

From this it is inferred by the agent of the United States, "That they have alſo decided, that the diſability ariſing from the attainder was removed alſo."

The agent for the claimants only infers, that the board have expreſſed their opinion that the diſability to ſue, ought to have been, as by the real and true interpretation of the treaty, it was intended to have been removed: and if the American courts have put any other conſtruction upon the treaty, they will conſider that conſtruction as a legal impediment, and award compenſation accordingly—But for them to decide that the diſability *was* removed, while judicial deciſions to the contrary (cited and relied upon by the United States) are ſtaring them in the face, would be to decide that midnight is noon day.

The agent of the United States having drawn his inference; reaſons as if the decrees of the board were to reverſe all former and to controul all future deciſions of the courts upon the ſame points, and inſtead of coming forward and ſhewing cauſe why certain principles ſtrenuouſly inſiſted upon by him, in former arguments, ſhould not be admitted as fixing the American conſtruction of the treaty, and of courſe entitling the claimants to an award, under the interpretation of the board, he flies off, and ſays "that is a propoſition to be admitted or denied on the part of the "claimant."

The claimant has no heſitation in admitting and denying, and he will involve himſelf in no contradiction in ſo doing.

He admits that by the conſtruction put upon the treaty by the courts in the United States, he cannot recover his debts, and he complained in his memorial of this, as *a legal impediment*.

He denies that this is the conſtruction which the Britiſh government put upon the ſame treaty.—

He admits that the board are the proper umpires upon the ſubject, and he is ſatisfied with their deciſion.—

He denies that their deciſion is of any binding authority upon the courts, any more than the deciſion of the courts to the contrary are binding on the board.

The agent of the United States, when preſſed by the board to declare, "whether there is good ground by the laws of the land for now proceeding judicially in the recovery of the debt on which this claim is founded," avoids a direct anſwer. Is this the candid and dignified act of a great government, well knowing the interpretation which the ſages and expounders of its laws have repeatedly given, to the replications

replications of the "treaty" when acts of attainder have been pleaded by debtors? Could he not have ſaid, "I know of no deciſion in favor of ſuch a plaintiff, in any court, and I know of ſeveral in which it has been determined that perſons in the claimant's ſituation can not recover?"—Inſtead of this, he ſays, "It has been adjudged that the treaty has removed the impediment ariſing from confiſcation, and therefore *it may be contended* that it repealed attainders; and he proceeds, and *contends* that if it be *doubtful*, the claimant muſt ſeek his remedy at law;—in other words, he muſt waſte a few years and ſpend the amount of his demand in order to purchaſe authentic teſtimony, that the debt itſelf is irrecoverable in the ordinary courſe of judicial proceedings. It has not indeed, been inſiſted, that the board muſt attend the different trials, deliver their charges to the jury, and aſſiſt in the deliberations of the judges, but it is evident that they muſt wait the event of every deciſion, and after that, they muſt wait the returns of all the executions, to know from the returns of marſhals, whether the defendants are ſolvent in their diſtricts, or have eſtates in Kentucky or the Moon.

But, in propoſing the queſtion to the agent of the United States, did the board mean to aſk, *What points might be contended?* No!—The arguments before them ſhew that *every thing* is contended.—Nor did they wiſh to know what things are *doubtful*.—A pointed queſtion was put, and a direct anſwer ought to have been given.

That anſwer the general agent for claimants will take the liberty to give, and to prove.

By the law of the ſeveral States, and of the United States, as it *now* ſtands declared, as well by the judges of the State courts as of the courts of the United States, and from the conſtruction put upon the treaty by thoſe courts, *the claimant can not recover at law.*

If this is proved, ſo as to ſatisfy the conſciences of the board, of the fact, the claimant muſt have his award, agreeably to the deciſion already given in this claim.

The agent for the claimants will ſtate the judgments, on which he relies, and he calls upon the agent for the United States to produce one, to contradict them.

DECIDED CASES.

Moore *v.* Patch.

JAMES PUTNAM, Eſq. before the revolution held a high and important office under the crown, in Maſſachuſetts. He early decided upon the part he thought himſelf bound to take, and joined the Britiſh forces and left Maſſachuſetts before the declaration of independence. He was proſcribed, attainted, and his real and

and perſonal eſtate, debts included were confiſcated to the uſe of the State. He commenced at ſuit, after the peace, againſt one of his debtors, for a *bona fide* debt contracted before the war, and which had not been collected into the treaſury.

It was, ſolemnly determined in the ſupreme court of the commonwealth, that his attainder was a bar to his recovery.

The ſame point, ariſing on the ſame act, was decided by the circuit court of the United States, in the diſtrict of Maſſachuſetts.

In theſe two caſes, the plaintiff was proſcribed by the ſame State in which the defendants reſided and the cauſe was decided.

CAMP *v.* LOCKWOOD.

IN this caſe the defendant was ſued in a different State from that in which the plaintiff was proſcribed, and the debt had never reached the treaſury. One ſtrong point, in addition to all the arguments to be drawn from the true interpretation of the treaty, preſented itſelf in this caſe, to wit, "that courts of one State ought not to take notice of the penal laws of another State." All were overruled, and judgment rendered for the defendant.—See Dallas's Reports.

This muſt be conſidered as a moſt authoritative declaration of the interpretation the United States put upon the treaty, as it was cited and relied upon by them, (unleſs they diſavow the argument of their agent) to ſhew that a perſon in the claimant's ſituation not only could not recover his debt at law, but even had no pretenſion to claim before the board.

DOUGLASS *v.* STIRK *et alias.*

IN the circuit court of the United States, for the diſtrict of Georgia,

The plaintiff, (together with Sir James Wright and many others) was proſcribed by name, by an act of aſſembly of Georgia, for adhering to the king of Great Britain, and all his eſtate real and perſonal, debts included were confiſcated. Mr. Douglaſs had alſo an eſtate, and ſeveral debts due to him in South-Carolina ; By the Jackſonburgh law, his eſtate, (debts excepted) was confiſcated as the property of a known Britiſh ſubject.

On the eſtabliſhment of the federal court (for no Britiſh ſubject whatever could maintain a ſuit in the State courts of Georgia) he commenced the above action. The defendants pleaded the act of aſſembly, the plaintiff replied with the treaty of peace, and the conſtitution of the United States declaring it the ſupreme law of the land. On demurrer this judgment was given.

May

ALL and ſingular the premiſes being ſeen, and by the court now here, more fully underſtood, and mature deliberation being thereon had, it ſeems to the ſaid court that the plea aforeſaid by the ſaid &c. in manner and form pleaded, and the matter in the ſame contained, are good and ſufficient in law to preclude the ſaid Samuel Douglaſs from his action aforeſaid, &c. and concludes in the uſual form, that the defendants go without day, and a judgment that they recover their coſts, &c.

The foregoing is a "*judgment on demurrer and therefore of high authority.*" It was of ſo high authority as to deter every other Britiſh ſubject in the ſame ſituation either from proceeding in ſuits already commenced, both in Georgia and the other States, or from commencing any other ſuits, and was not that a legal impediment?

If additional teſtimony was neceſſary to ſhew that the foregoing deciſions contain the interpretation which every court in the United States will give to the treaty, it might be taken from the argument of the United States in this caſe. Their agent even after being convinced that he muſt abandon one of his principles, to wit, that confiſcation is a bar to every claim, ſtill inſiſts, that attainder is a bar, and the very deciſion of chief juſtice Elſworth in the confiſcation caſe, Hamilton *v* Eaton fully ſupports him half-way in his poſition; to wit, that it is conſidered as a *bar at law* in the United States, the other half, to wit, that it is a bar to any claim here, has been negatived by the deciſion of the board

With theſe deciſions, with the corroborating opinion of the chief juſtice of the United States, that the claimant "might have been claimed and holden as a citizen whatever were his ſentiments and inclinations," and with the act of New-York "*which legiſlated on his rights and debts in that character.*" All before him, how can he decline a plain anſwer to a plain queſtion? how can he even ſay *that queſtion is doubtful?* If a ſuit at law was to be brought in this caſe, and as the United States are intereſted their agent and attorney general were to argue for the plaintiff, how would they get over their own aſſertions? could they candidly ſay we were in an error and are convinced of it? Why not then tell the board in plain terms *the claimant has a remedy at law?* they will not commit themſelves ſo far. Would they cite the opinion of the board? A chapter in the Koran would be legally as binding, would they urge the policy of a contrary determination? Policy cannot diſpenſe with the oaths which are recorded in Heaven. Would they venture to ſay that the intereſt of the United States, its treaſury and its citizens require it? Would not the honeſt indignation of the judge rouſe at the argument addreſſed to the intereſts of the man? Could they urge the wiſhes, inſtructions or even directions of the other branches of government? "It is an important principle, which in the diſcuſſion of "queſtions of this kind, ought never to be loſt ſight of, that the judiciary of the "United States is not a ſub-ordinate, but co-ordinate branch of the government."

But is the ***argumentum ab inconvenienti*** to avail nothing? and in the zeal of the agent of the United States for their intereſt, is not that intereſt in ſome degree forgotten.

If

If one ſuit is neceſſary to be brought, thouſands muſt be brought, for if one alone is commenced and terminates (contrary to all precedents) in favor of the plaintiffs, all the other claimants are left to the chapter of accidents. If all are brought, the board muſt wait the deciſion of the very laſt, in order to aſcertain whether the parties, if alive are ſolvent or their deſcendants in the third or fourth generation have aſſets by deſcent. All theſe ſuits muſt remain in ſuſpenſe in the lower courts, until one ſhall be determined in the ſupreme court, and then proceed; or they muſt all preſs for the judgment of the lower courts which muſt inevitably decide againſt them, thoſe courts being bound by the law as it now ſtands. And then they muſt all give ſecurity, purchaſe writs of error and come to the higheſt tribunal; and if all theſe judgments ſhall there be rendered for the defendants, not barely legal coſts but every neceſſary expenſe muſt be added to the compenſation.

But how can the agent of the United States even hint at the neceſſity of ſuits without formally and ſolemnly abandoning, and declaring unfounded, every poſition he has laid down in all his former arguments. But even this would be now too late, when the claim was firſt filed he ſhould have avowed the opinion of the United States, that confiſcations and attainders were all done away. With this ſanction, ſuits might then have been commenced, but while the United States gave their approbation to, and reſted upon deciſions that the claimants had no remedy it would have been madneſs to have gone to law.

As long as the doctrine of the perpetual and unalienable allegiance of the natural born Britiſh ſubjects is interwoven in the texture of the Britiſh conſtitution, and as long as the right of emigration and of expatriation is a principle of the American government, the courts of the two countries will differ in one important point of interpretation on the treaty of peace.

Great Britain ſays, every individual who did not remain attached to the American government at the treaty of peace, although from neceſſity, from the impoſſibility of getting away, or from the wiſh to ſecure the earnings of his life, he may have remained after the declaration of independence, he is ſtill my ſubject; my prior right, and his own determination, juſtify a claim which has never been relinquiſhed, and his adherence to my cauſe, which you call a crime, with me was meritorious, and gives him an additional right to my protection and ſupport.

The United States aſſert that from the declaration of independence they aſſumed their ſtation among the nations of the earth—that remaining after that time, was at leaſt a tacit acknowledgment that he had become a citizen—that his eſtate was legiſlated upon as the eſtate of a citizen's, and that that law was directed to an object of mere municipal regulation and not affected by the treaty.—Here they are at iſſue—and as nations own no ſuperior under Heaven, however different they may be in wealth, population and improvements—war or arbitrement muſt decide their diſputes, and wiſdom, juſtice and humanity, have choſen the latter.

That arbitrement however is not between creditor and debtor; that would be erecting a court unknown to the conſtitution of the country—and deciſions of courts,

courts, moulded to ſuit the awards of the board, would indirectly ſubmit the debtor to a tribunal from which by the moſt ſolemn compact he is exempted.

The arbitrement is between the creditor who has been by the laws of the country prevented from recovering his debt, and that country in which thoſe impediments have been created or permitted.

Wm. MOORE SMITH,
General agent for claimants.

July 1, 1798.

COMMISSIONERS' OFFICE,
Philadelphia, 2d *July* 1798.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the caſe of INGLIS.

OBSERVATIONS from the claimant by the general agent purſuant to the order of the board of the 25th ult. having been read—Ordered, that the agent for the United States have leave to ſee and reply to the ſame within ten days.

Extracted from the proceedings of the board.

G. EVANS, *Secretary.*

In the caſe of the Reverend MR. INGLIS.

IN purſuance of the order of the board of the ſecond inſtant, the agent for the United States will proceed to remark on the obſervations and the authorities offered to the board by the generel agent for claimants, in conſequence of their order of the twenty-fifth ultimo, which have relation to the preſent enquiry in this caſe, " Whether there is a remedy at law now for the claimant."

In

In doing this, the agent for the United States will endeavor to avoid any allusions to him personally or to the nation whose subjects in these cases he represents, that may tend to excite unpleasant sensations in either.

It is a principle which he hopes will not be denied, that where creditors claim under the treaty of amity it must appear to the board *that they have not now a remedy for the recovery of their debts in the ordinary course of judicial proceedings.* Convinced that this ought to appear to the board, and that the United States never assumed the payment of one cent on account of British debts when the debtor was able and might be compelled to pay; it was made by the agent for the United States a distinct ground of defence against this claim, "that there had been and was yet adequate remedy at law." He intended to resort to this plea, and rely on it, should the first ground of defence be determined against the United States. Is he, or can he be precluded by any act of the board from doing this? May he not state as many grounds of defence as he may think proper, and if any one is determined a just bar to the claim, are not the board in conscience bound to decree against the claim? unquestionably they are; as the agent knows no power to limit the various defences he may make to claims, he shall be governed now as he has been on this subject entirely by a regard to *justice* and to the *honor* and *interest* of the *United States.* These motives induced him to plead the second plea of defence against the claim, the same motives powerfully urge him to rely on it, and he *does* rely on it.

It is observed by the agent for claimants that "if this case stood alone (without "having others depending upon one very important principle, to wit—the necessity "at this late day of resorting to the courts of the United States as a previous step "to any application to the board) a single observation only would be repeated—the "claimant's security is impaired, lessened, absolutely destroyed." Waving for a moment an enquiry whether the claimant's security is impaired, lessened, or absolutely destroyed; and supposing the security absolutely destroyed; yet if the creditor can *now obtain* and *actually have* and *receive* full and adequate compensation, from the estate of the debtor in the ordinary course of judicial proceedings, it is a case where the United States are not *responsible.* The words of the 6th article are, &c. "Whereas it is alledged, &c. that by the operation of various lawful "impediments since the peace, not only the full recovery of the said debts has "been delayed, but also the value and security thereof have been in several instan-"ces impaired and lessened *so* that by the ordinary course of judicial proceedings "the British creditors cannot now obtain and actually have and receive full and "adequate compensation, for the losses and damages which they have thereby sus-"tained, it is agreed that in all *such* cases where full compensation for such losses "and damages cannot for whatever reason be actually obtained, had and received "by the said creditors in the ordinary course of justice, the United States will "make full and complete compensation for the same, &c." According to this text though a mortgage is destroyed absolutely, yet if the creditor possesses other evidences of the same debt which the mortgage secured, and the debtor in the ordinary course of judicial proceedings can be compelled to satisfy the debt out of some

other

other eſtate, the caſe is excluded from the juriſdiction of the arbitrators. The debtor muſt be purſued and the United States cannot be made liable: The ſtipulation does not render them liable *merely* becauſe a *ſecurity* is *impaired* or *leſſened* or *deſtroyed* but it muſt be *ſo* deſtroyed, that the debt cannot be recovered from the debtor, in *any judicial form* whatſoever. Where is the loſs or damage to a creditor, if having two ſecurities one is loſt and the other will enable him to recover his whole debt? and if one is loſt, why in juſtice ſhould he not avail himſelf of the other? and in ſuch a caſe as this, why ſhould he not be compelled to do it? Suppoſe a caſe where prior mortgages had exhauſted the ſubject, would the latter mortgagee conſider his debt loſt, when out of other eſtate of the debtor he might obtain payment in the ordinary courſe of juſtice by an action of covenant. Vain is it for the claimant now to pretend that he truſted merely to the mortgage, when that had been preceded by bonds to ſecure the ſame debt: He truſted as is very uſual to the perſonal ſecurity of the debtor, and to the mortgage alſo. The agent for the claimant then has been precipitate in taking it for granted that the creditor truſted to the mortgage only; nothing can reaſonably warrant ſuch an idea, nor did the agent for the United States ever admit it. When it was ſaid on a former argument by him, that the mortgages were in the poſſeſſion of the State of New-York, it was urged on the part of the United States, that the bonds were in the hands of Mr. Inglis, and that he had a remedy by ſuing on them, even ſuppoſing for the ſake of argument no proceedings could be maintained on the mortgages. Does *this principle* contain the admiſſion which it is ſaid has been made on the part of the United States? Can it be ſeriouſly believed, that they would contend, that Mr. Inglis ought to ſue on the bonds if they believed the bonds were no ſecurity for his debt? It is contended now, and always has been contended, on the part of the United States, that the bonds were ſecurities for theſe debts, and it is believed whenever the debts are ſued the bonds may be evidence to ſupport the actions. Theſe obſervations and a recurrance to the laſt argument, which concluded the pleadings on the part of the United States will ſhew that the agent for claimant's has either not read or not underſtood them. The agent for claimants having made a rampart for himſelf by what he calls an admiſſion ſuppoſes the lands have paſſed into the hands of *innocent purchaſers*, *poſitively* diſencumbered in law, and therefore argues that there is no remedy now on the mortgage. The agent for claimants in the hurry and length of his argument altogether forgets the principles on which he argues. Does he ſtate it as a fact that the land has been ſold by the mortgagor? No—he has never ſaid it was ſold by them. With reaſon then the agent for the United States may conſider it as agreed by the agent for claimants, that the mortgagors ſtill hold the lands, he is the more willing to underſtand the agent for claimants in this way becauſe he believes they are now in poſſeſſion of them. If the fact is, that the mortgagors hold the lands, can any argument founded on the ſuppoſition that they do not hold them, advance the intereſt of Mr. Inglis or furniſh arguments to ſupport it.

The material fact is, that, whether they hold the mortgaged premiſes or not, they hold ample eſtate for ſatisfying the claimants' demand.

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The next *fuppofition* which is affumed as a *ground* of *argument* is that the lands have paffed pofitively difencumbered into the hands of *innocent purchafers*. This is the *very point* on which the agents have been at *iffue* " whether the lands if fold " did pafs *pofitively difencumbered*." How does the agent for the claimant argue his fide of the queftion ? In this extraordinary way, he decides the matter on which the agents difagree, to be in his favor, having done this, it is laid down by him as a ground-work to prove, the very point itfelf on which they are at iffue. The agent for claimants has heretofore argued that the treaty reinftated Mr. Inglis's debts, if it did, it confirmed the original fecurity on the land which never could pafs difencumbered into the hands of a purchafer.

It is faid that the agent for the United States reafons as if the decrees of the board, were to controul the decifions of the courts, his reafoning muft have been ftrangely mifunderftood to produce fuch an obfervation. He never *did* nor *does* he *now* admit a controuling power in the board over the *judiciary of America*. An idea fo *humiliateing*, fo *difgraceful*, to the United States, was never entertained by him.

The agent for claimants has taken the liberty to obferve that the agent for the United States when *preffed* by the board to declare, " whether there is good ground " by the laws of the land for now proceeding judicially in the recovery of the debt " on which this claim is founded avoids a direct anfwer." If the agent for the United States returned his anfwer in a manner unfatisfactory to the board, it was only from the board that he expected to hear it was unfatisfactory. If their queftion has not been anfwered by him, in a manner not to be mifunderftood by them and at the fame time perfectly decorous, he has been very unfortunate in not executing what he intended. When the agent for the United States had previoufly ftated, as a *fubftantive* and *adequate* ground of defence againft this claim, that the difability arifing from the act of attainder of the creditor was annulled by the treaty of peace, on the fame principle that the confifcation of the debt was adjudged to be annulled, the debtor being yet and always poffeffed of fufficient eftate to fatisfy this claim, or fuch part of it as in juftice fhould be paid, he underftood the queftion from the board, as intended to draw forth further reafons in fupport of that ground, and not his private opinion which he could not have fuppofed the board had condefcended to afk. He therefore gave an anfwer containing reafons for that propofition. This he conceives was proper and all that was expected of him by the board, more efpecially as they have not fignified the contrary, for he is not difpofed to confider the agent for claimants as directed by the board to complain on *their* behalf that their queftion was not fatisfactorily anfwered. But to gratify the agent for claimants in this inftance though under no obligation to do it, the agent for the United States will fay again, what he has before moft intelligibly faid, that the treaty of peace did repeal and annul the legiflative acts of *attainder* paffed by the feveral States, upon the fame principles that in the cafe of *Hamiltons and Eaton* the chief juftice adjudged it to have annulled the acts of *confifcation* paffed by the State of North-Carolina, and upon the fame principles that the board have in this cafe refolved that the laws of confifcation paffed by the feveral States fo far as debts are concerned,

concerned, are by the treaty of peacc annulled and made void. If this is the effect of the treaty of peace on *confiscation laws* relative to *debts*, the like must be its effect on *attainder laws* relative to *debts*, for the agent for the United States does not discern any reasonable foundation for a distinction between the operation of the treaty on these several laws.

How captious then must appear this complaint against the manner in which the enquiry of the board had been answered, and how unbecoming was it in the agent for claimants to interrogate, and observe, " Is this the candid and dignified act of " a great government, well knowing the interpretation which the sages and expoun- " ders of its laws have repeatedly given to the replications of the treaties when " acts of attainder have been pleaded by debtors? Could he not have said, I " know of no decision in favor of such a plaintiff in any court, and I know of " several in which it has been determined that persons in the claimant's situation " cannot recover."

Here it is asserted that cases have existed where repeatedly the judges have determined that persons attainted by legislative acts during the war, were disabled to recover their debts since the peace, and it is insinuated that they were known to the agent for the United States. If any such cases exist they are unknown to the agent for the United States, nor does he believe there are any such, for he does not consider either of the three cases. *Moore* vs. *Patch*. *Camp* vs. *Lockwood*, or *Douglass* vs. *Stirke*, &c. produced in support of this assertion as warranting it. Upon these he shall observe more particularly by and by, but he cannot conceal his surprize, if *repeatedly* judgments of this sort have been rendered that some instances are not more satisfactorily made known to the board, and he must add that if in any inferior court a judgment of this sort has ever been given, it being contrary to the doctrine established by the opinions of the judges of the supreme court in *Hylton*'s *case* ought not to be regarded by the board. The agent for the United States therefore could not say, " that he knew of several in which it has " been determined that persons in the claimant's situation cannot recover" their debts, and he denies that any decision was ever given in the supreme court of the United States which either supports or even countenances, and which does not rather contradict such an opinion. The agent for claimants proceeds—" But in " proposing the question, &c. did the board mean to ask what was contended? No " —the arguments before them shew that every thing is contended"—When *every thing* is demanded, many things must be contended. When an interpretation is laboured to be given to the treaties, contrary, as it is conceived, to the uncontrovertible meaning of the articles, when an interpretation is labored to be given to the treaty of amity, *so injurious* to the *interest* and so *derogatory* to the *honor* of the United States, so contrary to the ideas entertained of it in the United States, when adopted, that had such an interpretation been thought possible this treaty would not then have found a single friend, among the many wise, honorable and just men, who approved and advocated it. When an interpretation is laboured to be given to this treaty, that cannot fail to make it the object of universal detestation for the injustice that it will do the people of the United States, it was incumbent on

on the agent to oppose every argument against such an interpretation. In the present case when it is admitted that the debtors possess estates more than sufficient to pay this claim, when those debtors and their estates are amenable to the laws, when the creditors possess legal evidence (that is to say bonds) to maintain suits in the ordinary course of judicial proceedings: Where is the reason or the justice that excuses the creditor from proceeding at law against the debtors? The agent for the claimant has urged two objections. 1st. That there is no "necessity at this "late day of resorting to the courts of the United States as a previous step to any "application to the board. 2dly. That the act of the attainder in this case is a bar "to a suit."

The first objection is of a general nature applying to other cases in like manner as to this, and therefore its principle is said to be very important. Truly it is very important. If it means any thing it means, that the United States are immediately liable for all the outstanding debts contracted before the war, remaining due from American debtors, to British subjects, and that a British creditor is not bound to sue his debtor in any instance at *this late day*. When such a proposition is seriously insisted upon on the part of the claimant can there be any bounds to claims against the United States; and if the proposition is approved by the board, is there any outstanding debt contracted before the war, and yet due from an American citizen to a British subject that will not be awarded to be paid out of the public treasury? Can such an opinion be for a moment entertained by any man who will take the trouble to read the article of the treaty? In this particular case the agent for the claimant urges that he ought not to be obliged to resort to judicial proceedings, because he says the same question has already been decided, and he uses the following words: "The board are not to suppose that the decisions of the American "judicatures are to be worked upon by thet emper of the times, to rise and fall with "the tides of events, that they will bend to every governmental exigency, or vary "or be blown about by every breeze of political interest, "nor can the experi- "ment of commencing suits to try the question again be decently insisted upon by "the agent for the United States; it amounts to little short of a declaration "that the courts of the United States would do what he has already accused a "learned and illustrious judge of having done" make decisions from governmental "policy." If this form of expression has been used to cast indirectly any aspersion on the judiciary of the United States, or to induce a belief that the agent of the United States, had reflected on their probity, in either case the insinuation is unjust. The assertion that the question has been already tried, is not admitted to be true, and already has been contradicted according to the best of this agent's knowledge. At *this late day* it is said not to be reasonable to require the claimant to commence a suit at law. Why has he not sued before? What has hindered him? The courts of justice have been open in New-York to British subjects perhaps ever since the peace, but certainly from the 4th April 1787. See A. Hamilton's letter 19th April 1792, President's Message, p. 129.

"But how can the agent for the United States even hint at the necessity of suits "without formally and solemnly abandoning and declaring *unfounded* every position "he

" he has laid down in all his former arguments but even this would now be too late,
" when the claim was first filed he should have avowed the opinion of the United
" States, that confiscation and attainders were all done away," &c. What means this *presumptuous* and *groundless* assertion? The position relative to suits as a general rule, was laid down in *Cunningham's* case, (page) it never has been abandoned and never will be, unless in such particular cases as may reasonably be excepted out of the general rule. The case of Mr. Inglis is not deemed an exception. Is it for the agent for the creditors to *dictate* before this board how their claims are to be repelled and defended on the part of the United States?

The agent for the United States wishing to avoid the discussion of any matter that is not immediately connected with the subject before the board, will not enter upon the doctrine of allegiance as established in Great Britain or in America. When the controversy is not between his Britannic majesty and the United States, it cannot be necessary to touch upon that subject. The controversies submitted to arbitration are between certain individuals, subjects of his Britannic majesty, relative to their private interests and the United States. Should a case arise where the claimant shall have taken the oath of fidelity to the United States and for a while acted with them voluntarily and afterwards joined his Britannic majesty, it may well be disputed whether this description of persons are capable of claiming before this board by virtue of the treaties. Would it be competent for any man to say that he was not an American citizen in the teeth of his own oath, when the controversy does not concern his Britannic majesty but the individual himself and the United States. On this head however no objection lies against Mr. Inglis who never took an oath to the United States, and who has been determined to possess a character that entitles him to claim before the board. After this point had been determined by the board, it seems difficult to account for the observations that the agent for the claimant has at *this* stage thought proper to make on it.

The agent for the United States will now proceed to examine the three cases, cited by the agent for the claimant to shew that by the laws of the several States as it *now* stands declared as well by the judges of the State courts, as of the United States, and from the construction put upon the treaty by those courts *the claimant cannot recover at law*, and will endeavour to shew that neither can support this position.

In the case of *Moore v. Patch*, it is alledged that Mr. Putnam, the creditor and plaintiff in the first action was attainted. No such fact appears by the record. In the record he is called an absentee. In Massachusetts there were two classes of people who had been inhabitants of the State that were prescribed, the first under the conspiracy act which was an *act of attainder*, the latter under the absentee law, which was *not* an act of attainder, nor *even* confiscation without certain proceedings at law by way of libel were had for this purpose. It was under the last law Mr. Putnam was proceeded against as an absentee; It is believed he never was attainted as a conspirator. Mr. Putnam after the peace instituted a suit in the county of Worcester in the State of Massachusetts, for a debt due to him before the peace,

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by a perſon of the name of Adams. He recovered his judgment in the uſual time and manner, no attainder or confiſcation was pleaded in bar of the action. After recovering judgment it was found his debtor had left no *perſonal eſtate* to ſatisfy the judgment, but was ſeized of *real eſtate* equal to that purpoſe. According to the laws of Maſſachuſetts of ancient ſtanding, the real eſtate of the defendant was delivered to the plaintiff in execution by metes and bounds to be held by him in fee ſimple in ſatisfaction for his debt. Mr. Putnam being an *alien*, it was doubtful whether he could hold the land thus taken for his debt. To determine in a legal way that queſtion a conveyance was made by him to *Moore*, the preſent plaintiff, and he brought an action of treſpaſs which was finally determined againſt the intereſt of Mr. Putnam, that he was an alien and incapable by the laws of Maſſachuſetts of holding lands in fee ſimple. Such appears to the agent for the United States to be the circumſtances of this caſe, which having no analogy whatever to the caſe of Mr. Inglis is no authority to prove he cannot *now* recover at law. Beſides this caſe, if it involves the conſtruction of the treaty of peace, it might and ought to have been brought before the ſupreme court of the United States for their deciſion, had the plaintiff conſidered the judgment of the ſupreme court of Maſſachuſetts to be againſt the treaty.

The next caſe is that of *Camp v. Lockwood*, adjudged in the State court of Pennſylvania in the year 1788. This caſe when examined will readily be ſeen by the board to be no authority in ſupport of that opinion. The real queſtion, and on which the court gave their opinion, was a queſtion of confiſcation, in the words of the judge—" Whether the debt had been forfeited in Connecticut and actually veſt-" ed in that State, and whether any thing has occurred which diveſts it, and whe-" ther under the peculiar circumſtances of our relative ſituation with regard to " each other the courts of this State can take notice of ſuch confiſcating and veſting " ſo as to preclude the plaintiff from recovering here a debt due to him there, before " that confiſcation." The proceeding againſt *Camp* was not as a *traitor*, and he had never been attainted. The principal point in this caſe was the operation of the treaty on *confiſcated debts*, and the opinion of the court on that ſubject was, the only part of the caſe cited by the agent for the United States. This opinion was that the treaty did not annul the act confiſcating the debts, which opinion has ſince been overruled in the courts of the United States, and is contradicted by the reſolution of the board in this caſe. Does the agent for claimants wiſh to ſatisfy the board by this adjudication that their reſolution is *erroneous*, or what *other* purpoſe can it anſwer ? Indeed he ſays the caſe preſents another point of importance, viz : that the penal laws of one State will be taken notice of by the courts of another. Is this offered as an authority in *ſome other* claim that is hereafter to be brought before the board, or in Dr. Inglis's caſe ? If in the latter how does it apply ? All the penal laws relative to Dr. Inglis were paſſed in the State of New-York. Dr. Inglis, if the board ſent him to law for redreſs, will ſeek his remedy in the courts of New-York, where they will take notice of their own penal laws and of the treaty of peace. This part of the caſe having no relation to Dr. Inglis's caſe might have been well omitted.

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The third and laſt caſe to which the claimant refers, is that of *Douglaſs v. Stirk*, of this the agent for the United States knows nothing more, than what the agent for claimants has diſcloſed concerning it at different times. The ſtatement which he has made of this caſe is very ſhort, and as it is probable the whole of the caſe can be produced it would be agreeable to ſee it.

But taking the ſtatement to be correct (though from the inſtances of inaccuracy ſo frequent in the obſervations now under conſideration it may well be doubted,) the real points decided cannot be conſtrued to be any other than theſe two. 1ſt That the treaty of peace did not annul a confiſcation law, and 2d That there was a difference between an *American Britiſh ſubject* and a *real Britiſh ſubject*.' This judgment was rendered in 1792, and in both points has ſince been overruled by the American courts particularly in the caſe of *Hamiltons* and *Eaton*. That there was an attainder, or if there was, that it was regarded in the deciſion, does not certainly appear. Reference was made to this ſame caſe by the agent for claimants in the memorial filed on the part of *Robert Williams*, and it was there repreſented that the court decided, that there was a diſtinction between an American Britiſh ſubject and a real Britiſh ſubject, and that the 4th article of the treaty of peace, only embraced the debts of the latter, nothing is there ſaid of attainders and the judgment applied to American Britiſh ſubjects who were abſentees, in the like manner as to thoſe who had been attainted by law. In the caſe of *Hamiltons* vs. *Eaton*, the plaintiff was an American Britiſh ſubject and the debt had been confiſcated; whether he had been proſcribed or attainted will appear by reference to the report in the poſſeſſion of the agent for claimants, which it is hoped will be inſpected by the board. The agent for the United States regrets that he does not poſſeſs the report, and cannot aſſiſt his memory by peruſing it.

From theſe explanations and remarks on the caſes produced by the agent for claimants, the board it is hoped will be convinced that they do not ſupport the aſſertion, that by the law as it is now declared there is no remedy in the courts for Mr. Inglis. They will for that reaſon, and as there is every proſpect that Mr. Inglis will recover at law, order him to ſeek his remedy there. It is believed the board can *never* make it neceſſary before a claimant is ſent to the courts to ſeek payment of the debtor to prove to them by an *adjudged caſe*, that he *can* recover; it is ſufficient for this purpoſe, if there are *no adjudged caſes* or no *eſtabliſhed* principle of *law* to oppoſe his recovery. Such appears the fair conſtruction of the treaty of amity, which was to give redreſs where it could not be obtained in the courſe of judicial proceeding.

The United States do not expect that the intereſt of their treaſury will influence the board in their interpretation of the treaties, nor do they deſire it. They have formed treaties which they are able to fulfil, and with which they are willing faithfully to comply; but let it be remembered by the agent for claimants, that their *national faith* will not be violated, if they refuſe to perform what was *never promiſed*,

and

and that their faith has not been pledged to pay whatever may be awarded, but only whatever ſhall be awarded *in the ſpecial caſes refered to arbitrament.*

JOHN READ, Jun.
Agent general for the United States.

July 30, 1798.

COMMISSIONERS' OFFICE,
19th February, 1799.

PRESENT.

Mr. MACDONALD.
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Caſe of the *Right Reverend* CHARLES INGLIS.

The following Reſolution having been the ſubject of full diſcuſſion in the board during ſeveral ſittings, Mr. Macdonald, with the concurrence of Mr. Rich and Mr. Guillemard, moved that the ſame ſhould be paſſed.

THE BOARD having further conſidered this caſe with the ſeveral arguments of the parties, acts of the legiſlature of the State of New-York, proceedings purſuant thereto, ſtatements of the law and deciſions of courts therein referred to; and having in particular conſidered——

An act of the ſaid State of New-York, paſſed on the 22d day of October, 1779, whereby the claimant was convicted and *attainted* of the offence of adhering to the king of Great Britain, and his whole eſtate both real and perſonal *forfeited* to and *veſted* in the people of the State:

An act paſſed on the 13th day of November, 1781, for remedying miſtakes and defects in the proceedings for conviction of perſons who had adhered to the enemy:

An

An an paſſed on the 19th day of May, 1784, *(ſubſequent to the treaty of peace)* by the forty-ſixth ſection whereof it was made lawful for all perſons being citizens of the State, who were indebted by mortgage, bond, ſpecialty, contract, or on account, to any perſon whoſe eſtate was by *attainder and conviction forfeited* to the people of the State, *with ſix months* after the paſſing of the ſaid act, to *pay the ſaid debts to the treaſury of the State*, in ſpecie or other monies and paper ſecurities, and where ſuch debts were due from perſons who had not remained within the enemy's power or lines, and whoſe eſtates were *forfeited* to the State by *attainder* or conviction, ſuch perſons might in diſcharge of ſuch debts, pay unto the ſaid treaſurer, the certificate or notes therein referred to, and be *diſcharged from any intereſt which may have become due on ſuch debts, from the firſt day of January, 1776, to the firſt day of January next after the concluſion of the war,* provided the ſecurity had not been executed ſince the ſaid firſt day of January, 1776, *the receipt of the ſaid treaſury* being thereby declared to be *a ſufficient diſcharge for the debts* ſo paid: And it was thereby alſo provided, that from and after the expiration of the ſaid ſix months, it ſhould *be lawful to the commiſſioners of forfeitures, to ſue for and recover* all debts due to perſons whoſe eſtates were by *attainder or confiſcation* ſo forfeited to the people of the State, with *the whole intereſt* due and to grow due thereon, the monies ſo recovered by the ſaid commiſſioners to be paid into the treaſury of the State:

An act paſſed on the 27th day of November, 1784, whereby the clerks of the reſpective cities and counties within the State, were authorized and required to *cancel the records of mortgages* to perſons whoſe eſtates real and perſonal, were *forfeited to and veſted in the State;* and in particular providing, that where ſuch mortgages were diſcharged ſince the 12th day of May, 1784, the treaſurer's certificate ſhould be ſufficient:

Three ſubſequent Acts, allowing further time to debtors for making payments to the treaſurer of the State, of debts due to perſons attainted, and whoſe eſtates were forfeited to the State, in the manner provided by the ſaid act of the 19th day of May, 1784:

An act paſſed on the 22d day of February, 1788, entitled, " An act in the " form of the act recommended by the reſolution of the United States in congreſs " aſſembled, of the 21ſt day of March, 1778, to be paſſed by the ſeveral States, " relative to the treaty of peace between the United States and the king of Great " Britain,"—whereby it was enacted, that ſuch of the acts and parts of acts of the legiſlature of the State as were repugnant to the treaty of peace, or any article thereof, ſhould be and were thereby repealed; and the courts of law and equity within the State, were directed and required to decide and adjudge according to the tenor, true intent, and meaning of the ſame:

An act paſſed on the 21ſt day of March, 1788, in the ſame ſeſſion of the legiſlature of the ſaid State, and by the ſame perſons who paſſed the general repealing act laſt mentioned, the fourth ſection of which act, paſſed on the ſaid 21ſt day of March, ſtates, that " Whereas notwithſtanding the length of time given by the " legiſlature

" legiſlature of the State, to ſuch as were indebted to perſons whoſe eſtates had
" been forfeited as aforeſaid, to pay the ſaid debts into the treaſury in public ſecu-
" rities, there was reaſon to believe that many of the ſaid debtors had withheld
" ſuch payments, and not availed themſelves of the benefit intended them by
" ſuch proviſion"—and enacts, that after the firſt day of November then next, *any perſon* might produce to the treaſurer any bond or other contract, executed to *any attainted perſon*, and pay the amount due thereon, in any public ſecurities, iſſued from the treaſury; and upon the treaſurer's certificate of ſuch payment, the perſon paying the ſame, might then recover the amount of ſuch debt from the perſon who executed ſuch bond or other contract, *but that no intereſt ſhould be computed thereon between the firſt day of January*, 1776, *and the firſt day of January*, 1784,—which act ſpecially provides, that " nothing therein contained ſhould ex-
" tend to any bond or other contract, where one or more of the co-obligors had
" ſince the war, or did then, reſide within the dominions of the king of Great
" Britain; or to any debts due from the perſons who had been inhabitants of the
" State from the firſt day of January, 1776, and who had been well attached
" to the freedom and independence of the State, and actual ſufferers by the late
" war, *to any perſon or perſons who had been convicted or attainted as aforeſaid;*
" if ſuch debts when contracted did not reſpectively amount to upwards of *fifty*
" *pounds* each; but that all ſuch debts not exceeding ſaid amount as aforeſaid,
" *ſhould be and were thereby forever diſcharged;* unleſs due to joint partners or
" truſtees, where one or more of the partners or *ceſtui que truſt* had not been *con-*
" *victed or attainted:*"—But the ſaid act, while it provides for the further effect and operation (under the modifications therein mentioned) of the attainder, confiſcation, and proceedings purſuant thereto, as authorized and directed by the ſeveral acts before ſtated, contains no reference to the general act which had been paſſed in the ſame ſeſſion of the legiſlature as aforeſaid, " *in the form* of the act
" recommended by the reſolution of the congreſs of the United States," as having been meant or held, ſubſtantially, in any part, to repeal by the general words it contained or reſtrict the operation and effect of the ſaid ſpecial attainder and confiſcation, or proceedings purſuant thereto, and to the other acts for carrying the ſame into execution; nor any ſuch proviſions as would have been neceſſary for applying the operation of a repeal of the ſaid former acts, to thoſe things which had been done, and proceedings which had taken place under the ſame; and which act therefore amounts to a legiſlative declaration, that " the ſaid act in the form of
" an act" paſſed in the general terms before ſtated, was not meant to repeal, or in any reſpect underſtood to affect the ſaid ſpecial attainder and confiſcation, or operation thereof, paſt or to come:

The certificate of Gerard Bancker, treaſurer of the State of New-York, dated the 20th of October, 1797, is in the following words, viz:

" This is to certify, that purſuant to a liquidation made by John Sloſs Hobart,
" Eſquire, one of the judges of the ſupreme court of the State of New-York, as
" directed by law, dated the 21ſt day of May, 1785, the balance due on a mort-
" gage given by Hezekiah Mills and Mary his wife, dated the 2d day of May,

" 1775.

" 1775, to Charles Inglis, is three hundred and twenty-two pounds three ſhillings,
" and that the ſaid Hezekiah Mills did on the 24th day of May, 1785, pay ſaid
" ſum into the treaſury in public ſecurities.—And that purſuant to another liquida-
" tion made by the ſaid John Sloſs Hobart, eſquire, dated the 13th June, 1788,
" the balance due on a mortgage from Nathan Barlow and Joan his wife, to
" Charles Inglis, dated the 2d May, 1776, is one thouſand and thirty-one pounds
" eight ſhilliags and nine-pence half-penny—And purſuant to another liquidation
" made by the ſaid John Sloſs Hobart, eſquire, dated the 14th June, 1788, the
" balance due on another mortgage from Nathan Barlow and Joan his wife, to
" Charles Inglis, dated the 2d June, 1776, is three hundred and ſixty-eight
" pounds ſix ſhillings and one penny; which two laſt ſums together, amounting to
" one thouſand three hundred and ninety-nine pounds fourteen ſhillings and ten
" pence half-penny, were paid into the treaſury of the State of New-York on the
" 27th day of November, 1789, in public ſecurities.—It does not appear from
" any vouchers I have, what ſums the mortgages were originally given for."—

New York, October 20th, 1797.

(Signed) GERARD BANCKER, *Treaſurer.*
State of New-York.

The deciſion of the court of common pleas of the State of Pennſylvania, held at Philadelphia, in December, 1788, in the caſe of *Camp againſt Lockwood*, referred to on the part of the United States as authority in this caſe, in the report whereof the parties are deſcribed as follows, " the plaintiff and defendant had both " been inhabitants of Connecticut previous to the revolution, where the debt for " which this action is brought was alledged to be contracted, and continued ſo for " ſome time after the commencement of the war; ſubſequent however to the " declaration of independence, the plaintiff joined the Britiſh army, and on the " return of peace, he removed with *other loyaliſts* to Halifax, where he continued " to reſide:" Whereby it alſo appears, that all the plaintiff's eſtate, real and perſonal, was *confiſcated* by the legiſlature, under an act of the ſaid ſtate of Connecticut, and declared to be forfeited to the State; that the plea on which the queſtion was decided by the court was as follows, viz: " That the *confiſcation* by virtue of " the act of Connecticut *had diveſted* the plaintiff's property in the debt, if any was " due, and *veſted the same in that State*," and that in deciding the queſtion againſt the plaintiff it was held by *Shippen*, preſident, " that the courts of one State muſt " neceſſarily take notice of the confiſcations made in another;"—That the debt " was due from a perſon reſiding within the State of Connecticut, and was con- " ſequently confiſcated as other debts due there, and the right of action as well as " the debt was *veſted in that State*,"—" That the fourth article of the treaty of " peace was confined to *real Britiſh ſubjects* on the one ſide, and the citizens of " America on the other;"—" And that *the plaintiff was not such a perſon as had a* " *right to sue for and recover* the ſaid debt, *already veſted by confiſcation* in the " State of Connecticut:"

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The decision in the case of *Murray against Marean* of the circuit court of the United States for the district of Massachusetts, held at Boston, on the 12th day of May, 1791, by *John Jay, esquire,* then chief justice of the United States, *William Cushing, esquire,* associate judge, and *John Lowell, esquire,* district judge; in which case the plaintiff was John Murray, described to be "*of the city of St.* "*John's, in the province of New-Brunswick,*" and wherein it was pleaded for the defendant, that by "act of the general assembly of the State of Massachusetts "Bay, holden in the year of our Lord, 1779, reciting among others, that where- "as the said John Murray with sundry other persons in the same act mentioned, "had wickedly conspired to overthrow and destroy the constitution of government "of the then late province of Massachusetts Bay, and also to reduce the inhabi- "tants of the said province: it was enacted that the said John Murray had justly "incurred the *forfeiture* of all his *property, rights and liberties,* holden under and "derived from the government and laws of the same State, *and lost all civil and* "*political relation to the same State, and to the United States* of America;" and "that all the goods and chattels, rights and credits, lands, tenements, and here- "ditaments of every kind, of which the said John Murray was seized and posses- "sed, or was entitled to possess, should ensure and accrue to the *sole use and benefit* "*of the said government and people* of the State aforesaid;"—"And that the com- "monwealth of Massachusetts *had the sole and exclusive right to sue for and recover* "*the debt aforesaid;*—Which plea in bar *the court held to be good,*"—"and that "the said John Murray *should recover nothing* by his writ."

The decision of the circuit court for the district of Georgia, in the case of *Douglass* against *Stirk's executors,* on the 2d of May, 1792, where it appears, from a printed report of the case, that judgment was given as follows: "JUDGE "IREDELL thus delivered the judgment of the court: In this case, from the "first, I have not had a moment's doubt. Douglass was a citizen of this State; "banished from it; and his estate and debts confiscated. This is a punishment "by a State of one of its own citizens. There is no article in the treaty that can "possibly do away a forfeiture actually incurred by a citizen actually named be- "fore the treaty took place, and with respect to which, no further inquiry is ne- "cessary than what property and debts he possessed. If his crime was still to be "established by any proof whatever, perhaps he would be protected by the sixth "article of the treaty. I am perfectly clear that the fourth article protects only "*British subjects* on the one side, and *American citizens* on the other. An Ameri- "can citizen cannot say he was on the side of Great Britain so as to avail of that "article, without acknowledging himself guilty of high treason, and no man to "be sure can claim a benefit under that allegation from the country against whom "the treason was committed. *If any doubt can be entertained* on this subject, the "fifth article would shew this part of the treaty was not intended to operate on such "persons. But I think the construction *for the article itself is clear.* I perfectly "agree also with the defendant's counsel, that in this case, the plaintiff Douglass, "was as completely bound by this act as he could have been by a sentence at law; "and that this law is to operate in the nature of a sentence, an observation which I "think was made with much judgment and propriety. My brother Pendleton

"authorizes

" authorizes me to ſay, that he concurs in this opinion, and therefore there muſt
" be a judgment for the defendants.

The deciſion of the *supreme court* of the United States in February, 1794, the *State of Georgia againſt Brailsford, and others,* (produced and referred to in the courſe of diſcuſſion in the board, to ſhew that in the caſe of *confiscation* there was a remedy at law, at the ſuit of the original creditor) in which caſe, the cauſe having been tried by a ſpecial jury upon an amicable iſſue from the equity ſide of the court, to aſcertain " whether *the debt, and the right of action to recover it,* belong-" ed to the State of Georgia or to the original creditors," the queſtion of law conſidered by the court as deciſive of that point was, whether the debt had been confiſcated or not? And the judges having been unanimous, the following charge was delivered to the jury by *chief juſtice* JAY: " We are of opinion that the debts due to " Hopton and Powell (who were citizens of South-Carolina) *were not confiscated* " by the ſtatute of South-Carolina, the ſame being therein expreſsly excepted: that " thoſe debts were *not confiscated* by the State of Georgia, for that ſtatute enacts, " with reſpect to Powell and Hopton, 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 rela- " tive 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 Bri- " tiſh ſubject reſiding in Great 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*:" Upon receiving which charge, the jury, after deliberating ſome time, propoſed the following queſtions to the court, " Firſt, did the act of the State of Georgia *com-* " *pletely veſt* the debts of Brailsford, Powell, and Hopton, *in the State,* at the " time of paſſing the ſame? Secondly, 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 which queſtions the chief juſtice ſtated, " that it was intended in the " general charge of the court, to *comprize their ſtatements upon the points now sug-* " *geſted,* 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 Georgia *did not veſt* the debts of Brailsford, Powell, and " Hopton, in the State, at the time of paſſing it: *On the second queſtion* he ſaid, *that* " *no sequeſtration diveſts 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 au- " thority, to prevent Brailsford 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 ſe-* " *queſtration* would certainly remain a lawful impediment to the recovering of a " *bona fide debt,* due to a Britiſh creditor, in direct oppoſition to the fourth article " of the treaty:'—The ſaid ſeveral points thus ſtated by chief juſtice Jay, as the unanimous opinion of the judges of the ſupreme court, manifeſtly importing, that

if the debts in queſtion had been *confiſcated*, the right would have been gone from the original creditor forever, ſo as to leave nothing on which the treaty of peace could operate ; but that in the caſe of *ſequeſtration only*, the right never *having been diveſted*, the *remedy* was only ſuſpended, and of courſe revived on the mere reſtoration of peace, as well as by the treaty,—and the report ſtates, that "after this "explanation, the jury, without going again from the bar, returned a verdict for "the defendants :"

And the caſe of *Warre* executor of *Jones*, plaintiff in error againſt Hylton, decided by the *ſupreme court* of the United States in Feb. 1796, on a writ of error from the circuit court for the diſtrict of *Virginia*, where on the demurrer to the defendants rejoinder to the plaintiff's replication to the *ſecond plea*, judgment had been given for the defendants, in June, 1793; which *ſecond plea*, whereon the deciſion was ſo given, confines itſelf to the ſtatement of a payment into the loan office of the State, purſuant to an act paſſed on the 20th day of October, 1777, therein ſpecially recited, entitled "An act for *ſequeſtering* Britiſh property, enabling thoſe indebted to Britiſh ſubjects to pay off ſuch debts and directing the "proceedings in ſuits where ſuch ſubjects are parties :" And which act ſo entitled proceeds on the following preamble. "Whereas divers perſons, ſubjects of *Great* "*Britain*, had during our connection with that kingdom, acquired eſtates, real "and perſonal, within this commonwealth, and had alſo become entitled to debts "to a conſiderable amount, and ſome of them had commenced ſuits for the reco-"very of ſuch debts, before the preſent troubles had interrupted the adminiſtration "of juſtice, which ſuits were at that time depending and undetermined, and ſuch "eſtates being acquired, and debts incurred, under the ſanction of the laws and of "the connection then ſubſiſting, and it not being known, that their ſovereign *hath* "*as yet ſet the example of confiſcating debts* and eſtates, under the like circumſtances, "the public faith, and the law, and uſages of nations, *require, that they ſhould not* "*be confiſcated* on our part, but the ſafety of the United States demands and the "ſame law and uſages of nations will juſtify, that we ſhould not ſtrengthen the "hands of our enemies during the continuance of the preſent war, by remitting to "them the profits or proceeds of ſuch eſtates, or the intereſt or principal of ſuch "debts ;" And it is thereby enacted (as ſtated in the ſaid plea) "that *it may and* "*ſhall be lawful* for any citizen of this commonwealth, owing money to a ſubject "of Great Britain, *to pay the ſame* or any part thereof, from time to time as he "ſhall think fit, *into the ſaid loan office*, taking thereout a certificate for the ſame, "in the name of the creditor, with an indorſement under the hand of the com-"miſſioner of the ſaid office, expreſſing the name of the payer ; and ſhall deliver "ſuch certificate to the governor and council, whoſe receipt ſhall diſcharge him "from ſo much of the ſaid debt :" The ſaid plea further ſetting forth a payment into the loan office purſuant to the ſaid act of *ſequeſtration*, whereby it is there pleaded, "that the *defendants were diſcharged* from ſo much of the ſaid debt," but not that the right of the creditor was gone, or veſted in the State ;—with the ſubſequent act of *confiſcation* paſſed by the ſaid State in the year *one thouſand ſeven hundred and ſeventy-nine*, whereby it was enacted, "that all the property, *real and perſonal*, within the ſaid commonwealth, belonging to any Britiſh ſubjects, ſhould "be

" be vested in the commonwealth," and which further contains a provision in the following words: " But this act shall not extend to debts due to British subjects " and payable into the loan office, according to the act of general assembly *for* " *sequestering British property*,"

And further, having considered the statement of the law laid before the board by the agent for the United States, acting (pursuant to act of Congress) with the advice and under the direction of the *attorney general*, as contained in the answer of the United States in this case, their answer in the case of *Putnam*, and also their printed answer in the case of *Cunningham and company* before the board, referred to in this case, and their observations on the reply; which statement of the law, *thus sanctioned by the authority of the first law officer of the United States*, is as follows, viz: " The act of the State of New-York, passed the 22d October, " 1779, by name *attainted* the claimant of the offence of adhering to the enemies " of the State, and for that offence *confiscated* all his real and personal estate, and " declared it to be *forfeited to and vested* in the people of the State; this act was *a* " *complete and absolute confiscation of the debts of the claimant*, and on the passage of " it, the state was *ipso facto* possessed of them. *It divested the claimant of all interest* " *or pretext to the debts*, and every right exercised by the State over them after the " forfeiture *was an exercise of ownership*. The State was the creditor, and Hezekiah Mills and Nathan Barlow, were the debtors, and the State could offer " terms of payment, or *absolutely* release or discharge the debts forever:—The " *confiscating* of the debts of the Reverend Charles Inglis was by this act, *absolute* " *and complete*:—It has been satisfactorily proved in the answer on the part of the " United States to the claim of *Putnam's* executors, to which the agent for the " United States begs leave to call the attention of the board in their consideration " of this claim, that where *confiscations are complete* on the return of peace, debts " of themselves *do not revive*, but *that an express stipulation* is necessary to reinstate " them, and that no stipulation was made in the treaty of peace for debts, the " confiscation of which was complete and absolute. The debts of the claimant, by " an act of the legislature of New-York, were *confiscated*, and the treaty of peace " did not revive them; he can therefore have no pretext to ask for compensation " for them from the United States. And farthur, if he is a *royalist* or *refugee*, " as the agent for the United States believes and *expressly charges*, the recommendatory words of the fifth article of the treaty of peace, shews his cause was not " provided for, but left to the justice of the State, if they deemed him a fit object " of attention or recompence." *Answer of the United States p.* 1. " Two questions were submitted to the court" (the supreme court of Massachusetts in the case of *Moore against Patch*) " for their opinion; but on which of them, or whether on both, their judgment was given, does not, nor cannot appear, for the " judgment is a general one. The first was, that James Putnam after the 19th of " April, 1775, renounced all allegiance to the State of Massachusetts, and was " convicted of the same on a libel filed and pronounced according to law, on the " second Tuesday in December, 1780, in the court of common pleas held at " Worcester, and was named and proscribed in an act of that commonwealth, " called an act for *confiscating* the estates of *absentees*." Secondly, that at the time of

" extending " the executions and executing the deed to the plaintiff James Put-
" nam, at all times after the 19th of April, 1775, was *an alien*, being a subject
" to the king of Great Britain.—It was submitted to the court, whether on these
" facts the plaintiff could recover :—The agent for the United States, after stating
" this case as it really appears from the documents, which the board will discover
" do not correspond with the memorial, submits that *both or either of these grounds*
" are sufficient to prevent the memorialist from relief under the treaty of 1794.
" The act referred to in the case agreed on, the agent for the United States is
" informed and believes, and when able will produce it, *confiscated absolutely* the
" estate of James Putnam. By it all his property real and personal was *vested in*
" *the State* of Massachusetts and was appropriated to its use.—The confiscation
" *being thus complete*, the treaty of peace did not revive it."—*Answer of the United States in Putnam's case, p.* 1. " In *Wright v. Nutt* 1 H. Blackstone's reports 119,
" Lord Chancellor *Thurlow* declared, that he considered the act of the State of
" Georgia, passed 1782, for the confiscation of the real and personal estate of Sir
" James Wright, and also his debts, as the law of an independent country.—In
" the case of *Folliot v. Ogden*, *Ib.* 135. Lord *Loughborough* declared, that the act
" of the State of New-York passed in 1779, for attainting forfeiting and confis-
" cating the real and personal estate of the plaintiff, was certainly of as full valid-
" ity as the act of any independent State. The agent for the United States, con-
" sidering that this position will not be denied, forbears to offer further reasons or
" produce authorities to support them. The State then having the power, right-
" fully exercised that power in this instance. Congress did the same when on the
" 24th July 1776, they confiscated any British property whatever found on the
" high seas :" *Ib.* p. 2.—" That the claimant is a *British subject* within the mean-
" ing of the treaty is a fact which the agent for the United States cannot admit :"
—*Answer p.* 1. " It appears that he remained in the United States *at the declara-*
" *tion of independence*, and in his usual place of residence, until it was taken posses-
" sion of by the British forces. After the important act of the 4th July, 1776,
" which separated for ever the two nations, the claimant *made his election* to which
" party he would unite himself. The election was fully manifested by his own act,
" *he residing* under the jurisdiction of the United States. *These circumstances put it*
" *beyond a doubt, that Mr. Inglis is not a real British subject*, which is the descrip-
" tion of persons meant by the fourth article of the treaty of 1783; and if he
" even had been, that treaty does not reinstate his *confiscated* debts. The opinion
" of *chief justice Elsworth*, part of which has been cited in the reply by the agent
" for claimants, supports the principle here contended for by the agent for the
" United States. The chief justice remarks (in the case of Hamiltons against
" Eaton) " that there is no doubt but the debt in question was a *bona fide* debt,
" and therefore contracted prior to the treaty. To bring it within the article it is
" also requisite that the debtor and creditor should have been on differeut sides with
" reference to the parties to the treaty, and as the defendant was confessedly *a citi-*
" *zen of the United States*, it must appear that the plaintiffs *were subjects of the king of Great Britain*, and it is pretty clear from the pleading and laws of the State that
" they were so. It is true on the 4th July, 1776, when North Carolina became
" an independent State they were inhabitants thereof, though natives of Great
" Britain,

" Britain, and they might have been claimed and holden as citizens, whatever
" were their ſentiments or inclinations." " The Reverend Mr. Inglis might have
" been claimed and holden as a citizen, whatever were his ſentiments or inclina-
" tions, and by the act of the 22d October, 1779, the legiſlature of New-York
" legiſlated on his rights and debts in that character :"—*Obſervations p.* 7. *and* 8.
" James Putnam was a *loyaliſt* or *refugee*, and of courſe can have no claim under
" the treaty of peace to a reinſtatement of his debt :"—*Anſwer, caſe of Putnam, p.* 3.—" In *Camp v. Lockwood,* decided in the common pleas of Philadelphia
" county, among other things *Shippen,* Preſident, obſerves, that as to the reſtitu-
" tion of eſtates, rights and properties *already confiſcated,* it is not required by the
" treaty to be done, even as to real Britiſh ſubjects ; it is agreed indeed by the fifth
" article, that Congreſs ſhall recommend it to the ſeveral legiſlatures to provide for
" ſuch reſtitution :"—*Ibid. p.* 4.

And further, having conſidered the known and acknowledged practice of the courts in the State of New-York, (in common with other States) *of deducting intereſt during the war* ; correſponding with the legiſlative proviſions, to that effect, contained in the act before ſtated.

And laſtly, having conſidered the charge of *negligence and wilful omiſſion,* which has been made againſt the claimant, for not having proceeded at law notwithſtanding the ſaid legiſlative acts, deciſions of courts, and legal practice before referred to with the ſtatements of the law, laid before the board on the part of the United States, as before recited :—and alſo the following ſuggeſtions, ſubmitted to the board on the part of the United States, as reaſons why the claimant ought not yet to derive any benefit from the treaty of amity, viz. " Waving for a moment an
" enquiry, whether the claimant's ſecurity was impaired and leſſened or abſolutely
" deſtroyed, and ſuppoſing the ſecurity abſolutely deſtroyed, yet if the creditor can
" *now* obtain, and actually have and receive, full and adequate compenſation from
" the eſtate of the debtor in the ordinary courſe of judicial proceedings, it is a caſe
" where the United States are not reſponſible :" *Reply of the United States on the ſpecial argument, p.* 4. " The debtor muſt be purſued and the United States cannot
" be made liable : The ſtipulation does not render them liable merely becauſe a
" ſecurity is impaired, or leſſened or deſtroyed, but it *muſt be ſo deſtroyed that the*
" *debt cannot be recovered from the debtor in any judicial form whatever* :" *Ib. p.* 5.
" The caſes do not ſupport the aſſertion, that by the law *as it is now declared* there
" is no remedy in the courts for Mr. Inglis. They will for that reaſon, and as
" there is every proſpect that Mr. Inglis will recover at law," *order him to ſeek his remedy there* :" *Ib. p.* 17. " At this late day it is ſaid not to be reaſonable to re-
" quire the claimant to commence a ſuit at law : Why has he not ſued before ?
" what has hindered him ? The courts of juſtice have been open in New-York to
" Britiſh ſubjects, perhaps ever ſince the peace, but certainly from the 4th April,
" 1787." *Ib. p.* 11. The following paſſage from the claimant's reply on the ſecond argument which is there cited and anſwered in theſe words, " but how can
" the agent for the United States even hint at the neceſſity of ſuits, without form-
" ally and ſolemnly abandoning and declaring unfounded, every propoſition he has
" laid down in all his former arguments ? but even this would now be too late ;

" when

" when the claim was firſt filed he ſhould have avowed the opinion of the United
" States, that confiſcation and attainder were all done away," &c. &c. " What
" means this preſumptuous and groundleſs aſſertion? The poſition relative to ſuits,
" as a general rule, was laid down in *Cunningham's caſe*; it *never has been aban-*
" *doned, and never will be,* unleſs in ſuch particular caſes as may reaſonably be
" excepted out of the general rule." *Ib. p.* 11. " And the poſition thus laid down in
" the caſe of Cunningham, which is to be found in the following among other paſ-
" ſages: Compenſation ought not to be awarded againſt the United States where
" the debtor is ſolvent *now,* and the ordinary courſe of juſtice is competent to *partial*
" relief, for any more *than the part* which cannot be recovered from the debtor in
" the ordinary courſe of juſtice." *Printed anſwer in Cunningham's caſe, p.* 11.

" As to thoſe debts which are ſtated to be good, why have not ſuits been
" brought? In ſuch caſes can it be ſaid, that full compenſation is not attainable in
" the ordinary courſe of judicial proceedings *until a trial ſhall be made?* Can this
" be admitted to be true as to all theſe caſes in aggregate? *Perhaps* in ſome inſtances
" compenſation *might be had* if it was *ſought in the tribunals having cognizance,* and
" theſe inſtances ought to be deducted." *Ib. p.* 60. " It is fairly and unequivo-
" cally to be inferred when debts of this magnitude are ſuffered to remain ſo long,
" when full and ample juſtice would have been done to the claimant at law, that
" they *were conſidered by him as rightfully confiſcated, and would have continued ſo to*
" *be conſidered but for the treaty of* 1794; under it, claims can be preferred *without*
" *expenſe or trouble, and payments immediately demanded* of the United States: Theſe
" motives will no doubt encourage many applications to your board, and often for
" debts like the preſent, *legally and rightfully extinguiſhed* in the ſtruggle between
" the two nations." *Anſwer of the United States, p.* 3.

" It is ſufficient here to recapitulate, that the debts of Mr. Inglis have been prov-
" ed to be legally confiſcated, that he was of the deſcription of perſons called *roy-*
" *aliſts,* and had he been a *real Britiſh ſubject,* his debts would not be revived by
" the treaty of 1783:—*That he has been guilty of great delay and negligence,* and
" that the courts of the ſtate and diſtrict of New-York were always open for him to
" purſue his rights in, and that the payments of his confiſcated debts into the trea-
" ſury were under an act of the legiſlature, which, if *contrary to the treaty of peace,*
" there was full and ample redreſs for him at law; and *that application ought to be*
" *made to the State of New-York, which* may be done by *petition* for reſtitution of
" the money received from the debtors to the claimant, *and if a balance* ſhall there-
" after remain due to him, that he *ſhould reſort to judicial proceedings againſt* the
" debtors reſpectively." *Obſervations for the United States, p.* 11.

—And the whole matter having been fully diſcuſſed,—

Resolved, that the perſonal incapacity to ſue and recover in the courts, under the 4th article of the treaty of peace, ariſing from the deſcription and character aſcribed to the claimant, as maintained (with reference to authority) on the part of the United States, and from the act of *attainder* and confiſcation before ſtated, by which *attainder*

attainder the claimant " loſt all civil and political relation to the State ;" the total extinction of his right to the debts in queſtion, notwithſtanding the treaty of peace, by virtue of the ſaid act of *confiscation*, and other acts and proceedings purſuant thereto, as declared by the concurring deciſions of courts of competent juriſdiction before the treaty of amity ; and particularly as declared, (reſpecting the concluſive effects of *confiscation* againſt the right of the original creditor) by the unanimous opinion of the judges of the *supreme court* of the United States in February 1794, delivered by chief juſtice Jay, in the caſe of *Georgia againſt Brailsford* and others, before recited, agreeably to the ſtatement of the law which has been laid before the board on the part of the United States, in the manner before mentioned ; and the general courſe of judicial practice *in deducting intereſt*, as before referred to, *were lawful impediments*, operating againſt the recovery of the debts due to the claimant, within the meaning of the treaty of amity, at the date of the ſaid treaty ; " ſo that by the " ordinary courſe of judicial proceedings, the claimant could not *then* obtain, and " actually have and receive, full and adequate compenſation for the loſs and damage " which he had thereby ſuſtained :"—that the loſs ſtated to have ariſen from the operation of the ſaid lawful impediments, was not occaſioned by " the manifeſt " delay, negligence, or wilful omiſſion" of the claimant ; for no duty of diligence could demand the proſecution of expenſive proceedings at law, on the ſurmiſe of a chance, in oppoſition to legiſlative acts, the uniform deciſions of competent courts, and the eſtabliſhed courſe of judicial practice ; nor can the claimant be held to have known, that what the courts had determined to be law was not law ; that bound and authorized as they were to apply the conſtitution, their deciſions were againſt the conſtitution, and therefore void ; and that what they had adjudged *not* to be within the treaty of peace, was nevertheleſs within the treaty, and would be judicially ſo conſidered if again tried :—that, (however unneceſſary the enquiry may be in the preſent caſe, ſupported as it is by ſufficient evidence of the law, as it reſpects the claimant at and before the concluſion of the treaty of amity) it does not appear that any deciſion of any court within the United States, has ſince been given, inconſiſtent with the deciſions already referred to ; for the caſe of *Hamilton* againſt *Eaton*, decided in the *circuit court* for North Carolina diſtrict, in June, 1796, was a caſe of confiſcation affecting perſons in the peculiar ſituation deſcribed in the pleadings, under the operation of an act of the State of North Carolina, paſſed in April, 1777, whereby it was among other things enacted, " that all perſons being " ſubjects of the State, and then living therein, or who ſhould thereafter come to " live therein, who had traded immediately to Great Britain or Ireland within ten " years then laſt paſt, in their own right, or acted as factors, ſtore-keepers or " agents there, or in any of the United States of America, for merchants reſiding " in Great Britain or Ireland, ſhould take an oath of abjuration or allegiance, or " depart the State ;" and notwithſtanding the general grounds and principles adopted by the judges, individually, in declaring their opinions in that caſe, the judgment (which though not in the laſt reſort, was a binding precedent as far as it went) was no precedent beyond the caſe deſcribed in the pleadings, and which is ſtated in the paſſage referred to on the part of the United States, in the opinion then delivered by *chief juſtice Elſworth* ; the ſaid paſſage being in the following words, viz : "To " bring it within the article, it is alſo requiſite, that the debtor and creditor ſhould

" have

" have been *on different sides*, with reference to the parties to the treaty, and as
" the defendant was confessedly a citizen of the United States, it must appear
" that the plaintiffs *were subjects of the king of Great Britain*, and it is pretty
" clear from the pleadings and the laws of the State, that they were so. It is
" true that on the 4th of July, 1776, when North-Carolina became an inde-
" pendent State that they were inhabitants thereof, though natives of Great
" Britain, and they might have been claimed and holden as citizens, whatever
" were their sentiments and inclinations. *But the State afterwards in* 1777,
" *liberally gave them* with others similarly circumstanced, the *option* of taking
" an oath of allegiance, *or of departing the State*, under a prohibition to return,
" with the indulgence of a time to sell their estates and collect and remove their
" effects—*They chose the latter*, and ever after have adhered to the king of
" Great Britain, and must therefore be regarded as on the British side:"
From which the necessary inference is, that if the plaintiffs in that case had not been within the description and operation of the said act of North-Carolina, they would not, in the opinion of the said learned judge, have been entitled to recover :—And in the case of *Warre*, executor of *Jones*, plaintiff in error against *Hylton*, decided in the *supreme court* of the United States in February, 1796, reversing the judgment of the circuit court for the district of *Virginia* in February, 1793, the act of assembly stated iu the plea on which the judgment was founded, and payment had been made into the loan-office of the State, was in express terms declared to be no more than an act of *sequestration ;* as appears from the recital already given, and the subsequent act of *confiscation* passed in the said State, *referring to the said former act, as an act of sequestration only*, also before recited :—and therefore, whatever may have been the extent of general reasoning, adopted by some of the judges who concurred in the said decision of the supreme court, against the judgment of the circuit court, that decision was confined to *sequestration*, and left the law on the conclusive effect of *confiscation* against the right of the original creditor, as it stood on former decisions of competent courts and had been solemnly and unanimously declared by the judges of the said supreme court, in the case of *Georgia* against *Brailsford*, particularly above recited and referred to :—But if it were true that, *after* the treaty of amity, which made no change upon the law, but secured to certain creditors the benefit of an arbitration, and of relief from the United States, wherever they could not then recover in the ordinary course of judicial proceedings, decisions had been given, in direct and manifest contradiction to what had been solemnly, and even in the last resort declared to be the law, *before* the said treaty ; such subsequent decisions would not affect the claimant's right to a remedy before the board, unless it could successfully be maintained that his conduct was to be estimated, not by events then past or present, but by subsequent events ; that (according to an argument which has been held) decisions in the year *one thousand seven hundred and ninety-six*, were by a technical retro-action of their effect, to be considered by the board, as information of the law in the year *one thousand seven hundred and ninety-four*, and such information as to subject the claimant to the *forfeiture* of his rights for *culpable* negligence, in not having acted *then* according to the knowledge he thus *afterwards* received :—Or, that in determining whether a claimant is entitled to proceed before the board, for want of remedy in the ordinary course

course of judicial proceedings, *the last decision* whensoever it may be given, or *the last alteration of circumstances in the situation of debtors*, whensoever it may happen, must be the rule: And if the right to a remedy before the board, did not by the treaty attach, according to the state of things at or preceding the conclusion thereof, as the period to which all evidence on that head was to relate, and from which, as a fixed and settled point of departure, the board were to proceed, such must be the rule, with all its consequences of uncertainty, confusion, and incalculable delay: —Nor could it ever be said that the jurisdiction of the board, shifting with every occurrence, had efficient operation upon a single case till the very moment of a final award; for at any one period of the discussion, the following might be the terms of a representation on the part of the United States.—" The proceedings before the " board must in this case cease, as a remedy may *now* be obtained in the ordinary " course of justice,—it is true that the debt appears to be just, that the debtor " was solvent at the peace, and that he became insolvent during the operation of " lawful impediments; but he is *now* again solvent; it is true, that under the " shelter of such impediments he absconded with all his effects, lest the law should " change its course, and compel him to do justice, but he is *now* discovered, or " some of his effects are to be found in different States, or *fraudulent* conveyances " may be detected and set aside in *chancery*, and a recovery thus obtained;—it is " true that the courts were shut, or that decisions were given against the creditor " in cases precisely similar, but the courts are *now* open, and decisions have *since* " been given in favor of such rights:"—While the following might at some future period, before the final breaking up of the board, be the terms of representation on the part of the creditor: " The remedy before the board was formerly stopt in its " course by the then recent solvency, or discovery of the debtor or of his effects, " and by a change of decision at law: but *now* again it is restored by the insolven- " cy which has *since* occurred of the same debtor, his having again disappeared, or " the course of judicial opinion and practice having returned to its former channel;" —or it might be said, " the creditor has since gone through the whole course of " law and legal remedy in vain, and now again appears before the board, to claim " compensation for all that he has suffered, including the loss which has been incur- " red through the costly experiments he has made:"—And thus, as every tribunal of justice, ordinary or extraordinary, by arbitration or at law, *must afford sufficient time* and opportunity for substantiating, by the best evidence of which the case is capable, such averments, as according to the principles by which they are governed, are material and relevant, it never could be known when the course of litigation and of legal execution would terminate; for the period must forever recede from the pursuit, and elude the hope of promised satisfaction; while under the operation of a treaty of *amity* between the two nations, *British subjects*, claiming an exemption from the operation of general law, would be placed in array against *American citizens*, in all the tedious and litigious hostility of actions at law, suits in chancery, and writs of execution; the board in the mean time, either employing itself in the investigation of facts (on the statement of circumstances, the nature and variety of which may be conceived from the reference *in one single case* to a list of debtors amounting to *several thousands* in number) the whole of which investigation might be rendered of no avail by such suggestions as those which have been stated; or sitting inactive

 for

for years, till the result of various experiments enabled them to proceed in estimating *partial* recoveries, ascertaining and deducting costs of litigation, striking balances, awarding compensation for deficiencies, and (under a condition which was stipulated by the treaty, for the purpose of enabling the United States to avail themselves of such changes as might occur in favor of judicial recovery) *directing assignments* to the United States, after it had been proved by actual proceedings through the whole compass of legal possibility, that all recovery of the debt so assigned was impracticable;—consequences which would inevitably follow from the position, that the question of legal remedy may depend upon future events.—But whatever might be the conduct of the board, whether they acted consistently, and according to rule, in yielding to such consequences, or disappointed the application of their own principles by the irregular exercise of a loose and arbitrary discretion, every exposition of the treaty *which would in any degree warrant such consequences must be erroneous*:—that therefore the experiments which have been suggested and proposed on the part of the United States, as still necessary (before the board can proceed in this or similar cases) to be tried by judicial proceedings, for the purpose of ascertaining, whether the courts will now determine to be law, that which was held not to be law at the date of the treaty of amity, and set aside the operation of the legislative acts and decisions before stated; so as to afford, if not compleat, at least a *partial* satisfaction for the loss sustained, would in all respects counteract the whole tenor and intent of the sixth article of the said treaty, which regarded the state of things at the period of its conclusion, and by which a right to "*full and adequate*" compensation from the United States, was completely vested in those individuals *whose cases were then within the description it contained;* a right not contingent or fluctuating on future circumstances, but perfect and entire; to be carried into effect, not according to the precarious result of different experimental proceedings, in their nature dilatory, and tending from the costs of litigation, and the protraction of dispute, to an increase of the evil; but by one simple and definitive course of remedy, prescribed jointly by the two nations, in the spirit of friendship and peace, for the purpose of speedily putting an end to the only remaining cause of irritation and discontent; and to be exclusively administered by arbitrators whom they have mutually chosen, and invested with ample powers for that wise and amicable purpose.

THE SAID RESOLUTION having been read, Mr. SITGREAVES read the following paper.

WE the undersigned COMMISSIONERS, named on the part of the United States, having determined not to give countenance or effect, by our presence at the board, to the principles asserted in the resolution, proposed in the case of the Right Revd. Charles Inglis; we think it proper to declare the reasons and motives which have led us to this determination, on deliberate reflection, and after combining, according to our best judgment, a liberal estimate of our power with an anxious consideration of our duties under the treaty of amity.

The

The essential facts which are assumed, or admitted, by the claim and other documents in this case, appear to be as follow, viz.

That Doctor Inglis, was an inhabitant of the city of New-York before the war, and at the declaration of independence; that in September 1776, when the British forces took possession of the said city, he remained within their lines, and has ever since continued a subject of his Britannic Majesty.

That on the 2d day of May 1775, Hezekiah Mills, a citizen of the State of New-York, was justly indebted to him in £.300 of money of New-York, for the payment whereof, with lawful interest from the date, the said Hezekiah Mills executed a bond to the claimant, in the penal sum of £.600 of like money.

That, on the 6th day of June 1776, Nathan Barlow, also a citizen of the said State of New-York, was indebted to him in £.1000 of money of New-York, for the payment whereof, with lawful interest from the dates therein specified, the said Nathan Barlow executed bonds to the claimant, in several penalties, amounting to the sum of £.2000 of like money.

That the full payment of the said sums was *amply secured by mortgages of sufficient real estates*, in the State of New-York, and that the debtors are *now solvent*.

That on the 22d October 1779, the legislature of the State of New-York passed an act, entitled "An act for the forfeiture and sale of the estates of persons who "have adhered to the enemies of this State, and for declaring the sovereignty of "the people of this State, in respect to all property within the same," RECITING, that "whereas, during the present unjust and cruel war, waged by the king of "Great Britain, against this State, and the other United States of America, "*divers persons, holding or claiming property within this State*, have voluntarily been "adherent to the said king, his fleets and armies, enemies to this State, and the "said other United States, with intent to subvert the government and liberties of "this State, and the said other United States, and to bring the same in subjection "to the crown of Great Britain; by reason whereof the said persons have severally "justly forfeited all right to the protection of this State, and to the benefit of the "laws under which such property is held or claimed; and whereas the public "justice and safety of this State absolutely require, that the most notorious offenders "should be immediately hereby convicted and attainted of the offence aforesaid, "in order to work a forfeiture of their respective estates, and vest the same in the "people of this State:" and ENACTING, that John Murray, Earl of Dunmore, formerly governor of the colony of New-York, William Tryon, esquire, late governor of the said colony, Sir Henry Clinton, knight, and the claimant, by the name of Charles Inglis, of the city of New-York, clerk, together with many other persons especially therein named "be and each of them are hereby severally "declared to be *ipso facto* convicted and attainted of the offence aforesaid; and "that all and singular the estate, both real and personal, held or claimed by the "said persons severally and respectively, whether in possession, reversion, or remain-

"der,

" der, within this State on the day of the paffing this act, fhall be and hereby is
" declared to be forfeited to and vefted in the people of this State."

That by another act of the legiflature of the State of New-York, paffed the 19th of May, 1784, it was enacted "that it fhall and may be lawful to and for
" all and every perfon or perfons, being citizens of this State, who is or are in-
" debted by mortgage, bond, fpecialty, contract, or on account, to any perfon
" or perfons, whofe eftates, real and perfonal, is or are, by attainder or convic-
" tion forfeited to the people of this State, *within fix months* after the paffing of this
" act *to pay the faid debts, dues and demands to the treafurer of this State*, who is hereby
" required to receive all fuch debts, dues, and demands in fpecie or other monies,
" and paper fecurities, made receivable in payment upon the fale of forfeited
" eftates by the fifth fection of this act; and where fuch debts were due from any
" perfon or perfons who have not remained within the enemy's power during the
" late war, to any perfon or perfons who remained with or went into the enemy's
" power or lines, and whofe eftates have been refpectively forfeited to the people
" of this State, by his or their attainder or conviction refpectively, fuch perfon or
" perfons being fo indebted may, in difcharge of fuch debts in addition to the
" fecurities abovementioned, pay unto the faid treafurer the like certificates or
" notes, and be difcharged from any intereft which may have become due on fuch
" debts, as is directed by the act entitled, 'An act relative to debts due to perfons
" within the enemy's lines,' paffed the 12th day of July 1782, and upon payment
" of fuch debts, dues and demands as aforefaid, *the faid treafurer fhall give his*
" *receipt, which* receipt fhall be a fufficient difcharge for fo much of the faid *debts*,
" *dues, and demands*. That from and after the expiration of the faid fix months,
" it fhall and may be lawful to and for the faid commiffioner or commiffioners
" of "forfeitures, within his or their refpective diftricts, *to afk, demand, fue for*
" *and recover*, in his or their own name or names, all debts, dues and demands
" which are owing, due, and payable to any perfon or perfons, whofe eftate real
" and perfonal is or are by attainder and conviction, forfeited to the people of
" this State, by virtue of any law or laws heretofore paffed, and all and fingular
" the intereft money due or to grow due thereon, &c."

That by divers fubfequent acts of the legiflature of the faid State of New-York, the laft whereof was paffed on the 21ft day of April 1787, the term of fix months, allowed as aforefaid for the payment into the treafury of debts due to perfons attainted, &c. was prolonged.

That by an act of the faid legiflature of New-York, paffed the 27th day of November 1784, it is enacted "that where any perfon or perfons entitled to the
" equity of redemption of lands, tenements, or hereditaments, vefted in manner
" aforefaid in the people of this State, fhall be defirous to redeem and difcharge
" the incumbrances thereon, or who have redeemed and difcharged the incum-
" brances on fuch lands, tenements or hereditaments, fince the 12th day of May
" 1784, it fhall and may be lawful to and for all and every fuch perfon or perfons,
" to apply to any one of the judges having authority to take proofs and acknowledg-
" ments

" ments of the due execution of mortgages, in the city or county wherein the
" same lands, tenements, or hereditaments may be situated and to produce to such
" judge the evidence respecting such mortgage and the payments made thereon.
" And if the judge, on satisfactory testimony, shall be able to ascertain the balance
" in arrear on such mortgage, he shall after due examination certify under his hand
" and seal to the treasurer of the State, and to the clerk of the city or county, in
" whose office the mortgage may be registered, the balance which shall so appear to
" him to be due thereon: and upon producing such certificate to the treasurer, and
" tender, in the manner which the law directs, of such balance, the treasurer
" shall, and he is hereby authorized and directed to receive the same, and to sign
" a certificate of such receipt; which certificate, being acknowledged by him or
" proved by the oath of one or more witnesses, in the manner directed by the said
" act with respect to the certificate of the mortgagee or his representative, and
" being filed with the certificate of the judge first mentioned, in the office of the
" clerk of the city or county where such mortgage shall be registered, it shall and
" may be lawful to and for the said clerk, and he is hereby required to enter in the
" book of mortgages, a minute of the said certificates; *which minute so entered*
" *shall operate as a full and absolute bar to all and every such mortgage and mortgages*
" to all intents and purposes whatsoever: Provided, that with respect to such
" persons who have redeemed or discharged the said incumbrances on such lands,
" tenements or hereditaments since the 12th day of May 1784, it shall only be
" necessary for the said persons respectively to produce the certificate of discharge
" given by the treasurer on payment, and upon proof of the same in manner
" aforesaid, it shall be lawful for the said clerks, and they are hereby respectively
" required to enter in the book of mortgages, a minute of the said certificates
" respectively which shall operate as a discharge in like manner as aforesaid."

That on the 24th day of May 1785, the said Hezekiah Mills did, in pursuance of the several acts before recited, pay into the treasury of the State of New-York, the sum of £.322 3 0 in public securities, in discharge of his bond and mortgage as aforesaid, agreeably to a liquidation of the balance due thereon by John Slofs Hobart, esquire, one of the judges of the supreme court of said State.

That, on the 27th day of November 1789, the said Nathan Barlow, did in like manner, pay into the treasury of the State of New-York, the sum of £.1399 14 10½, in discharge of his bonds and mortgages aforesaid, agreeably to a liquidation of the balances due thereon by the said John Slofs Hobart, esquire, one of the judges as aforesaid of the supreme court of the said State.

That the original bonds and mortgages are still in possession of the claimant

That by an act of the legislature of the State of New-York, passed on the 22d day of February 1788, entitled "An act in the form of the act recommended by
" the resolution of the United States, in congress assembled, of the 21st day of
" March 1787, to be passed by the several States relative to the treaty of peace
" between the United States and the king of Great Britain:" It is enacted,
" That

" That ſuch of the acts and parts of acts of the legiſlature of this State as are
" repugnant to the treaty of peace between the United States and his Britannic
" majeſty, or any article thereof, ſhall be and are hereby repealed; and further,
" that the courts of law and equity within this State be, and they hereby are
" directed and required, in all cauſes and queſtions cognizable by them reſpectively
" and ariſing from or touching the ſaid treaty, to decide and adjudge according
" to the tenor, true intent, and meaning of the ſame; any thing in the ſaid acts,
" or parts of acts, to the contrary thereof in anywiſe notwithſtanding."

That, on the 21ſt day of March 1788, the legiſlature of the State of New-York paſſed the act entitled "An act relating to the forfeited eſtates" recited in the preamble of the propoſed reſolution, under which act however nothing appears to have been done in this caſe.

That by the ſixth article of the conſtitution of the United States it is declared,
" That this conſtitution, and the laws of the United States which ſhall be made in
" purſuance thereof, and *all treaties made*, or which ſhall be made under the au-
" thority of the United States, *ſhall be the ſupreme law of the land; and the judges
" in every State, ſhall be bound thereby, any thing in the conſtitution or laws of any
" State to the contrary notwithſtanding.*"

That the ſaid conſtitution of the United States was ratified and *adopted by the State of New-York* on the 26tth day of July 1788, being the *eleventh* State which had ratified and adopted the ſame.

That, on the 24th day of September 1789, the act entitled "An act to eſtabliſh the judicial courts of the United States" was paſſed by congreſs; by the 11th ſection whereof it is enacted, that the circuit courts of the United States ſhall have original cognizance, concurrent with the courts of the ſeveral States, of all ſuits of a civil nature at common law or in equity, where the matter in diſpute exceeds, excluſive of coſts, the ſum or value of 500 dollars, *and an alien is a party.* And, that the claimant has not at any time ſince the peace, cauſed any ſuit to be brought on the bonds or mortgages aforeſaid, or either of them, either in the courts of the State of New-York, or in the courts of the United States, for the recovery of his debts aforeſaid, or in any manner ſought a remedy for the ſame, in the ordinary courſe of judicial proceedings.

Such is the State of this caſe.

THIS BOARD has been conſtituted for the purpoſe of aſcertaining ſuch loſſes and damages as have been ſuſtained by Britiſh creditors, in caſes where by the operation of lawful impediments ſince the peace, not only the full recovery of their debts has been delayed, but alſo the value and ſecurity thereof have been impaired or leſſened, ſo that "full compenſation for ſuch loſſes and damages cannot, for
" whatever reaſons, be actually obtained, had and received, by the ſaid creditors
" in

" in the ordinary courts of juſtice," in which caſes only the United States have agreed to make, and the board are authoriſed to award compenſation to the creditors.

We are clearly of opinion, that the claim of Doctor Inglis does *not* diſcloſe a caſe of this deſcription; and therefore that the board cannot in purſuance of the true intent and meaning of the treaty of amity, make any award therein.

It is not denied that the acts of the legiſlature of New-York, herein recited, did create lawful impediments to the recovery of the claimant's debts; and that by reaſon of theſe impediments the recovery thereof was, for a time, delayed. But it will not, we preſume, be alledged, that the *mere delay of recovery*, by the operation of lawful impediments is, of itſelf, a ſufficient foundation for a claim; it muſt be ſuch a delay as has produced *a loſs which cannot be repaired in the ordinary courſe of juſtice.*

In the preſent caſe, the claimant poſſeſſes the evidence of his debts,—his debtors are ſtill ſolvent,—the debts were ſecured by a ſpecific lien on lands of adequate value,—the conſtitution of the United States has repealed all laws, repugnant to the treaty, which interpoſed between the creditor and his remedy,—the conſtitution and the treaty are the ſupreme law of the land,—the judges in every State are bound thereby, any thing in the conſtitution and laws of any State to the contrary notwithſtanding,—the State of New-York has adopted the conſtitution,—the federal courts have cognizance of the demand,—juſtice is adminiſtered in theſe courts with eminent ability, impartiality and effect,—and the claimant can unqueſtionably obtain in them, complete and adequate remedy to the full extent of his right. He has neglected to ſeek his remedy from his debtors, in the ordinary courſe of judicial proceedings; and is therefore, on every account, precluded from demanding it of the United States.

It is a rule of the law of nations, of the law of England, of ſound reaſon, and common ſenſe, that the laws ſhall be preſumed to be *duly adminiſtered* in the tribunals of every nation. The contrary poſition can in no caſe be correctly aſſumed without the moſt unequivocal proof, *et in re num me dubia.* It is not competent to a perſon to complain of a defect of remedy who has never ſought that remedy in the tribunals where it ſhould be afforded. No imputation can juſtly be attached to the courts of the United States, either of a want of diſpoſition, or of ſkill, or of power, to do juſtice. To this claimant it has never been denied: If he had aſked, at any time ſince the organization of the federal judiciary, it may be pronounced with confidence that he would have obtained it, and this aſſertion does not depend for its ſupport merely on the theory of the law or of its adminiſtration; but will appear in the ſequel to be juſtified by actual adjudications in the courts of the laſt and higheſt reſort.

We cannot therefore diſcern any juſt ground for giving compenſation to this claimant out of the treaſury of the United States. In the diſcuſſions on this ſub-

ject in the board, and in the resolution now proposed, we have discovered nothing to create doubt or hesitation. The respect due to the opposite opinion, when advocated by three commissioners, has induced us to examine, but has not taught us to distrust the correctness of our own sentiments. On the contrary, we have perceived that the application of the principles adopted on this occasion, and asserted in the proposed resolution, must necessarily lead to consequences so extensively injurious to the just expectations of the United States, as imperiously to prescribe to us, the duty of seperating from the board, rather than that these principles should take effect, by any implied or constructive acquiescence on our purt.

We understand the resolution, as proposed, directly or in effect, to assume the following positions.

That the date of the treaty of amity is, exclusively, the period to which the enquiries of the board, respecting the existence of lawful impediments, can have relation; and that in cases where lawful impediments existed at that time, the right was *then* acquired by British creditors, not to be affected or impaired by subsequent events.—That at the date of the treaty of amity, lawful impediments did exist to the claimant's recovery;—that these impediments were "a personal incapacity to sue," by reason of his *attainder*, and "the total extinction of the debts," by virtue of the *confiscation* of his property;—that the evidence of these impediments is to be found in the legislative acts of the State of New-York, in the admission of the agent for the United States, and in the concurring decisions of the courts of competent jurisdiction;—that this evidence is not sufficiently rebutted by the provisions of the constitution of the United States, or by any decisions of the courts since the treaty admitting the claimant's right of action and recovery,—and that if there are any such decisions since the treaty, they cannot be received as evidence of the law at the date of the treaty, or deprive the claimant of the right, which is said *then* to have attached, to a remedy by the award of this board;—that the claimant was not bound to go to law for his remedy against the debtors; and that no laches can be imputed to him for his having neglected so to do.

All of these propositions are deemed to be essentially incorrect, either in fact or on principles of fair and liberal construction; they will be examined in their order, as distinctly as the nature of their intimate connection with each other will permit.

The first position, that the right to a remedy before the board attached according to the state of things at or preceding the conclusion of the treaty of amity, as the period to which all evidence on that head is to relate, and from which, as a fixed and settled point of departure, the board are to proceed; or in other words, that British creditors acquired at the date of the treaty a right, not be measured or affected in any case by subsequent events, would be a literal construction of that instrument, so narrow, as manifestly to contradict its object and design.—*Qui hæret in litera, hæret in cortice.* The obvious spirit of the engagement of the United States was, to make compensation for losses *actually sustained* by the operation of lawful impediments contrary to the treaty of peace. To ground a demand against them, on

this

this promiſe, *a loſs muſt have accrued and taken effect;* The creditor who would avail himſelf of their promiſe muſt prove his right according to the ſtipulation, and a claimant cannot with truth ſay, that he has ſuſtained a loſs in a caſe where he has yet a remedy. The board muſt conſider each caſe with the circumſtances under which it is preſented to them; and if it appears, that *he has not ſuſtained a loſs,* or which is the ſame thing, that he has yet a remedy, they cannot juſtly interpoſe for his relief. The treaty did not deſign to afford double remedy, *one* in the courts, and *another* by the board; the latter is *to ſupply the defect* of the former, and *to be inſtead of it.* The creditor is entitled but to *one* of theſe remedies; he cannot have *both.* From the generality of the principle which is thus aſſumed, this ſtrange concluſion would reſult, that even a payment of the whole debt to the creditor, ſubſequent to the date of the treaty, would not deprive him of his right againſt the United States; becauſe ſuch payment was made after the right is ſaid to have attached; and it would be difficult to ſhew, ſo far as reſpects the obligation of the United States, any ſolid diſtinction between an actual payment by the debtor, and a capacity to enforce ſuch payment. Every reaſon which would exonerate the United States in the one caſe would equally exonerate them in the other:—the claimant is bound to make out his right to compenſation, at the time when he preſents his claim; *that* right can only be founded on a loſs which is otherwiſe irretrievable; and unleſs he can ſhew ſuch a loſs to have been ſuſtained, his claim cannot juſtly be admitted. We do not deſire to anſwer all the chimerical inferences and conſequences which, in the reſolution, are attributed to this ſentiment. When we ſhall attempt to follow it with theſe conſequences, it will be time for us to vindicate them.

In truth, the oppoſite doctrine has been combated only on account of the extravagant length to which it would lead. In this caſe it is not neceſſary to deny it; for it is believed not to be true, that at the date of the treaty of amity, lawful impediments to the claimant's recovery did actually exiſt. This aſſertion muſt neceſſarily be conſidered in connection with the evidence by which it is attempted to be ſupported.

In the firſt place it is ſaid, that legiſlative acts of the State of New-York attainted the perſon of the claimant and confiſcated his debts; by the former creating a perſonal diſability to ſue, and by the latter, diveſting his right to the debts themſelves. This is conceded:—but it muſt be alſo conceded that, before the date of the treaty of amity, another legiſlative act of the State of New-York, *repealed* all laws repugnant to the treaty of peace, and enjoined upon the courts, to decide all cauſes, ariſing from or touching the ſaid treaty, according to the tenor, true intent and meaning of the ſame, any thing in the ſaid laws to the contrary thereof notwithſtanding. If therefore, the act of attainder and confiſcation was a lawful impediment contrary to the treaty of peace, it was by the latter act repealed and annulled, and did not remain a lawful impediment at the concluſion of the treaty of amity. Theſe acts were all made by the ſame authority, the latter abrogated the former, and the courts were enjoined and bound to decide accordingly.

But it is further ſaid that an act of aſſembly was made, ſubſequent to the repeal-

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ing act, for carrying the act of confiscation into effect; which must be considered as a legislative declaration that the general expressions of the repealing act could not be construed to include the act of confiscation. This is by no means a necessary inference, because the act of confiscation might have applied to persons and cases not within the meaning of the treaty of peace, and with respect to such persons and cases, its operation might legitimately continue according to the provisions of the last act. But even if the inference is correct, it still admits of this conclusive answer, that after the date of the last act, and before the treaty of amity, the constitution of the United States was ratified and adopted by the State of New-York; and that the sixth article of the constitution, by declaring the constitution and treaties to be the supreme law of the land, effectually put an end to all conflicting pretensions and authorities on this subject, and established, beyond the possibility of future doubt or question, the absolute and paramount supremacy of the treaty of peace over the constitutions and laws of the individual States. From that period, and more particularly from the establishment of the federal courts, it cannot be pretended, that the obligation of treaties has been a mere theory:—from that period, whatever shades of difference may have appeared in the construction of the treaty, its obligation has never been denied or disregarded:—from that period, the claimant might have resorted to the American tribunals, in perfect confidence that the stipulations of the treaty would have been liberally and impartially applied:—at that period, the largest of his demands had not yet been paid into the treasury of the State, and his remedy might have been pursued without difficulty or embarrassment. If any loss had since occurred, it would be justly attributable to his own wilful omission:—Fortunately for him, his debtors are still solvent, his specific security still remains; and he may still recover in those courts to which he imputes a defect of justice, without having made a single effort to obtain it.

The next evidence on which the assertion rests, that there were legal impediments to the claimant's recovery at the date of the treaty of amity is "the statement "of the law laid before the board by the agent of the United States, acting pursu-"ant to the act of congress with the advice and under the direction of the attorney "general" as contained in different arguments on the part of the United States in this and other cases; which statement of the law is said to be "sanctioned by the "authority of the first law officer of the United States:"—We do not believe that any "statement of the law" submitted to the board by the agents on either side, can justly be considered as evidence of the law, or be a correct foundation for the decisions of the board; the evidence of the law must be drawn from higher sources, and the board are bound to decide *upon the best evidence*. If the declarations of the agents are to be received as *admissions* of the law, binding upon the parties respectively from whom they proceed, it will presently be seen that conclusive inferences are to be drawn from the admissions of the agent for the claimant, against the most essential principle asserted in the proposed resolution. But when the argument on the part of the United States shall be accurately exhibited, there will be no difficulty in agreeing that it shall govern the decision in this case, The answer of the agent for the United States to the memorial of the claimant presents a dilemma, from which we believe the claim has not been, and cannot be, extricated. It suggests that

that the claimant, having been resident in the State of New-York at the epoch of its sovereignty, that is, at the declaration of independence, he was thereby a citizen of the State who owed allegiance to it, and was amenable to its laws, that the act of the legislature, which attainted him of the offence of adhering to the enemies of the State, acted upon him as a citizen; that therefore the rights, of which it deprived him, are not restored to him by the fourth article of the treaty of peace, which cannot be construed to embrace persons of his description; and that consequently his case is not within the treaty of amity, which had relation only to impediments contrary to the treaty of peace—Or, if he is really and truly a creditor on the side of Great Britain within the meaning of the treaty of peace, that in that case the courts are open to him, in which that treaty is acknowledged as the supreme law of the land and where no lawful impediment will be permitted to obstruct his recovery; and that he is bound to shew that he has been denied relief *there*, before he can have any right to demand it *here*. If the argument of the agent of the United States is to be considered as evidence of a confession which shall bind the United States, it must be received according to those rules which universally apply to evidence of that description; it must be taken altogether: one part of it is not to be received and another part rejected. Thus if according to one horn of the dilemma, it is to be received as evidence that the claimant could not recover in the courts, it is also to be received as evidence that the treaty gave him no right to recover, or if according to the second horn of the dilemma, it is to be received as evidence that he had a right to recover, it must also be received as evidence that he could actually recover—and the claimant is assuredly welcome to his choice of these admissions. The alternative states propositions directly opposite and contradictory to each other —*Either may*, but *both cannot* be true; shall it be received therefore as evidence to establish contradictions? or shall we reject one proposition and admit the other? If we do, it must be on other testimony, for this evidence applies equally to both.

We proceed therefore, to examine the remaining evidence, which is indeed the most important, and which must be conclusive on the present case:—It is contended that concurring decisions of the courts, have established the incapacity of the claimant to sue, and also the complete extinguishment of the debts due to him. If in truth the treaty of peace, protected the claimant's right of recovery, and if concurring decisions of the courts of the United States, do indeed shew that, notwithstanding the stipulation of the treaty, the claimant cannot recover, the conclusion is certainly in favor of the claim. We believe that the cases referred to, will by no means warrant this conclusion; we believe, on the contrary, that these cases and others which we shall mention, furnish full, direct, and unequivocal proof of the efficacy of the constitutional declaration of the supremacy of treaties, of the practical recognition of the treaty of peace, and the liberality of the courts in its interpretation and construction; and, that they demonstrate, beyond all reasonable doubt, that the claimant can now, and could at the date of the treaty of amity, "actually obtain, have, and receive full and adequate compensation in the ordinary "course of judicial proceedings."

The first case we shall refer to, although not the first in the order of date, is the case of Warre, administrator of Jones, plaintiff in error, versus Hylton and al.—

3d.

3d. Dallas's reports 199, adjudged in the supreme court of the United States, at February term 1796, on a writ of error from the circuit court for the district of Virginia, after solemn arguments and great consideration, by the opinion of four judges, against the opinion of Judge Iredell, who decided the cause in the circuit court. The judges delivered their opinions seriatim, at great length; and we shall make copious extracts from their arguments, because we believe this authority will be found to be full and conclusive, on all the points which are drawn into controversy in this claim.

" CHASE, justice.—The defendants in error, on the 7th day of July 1794,
" passed their penal bond to Farrell and Jones, for the payment of £2976 11 6 of
" good British money; but the condition of the bond, or the time of payment,
" does not appear on the record.

" On the 20th October 1777, the legislature of Virginia passed a law to *sequester*
" *British property*. In the third section of the law it was enacted, 'That it should
' be lawful for any citizen of Virginia owing money to a subject of Great Britain,
' to pay the same, or any part thereof, from time to time, as he should think fit,
' into the loan-office, taking thereout a certificate for the same, in the name of the
' creditor, with an indorsement under the hand of the commissioner of the said
' office, expressing the name of the payer; and shall deliver such certificate to the
' governor and council, *whose receipt shall discharge him from so much of the debt*.
' And the governor and the council shall, in like manner, lay before the general
' assembly once in every year, an account of these certificates, specifying the names
' of the persons by and for whom they were paid; and shall see to the safe-keeping
' of the same, subject to the future directions of the legislature. Provided that
' the governor and council may make such allowances as they shall think reasona-
' ble, out of the interest of the money, so paid into the loan-office, to the wives
' and children, residing in the State of such creditors.'

" On the 26th April 1780, the defendants in error paid into the loan-office of
" Virginia, part of their debt, to wit, 3111 $\frac{1}{9}$ dollars, equal to £933 14 0
" Virginia currency, and obtained a certificate from the commissioners of the loan-
" office, and receipt from the governor and council of Virginia, agreeably to the
" above in part recited law.

" The defendants in error, being sued on the above bond in the circuit court of
" Virginia, pleaded the above law, and the payment above stated, in bar of so
" much of the plaintiff's debt. The plaintiff to avoid this bar, replied the 4th
" article of the definitive treaty of peace between Great Britain and the United
" States, of the 3d September 1783:—To this replication, there was a general
" demurrer and joinder:—The circuit court allowed the demurrer and the plaintiff
" brought the present writ of error.————I am of opinion that the law of the
" 20th October 1777, and the payment in virtue thereof amounts either to a *con-*
" *fiscation* or *extinguishment* of so much of the debt as was paid into the loan-office
" of Virginia.————

" The

"The payment by the debtor into the loan-office is made a lawful act. The
" public receive the money, and they *discharge* the debtor, and they make the
" certificate (which is the evidence of the payment) subject to their direction, and
" they benevolently appropriate part of the money paid, to wit, the interest of the
" debt, to such of the family of the creditor as may live within the State. All
" these acts are plainly a *legislative interposition* between the creditor and debtor,
" annihilates the right of the creditor, and is an exercise of the right of ownership
" over the money—Whether all these acts amount to a *confiscation* of the debt, or
" not, may be disputed according to the different ideas entertained of the proper
" meaning of the word *confiscation*. I am inclined to think that all these acts
" *collectively* considered, are *substantially a confiscation of the debt*. The verb con-
" fiscate, is derived from the Latin "*con*" with, and "*fiscus*" a basket or hamper,
" in which the Emperor's treasure was formerly kept. The meaning of the word
" *to confiscate*, is to transfer property from *private* to *public* use, or to forfeit pro-
" perty to the prince or State. In the language of Mr. Lee (p. 118) *the debt was*
" *taken hold of*; and this he considers as confiscation. But if, strictly speaking,
" the debt was not *confiscated*, yet it certainly was *extinguished*, as between the
" creditor and debtor, the debt was *legally paid*, and of consequence *extinguished*.
" The State interfered and received the debt, and discharged the debtor from his
" *creditor*; and not from the *State*, as suggested. The debtor owed nothing to the
" State of Virginia, but she had a right to take the debt or not, at her pleasure.
" To say that the discharge was from the State, and not from the debtor, implies
" that the debtor was under some obligation of duty to pay the State what he
" owed his British creditor. If the debtor was to remain charged to his creditor
" notwithstanding his payment, not one farthing would have been paid into the
" loan-office. Such a construction therefore, is too violent and not to be admit-
" ted. If Virginia had confiscated British debts, and received the debt in quest-
" tion, and said nothing more, the debtor would have been discharged *by the opera-*
" *tion of the law*. In the present case there is an *express* discharge on payment,
" certificate and receipt.

" It appears to me that the plea, by the defendant, of the act of assembly, and
" the payment agreeably to its provisions, which is admitted, *is a bar* to the
" plaintiff's action, for so much of his debt as he paid into the loan-office, *unless*
" the plea is avoided, or destroyed, by the plaintiff's replication of the 4th article
" of the definitive treaty of peace between Great Britain and the United States,
" on the 3d September 1783.

" The question then may be stated thus, whether the 4th article of the said
" treaty, *nullifies the law* of Virginia, passed on the 20th October 1777; *destroys*
" *the payment* made under it; and *revives the debt*, and gives a right of recovery
" thereof against the original debtor.

" It was doubted by one of the counsel for the defendants in error (Mr. Mar-
" shall) whether congress had a *power* to make a treaty that could operate to *annul*
" *a legislative* act by any of the States, and to destroy *rights* acquired by, or vested
" in

" in individuals, in virtue of ſuch acts. Another of the defendant's counſel (Mr.
" Campbell) expreſsly, and with great zeal, denied that congreſs poſſeſſed ſuch
" *power*. But a few remarks will be neceſſary to ſhew the inadmiſſibility of this
" objection to the power of congreſs. 1ſt. The legiſlatures of all the States have
" often exerciſed the power of taking the property of its citizens for the uſe of
" the public, but they uniformly compenſated the proprietors. The principle to
" maintain this right is for the public good, and to that the intereſt of individuals
" muſt yield. The inſtances are many, and among them are lands taken for
" forts, magazines, or arſenals; or for public roads, or canals, or to erect towns.

" 2d. The legiſlatures of the States have *often* exerciſed the power of diveſting
" rights veſted; and even of impairing, and in ſome inſtances of almoſt annihilat-
" ing the obligation of *contracts*, as by tender laws which made an offer to pay,
" and a refuſal to receive paper money for a *ſpecie* debt, *an extinguiſhment* to the
" *amount* tendered.

" 3d. If the legiſlature of *Virginia* could by a law *annul* any former law, I
" apprehend that the effect would be to deſtroy all rights acquired under the law
" ſo nullified.

" 4th. If the legiſlature of *Virginia* could not by *ordinary acts of legiſlation*, do
" theſe things, yet poſſeſſing the ſupreme ſovereign power of the State, ſhe cer-
" tainly could do them by a *treaty of peace*; if ſhe had not parted with the power
" of making ſuch treaty. If *Virginia* had ſuch power *before* ſhe delegated it to
" congreſs, it follows that *afterwards* that body poſſeſſed it. Whether Virginia
" parted with the power of making treaties of peace, will be ſeen by a peruſal of
" the 9th article of the confederation (ratified by all the States on the 1ſt of March
" 1781) in which it was declared, 'that the *United States* in congreſs aſſembled,
' ſhall have the *ſole and excluſive right and power* of determining on *peace* or *war*,
' except in the two caſes mentioned in the 6th article; and of entering into treaties
' and alliances with a *proviſo*, when made, reſpecting commerce.' This grant has
" no reſtriction, nor is there any limitation on the power in any part of the confe-
" deration. A right to make peace, neceſſarily includes the power of determining
" *on what terms peace ſhall be made*. A power to make *treaties* muſt of neceſſity
" imply a power, to decide the terms on which they ſhall be made: A war be-
" tween two nations can only be concluded by *treaty*.

" Surely, the ſacrificing *public* or *private* property to obtain *peace*, cannot be
" the caſes in which a treaty would be *void*. *Vattel*, *Lib.* 2. *c.* 12. § 160 161.
" *p.* 173. *Lib.* 6. *c.* 2. § 2. It ſeems to me that treaties made by congreſs,
" according to the confederation, were ſuperior to the laws of the States; becauſe
" the confederation made them obligatory on all the States. They were ſo de-
" clared by congreſs on the 13th of April 1787; were ſo admitted by the legiſla-
" tures and executives of moſt of the States; and were ſo decided by the judiciary
" of the general government, and by the judiciaries of ſome of the State govern-
" ments.

" If

" If *doubts* could exiſt before the eſtabliſhment of the preſent national govern-
" ment, they muſt be *entirely* removed by the ſixth article of the conſtitution,
" which provides :—' That all treaties *made*, or which ſhall be made, under the
' authority of the *United States* ſhall be the *ſupreme law of the land;* and the judges
' of every State ſhall be bound thereby, any thing in the conſtitution or laws of
' any State to the contrary notwithſtanding.' There can be no limitation on the
" power of the *people* of the *United States*. By their authority the State conſti-
" tutions were made, and by their authority the conſtitution of the *United States*
" was eſtabliſhed ; and they had the power to change or aboliſh the State conſti-
" tutions, or to make them yield to the general government, and to treaties made
" by their authority. A treaty cannot be the *ſupreme law* of the land, that is, of
" all the *United States*, if any act of a *State legiſlature* can ſtand in its way. If the
" conſtitution of a State (which is the *fundamental* law of the State, and para-
" mount to its legiſlature) muſt give way to a treaty, and fall before it, can it be
" queſtioned, whether the *leſs* power, an act of the State legiſlature, muſt not be
" proſtrate ? It is the declared will of *the people of the United States*, that every
" treaty made by the authority of the *United States*, ſhall be ſuperior to the *con-*
" *ſtitution* and *laws of any individual State ;* and their will alone is to decide. If
" a law of a State contrary to a treaty, is not void, but *voidable only by a repeal*, or
" nulliſication by a State legiſlature, this certain conſequence follows, that the
" will of a *ſmall part* of the *United States* may controul or defeat the will of the
" whole : Four things are apparent in a view of this 6th article of the national
" conſtitution. 1ſt. That it is *retroſpective*, and is to be conſidered in the ſame
" light as if the conſtitution had been eſtabliſhed before the making of the treaty
" of 1783. 2d. That the conſtitution, or laws, of any of the States, ſo far as
" either of them ſhall be found contrary to that treaty, are by force of that ſaid
" article, proſtrated before the treaty. 3d. That conſequently, the treaty of 1783,
" has ſuperior power to the *legiſlature* of any State, becauſe no legiſlature of any
" State, has any kind of power over the conſtitution which was its *creator*. 4th.
" That it is the declared duty of the State judges, to determine any conſtitution or
" laws of any State contrary to that treaty (or any other) made under the author-
" ity of the *United States*, *null and void ;* national or federal judges are bound by
" duty and oath to the ſame conduct.

" I will now proceed to the conſideration of the treaty of 1783. It is evident
" on a peruſal of it, what were the great and principal objects in view by both par-
" ties. There were *four* on the part of the *United States*, to wit : 1ſt, an ac-
" knowledgment of their independence, by the crown of *Great Britain*. 2dly, a
" ſettlement of their weſtern bounds. 3dly, the right of fiſhery : and 4thly, the
" free navigation of the Miſſiſſippi. There were *three* on the part of Great Bri-
" tain, viz. 1ſt. a recovery by *Britiſh* merchants, of the value in *ſterling* money,
" of debts contracted by the citizens of *America before* the treaty. 2d, reſtitu-
" tion of the confiſcated property of *real Britiſh* ſubjects, and of perſons reſidents
" in diſtricts in poſſeſſion of the *Britiſh* forces, and who had not borne arms againſt
" the *United States* ; and a *conditional* reſtoration of the confiſcated property of
" all *other perſons :* and 3dly, a prohibition of all *future* confiſcations, and *proſe-*
" *cutions*.

" *cutions*. The following facts were of the most public notoriety at the time when
" the treaty was made, and therefore must have been very well known to the gen-
" tlemen who assented to it. 1st. That *British* debts to a great amount,
" had been paid into some of the State treasuries, or loan-offices, in paper money
" of very little value, either under laws confiscating debts, or under laws autho-
" rizing payment of such debts in paper money, and discharging the debtors. 2dly.
" That tender laws had existed in all the States; and that by some of those laws,
" a tender and a refusal to accept, by principal or *factor*, was declared an *extinguish-*
" *ment of the debt*. From the knowledge that such laws had existed there was good
" reason to *fear*, that similar laws with the *same* or less consequences, might be
" again made, (and the fact really happened) and prudence required to guard the
" British creditor against them. 3dly. That in some of the States, property of any
" kind might be paid at *an appraisement*, in discharge of any execution.
" 4thly. That laws were in force in some of the States at the time of the treaty,
" which prevented suits by *British* creditors. 5th. That laws were in force in
" other of the States at the time of the treaty, to prevent suits by *any person for a*
" *limited time*. All these laws created *legal impediments*, of one kind or another,
" to the recovery of many *British* debts, contracted *before* the war; and in many
" cases, compelled the receipt of property instead of gold and silver.

" To secure the recovery of *British debts*, it was by the latter part of the fifth
" article, agreed as follows:—' That all persons who have any interest in *confiscat-*
' *ed lands*, by debts, should meet with no *lawful impediment* in prosecution of their
' just rights.' This provision clearly relates to *debts* secured by mortgages on
" lands in fee simple, which were afterwards confiscated; or to *debts* or
" judgments which were a *lien* on lands, which also were afterwards confiscated,
" and where such debts on mortgages or judgments had been paid into the
" State treasuries, and the debtors discharged. This stipulation was absolutely
" necessary if *such debts* were intended to be paid. The pledge or security
" by *lien*, had been confiscated and sold. British subjects being *aliens*, could
" neither recover the possession of lands by ejectment, nor foreclose the equi-
" ty of redemption; nor could they claim the money secured by mortgage, or
" have the benefit of a *lien* from a judgment, if the debtor had paid his debt into
" the treasury, and been discharged. If a *British* subject in either of those cases
" prosecuted his just right, it could only be in a court of justice, and if any of the
" above causes were set up as a lawful *impediment*, the courts were bound to decide,
" whether this article of the treaty nullified the laws confiscating the lands, and
" also the purchases made under them, or the laws authorizing payment of such
" debts to the States; or whether *aliens* were enabled by this article to hold lands
" mortgaged to them before the war. In all these cases it seems to me, that the
" courts, in which the cases arose, were the only proper authority to decide,
" whether the case was within the article of the treaty, and the operation and effects
" of it. One instance among many will illustrate my meaning. *Suppose a mort-*
" *gager paid the mortgage money into the public treasury, and afterwards sold the*
" *land, would not the British creditor under this article, be entitled to a remedy against*
" *the mortgaged lands?*

" The fourth article of the treaty is in theſe words : ' It is agreed that *creditors* ' on either ſide ſhall meet with no *lawful impediments* to the recovery of the full ' value in ſterling money of all *bona fide* debts *heretofore contracted.*'—If the reco- " very of the preſent debt is not within the clear and manifeſt *intention* and *letter* of " the fourth article of the treaty, and if it was not intended by it to *annul* the law " of *Virginia,* mentioned in the plea, and to deſtroy the payment under it, and " to *revive* the right of the *creditor* againſt his *original debtor ;* and if the treaty " cannot affect all *theſe* things, I think the court ought to determine in favor of the " defendants in error ; under this impreſſion, it is altogether unneceſſary to notice " the ſeveral rules laid down by the counſel for the defendants in error, for the *con-* " *ſtruction* of the treaty.

" I will examine the fourth article of the treaty in its *ſeveral parts* and endeavor " to affix the plain and natural meaning of each part.

" To take the fourth article in order as it ſtands ;

1ſt. " It is agreed," that is, it is *expreſsly contracted,* " and it appears from " what follows, that *certain* things ſhall *not* take place. This ſtipulation is *direct.* " The diſtinction is ſelf-evident, between an agreement that a thing ſhall *not* hap- " pen, and an agreement that a third power ſhall prevent a certain thing being done. " The *firſt* is obligatory on the *parties contracting.* The latter will depend on the " will of *another ;* and although the parties contracting had power to lay him " under a *moral* obligation for compliance, yet there is a very great difference in " the two caſes. This diverſity appears in the treaty.

2dly. " That creditors on either ſide," without doubt " meaning the *Britiſh and* " *American creditors.*

3dly. " Shall meet with no *lawful impediment*" " that is, with no obſtacle (or " bar) ariſing from the common law, or acts of parliament, or acts of congreſs, " *or acts of any of the States,* then in exiſtence, or thereafter to be made, that " would in any manner, operate to prevent the recovery of *ſuch* debts, as the " treaty contemplated. A *lawful* impediment to prevent a recovery of a debt, " can only be *matter of law* plead in bar to the action. If the word *lawful* had " been omitted, the impediment would not be confined to matter of *law.* The " prohibition that *no lawful* impediment ſhall *be interpoſed,* is the ſame as that *all* " lawful impediments ſhall be *removed.* The meaning cannot be gratified by the " the removal of *one* impediment, and leaving *another* ; and *a fortiori* by taking " away the *leſs* and leaving the *greater.* Theſe words have both a *retroſpective* " and *future aſpect.*

4thly. " To the recovery," that is, to the right of action, judgment and exe- " cution, and receipt of the money, without impediments in the courts of juſtice, " which could only be by plea (as in the preſent caſe) or by proceedings *after judg-* " *ment,* to compel receipt of paper money or property, inſtead of ſterling money.

" The word *recovery* is very comprehenſive, and operates, in the preſent caſe, to
" give remedy from the commencement of ſuit, to the receipt of money."—

" If the words of the 4th article taken *ſeparately*, truly bear the meaning I
" have given them, their ſenſe *collectively*, cannot be miſtaken, and muſt be the
" *ſame*. The next enquiry is, whether the debt in queſtion is one of thoſe deſcribed
" in this article. It is very clear that the article contemplated *no debts* but thoſe
" contracted *before the treaty*; and no debts but only thoſe, to the recovery whereof
" ſome *lawful impediment* might be impoſed. The preſent debt was contracted
" *before* the war, and to the recovery of it a *lawful* impediment, to wit, a law of
" *Virginia* and payment under it, is plead in bar. There can be no doubt that the
" debt ſued for is within the *deſcription*, if I have given a proper interpretation of
" the words. If the treaty had been ſilent as *to debts*, and the law of *Virginia* had
" *not* been made, I have already proved, that the debts would on peace, have
" *revived* by the *law of nations*. This alone ſhews that the *only impediment* to the
" recovery of the debt in queſtion is the *law of Virginia*, and the payment under
" it; and the treaty relates *to every kind of legal impediment*.

" But it is aſked, did the 4th article intend to *annul* a *law* of the States, and
" deſtroy rights acquired under it? I anſwer, that the 4th article did intend to
" deſtroy all *lawful impediments*, *paſt* and future; and that the law of *Virginia*
" and the payment under it, is a lawful impediment; and would bar a recovery,
" if not deſtroyed by this article of the treaty. This ſtipulation could not intend
" only to repeal laws that created legal impediments to the recovery of the debt,
" (without reſpect to the mode of payment) becauſe the *mere repeal* of a law would
" not deſtroy acts done, and rights acquired under the law, *during its exiſtence before*
" *the repeal*. This right to repeal was only admitted by the *council for the defendants*
" *in error*, becauſe a repeal would not affect their caſe; but on the ſame ground
" that a treaty can repeal a law of the State, it can *nullify* it. I have already
" proved, that a treaty can totally *annihilate* any part of the *conſtitution* of any of
" the individual States that is contrary to a treaty. It is admitted, that the treaty
" intended and did annul ſome laws of the States, to wit, any laws *paſt* or *future*
" that authoriſed a tender of *paper money* to extinguiſh or diſcharge the debt, and
" any laws *paſt* or *future*, that authoriſed the diſcharge of executions by paper mo-
" ney, or delivery of property at appraiſement; becauſe if the words *ſterling money*
" have not this effect, it cannot be ſhewn that they have any other. If the treaty
" could nullify *ſome* laws, it will be difficult to maintain that it could not equally
" annul others.

" It was argued that the 4th article was neceſſary to revive debts which had
" not been paid, as it was *doubtful* whether debts *not paid* would revive at peace
" by the *law of nations*. I anſwer that the 4th article was not neceſſary on *that*
" *account*, becauſe there was *no doubt* that debts not paid do revive by the *law* of
" *nations*; as appears from *Bynkershock*, *Lee*, and Sir *Thomas Parker*, and if ne-
" ceſſary, this article would not have this effect, becauſe it revives no debts, but
" only thoſe to which ſome *legal* impediment might be interpoſed, and there could
" be

" be no legal impediment or bar to the recovery after peace, of debts *not paid*
" during the war to the State.

" It was contended that the provifion is, that creditors fhall recover, &c. and
" there was no *creditor* at the time of the *treaty*, becaufe there was then no *debtor*,
" he having been legally difcharged. *The creditors* defcribed in the treaty were
" not creditors generally, but only thofe with whom debts had been contracted, at
" fome time before the treaty; and is a defcription of *perfons*, and not of their
" *rights*. This adhering to the *letter*, is to deftroy the plain meaning of the pro-
" vifion; becaufe if the treaty does not extend to debts paid into the State treafu-
" ries, or loan-offices, it is very clear that *nothing* was done by the treaty as to
" thofe debts, not even fo much as was ftipulated *for royalifts*, and *refugees*, to wit,
" a *recommendation of reftitution*. Further, by this conftruction, nothing was done
" for *Britifh creditors*, becaufe the law of nations fecured a recovery of their debts
" which had not been confifcated and paid to the States; and if the debts paid in
" paper money, of little value, into State treafuries, or loan-offices, were not paid
" to them, the article was of no kind of value to them, and they were deceived.
" The article relates either to debts *not paid*, or to debts *paid* into the treafuries or
" loan-offices. It has no relation to the *firft*, for the reafons above affigned; and if
" it does not include the latter it relates to nothing."—But it was alledged, that
the 4th article only ftipulates, that "there fhall be no *lawful impediment*, &c.
" But a law of the State was firft neceffary to *annul* the law creating fuch impedi-
" ment; and that the State is under a *moral* obligation to pafs fuch a law; but
" until it is done the impediment remains.

" I confider the 4th article in this light, that it is not a ftipulation that *certain*
" acts fhall be done, and that it was neceffary for the legiflatures of individual
" States to do thofe acts; but that it is an exprefs agreement, that certain things
" fhall *not* be permitted in the *American* courts of juftice; and that it is a contract
" on behalf of thofe courts, that *they* will not allow fuch acts to be plead in bar,
" to prevent a recovery of certain *Britifh debts*. 'Creditors are to meet with no
' lawful impediment, &c.' As creditors can only fue for the recovery of their
" debts in courts of juftice; and it is only in courts of juftice that a *legal* impedi-
" ment can be fet up by way of plea, in bar of their actions; it appears to me,
" that *the courts* are bound to overrule every *fuch* plea if contrary to the treaty.
" A recovery of a debt can only be prevented *by a plea in bar to the action*."——
" On the beft inveftigation I have been able to give the 4th article of the treaty, I
" cannot conceive that the wifdom of men could exprefs their meaning in more
" accurate and intelligible words, or in words more proper and effectual to carry
" their *intention* into execution. I am fatisfied, that the words in their natural im-
" port and common ufe give a recovery to the *Britifh* creditor from his original
" *debtor* of the debt contracted *before* the treaty, notwithftanding the payment
" thereof into the public treafuries, or loan-offices, under the authority of any
" State law; and therefore I am of opinion, that the judgment of the circuit
" court ought to be reverfed, and that judgment ought to be given, on the demurrer,
" for the plaintiffs in error; with the cofts in the circuit court, and the cofts of
" the appeal."

" PATTERSON,

" PATTERSON, juſtice.—The preſent ſuit is inſtituted on a bond bearing date
" the 7th of July 1774, and executed by *Daniel Lawrance Hylton and Co.* and
" *Francis Eppes*, citizens of the State of *Virginia*, to *Joſeph Farrel* and *William*
" *Jones*, ſubjects of the king of Great Britain, for the payment of £2976 11 6
" *Britiſh* or ſterling money.

" The defendants, among other pleas, pleaded, 1ſt, payment; on which iſſue
" is joined. 2d. That 3111 1/9 dollars, equal to £933 14 10 part of the debt
" mentioned in the declaration were on the 26th of April 1780, paid by them into
" the loan-office of *Virginia*, purſuant to an act of that State, paſſed on the 20th
" of October 1777, entitled ' An act for ſequeſtering *Britiſh* property, enabling
' thoſe indebted to *Britiſh* ſubjects to pay off ſuch debts, and directing the pro-
' ceedings in ſuits where ſuch ſubjects are parties.' The material ſection of the
" act is recited in the plea. To this plea the plaintiffs reply, and ſet up the fourth
" article of the treaty, made the 3d of *September* 1783, between the *United States*
" and his *Britannic* Majeſty, and the *conſtitution* of the *United States* making trea-
" ties the ſupreme law of the land. The rejoinder ſets forth, that the debt in the
" declaration mentioned, or ſo much thereof as is equal to the ſum of £933 14
" 10 was not a *bona fide* debt due and owing to the plaintiffs on the 3d of Septem-
" ber 1783, becauſe the defendants had on the 26th *April* 1780, paid in part
" thereof, the ſum of 3111 1/9 dollars into the loan-office of *Virginia*, and obtained
" a certificate and receipt therefor purſuant to the directions of the ſaid act, without
" that, that the ſaid treaty of peace, and the conſtitution of the *United States*,
" entitle the plaintiffs to maintain their action againſt the defendants, for ſo much
" of the ſaid debt in the declaration mentioned as is equal to £933 14 10.

" To this rejoinder the plaintiffs demur.

" The defendants join in demurrer.

" On this iſſue in law judgment was entered for the defendants in the circuit
" court for the diſtrict of *Virginia*. A writ of error has been brought, and the
" general errors are aſſigned.

" The queſtion is, whether the judgment rendered in the circuit court be erro-
" neous? I ſhall not purſue the range of diſcuſſion, which was taken by the coun-
" ſel on the part of the plaintiffs in error. I do not deem it neceſſary to enter on
" the queſtion, whether the legiſlature of *Virginia* had authority to make an act
" confiſcating the debts due from its citizens to the ſubjects of the king of *Great*
" *Britain*, or whether the authority in ſuch caſe was excluſively in congreſs. I
" ſhall read and make a few obſervations on the act, which has been pleaded in
" bar, and then paſs to the conſideration of the fourth article of the treaty. The
" firſt and third ſections are the only parts of the act neceſſary to be conſidered.

1ſt. ' Whereas divers perſons, ſubjects of *Great Britain* had, during our con-
' nection with that kingdom, acquired eſtates real and perſonal within this com-
' monwealth,

'monwealth, and had alſo become entitled to debts to a conſiderable amount, and
'ſome of them had commenced ſuits for the recovery of ſuch debts before the
'preſent troubles had interrupted the adminiſtration of juſtice, which ſuits were at
'the time depending and undetermined, and ſuch eſtates being acquired and debts
'incurred, under the ſanction of the laws and of the connection then ſubſiſting,
'and it not being known that their ſovereign hath as yet ſet the example of confiſ-
'cating debts and eſtates under the like circumſtances, the public faith, and the
'laws and uſages of nations require, that they ſhould not be confiſcated on our
'part, but the ſafety of the *United States* demands, and the ſame law and uſages
'of nations will juſtify, that we ſhould not ſtrengthen the hands of our enemies
'during the continuance of the preſent war, by remitting to them the profits or
'proceeds of ſuch eſtates, or the intereſt or principal of ſuch debts.

3d. 'And be it further enacted, that it ſhall and may be lawful for any citizen
'of this commonwealth owing money to a ſubject of *Great Britain*, to pay the
'ſame, or any part thereof, from time to time, as he ſhall think fit, into the ſaid
'loan-office, taking thereout a certificate for the ſame in the name of the creditor,
'with an endorſement under the hand of the commiſſioner of the ſaid office expreſſ-
'ing the name of the payer, and ſhall deliver ſuch certificate to the governor and
'council whoſe receipt ſhall diſcharge him from ſo much of the debt. And the
'governor and council ſhall in like manner lay before the general aſſembly, once in
'every year, an account of theſe certificates, ſpecifying the names of the perſons by
'and for whom they were paid, and ſhall ſee to the ſafe keeping of the ſame, ſub-
'ject to the future direction of the legiſlature.'

"The act does not confiſcate debts due to *Britiſh* ſubjects. The preamble re-
"probates the doctrine as being inconſiſtent with the public faith, and the law and
"uſages of nations. The payment made into the loan-office was voluntary and
"not compulſive; for it was in the option of the debtor to pay or not:—The en-
"acting clauſe will admit of a conſtruction in full conſiſtency with the preamble;
"for, although the certificates were to be ſubject to the future direction of the legiſla-
"ture, yet it was under the expreſs declaration, that there ſhould be no confiſcation
"unleſs the king of Great Britain ſhould ſet the example; if he ſhould confiſcate
"debts due to the citizens of *Virginia*, then the legiſlature of *Virginia* would con-
"fiſcate debts due to *Britiſh* ſubjects:—But the king of *Great Britain* did not con-
"fiſcate debts on his part, and the legiſlature of *Virginia* have not confiſcated
"debts on their part. It is, however ſaid, that the payment being made under
"the act, the faith of *Virginia* is plighted. True:—but to whom is it plighted:
"—To the creditor or debtor:—to the alien enemy or to its own citizen who
"made the voluntary payment? or will it be ſhaped and varied according to the
"event:—if one way, then to the creditor, if another, then to the debtor. Be
"theſe points as they may, the legiſlature thought it expedient to declare to what
"amount *Virginia* ſhould be bound for payments ſo made. The act for this purpoſe
"was paſſed on the 3d of *January*, 1780; and is entitled 'an act concerning
'monies paid into the public loan-office in payment of Britiſh debts. Section 1;
'Whereas by an act of the general aſſembly entitled an act for ſequeſtering *Britiſh*
'property,

' property, enabling those indebted to British subjects to pay off such debts, and
' directing the proceedings in suits where such subjects are parties, it is among other
' things provided, that it shall and may be lawful for any citizen of this common-
' wealth, owing money to a subject of *Great Britain*, to pay the same, or any part
' thereof, from time to time, as he shall think fit, into the said loan-office, taking
' thereout a certificate for the same, in the name of the creditor; with an indorse-
' ment under the hand of the commissioner of the said office, expressing the name of
' the payer; and shall deliver such certificate to the governor and council whose
' receipt shall discharge him from so much of the debt; and the governor and council
' shall in like manner, lay before the general assembly, once in every year, an ac-
' count of these certificates, specifying the names of the persons, by and for whom
' they were paid, and shall see to the safe keeping of the same, subject to the future
' direction of the legislature. Section 2d:—And whereas it belongs to the legisla-
' ture to decide particular questions, of which the judiciary have cognizance, and
' it is therefore unfit for them to determine, whether the payments so made into
' the loan-office, as aforesaid, be good or void between the creditor and debtor;
' But it is expedient to declare to what amount this commonwealth may be bound
' for the payments aforesaid:—Be it enacted and declared, that this commonwealth
' shall, at no time nor in any event or contingency, be liable to any person or per-
' sons whatsoever, for any sum, on account of the payments aforesaid, other than
' the value thereof when reduced by the scale of depreciation, established by one
' other act of the general assembly, entitled an act directing the mode of adjusting
' and settling the payment of certain debts and contracts, and for other purposes,
' with interest thereon, at the rate of six per centum per annum; any law, usage,
' custom, or any adjudication or construction of the first recited act already made,
' or hereafter to be made, notwithstanding'

" On the part of the defendants, it has also been urged, that it is immaterial whe-
" ther the payment be voluntary or compulsive, because the payer, on complying
" with the directions of the act, shall be discharged from so much of the debt:—
" Be it so:—If the legislature had authority to make the act, the congress could,
" by treaty, repeal the act, and annul every thing done under it. This leads to
" consider the treaty and its operation. Treaties must be construed in such a man-
" ner as to effectuate the intention of the parties. The intention is to be collected
" from the letter and the spirit of the instrument, and may be illustrated and enfor-
" ced by considerations deducible from the situation of the parties; and the reason-
" ableness, justice, and nature of the thing for which provision has been made.
" The 4th article of the treaty gives the text, and runs in the following words:
" It is agreed, 'that creditors on either side shall meet with no legal impediments
' to the recovery of the full value in sterling money of all *bona fide* debts heretofore
' contracted.' The phraseology made use of, leaves in my mind no room to hesitate
" as to the intention of the parties. The terms are unequivocal and universal in
" their signification, and obviously point to, and comprehend *all creditors* and *all*
" *debtors* previously to the 3d September, 1783. In this article there appears to be
" a selection of expressions plain and extensive in their import, and admirably calcu-
" lated to obviate doubts, to remove difficulties, to designate the objects, and ascer-
" tain

" tain the intention of the contending powers, and in ſhort, to meet and provide
" for *all poſſible caſes* that could ariſe under the head of *debts*. The words ' credi-
' tors on either ſide' embrace *every deſcription of creditors*, and cannot be limited or
" narrowed down to ſuch only, whoſe debtors had not paid into the loan-office of
" *Virginia;* creditors muſt have debtors; debtors is the corrective term. ' Who
" are theſe debtors? On the part of the defendants in error, it has been contended,
" that *Virginia* is the ſubſtituted debtor, ſo far as reſpects debtors who may have
" paid money into the loan-office under its laws. But the idea, that the treaty
" may be ſatisfied by ſubſtituting the State of *Virginia* inſtead of the original debtor,
" is far fetched, and altogether inadmiſſible. The terms in which the article is
" expreſſed, clearly evince a contrary intention, and naturally and irreſiſtibly carry
" the mind back to *the original debtor;* for, as between the *Britiſh* creditor and
" the State of *Virginia* there was no expreſs and pre-exiſting ſtipulation of debt.
" Beſides what lawful impediment was to be removed out of the way of the credi-
" tor, if *Virginia* was the ſubſtituted or ſelf-created debtor? Did this clauſe make
" *Virginia* liable to a proſecution for the debt? Is Virginia now ſueable by ſuch
" Britiſh creditor? No; he would in ſuch caſe be totally remedileſs, unleſs the
" nation of which he is a ſubject, would interpoſe in his behalf. The words ' ſhall
' meet with no lawful impediment,' refer to *legiſlative acts and every thing done under*
" *them,* ſo far as the creditor might be affected or obſtructed in regard either to his
" remedy or right. All lawful impediments of whatever kind they might be, whe-
" ther they related to *perſonal diſabilities*, or *confiſcations, ſequeſtrations or payments*
" *into loan-offices* or *treaſuries*, are removed. *No act of any State legiſlature,* and *no*
" *payment made under ſuch act* into the public coffers, ſhall obſtruct the creditor in
" his courſe of recovery againſt his debtor. The act itſelf is a lawful impediment
" and therefore repealed; the payment under the act is alſo a lawful impediment,
" and therefore is made void. The article is to be conſtrued according to the ſub-
" ject matter or nature of the impediment; it repeals in the firſt inſtance, and
" nullifies in the ſecond. Unleſs this be the conſtruction, it is not true that the
" creditor ſhall meet with no legal impediment to the recovery of his debt. Does
" not the plea in the preſent caſe contradict the treaty, and raiſe an impediment in
" the way of recovery, when the treaty declares there ſhall be none? Payments
" made in paper money into loan-offices and treaſuries, were the principal impedi-
" ments to be removed, and miſchiefs to be redreſſed. The article makes proviſion
" accordingly. It ſtipulates, that the creditor ſhall recover the full value of his
" debt in ſterling money, hereby ſecuring and guarding him againſt all payments
" in paper money. Suppoſe the creditor ſhould call on *Virginia* for payment:
" —What would it be!—The paper money paid into the loan-office, or its
" value:—Would this be a compliance with the article? In the one caſe the money
" being cried down and dead, is no better than waſte paper; and in the other,
" the payment when reduced by the table of depreciation, would be inconſiderable,
" and in many caſes not more than ſix-pence in the pound. Can this be called
" payment in the full value of the debt in ſterling money? The ſubſequent ex-
" preſſions in the article enforce the preceding obſervations, and mark the will
" and intention of the contracting parties, in the moſt clear and preciſe terms.
" The concluding words are ' all *bona fide* debts heretofore contracted.' In the
" conſtruction

" construction of contracts, words are to be taken in their natural and obvious
" meaning, unless some good reason be assigned to shew that they should be under-
" stood in a different sense. Now if a person in reading this article should
" take the words in their common meaning, and as generally understood, could he
" mistake the intention of the parties? Their design unquestionably was to *restore*
" *the creditor and debtor to their original State, and place them precisely in the*
" *situation they would have stood if no war had intervened or act of the legislature of*
" *Virginia had been passed.* The impediments created by legislative acts, and the
" payments made in pursuance of them, and all the evils growing out of them,
" were, so far as respected creditors, done away and cured. This is the only way
" in which all lawful impediments can be removed, and all debts, contracted before
" the date of the treaty, can be recovered to their full value, by the creditors
" against their debtors. It has however been urged, that this article must be re-
" stricted to debts existing and due at the time of making the treaty; that the debt
" in question was discharged because it has been paid into the loan-office, agreeably
" to law; and that the treaty ought not to be construed so as to renovate or revive
" it:—To enforce this objection the rule laid down by *Vattel* was relied on, ' that
' the state of things at the instant of the treaty, is to be held legitimate, and any
' change to be made in it requires an express specification in the treaty; conse-
' quently all things not mentioned in the treaty are to remain as they were at the
' conclusion of it.' *Vattel, B.* 4. *c.* 2. § 21. The first part of the objection has
" been already answered; for it is within both the letter and spirit of the instrument,
" that the creditors should be reinstated, and of course that the debtors should be
" liable to pay. The act of *Virginia and the payment under it have so far as the*
" *creditor is concerned, no operation and are void.* There is no difficulty in answer-
" ing the objection arising from the passage in *Vattel.* The universality of
" the terms is equal to an express specification in the treaty, and indeed in-
" cludes it. For it is fair and conclusive reasoning, that if any description
" of debtors, or class of cases was intended to be excepted, it would have been
" specified in the instrument, and the words, ' that creditors on either side shall
' meet with no lawful impediment to the recovery of the full value in sterling money
' of all debts heretofore contracted,' would not have been made use of in the unqua-
" lified manner, in which they stand in the treaty:—the universality of the terms are
" equal to a *specification of every particular debt, or an enumeration of every creditor and*
" *debtor.* It is the same thing as though they had been individually named. *All the*
" *creditors* on either side, *without distinction*, must have been contemplated by the parties
" in the 4th article. Almost every word separately taken, is expressive of this idea, and
" when all the words are combined and taken together, they remove every par-
" ticle of doubt. But if the class of *British* creditors whose debtors have paid
" into the loan-office of *Virginia* are not comprehended in the fourth article,
" they then pass without redress, without notice, without so much as a recommend-
" ation in their favor. The thing is incredible. Why a distinction?—Why should
" the creditors, whose debtors paid into the loan-office, be in a worse situation
" than the creditors whose debtors did not thus pay? The traders and others of
" this country, were largely indebted to the merchants of *Great Britain.* To
" provide for the payment of these debts, and give satisfaction to this class of sub-
" jects,

" jects, must have been a matter of primary importance to the *British* ministry.
" This doubtless, is at all times, and in all situations, an object of moment to a
" commercial country. The opulence, resources, and power of the *British* nation,
" may, in no small degree, be ascribed to its commerce; it is a nation of manu-
" facturers and merchants. To protect their interests, and provide for the payment
" of debts due to them, especially when those debts amounted to an immense sum
" it could not fail of arresting the attention, and calling forth the utmost exertions
" of the *British* cabinet. A measure of this kind it is easy to perceive, would be
" pursued with unremitting diligence and order, sacrifices would be made to ensure
" its success, and perhaps nothing short of extreme necessity would induce them to
" give it up. But if the debts which have been confiscated, or paid into loan-
" offices, or treasuries, be not within the provision of the 4th article, then a nu-
" merous class of British merchants are passed over in silence, and not so much
" attended to as the loyalists, or *Americans* who attached themselves to the cause
" of *Britain* during the war. Is it a supposeable case that the British negociators
" would have been more regardful of the interests of the loyalists than of their own
" merchants? that they would make a discrimination between merchants, when
" in a national and political view, and in the eye of justice, they were equally
" meritorious, and entitled to receive complete satisfaction for their debts? *No*
" *line should be drawn between creditors, unless it be found in the treaty. The treaty*
" does not make it: the truth is, that none was intended, or it would have been
" expressed. The indefinite and sweeping terms made use of by the parties, such
" as 'creditors on either side, no lawful impediment to the recovery of the full
' value in sterling money, of all debts heretofore contracted,' exclude the idea of
" any class of cases having been intended to be excepted, and explode the doctrine
" of constructive discrimination:—It has been made a question, whether the con-
" fiscation of debts, which were contracted by individuals of different nations in
" time of peace, and remain due to individuals of the enemy in time of war, is
" authorized by the law of nations, among civilized States? I shall not however
" controvert the position, that by the rigor of the law of nations, debts of the
" description just mentioned, may be confiscated. This rule has by some been
" considered as a relict of barbarism; it is certainly a hard one, and cannot con-
" tinue long among commercial nations; indeed it ought not to have existed among
" any nations, and perhaps is generally exploded at the present day in Europe.—
" Confiscation of debts is considered a disreputable thing among civilized nations
" of the present day; and indeed nothing is more strongly evincive of this truth,
" than that it is gone into general disuetude, and whenever put into practice,
" provision is made by the treaty which terminates the war, for the mutual and
" complete restoration of contracts and payment of debts. I feel no hesitation in
" declaring, that it has always appeared to me to be incompatible with the principles
" of justice and policy, that contracts entered into by individuals of different
" nations, should be violated by their respective governments in consequence of
" national quarrels and hostilities. National differences should not affect private
" bargains. The confidence both of an individual and national nature, on which
" the contracts were founded, ought to be preserved inviolate. Is not this the
" language of honesty and honor? Does not the sentiment correspond with the

" principles of juſtice, and the dictates of the moral ſenſe? In ſhort, is it not
" the reſult of right reaſon and natural equity? The relation which the parties ſtood
" in to each other at the time of contracting theſe debts, ought not to paſs without
" notice. The debts were contracted while the creditors and debtors were ſubjects
" of the ſame king, and children of the ſame family. They were made under
" the ſanction of laws common to, and binding on both. A revolution-war could
" not like other wars, be foreſeen or calculated upon. The thing was improbable:
" —No one at the time that the debts were contracted, had any idea of a ſever-
" ance, or diſmemberment of the empire, by which, perſons who had been united
" under one ſyſtem of civil polity, ſhould be torn aſunder, and become enemies
" for a time, and perhaps aliens forever. Contracts entered into in ſuch a ſtate of
" things, ought to be ſacredly regarded; inviolability ſeems to be attached to them.
" Conſidering then the uſages of civilized nations, and the opinion of modern
" writers, relative to confiſcation, and alſo the circumſtances under which theſe
" debts were contracted, we ought to take the expreſſions in this 4th article, in
" their moſt extenſive ſenſe. We ought to admit of no comment that will narrow
" and reſtrict their operation and import. The conſtruction of a treaty made in
" favor of ſuch creditors, and for the reſtoration and enforcement of pre-exiſting
" contracts ought to be liberal and benign. For theſe reaſons, this clauſe in the
" treaty deſerves the utmoſt latitude of expoſition. The 4th article *embraces all*
" *creditors, extends to all pre-exiſting debts, removes all lawful impediments, repeals*
" *the legiſlative act of Virginia* which has been pleaded in bar, and with regard
" to the creditor, *annuls every thing done under it*, This article *reinſtates the parties*;
" the creditor and debtor before the war, are creditor and debtor ſince; *as they*
" *ſtood then, they ſtand now*. To prevent miſtakes, it is to be underſtood, that
" my argument embraces none but lawful impediments within the meaning of the
" treaty, ſuch as legiſlative acts, and payments under them into loan-offices and
" treaſuries. An impediment created by law, ſtands on different ground from an
" impediment created by the creditor. To conclude: I am of opinion, that the
" demurrer ought to be ſuſtained; and of courſe that the judgment rendered in
" the court below is erroneous, and muſt be reverſed.

WILSON, juſtice:—" I ſhall be conciſe in delivering my opinion, as it depends
" on a few plain principles. If *Virginia* had a power to paſs the law of October,
" 1777, ſhe muſt be equally empowered to paſs a ſimilar law in any future war,
" for the powers of congreſs were in fact abridged by the articles of confederation;
" and in relation to the preſent conſtitution, ſhe ſtill retains her ſovereignty and
" independence as a State, except in the inſtances of expreſs delegation to the
" federal government. There are two points involved in the diſcuſſion of this
" power of confiſcation: the firſt ariſing from the rule preſcribed by the law of
" nations: and the ſecond ariſing from the conſtruction of the treaty of peace.
" When the *United States* declared their independence, they were bound to receive
" the law of nations in its modern ſtate of purity and refinement. By every
" nation, whatever is its form of government, the confiſcation of debts has long
" been conſidered diſreputable; and we know, that not a ſingle confiſcation of
" that kind ſtained the code of any of the *European* powers who were engaged in
" the

" the war, which our revolution produced. Nor did any authority for the confif-
" cation of debts proceed from congrefs, (that body which clearly poffeffed the
" right of confifcation, as an incident of the powers of war and peace) and there-
" fore, in no inftance can the act of confifcation be confidered as the act of the
" nation. But even if *Virginia* had the power to confifcate, the *treaty annuls the*
" *confifcation*. The 4th article is well expreffed to meet the very cafe: it is not
" confined to debts exifting at the time of making the treaty; but is extended to
" debts *heretofore contracted*. It is impoffible by any gloffary, or argument, to make
" the words more perfpicuous, more conclufive, than by a bare recital. Inde-
" pendent therefore of the conftitution of the *United States*, (which authoritatively
" inculcates the obligation of contracts) the treaty is fufficient to remove every
" impediment founded on the law of *Virginia*. The State made the law; the
" State was a party to the making of the treaty: a law does nothing more than
" exprefs the will of the nation; and a treaty does the fame. Under this general
" view of the fubject, I think the judgment of the circuit court ought to be
" reverfed.

" CUSHING, juftice.—My ftate of this cafe will, agreeably to my view of it,
" be fhort. I fhall not queftion the right of a State to confifcate debts. Here is
" an act of the affembly of *Virginia* paffed in 1777, refpecting debts; which con-
" templating to prevent the enemy deriving ftrength by the receipt of them during
" the war, provides, that if any *Britifh* debtor will pay his debt into the loan-
" office, obtain a certificate and receipt as directed, he fhall be difcharged from fo
" much of the debt. But an intent is expreffed in the act not to confifcate unlefs
" *Great Britain* fhould fet the example. This act it is faid, works a difcharge,
" and a bar to the payer. If fuch payments are to be confidered as a difcharge,
" or a bar, fo long as the act had force, the queftion occurs:—Was there a power
" by the treaty, fuppofing it contained proper words, entirely to remove this law,
" and this bar, out of the creditor's way? This power feems not to have been
" contended againft by the defendant's counfel: And indeed it cannot be denied;
" the treaty having been fanctioned in all its parts, by the conftitution of the *United*
" *States* as the fupreme law of the land:—Then arifes the great queftion upon the
" import of the fourth article of the treaty: and to me, the plain and obvious
" meaning of it *goes to nullify, ab initio, all laws*, or the impediments of any law,
" as far as they might have been defigned to impair, or impede the creditor's right,
" or remedy againft the original debtor: '*creditors on either fide fhall meet with no*
' *lawful impediment to the recovery of the full value in fterling money of all bona fide*
' *debts heretofore contracted*.'

" The article fpeaking of creditors and *bona fide* debts heretofore contracted,
" plainly contemplates debts as originally contracted, and creditors and original
" debtors; removing out of the way all legal impediments; fo that a recovery
" might be had, *as if no laws had particularly interpofed*. The words—'recovery
' of the full value in fterling money,' if they have force or meaning, muft annihi-
" late all tender laws making any thing a tender but fterling money; and the
" other words, or at leaft the whole taken together, muft, in like manner, remove
" all

" all other impediments of law aiming at the recovery of thofe debts.——' The
' provifion that *creditors* fhall meet with no lawful impediment, &c.' is as abfolute,
" unconditional, and peremptory, as words can well exprefs, and made, not to
" depend on the will and pleafure, or the optional conduct, of any body of men
" whatever. To effect the object intended, there is no want of proper and ftrong
" language, there is no want of power, the treaty being fanctioned as the fupreme
" law by the conftitution of the *United States*, which no body pretends to deny to
" be paramount and controuling to all State laws, and even State conftitutions,
" wherefoever they interfere or difagree. The treaty then as to the point in
" queftion, is of equal force with the conftitution itfelf; and certainly with any
" law whatfoever. And the words '*fhall meet with no lawful impediment, &c.*'
" are as ftrong as the wit of man could devife, to avoid all effects of *fequeftration,*
" *confifcation, or any other obftacle thrown in the way, by any law* particularly pointed
" againft the recovery of fuch debts. I am therefore of opinion, that the judg-
" ment of the circuit court ought to be reverfed."—

When the judgment of the court in this very important caufe is confidered in connection with the arguments of the judges, it appears to us, and we believe it muft appear to moft who fhall read it, to eftablifh the claimant's right of recovery in the ordinary courts of juftice, notwithftanding his attainder, and the confifcation of his property, beyond all reafonable doubt. The objection ftated in the propofed refolution againft this inference is, that the act of Virginia referred to in the pleadings, was an act of *fequeftration*, and not of confifcation, and that the authority of the cafe therefore, as a judicial precedent, goes no further than cafes of fequeftration, notwithftanding the generality of the principles adopted by the judges in their refpective arguments. To this objection it is anfwered, that on the queftion, whether the act of Virginia was an act of fequeftration merely, or in effect an act of confifcation, the judges were not agreed in opinion ; one of them, Judge Chafe, exprefsly confidered it as an act of confifcation, or at leaft as operating a complete extinguifhment of the debt before the peace. Judge Wilfon treats it in no other character than as an abfolute confifcation. And although the judges, Cufhing and Patterfon, intimated an opinion, that it was only an act of fequeftration, yet this appears evidently, not to have been the principal ground of their judgment. They all confidered the operation it would have had, if it had been clearly and indifputably an act of confifcation, and all declared, in the moft unequivocal and pofitive terms, that, on that conftruction, it would have been a lawful impediment which the treaty of peace removed ; the divifion of opinion on the bench, as to the true character of the act, *made it neceffary to confider and decide the effect of a confifcation.* Their language on this point admits of no ambiguity ; and their opinions are delivered with a precifion and folemnity, that irrefiftibly attaches to them the utmoft weight and authority.—Their fentiments are not left to be collected by inference or from implication ; they formally pronounce in terms not to be mifunderftood, that the words "*fhall meet with no lawful impediment,* refer to legiflative acts and every
" thing done under them. All lawful impediments of whatever kind they might
" be, whether they related to *perfonal difabilities*, or *confifcations*, or *fequeftrations,*
" or *payments into loan-offices or treafuries*, are removed. *No act of any State*
" *legiflature,*

" *legiſlature*, and *no payment under ſuch act* into the public coffers, ſhall obſtruct the " creditor in his courſe of *recovery againſt his debtor*." It cannot we think be juſtly doubted, that doctrines thus maintained and pronounced, are of concluſive effect as judicial declarations of the law, and entitled to all the weight of judicial precedent. The fact is, the judgment of the court has had this effect; and the ſame principles have, four months afterwards, been judicially applied to an unqueſtionable caſe of confiſcation. The caſe of Hamiltons againſt Eaton was determined in the circuit court of the United States for the diſtrict of North-Carolina, at June term, 1796.—*North-Carolina Report's, p. 2d, page* 1. *et ſeq.*—The ſtate of the caſe will appear in the arguments of the judges, ELSWORTH the chief juſtice of the United States, and SITGREAVES the judge of the diſtrict of North-Carolina. —We tranſcribe their arguments at large; for which, as well as for the copious extracts which we have made, or may make from the reports of adjudged caſes, we offer no apology, as we deem this inquiry into the adminiſtration of the law, to be of the firſt importance, with reference to the principles aſſumed on this occaſion, and highly expedient for the aſcertainment of the true character of the American tribunals, in relation to the ſubjects depending before this board.

" SITGREAVES, Juſtice. This is an action of debt brought by the plaintiffs, " to recover of the defendant, on an obligation made in the year 1777. The " defendant has pleaded four ſeveral pleas in bar, which are now for the deciſion " of the court by demurrer.

" I ſhall conſider the caſe as it appears by the firſt plea, which places the de- " fendant on the moſt advantageous ground; as a deciſion on that will probably " govern all the caſes ariſing out of the ſubſequent pleas.

" The caſe as it appears by the firſt plea, is as follows. The plaintiffs were " merchants, reſidents of North-Carolina before, and at the declaration of inde- " pendence. By an act of the legiſlature of North-Carolina, paſſed in April, " 1777, it was among other things, enacted, ' That all perſons being ſubjects of ' this State, and now living therein, or who ſhall hereafter come to live therein, ' who have traded immediately to Great Britain or Ireland, within ten years laſt ' paſt in their own right, or acted as factors, ſtore-keepers or agents here or in any ' of the United States of America, for merchants reſiding in Great Britain or ' Ireland, ſhall take an oath of abjuration and allegiance, or depart out of the State.' " By the ſame act ſuch perſons were permitted to ſell their eſtates, to export the " amount thereof in produce, and to appoint attornies to ſell and diſpoſe of their " eſtate for their uſe and benefit:—The plaintiffs falling within the deſcription of " perſons contemplated by this act, and refuſing to take the oath, departed the " State October 20, 1777—the debt which is the ſubject of the preſent ſuit then " exiſting. By ſubſequent acts of the legiſlature, all the eſtates, rights, properties, " and debts of certain perſons, among which the plaintiffs are ſpecially named, are " declared to be *confiſcated*, and the debts due to ſuch perſons are directed to be " paid to certain commiſſioners, to be appointed by the county courts for that pur- " poſe, by all perſons within the State owing the ſame, under pain of impriſon-

" ment,

" ment, *which payments it is declared, ſhall forever indemnify and acquit the perſons* " *paying the ſame*, their heirs, &c. againſt any future claim for the money mentioned " in the receipts or diſcharges of ſuch commiſſioners. In obedience to thoſe acts, " *the defendant paid the debt in queſtion* to the commiſſioners authorized to receive it; " and relies on that payment as legal, and a full and ſufficient diſcharge. The " plaintiffs admitting the fact of payment, rely on the conſtruction of the treaty of " peace, the law of the State declaring that treaty to be a part of the law of the " land, and the conſtitution of the United States.

" The counſel for the plaintiffs, in ſupport of their claim, has in the courſe of his " argument, preſented to the view a doubt, whether the debt in the preſent queſtion " has been confiſcated in a ſtrictly legal ſenſe, by any of the acts called confiſcation " acts; and has urged that doubt ſtrenuouſly, and with much force of argument, " contemplating them as a body of penal law, and of courſe ſubject to the legal rules " of conſtruction in ſuch caſes. The obſervations on that point would merit much " attention, but I deem it not abſolutely neceſſary to inveſtigate that queſtion, in " forming an opinion upon the preſent caſe: and ſhall confine my obſervations ſole- " ly to the law and the facts, as they ariſe out of the pleadings in the firſt plea of " the defendants, which admits alone of this queſtion, viz. Are the plaintiffs bar- " red of a recovery? It would appear quite unneceſſary to enquire, whether con- " greſs, under whoſe authority the treaty was negociated, was veſted by the States " with a power competent to enter into ſuch a contract, had not part of the argu- " ments of the defendant's counſel, ſeemed to require it. No one will doubt, if " they had the power, the treaty conſequently became obligatory on the people of " the United States, when made and duly ratified. Whatever agreement the " States may have entered into at the declaration of independence, and to what " purpoſes and extent that agreement may or may not have bound them, as a " confederated body; it is clear that at a ſubſequent period, and previous to the " negociation of this treaty, they, by their delegates in congreſs, formed and enter- " ed into a ſolemn compact, by which they plight and engage the faith of their " conſtituents, to abide by the determination of the United States in congreſs " aſſembled, *on all queſtions* which, by the confederation, are ſubmitted to them; " and that the articles thereof ſhall be *inviolably* obſerved by the States. Among " many other portions of ſovereignty which the States thought proper to depoſit in " that confederated head, was the *ſole* and *excluſive* right and power of determining " on *peace* and *war*, (except in certain caſes ſpecially enumerated) of ſending and " receiving ambaſſadors, entering into *treaties* and *alliances*. No words can be " more comprehenſive or expreſs, relative to the point in queſtion: nor is there " offered to my mind the leaſt room for doubt. Admitting for argument's ſake, " what has been contended, that the miniſters who negociated the treaty, exceeded " the powers granted them, certainly the ratification of that inſtrument by congreſs, " confirmed and legalized all that had been done by them; and if it could be " ſuppoſed, as has been ſaid, that congreſs in the ratification of it, exceeded the " powers veſted in them by the State, the act of aſſembly of this State, paſſed in " 1787, muſt have extinguiſhed every ſcintilla of doubt, as to its validity and " obligatory force on their citizens. That act is a perfect recognition of the whole

" treaty,

" treaty, declares it to be part of the law of the land, and directs the judges to
" decide accordingly. The last mentioned act must surely be sufficient, to satisfy
" the mind of the most scrupulous and sceptical. For myself I do not hesitate to
" declare, that it adds nothing to the validity or legality of the treaty: that its
" ratification by congress was alone sufficient, and that the act of assembly of the
" State was superfluous.

" The counsel for the defendant has contended, that, by the operation of the
" acts of confiscation, and the payment into the treasury, the plaintiffs were wholly
" divested of their right; and the same, if existing at all, was vested in the State.
" This forms a material part of his defence, and if it had been clearly evinced,
" that the right of the plaintiffs was wholly extinguished by the operation of the
" confiscation acts, and could not possibly be revived or restored by any subsequent
" act of the State, or the nation, it would follow of course, that they could have
" no demand against the defendant. In support of this argument it is said, 4.
" *Bacon*, 637, that all acts done under a statute while in force, are good notwith-
" ing a subsequent repeal. I am ready to admit the principle in its fullest extent,
" in the exposition of a statute or municipal law of any particular State. It is con-
" sonant with reason and is justified by the necessity of the case; it prevents much
" confusion and embarrassment, and insures a ready submission to the laws, by a
" confidence in the security impliedly promised to such obedience. If the treaty
" was now to be considered as an act of the State, and emanating from the same
" authority only that produced acts of confiscation, this reasoning might be solid:
" —But that instrument cannot be subject to the ordinary rules of construction,
" which govern in the exposition of statutes of a particular State. *These* have for
" their object the regulation of the rights of a distinct community or society only,
" whose interests being similar, are equally affected by an uniform regulation of
" their rights; who are alike united by the allegiance due to, and protection from
" the same government; *that* is a compact formed between two separate and distinct
" nations, relative to certain specified subjects, which involve interests of their
" respective citizens or people, unavoidably clashing with each other.

" The one is an act of the State, but a component part of the nation, providing
" for the benefit of its own citizens. The other is a compact of the whole nation
" (of which that State is but a part) with another nation, which must necessarily
" controul all acts issuing from the inferior authority which must contravene it.
" This is evinced by that plain and strong expression in the constitution of the
" United States, which declares, ' that all treaties made, or which shall be made,
' under the authority of the United States, shall be the supreme law of the land,
' and the judges in every State shall be bound thereby, any thing in the constitu-
' tion or laws of any State, to the contrary notwithstanding." Taking it for grant-
" ed then that the treaty is not to be governed, when in opposition to particular
" laws, by the rigid rules of the common law; nor to be restrained in its opera-
" tion, by any statute of any particular State, but that ' it ought to be interpreted
' in such a manner, as that it may have its effects, and not be found vain and illu-
' sive.' I will proceed to consider of the operation of the 4th article.

" Art.

" Art. 4th. It is agreed that creditors on *either ſide* ſhall meet with no *lawfu.*
" *impediments* to the *recovery* of the full value in *ſterling* money of all *bona fide* debts
" heretofore contracted."

" This article appears to me ſo clear, preciſe, and definite, that one would be
" at ſome loſs to ſelect other words to render it more ſo. But it has been con-
" tended by the defendant's counſel, that, by a true conſtruction of this article, it
" will appear much leſs general than the expreſſions would warrant; that it is a
" proviſion for real Britiſh ſubjects only, that is, perſons reſident in Great Britain
" at the commencement of the war, a term uſed in contradiction to many other
" deſcriptions of people, who in the courſe of the war, took part with that nation,
" and that the conſtruction is juſtified by the term *ſterling money*. In order to
" ſupport this expoſition, a reference has been had to the 5th and 6th articles.

" The 4th article contains the only ſtipulation with reſpect to debts in the whole
" inſtrument. It is mutual and general in its expreſſion; not limited or reſtrained
" by any particular words to any deſcription of perſons, as is evident in the 5th
" article. If that had been in the contemplation of the parties, they could not
" have overlooked the neceſſity for theſe diſtinctions; nor are we at liberty to pre-
" ſume it. In the next article, the diſtinction is made with great accuracy, with
" regard to thoſe who endeavor to procure a reſtitution of their lands, and other
" property. With reſpect to the expreſſion *ſterling money*, it appears to me, that
" was probably concluded on as a ſtandard, whereby to eſtimate the value of mo-
" ney due; it being no doubt apprehended, that a depreciated paper medium circu-
" lated in many States of the Union, the nominal ſum in which, might not to
" produce the intrinſic value of the debt due.

" Another conſtruction has been pleaded on this article, equally, in my opinion,
" unfounded with the foregoing. It has been ſaid, the article was only intended
" to take off from Britiſh ſubjects, their diſability as alien enemies, to ſue. Every
" one knows, that diſability can only exiſt during the continuance of a war; it
" would therefore have been unneceſſary to provide for it in a treaty of peace;
" when it is obvious, the peace itſelf, agreeably to the long eſtabliſhed principles of
" law, removed all ſuch diſability without any ſuch ſtipulation. The word *recovery*
" admits not of ſuch an idea. The terms *ſue* and *recover* have very different im-
" port in practice. The difference is daily exemplified in our courts, and the
" diſtinction appears evident in the body of that inſtrument; in the latter part of
" the 5th article it is ſtipulated, that certain perſons ſhall meet with no lawful im-
" pediment in the *proſecution* of their juſt rights. In the 4th article the words
" are, no lawful impediment to the recovery of their debts. The diſtinction is obvi-
" ous, and the terms aptly applied in each caſe. In the former, relative to lands
" and other property which had been confiſcated, and a reſtoration of which entirely
" depended on the liberality of the legiſlatures, the term *recovery* would have been
" improper; in the latter, in which payment to the creditor was poſitively ſtipulated,
" the expreſſion is correct.

" *Vattel*

" *Vattel says, p.* 369,—' When an act is conceived in clear and positive
' terms, when the sense is manifest, and leads to nothing absurd, there can be no
' reason to refuse the sense which this treaty naturally presents, to go elsewhere in
' search of conjectures in order to extinguish or restrain it, is to endeavor
' to elude it.' It is therefore my opinion, that this article does controul
" the operation of the acts of confiscation, relative to debts; that the plain-
" tiffs in this case are entitled to recover on the first demurrer, the plea in that
" case being the strongest ground of defence made by the defendant: that therefore
" judgment be given for the plaintiffs, on each of the demurrers.

" The State who has compelled the payment from the creditor by a threat of
" severe punishment, will certainly feel bound by every principle of moral obliga-
" tion, to reimburse in the most ample manner, all those who have made such
" payments. In addition to the moral tie, that it is bound by a solemn promise so
" to do, is clearly expressed by an act of the legislature.

" I have only to observe, that I have considered this case as of the utmost im-
" portance; that I have given it all the attention and consideration in my power to
" bestow at this time and place, that if any opinion is founded in error which is
" possibly the case, happily for the defendant, there is a higher tribunal where the
" error may be corrected.

" Elsworth, chief justice. It is admitted that the bond on which this suit
" is brought, was executed by the defendant to the plaintiffs; and that the plain-
" tiffs have not been paid. But the defendant pleads, that since the execution of
" the bond, a war has existed, in which the plaintiffs were enemies; and that
" during the war this debt was confiscated, and the money paid into the treasury
" of the State. And the plaintiffs reply, that by the treaty which terminated the
" war, it was stipulated, that 'creditors, on either side, should meet with no
' lawful impediment to the recovery of *bona fide* debts heretofore contracted.'

" Debts contracted to an alien, are not extinguished by the intervention of a war
" with his nation. His remedy is suspended while the war lasts, because it would
" be dangerous to admit him into the country, or correspond with agents in it;
" and also because a transfer of treasure from the country to his nation, would di-
" minish the ability of the former, and increase that of the latter to prosecute the
" war. But with the termination of hostilities, these reasons and the suspension
" of the remedy cease.

" As to the confiscation here alledged, it is doubtless true, that enemies debts,
" so far as consists in barring the creditor, and compelling payment from the debt-
" ors, for the use of the public, can be confiscated; and that on principles of equi-
" ty though perhaps not of policy, they may be. For their confiscation, as well
" as that of property of any kind, may serve as an indemnity for the expences of
" war, and as security against future aggression. That such confiscations have
" fallen into disuse, has resulted not from the duty which one nation independent
" of

" of treaties owes to another, but from commercial policy, which European nations
" have found a common, and indeed a ſtrong intereſt in ſupporting. Civil war,
" which terminates in a ſeverance of empire, does, perhaps, leſs than another,
" juſtify the confiſcation of debts ; becauſe of the ſpecial relation and confidence
" ſubſiſting at the time they were contracted. And it may have been owing to
" this conſideration, as well as others, that the American States, in the late revo-
" lution, ſo generally forbore to confiſcate the debts of Britiſh ſubjects. In Virginia
" they were only ſequeſtered ; in South-Carolina, all debts, to whomſoever due,
" were excepted from confiſcation ; as were in Georgia thoſe of Britiſh merchants
" and others reſiding in Great Britain. And in the other States, except this, I
" do not recollect that Britiſh debts were touched. Certain it is, that the recom-
" mendation of congreſs on the ſubject of confiſcation, did not extend to them.
" North-Carolina, however, judging for herſelf, in a moment of ſevere preſſure,
" exerciſed the ſovereign power of paſſing an act of confiſcation, which extended
" among others, to the debts of the plaintiffs. Providing however at the ſame
" time, as to all debts which ſhould be paid into the treaſury under that act, that the
" State would indemnify the debtors ſhould they be obliged to pay again.

" Allowing then, that the debt in queſtion was in fact and of right confiſcated,
" can the plaintiffs recover by the treaty of 1783 ?——

" The fourth article of the treaty is in the following words : 'It is agreed that
' creditors on either ſide ſhall meet with no lawful impediment to the recovery of
' the full value in ſterling money of all *bona fide* debts heretofore contracted.'

" There is no doubt but the debt in queſtion was a '*bona fide*' debt, and *therefore*
" contracted, i. e. prior to the treaty.

" To bring it within the article it is alſo requiſite, that the debtor and creditor
" ſhould have been on different ſides, with reference to the parties to the treaty,
" and as the defendant was confeſſedly a citizen of the United States, it muſt
" appear, that the plaintiffs were ſubjects of the king of Great Britain ; and it is
" pretty clear, from the pleadings and the laws of the State, that they were ſo.
" It is true, that on the 4th of July 1776, when North-Carolina became an inde-
" pendent State, they were inhabitants thereof, though natives of Great Britain ;
" and they might have been claimed and holden as citizens, whatever were their
" ſentiments or inclinations. But the State afterwards, in 1777, liberally gave
" to them, with others ſimilarly circumſtanced, the option of taking an oath of
" allegiance, or of departing the State under a prohibition to return, with the
" indulgence of a time to ſell their eſtates, and collect and remove their effects.
" They choſe the latter, and ever after adhered to the king of Great Britain, and
" muſt therefore be regarded as on the Britiſh ſide.

" It is alſo pertinent to the inquiry, whether the debt in queſtion be within the
" before recited article, to notice an objection which has been ſtated by the defend-
" ant's counſel, viz: That at the date of the treaty, what is now ſued for as a

" debt,

" debt, was not a *debt*, but a nonentity; payment having been made, and a dif-
" charge effected under the act of confifcation; and therefore that the ftipulation
" concerning *debts* did not reach it.

" In the firft place it is not true, that in this cafe, there was no debt at the date
" of the treaty A debt is created by contract, and exifts till the contract is per-
" formed. Legiflative interference to exonerate a debtor from the performance
" of his contract, whether upon or without conditions, or to take from the creditor
" the protection of law, does not in ftrictnefs deftroy the debt, though it may,
" locally, the remedy for it. The debt remains, and in a foreign country, pay-
" ment is frequently enforced. Secondly—It was manifeftly the defign of the
" ftipulation, that where debts had been *theretofore contracted*, there fhould be no
" bar to their recovery from the operation of laws paffed fubfequent to the con-
" tracts. And to adopt a narrower conftruction, would be to leave creditors to
" a harder fate than they have been left to by any modern treaty.

" Upon a view of all the circumftances of this cafe, it muft be confidered as
" one within the ftipulation, that there fhould be 'no lawful impediment to a
' recovery;' and it is not to be doubted, that impediments created by the act of
" confifcation are *lawful* impediments; they muft therefore be difregarded if the
" treaty is a rule of decifion. Whether it is fo or not remains to be confidered.
" Here it is contended by the defendant's counfel, that the confifcation act has
" not been repealed by the State; that the treaty could not repeal or annul it;
" and therefore that it remains in force, and fecures the defendant. And further,
" that a repeal of it would not take from him a right vefted, to ftand difcharged.

" As to the opinion, that a treaty does not annul a ftatute fo far as there is an
" interference, it is unfound. A ftatute is a declaration of the public will, and of
" high authority; but it is controulable by the public will fubfequently declared.
" Hence the maxim, that when two ftatutes are oppofed to each other, the latter
" abrogates the former. Nor is it material, as to the effect of the public will,
" what organ it is declared by, provided it be an organ conftitutionally authorized
" to make the declaration, A treaty when it is in fact *made* is, with regard to
" each nation that is a party to it, a national act, an expreffion of the national
" will as much as a ftatute can be. And it does therefore, of neceffity, annul any
" prior ftatute fo far as there is in an interference. The fuppofition, that the public
" can have two wills at the fame time repugnant to each other, one expreffed by a
" ftatute and another by a treaty, is abfurd.

" The treaty now under confideration, was made on the part of the United
" States by a congrefs compofed of deputies from each State, to whom were dele-
" gated by the articles of confederation, exprefsly, 'the fole and exclufive right
' and power of entering into treaties and alliances;' and being ratified and made
" by them, it became a complete national act, and the act and law of every State.

" If

" If however a subsequent sanction of this State was at all necessary to make the " treaty law here, is has been had and repealed. By a statute passed in 1787, " the treaty was declared to be law in this State, and the courts of law and equity " were enjoined to govern their decisions accordingly. And in 1789, was adopted " here the present constitution of the United States, which declared, that all " treaties made, or which should be made under the authority of the United " States, should be the supreme law of the land; and the judges in every State " should be bound thereby, any thing in the constitution, or laws of any State, " to the contrary notwithstanding, Surely then the treaty is now law in this State; " and the confiscation act, so far as the treaty interferes with it, is annulled.

" Still it is urged, that annulling the confiscation act cannot annul the defendant's " right of discharge, acquired while the act was in force.

" It is true, the repeal of a law does not make void what has been well done " under it. But it is also true, admitting the right here claimed by the defendant " to be as substantial as a right of property can be, that he may be deprived of it, " if the treaty so requires. It is justifiable, and frequent in the adjustment of " national differences, to concede for the safety of the State the rights of indivi- " duals. And they are afterwards indemnified or not according to circumstances. " What is most material to be here noted is, that the right or obstacle in question, " whatever it may amount to, has been created by law, and not by the creditors. " It comes within the description of 'lawful impediments,' all of which in this " case the treaty as I apprehend removes.

" Let judgment be for the plaintiffs."

It might have been expected, that this case of *Hamiltons* versus *Eaton*, would have removed all question on the subject of confiscation generally. But we find it contended, that even this case does not go far enough; because " it was a case of " confiscation affecting persons *in the peculiar situation* described in the pleadings, " under the operation of the act of North-Carolina, passed in April 1777," whereby they were required to take an oath of abjuration and allegiance, or depart the State. And a part of the argument of the chief justice is relied upon as authorizing an inference, " that if the plaintiffs in that case had not been within " the description and operation of the said act of North-Carolina, they would not, " in the opinion of the said learned judge, have been entitled to recover." This objection will certainly not apply to the opinion of the other judge who sat in the cause; who expressly combated the idea, that the 4th article of the treaty of peace " is a provision for real British subjects only, that is persons resident in Great Bri- " tain at the commencement of the war," and as expressly overruled it by declaring, that the article " is mutual and *general* in its expression: not limited or restrained " by any particular words to any description of persons;" and that if it " had " been in the contemplation of the parties, they could not have overlooked the " necessity for these distinctions; nor are we at liberty to presume it." Neither is the inference correctly drawn from the argument of the chief justice. The portion " of

of his argument to which reference is made, may *possibly* justify a conclusion, that persons who, on the 4th of July 1776, were inhabitants of one of the United States, " *might have been claimed and holden as citizens*" of the State in which they resided, whatever were their sentiments or inclinations; and that where an act of confiscation actually did *claim and hold them* as citizens, and acted upon them as such, they could not be considered as *creditors on the side of Great Britain*, within the true intent and meaning of the 4th article of the treaty of peace, so as to annul the effect of the confiscation upon their debts. It is not necessary *on this occasion*, to enquire into the accuracy of this sentiment. For ourselves we believe it to be founded on undeniable principles. But the case of the present claimant is *not* within the exception intimated by the chief justice, out of the general operation of the treaty on acts of confiscation. Doctor Inglis was not by the act of attainder of the State of New-York, *claimed or holden as a citizen of that State*. The description in the preamble of the act, is of " *divers persons holding or claiming property within* " *this State*;" and the same enacting clause includes the Earl of Dunmore, Governor Tryon, Sir Henry Clinton, Henry Lloyd, the elder, of Massachusetts, with respect to whom the character of citizens could not possibly be applied. The acts of the two States therefore create no distinction between the cases, and still less is such a distinction, to the exclusion of the claimant, warranted by the facts. Doctor Inglis put himself under the protection of the British arms so early as in September 1776, only two months after the declaration of independence; the North-Carolina plaintiffs remained in that State until the 20th of October 1777, fifteen months after the same epoch. There was far less reason for claiming the former as a citizen than the latter; and if the latter are considered in the courts of the United States as protected by the provisions of the treaty, *a fortiori* must the former be so considered. But the claimant himself, and the board also, have settled this point. The claimant in his memorial avers, " that he is, and ever from his birth has been a " subject of his Britannic Majesty," and the fact does not disprove his averment. The board, on the 21st of May 1798, resolved in this case, " that the claimant's " character of British subject, *was not affected or impaired* by the act of attainder " and confiscation passed by the State of New-York, on the 21st day of October " 1779, attainting him with the Earl of Dunmore, Governor Tryon, Sir Henry " Clinton, aud many other British subjects, who are therein described, *not as subjects* " *of the State*, but *as persons holding or claiming property within the State*, and for- " feiting and confiscating their whole estate, real and personal, for their *adherence* " to his Britannic Majesty; but that on the contrary the said act of attainder, and " the description of royalist or refugee applied to the claimant, on the part of the " United States, in consequence of his said adherence, are conclusive evidence " that he still maintained his original allegiance."

The board on the same day further resolved, " that the confiscation of the debts " in question before the peace is no bar to the claim; and that the board have so " determined *upon the same grounds and principles of interpretation respecting confis-* " *cations before the peace, which were adopted and declared by the judges of the United* " *States, when (in the case of Hamiltons* v. *Eaton) they decided in their circuit court* " *for North-Carolina district, that debts due to British subjects who resided within the* " *province,*

" *province, now State of North-Carolina, at the date of the declaration of independence*
" *and continued there to reside till the 20th day of October,* 1777, *when they were*
" *obliged by law, either to take an oath of abjuration and allegiance to the State, or to*
" *depart, and which debts had been confiscated and forfeited to the State before the peace,*
" *were nevertheless due and owing by virtue of the treaty.*"

On a comparison of these resolutions with the resolution now proposed, we are at a loss to discover by what new lights, facts which were *then* considered as giving the same character to the two cases, are *now* considered as distinguishing them ;— or why the application of the grounds and principles of interpretation, respecting confiscations before the peace, as adopted and declared by the judges of the United States, in the case of Hamiltons v. Eaton, which were *then recognized* as governing this claim, should now be rejected. It would surely be matter of just complaint on the part of the United States, if the same decisions of their courts, which are considered as evidence to prove that a case is within the meaning of the treaty of peace, should be disregarded as evidence to prove also, that in those courts a judicial remedy would be applied in such cases in virtue of the same treaty. It is *therefore*, we presume that the position is resorted to, that these decisions, having occurred since the treaty of amity, cannot affect the right of the claimant, which is held to have attached at the date of that treaty.

We have already made some general observations on this topic, and shall now make a more particular application of them.

It is not irrelevant to mention here, that this position is a new one in the proceedings of the board, and seems to have grown out of the necessity of this case. We do not find it even indirectly suggested in any former resolution ; and in the notes of Mr. Macdonald, put on the minute book on the 25th July, 1798, no such intimation is contained, although they comprise discussions which would naturally have led to the examination of this question. In describing the case to be made out on the part of the claimant, the third point stated is, " That full and adequate com-
" pensation for the losses and damages thereby sustained *cannot*, for whatever reason,
" be actually obtained, had and received, in the ordinary course of justice ; ' or as it is expressed in the preamble, " in the ordinary course of judicial proceedings."— And in the consideration of this point, he proceeds, " On the 3d point, the claim-
" ant must satisfy the board, that there *is* nothing to justify a reasonable expectation,
" that any compensation whatever *can* actually be obtained in the course of judicial
" proceedings ; or that any thing more than a partial compensation *can* be so ob-
" tained, or that, although even full and adequate compensation might be obtained
" in the course of judicial proceeding, no such compensation can be had in the
" *ordinary* course of judicial proceedings, or ordinary course of justice." All these propositions are in the present tense, and have no relation back to the date of the treaty :—The claimant does not appear to have entertained any idea of this relation. His memorial dated on the 28th February, and exhibited on the 2d March, 1798, states his claim to relief, " inasmuch therefore as your memorialist *cannot now*, in
" the ordinary course of judicial proceedings, *recover his said debts*." Conforma-
ble

ble to this phraseology has been the common and univerſal formula of the memorial, preſented to the board. The point raiſed by the *board*, in this caſe, after the interlocutory reſolutions before recited for argument by the agents, *did not ſuggeſt* this doubt, as explained in their reſolution of 1ſt June, 1798, the queſtion directed to be argued was, "whether there *is* good ground, *by the law of the land*, for *now* "*proceeding judicially* in the recovery of the debt on which the claim is founded?" And the argument proceeded accordingly on both ſides, with reference to the exiſtence of lawful impediments *now*, and *not at the date of the treaty of amity*.

Waving however all inference from the novelty of the ſuggeſtion, and from its omiſſion heretofore by the parties, and by the board, in this caſe and in others; and waving alſo, all contradiction of the principle, that the treaty of amity had excluſive relation to the period of its concluſion, as unneceſſary on this occaſion; it may be fairly aſſumed, that the deciſions of the courts which have been cited, are *expoſitions of the law, cotemporaneous with the treaty*. A treaty does not become a law *to ſubjects*, until it is *promulgated*. It is not obligatory upon the *parties* until it is ratified according to the forms, and by the authorities to be found in their conſtitutions and fundamental laws reſpectively. Vattel, Lib. 2. § 154. Lib. 3. § 239. Lib. 4. § 24. Martens, Lib. 8. ch. 7. § 5. The treaty of amity it is true was ſettled by the negotiators on the 19th November, 1794; but it depended for its validity on the ſubſequent ratification of the contracting parties * The ratifications were not exchanged until the 28th October, 1795, and it was not promulgated in the United States until the 29th February, 1796. In this ſame month of February, 1796, the caſe, Warre, executor of Jones, v. Hylton, and all was determined in the ſupreme court, and the caſe of Hamiltons v. Eaton, only four months afterwards, in June 1796, in the circuit court of North-Carolina. They are therefore to all purpoſes of equitable and fair conſtruction cotemporaneous declarations of the law.

But if notwithſtanding the periods of its ratification and promulgation, the obligation of the treaty ſhould be admitted, "by a technical retro-action of its effect," to

* In the act of parliament paſſed on 4th July 1797, entitled "An act for carrying into execution the treaty of amity, commerce and navigation, concluded between his Majeſty and the United States of America," the date of the exchange of ratifications is taken, as the point of time to which the word *now* in the ninth article of the treaty refers:—"*And whereas* by the ninth article of the ſaid treaty, it was agreed that the *British* ſubjects who then held lands in the territories of the ſaid United States, *American* citizens, who then held lands in the dominions of his Majeſty, ſhould continue to hold them according to the nature and tenure of their reſpective States and titles therein, and might grant, ſell, or deviſe the ſame to whom they ſhould pleaſe, in like manner as if they were natives, and that neither they nor their heirs or aſſigns ſhould, ſo far as might reſpect the ſaid lands and the legal remedies incident thereto, be regarded as enemies: Be it therefore enacted by the authority aforeſaid, That all lands, tenements, and hereditaments in the kingdom of *Great Britain*, or the territories and dependencies thereto belonging, which on the ſaid twenty-eighth day of *October*, one thouſand ſeven hundred and ninety-five, (being the day of the exchange of the ratification of the ſaid treaty between his Majeſty and the ſaid United States) were held by *American* citizens, ſhall be held and enjoyed, granted, ſold and deviſed, according to the ſtipulations and agreements contained in the ſaid article, any law, cuſtom, or uſage to the contrary notwithſtanding." *Vide 24th ſection of ſtatute.*

to have relation back to the date of its signature by the negotiators, still we presume it cannot be justly denied, that the decisions referred to, are complete and conclusive *evidence* of the law at the date of the treaty. Although it may be true, that the state of things at the date of the treaty shall be the proper object of our enquiry, it does not follow, that we are to limit the *evidence* of this state of things, also, to the same date. The stipulation of the 4th article of the treaty of peace is confined to debts contracted *before* the peace, yet it would be absurd to contend, that a confession or acknowledgment of the debtor *after* the peace, could not be received to prove such a debt. It is agreed on all hands, that a claimant must prove a debtor to have been solvent *at the peace* in order to charge the United States with a loss, yet it would be deemed very unreasonable to reject an inventory of his property taken twelve or fifteen months afterwards, if offered as evidence of such solvency. And it is deemed equally unreasonable to insist, that a decision of the supreme court in February 1796, shall not be received as *evidence*, to shew what was the law in November, 1794, only fifteen months before.—In *this instance*, it would be to shut our eyes against the most direct and positive testimony; for the case of Warre, executor of Jones, v. Hylton and al. having been decided on a writ of error, was an express adjudication by the supreme courts, of what the law really was at the date of the judgment removed by the writ of error; and a judicial declaration that at the date of the judgment in the circuit court, to wit, in June, 1793, before the date of the treaty, the plaintiff was by law entitled to recover. The judgment below is not evidence of the law, because in consequence of the writ of error, the question must still be considered as depending; but the decision of the supreme court, which is the court of the last resort, whose judgments are not subject to revision or appeal, is, when pronounced on a writ of error, evidence *of the highest nature* to prove the law, not only at the date of the judgment above, but also of the judgment below:—And this effect of the judgment of the highest court is not, as it is termed, " a technical " retro-action" but a plain, obvious and irresistible deduction of fact. Until now, we have never heard it asserted, that the decision of the inferior court, although reversed, *is* evidence, and that the judgment of the superior court reversing that decision, *is not* evidence of the law in the case, and at the time, to which the judgment of reversal ralates.

We have noticed the importance which the proposed resolution attaches to what it calls " the statement of the law" on the part of the United States, as an admission binding to them. Let us for a moment attend to the statement *of the claimant*, by his agent, on this subject of the evidence, arising from judicial decisions. We refer to the " observations" of July 2, 1798, in reply to the argument for the United States, on the point stated by the board.—" Still however, decisions of " courts of competent jurisdiction, in each country, upon questions arising upon the " treaty, *while unreversed by a superior tribunal*, are to be deemed and taken as the " law of that country, and are sufficient evidence of the interpretation the govern- " ment of that country gives to the treaty. To go further in search of evidence " would be to draw it from impure sources; and where an uniform train of deci- " sions on the same point are produced, both in the courts of the different States " and of the United States, that evidence must be conclusive. *The board are to*

" *take*

" *take that evidence as they find it at the present time,* not as binding upon their con-
" sciences to decide the same point the same way, *but as amply sufficient proof, that*
" *if other claimants go to the same courts with the same causes, their fate will be the*
" *same.*" The cases we have cited, therefore, are amply sufficient proof, that if this claimant had gone to the same courts at the date of the treaty, he would have met with the same fate, and *have recovered his debts.*

As then the cases already cited, and which have been determined *since* the date of the treaty, sufficiently prove this position ; so we believe, that the decisions *previous* to the date of the treaty will not be found to disprove it.

The first case referred to on this head, is the case of Camp v. Lockwood, 1. Dallas's Reports, 393, decided in the common pleas of Philadelphia county, in December, 1788. This case, although determined before the organization of the federal judiciary in a court of inferior and limited jurisdiction, may nevertheless be justly considered, from the great learning and integrity of the judge who presided in that court, as unquestionably of high authority. If however, that case should have been subsequently overruled by decisions of the highest judicial tribunal known in America, its authority respectable as it may be, must have been done away, so that if, in truth, there is any collision between this case and the cases already referred to, the former can no longer be considered as evidence of the law on the points of collision. But on a just consideration of the case of Camp v. Lockwood, there will not appear to be any reason for calling its authority in question on the present occasion, nor will it justify any inference in favor of this claim, or contrary to the position we have assumed, that the claimant might have obtained, and yet may obtain, the recovery of his debts at law. The characteristic feature of that case, the prominent fact on which principally the judgment rests, appears to be, that the plaintiff had been *an American citizen* and was not *a creditor on the side of Great Britain.* It is distinctly stated in the argument of the judge, that the act of confiscation of Connecticut was made to operate, by different modes of process, on two distinct classes of persons, some who had, and some who had not been citizens or inhabitants, of that State : " that the mode of proceeding against those who had
" been inhabitants, was directed to be by application to the county court, who are
" empowered to give judgment and sentence that all the estate of such person should
" be forfeited for the use of the State :—the last clause in the act, directs the mode
" of proceedings as to the estates of persons who never had an abode within the
" State."

" In pursuance of this act, Abiather Camp, who is stated to have been *lately* a
" resident in the town of New-Haven, in the month of September, 1779, was
" charged on the information of the select men, before the county court, with
" having *joined* the enemies of the United States, and put himself under the pro-
" tection of the king of Great Britain. He was thereupon *adjudged guilty*, and
" sentence passed, that all his estate, real and personal, should be forfeited to the
" use of the State.

" The

" The act of assembly directs the proceeding to be had only against the estates
" of such persons as had joined the enemy, but it distinguishes between such as had
" been inhabitants of that State, and those who never had an abode within it, but
" had estates there.

" The present plaintiff was convicted as an offender of the first description, be-
" ing late a resident in the town of New-Haven, and was *plainly pointed out as a*
" *subject*. Indeed *the fact is conceded, that he really was a citizen of the State*, who
" joined the enemy *long after* the declaration of independence, and the organization
" of our State governments.

" He cannot therefore be considered in the light of a public enemy, whose
" rights are said by the writers on the law of nations to revive after the termination
" of the war: the municipal law of the country operated upon him as a subject,
" and he could not be an object of the law of nations."

It is impossible not to perceive the obvious and striking distinction between the case of Camp v. Lockwood, and the case of the present claimant. That case comes precisely within the exception of the chief justice Elsworth, of an inhabitant " claimed and holden as a citizen." That case went even further. It was *conceded that Camp was really a citizen of the State*, whereas in this case it is agreed, that the claimant has always been a British subject. The act of Connecticut distinguished between persons who had been citizens, and those who merely had estates there :—The act of New-York makes no such distinction. Camp was " convicted " as an offender of the first description ;" Dr. Inglis was attainted merely as " a " person holding or claiming property within the State." The decision in that case is grounded on this distinction, and by necessary implication the court would have sustained the suit, if it had been brought by a person of the last description. It is therefore an authority proving, by irresistible inference, that the claimant, on the principles of that judgment, had full remedy at law.

The second case cited and referred to in the resolution, is the case of *Murray* v. *Marean*, decided in the circuit court of the United States for the district of Massachusetts, on the 12th day of May 1791. We know nothing of this case but what appears from the record, as it has been exhibited to the board. By that record it appears, that John Murray, by the name and description of " John Murray, " of the city of St. John's, in the province of New-Brunswick, esquire," commenced his action on bond, against William Marean, of the county of Worcester, in the State of Massachusetts. The defendant pleaded in bar, an act of Massachusetts, commonly called the conspiracy act, by which it was enacted, that the said John Murray had justly incurred the forfeiture of all his property and liberties, holden under and derived from the government and laws of the said State, and lost all civil and political relation to the same ; and that all the goods and chattels, rights and credits, lands, tenements, and hereditaments, of every kind, of which the said John Murray was seized or possessed, &c. should escheat, enure, and accrue to the sole use and benefit of the government and people of the said State, and that the

the ſaid government and people ſhould be deemed and adjudged to be in the real and actual poſſeſſion of all the goods and chattels, rights and credits, &c. of the ſaid John Murray, without further enquiry, adjudication, &c. To this plea the plaintiff filed a general demurrer; and the defendant joined in demurrer. We have no report of the arguments, either of the bar or the bench, on this caſe, and on a conſideration of the record, without other information, we are perfectly convinced that no queſtion of the plaintiff's right to recover, *in virtue of the treaty of peace*, could have been raiſed from the pleadings, or decided by the court. The plaintiff did not reply to the plea of the defendant by ſetting forth the treaty of peace, or by any averment that he was a Britiſh creditor within the meaning of the 4th article; and by this omiſſion placed the cauſe ſolely on the intrinſic operation of the act of confiſcation, unaffected by any intrinſic circumſtance. It could not appear from the pleading that he was entitled to the protection of the treaty, or to any exemption under it, from the natural operation and effect of the act of confiſcation, and as the court could not preſume a fact, which did not appear on the face of the record, he was precluded from raiſing any queſtion on the argument which depended on this fact. The deſcription of the plaintiff in this declaration was certainly not ſuch an averment as ſhewed his right under the treaty. His ſtiling himſelf "of the city of St. John's in the province of New-Brunſwick," was an averment, that he was an *alien at the time of the commencement of the ſuit*, ſufficient to give juriſdiction of the action to the court under the judiciary act of Congreſs: but did not either directly or impliedly, contain an averment, that he was a Britiſh creditor *at the time of the peace*, or entitled to the benefit of the ſtipulation in favor of ſuch creditors. This caſe therefore, in the ſhape in which it is preſented to the board, proves nothing in relation to the preſent ſubject.

The caſe of *Douglaſs* v. *Stirk*, in the circuit of the United States for the diſtrict of Geergia, May 1792, is next to be conſidered. Of this caſe alſo our information is very defective: We have no ſtate of the facts, by which to aſcertain the plaintiff's actual ſituation, nor any recital of the act of Georgia, on which the judgment was founded, nor any account of the pleadings in the cauſe. A very ſhort argument of judge IREDELL is alone preſented to us; and from this it appears, that the ſame obſervations apply to this deciſion which have been already made on the caſe of Camp v. Lockwood. The judge declares, that "Douglaſs was *a citizen* "*of this State*, baniſhed from it, and his eſtate and debts confiſcated. *This is a* "*puniſhment by a State, of one of its own citizens.*" It is evident therefore, that this caſe cannot govern the caſe of the claimant, or have any effect to ſhew, that he could not have recovered in the ordinary courſe of judicial proceedings.

The caſe of the State of *Georgia* v. *Brailsford*, and al. 3. Dallas's Reports, 1. in the ſupreme court of the United States, February term, 1794, is particularly relied upon as a concluſive anthority, to prove the exiſtence of lawful impediments to the recovery of confiſcated debts, at the date of the treaty of amity. When the caſe of Warre, executor of Jones, v. Hylton, is noticed in the propoſed reſolution, it is for the purpoſe of objecting to that judgment, that, as it was founded on an act of *ſequeſtration* only, "whatever may have been the extent of general "reaſoning

" reasoning adopted by some of the judges," who concurred in the said decision of the supreme court, *that* decision was confined to *sequestration*; yet this case of *Georgia* v. *Brailsford* which was also founded on an act of *sequestration*, is repeatedly mentionod with peculiar emphasis, and strongly asserted, to have been *a solemn and unanimous declaration of the judges of the said supreme court*, of the "conclusive effect " of *confiscation* against the right of the original creditor." Without desiring to animadvert on this extraordinary course of reasoning, we will examine this case of *Georgia* v. *Brailsford*, on the ground, that *it is* an authority to prove the law to have been according to the opinion of the court expressed on that occasion. And we conceive it to contain a direct declaration of the opinion of the court, that any legislative act, having the effect of an act of *confiscation*, that is, *divesting the property of the creditor* in the debts due to him, was a lawful impediment *removed* by the treaty of peace.

The jury proposed to the court the two following questions: "First, 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? Second, *If so*, did " the *treaty of peace*, or any other matter, revive the right of the defendants to " the debts in controversy?"

On the *first* question the chief justice said, "It was the unanimous opinion of " the judges, that the act of the State of Georgia, did not vest the debts of " Brailsford, Powell and Hopton, in the State at the time of passing it. On the " *second* question he said, that no sequestration divests 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 Brailsford'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 recovery of a *bona fide* debt, due to a British creditor, in direct " opposition to the 4th article of the treaty."

These are plain answers to plain questions. The jury ask, First, Did the act vest the debt in the State? and second, If so, did the treaty revive the right of the creditor? The court answer, First, The act did not vest the debts in the State: And second, If it were otherwise, that is, if the act had vested the debts in the State, it would certainly be an impediment in direct opposition to the treaty. The declarations of the court were intended as answers to the questions of the jury; and upon any other construction of those declarations they, would be evasions, and not answers. We think therefore, that the meaning attributed to the court by the proposed resolution, is strained and improbable; and that the true interpretation of the decision is diametrically opposite.

In

In confirmation of our new view of this case we shall cite the argument of judge Pendleton, in the case of *Brailsford* and others v. *Spalding*, determined in the circuit court of the United States for the district of Georgia, May 2d 1792, which case was the ground of the proceedings in the supreme court, in the cause of *Georgia* v. *Brailsford*, and others; the State of Georgia having applied for an injunction to the circuit court, suggesting, that the debts for which judgment had been rendered in the circuit court, in favor of Brailsford, had been vested by confiscation in the State, and therefore, that the plaintiff below had no property therein; on which application the court directed an issue to try the right of the State of Georgia, and on the trial of that issue gave the charge before mentioned to the jury.—This argument of the judge in the circuit court, considers the same points which are stated by the jury, and directly discusses and decides the question of the effect of confiscation;—and it must be remembered, that this case of Brailsford v. Spalding, was determined in the same court, and at the same term, in which the case of Douglass v. Stirk, was determined, and will therefore serve to throw light on the whole subject.—The following is extracted from the argument of—

Judge Pendleton.—"I shall now consider, First, Whether the debts of "merchants and others residing in Great Britain, in May 1784, are at all confiscated by the laws of Georgia?

"Second. Whether the sixth section of the act, which declares the property "and debts of British subjects to be *confiscated*, is sufficient to bar the recovery of "the plaintiff Brailsford?

The Judge, after expressing at great length his opinion on the first point, that the fifth section of the act of Georgia, which related to the case of *merchants and others residing in Great Britain*, did not confiscate, but only sequester their debts; and that, by such sequestration "the interest the creditor had, was neither divested "nor extinguished, but the right of action only suspended during the war;" proceeded to consider the operation of the sixth section of the same act, which *confiscated* the debts of all other British subjects.

"Second Whether the sixth section of the act of confiscation, which declares "the debts of British subjects to be confiscated, is sufficient to bar the plaintiff "Brailsford.

"The treaty of peaee, as well as the act of confiscation, makes distinctions "between the persons whose interests are considered in it. The law considers those "who are actually named in it as criminals in the highest degree, as the preamble "declares. They were considered as *citizens of the State*, who in joining the "enemy, had been guilty of high treason. *British subjects*, properly so called, "are not by the law, nor could they with any propriety, be deemed criminals, "having only acted in obedience to the laws of their own country. The act only "says, that *justice and policy* require their estates should be confiscated. The "treaty takes up the same distinction in the fifth article, where it says, the con-"gress shall recommend a restoration of all estates, rights and properties, of real

"British

" British ſubjects, and of ſuch perſons who reſided in diſtricts in poſſeſſion of the
" king's troops, who had not borne arms againſt America. The words *real Bri-*
" *tiſh ſubjects* in this ſentence, were certainly meant by way of contradiſtinction to
" ſome claſs of perſons who might pretend to be, though they were not *really*
" Britiſh ſubjects. The eſtates of both of theſe claſſes being actually confiſcated,
" the treaty rather confirms than weakens it. But taking into view the nature of
" the commerce carried on by the Americans with Great Britain before the war,
" in conſequence of which a very conſiderable debt was due to the latter, con-
" tracted on the faith of commercial credit, the contracting parties declared, what
" is uſually done at the cloſe of every war, that creditors on either ſide, ſhould
" meet with no lawful impediment to the recovery of their juſt debts. The con-
" ſtitution of the United States, as I mentioned before, has made this treaty the
" ſupreme law of the land. This State has adopted and ratified the conſtitution,
" and we muſt therefore conſider the treaty in the light of a law expreſsly enacted
" by the legiſlature. Suppoſe ſuch a law to have been actually made, would any
" perſon ſeriouſly contend, that the right of proſecuting for and recovering thoſe
" debts was not thereby reſtored to Britiſh creditors? If one law can be ſuppoſed
" to have more force than another, this treaty muſt be ſo conſidered, becauſe it not
" only has the ſanction of a law, but the obligation of a ſolemn contract, which
" we ſhould be bound by the principles of moral duty to comply with, though we
" were not enjoined to do ſo by any ſuch expreſs law.

" It has been contended, that the fourth article does not apply, nor was intended
" to apply, to the *right of recovery* of debts, but only as to the manner in which
" they ſhould be paid, that is, in ſterling money, not paper, or any other money
" of leſs value; which was meant of States where no confiſcation had been made
" of them, or that might be contracted after the treaty. But this would render
" the whole clauſe abſurd. Where no confiſcation had taken place, no impedi-
" ment would remain, and ſo the clauſe be unneceſſary. And the treaty has con-
" fined the right of recovery to " debts heretofore contracted," ſo that ſubſequent
" contracts are not included. The plain and obvious meaning of the parties was
" to remove all impediments, of whatever nature they were, in the way of recov-
" ery.

" It has been urged, that the treaty having confirmed actual confiſcations, theſe
" debts are as much confiſcated as other *eſtates, rights and properties;* That all
" forfeitures created by expreſs words in a law, are veſted without the aid of an
" inqueſt of office, and of courſe, theſe debts muſt remain as before the treaty;
" That the word *rights* in the recommendatory article of the treaty ſeems to apply
" only to debts, which the State may, or may not reſtore, as they think proper;—
" I anſwer that the confiſcation act ſo far as it relates to the right of recovery of
" debts due to real Britiſh ſubjects, is repealed by the expreſs words of the treaty,
" and the federal conſtitution operating upon it. The former is declared to be the
" ſupreme law of the land, any thing in the conſtitution or laws of any State, to
" the contrary notwithſtanding. The act of confiſcation, which ſays the debts due
" to Britiſh ſubjects ſhall be applied to the uſe of the State, is contrary to the ſtipu-

" lation

" lation of the treaty, which says those creditors shall recover them; the former
" law is therefore repealed by the latter."

To these two decisions last mentioned another is to be added, which also occurred before the date of the treaty of amity. The case of *Page*, executor, v. *Pendleton, and others*, was decreed in the high court of Chancery, in the State of Virginia, on the 3d of May, 1793. *Chancellor Wythe's Reports, page* 127, upon the following question; " Whether payments by the plaintiff's testator, a citizen of this common-
" wealth, into the loan-office, of paper money, in satisfaction of his debts to cre-
" ditors who were British subjects, discharged the debtor; a statute, by the legis-
" lature of the commonwealth, having enacted, that such payments should have
" that effect?" The chancellor considered this as a question of confiscation, stiled the acts of the legislature of Virginia " the acts of general assembly on the
" subject of confiscation," and after pronouncing his opinion, " that the right to
" money due to an enemy cannot be confiscated," proceeded to declare, that the provisional articles and definitive treaty of peace " between the United States of
" America and the king of Great Britain, after the ratifications thereof, abrogated
" the acts of every State in the Union, tending to obstruct the recovery of British
" debts from the citizens of those States."—" And therefore the court, upon the
" principles before stated, being of opinion, that payments into the loan-office,
" made by the plaintiff's testator, did not discharge his debts to his British credi-
" tors, directed the plaintiff in distributing the assets of his testator, not to distin-
" guish British creditors on account of their nation, from other creditors."

It remains to consider, whether the claim in this case is not defective in necessary statement, inasmuch as the claimant does not shew, that he had essayed to obtain a recovery in the ordinary course of justice, at any time since the establishment of the constitution of the United States. On this head, *we* have not contended, that it is necessary that every claimant shall have tried an expensive and useless experiment in his own case, through a course of fruitless litigation, to ascertain the denial of remedy, provided he can prove by other satisfactory testimony, that such a denial would have been the consequence of the experiment. We do *not* think it necessary to maintain, " that his conduct was to be estimated, not by events then
" past or present, but by subsequent events, or that any " duty of diligence could
" demand the prosecution of expensive proceedings at law, on the *surmise* of a
" *chance*, in opposition to legislative acts, the uniform decisions of competent courts,
" and the established course of judicial proceedings," or that he should " be held
" to have known, that what the courts had determined to be law was not law;
" that bound and authorized as they were to apply the constitution, their decisions
" were against the constitution; and that what they had adjudged not to be within
" the treaty of peace, was nevertheless within the treaty and would be judicially so
" considered if again tried." We trust it is sufficiently evident from what has been said, that the current of events, for many years preceding the treaty of amity, afforded him information which ought to have been deemed satisfactory, that his rights would be respected and established in the courts of the United States;—that the constitution of the United States and its solemn injunction on the judges

to

to be bound by the treaty as the ſupreme law of the land, any thing in the conſtitution or laws of any State to the contrary notwithſtanding, furniſhed ſomething more than the *ſurmiſe of a chance*;—that the *legiſlative acts* which had ſtood in his way were actually repealed, and every thing done under them annulled, and that neither the *uniform deciſions of competent courts*, nor *the eſtabliſhed courſe of judicial proceedings* preſented any obſtruction to his recovery—We truſt it is equally evident that the injurious *ſurmiſe*, that what the courts have determined to be law was not law, that their deciſions have been againſt the conſtitution, and that they have adjudged caſes which were within the treaty, not to be within the treaty, is altogether unwarranted by the fact; and that a more accurate inveſtigation, without the aid of any fore knowledge, would have ſufficiently inſtructed the claimant on theſe ſubjects, for the government and direction of his conduct. And we believe it to be an undeniable principle that while the poſitive theory of the law, uncontradicted by any experience, promiſed him a remedy, it is not competent to him to pretend, that he could not obtain the remedy, until he ſhall have been practically denied; or, under ſuch circumſtance, to ground a claim for compenſation, on a ſuggeſtion of loſs through defect of law, when he has never endeavored to avert the loſs by a recourſe to law.

Upon the whole therefore of this caſe, we believe it to be manifeſt and clear, that ever ſince the eſtabliſhment of the conſtitution of the United States, as well before as after the date of the treaty of amity, the ſtipulation of the treaty of peace, that " creditors on either ſide ſhall meet with no lawful impediment to the recovery " of the full value in ſterling money of all *bona fide* debts heretofore contracted," has been liberally and effectually executed by the courts of the United States; and that therefore, there can be no juſt pretence for any perſon to claim before this board, whoſe caſe is within that ſtipulation, whoſe debtors are ſolvent and his ſecurity unimpaired, on any ſuggeſtion, that he cannot actually obtain, have, and receive full compenſation, in the ordinary courſe of judicial proceedings. We agree that the preſent claimant is a creditor on the ſide of Great Britain, within the true meaning of that ſtipulation, and we believe that he would be ſo conſidered by the courts. We are clearly of opinion that he cannot truly aſſert, that he would not be ſo conſidered, unleſs he has made the experiment himſelf and been denied; or unleſs ſome other perſon, under the ſame circumſtances, has made ſuch experiment and been denied. We are further of opinion that no deciſion unreverſed, of any court of the United States, ſince the eſtabliſhment of the conſtitution, has been cited, which can be held to prove that he would not have recovered if he had ſued; —that in aſmuch as he has not himſelf commenced any action for the recovery of his debts, or ſhewed any judgment againſt any creditor in the ſame predicament with himſelf we are bound to believe, that the ſtipulation of the treaty of peace, ſanctioned by the conſtitution, and ſolemnly enjoined upon the courts, would have been duly applied to his caſe— :—that there is amply ſufficient evidence, from poſitive deciſions, that the ſtipulation of the treaty of peace would in fact, have been thus applied in the ordinary courſe of judicial proceedings:—that he has not preferred his claim within the true intent and meaning of the 6th article of the treaty of amity;—and that we are under the ſtrongeſt obligations of duty to reject and diſmiſs it.

We are further moſt clearly of opinion, that the principles contained in the propoſed reſolution, if carried into effect according to the latitude in which they are aſſumed, would lead to conſequences of the moſt extenſive import and injury to the United States;—we believed that the ſtipulation of the 6th article of the treaty of amity which has directed that there ſhould be two commiſſioners named by each contracting party, and that the preſence of at leaſt one on each ſide ſhould be neceſſary to conſtitute a board, cannot be juſtly ſo interpreted, as to require us to become the paſſive inſtruments of what we deem to be an unauthorized aſſumption of juriſdiction by the board on points of extreme importance, or to make it our duty to give effect by our preſence to proceedings, which we deem to be eſſentially injurious to the juſt rights of the United States:—On the contrary, we believe it to be our duty to reſiſt ſuch proceedings in ſuch caſes, by all the means to which the treaty has enabled us to reſort; and we ſhall therefore withdraw from the board, on this occaſion; declaring, however, our diſpoſition and deſire to proceed in ſuch buſineſs as may not be liable to the ſame or ſimilar objections.

Signed, THOS. FITZSIMONS,
S. SITGREAVES.

And the ſaid paper having been ſo read, *Mr. Fitzſimons and Mr. Sitgreaves withdrew.*

COMMISSIONERS' OFFICE,
20th February, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the caſe of the Right Reverend CHARLES INGLIS.—

Mr. Macdonald, with the concurrence of Mr. Rich and Mr. Guillemard, moved the following Reſolution:—

RESOLVED,

RESOLVED, That the refolution ftated in the minutes of the Board of yefterday, as moved by Mr. Macdonald, with the concurrence of Mr. Rich and Mr. Guillemard, does not affect the cafe, where there is no fatisfactory evidence, that the claimant could not at the date of the treaty of amity, recover a full and adequate compenfation in the ordinary courfe of judicial proceedings:—That there is no inconfiftency, as charged in the paper read by Mr. Sitgreaves, between the refolution of the 21ft of May laft, and the refolution in queftion, inafmuch, as the faid refolution of the 21ft of May laft, did no more than decide, that the confifcation was no bar to the claim *before the Board*, on the fame grounds and principles of interpretation, which were adopted by the judges in deciding the particular cafe therein mentioned; and their fubfequent refolution of the firft day of June following, whereby it was refolved, that the queftion remaining to be confidered under the faid former refolution, (which had been mifunderftood) was, "whether there was good ground by the law of the land, and not under any "refolution of the Board, (which cannot affect the law of the land or the courts "of juftice) for now proceeding judicially in the recovery of the debt on which "the claim is founded;' with their orders for fpecial argument, demonftrate that they confidered the whole queftion of *remedy at law*, as then open and untouched: ——That as the faid queftion had not then been taken up and confidered by the Board, it is not material, whether the propofitions maintained on the part of the United States under the above orders for fpecial argument, and the courfe of proceedings which it was then contended the claimant was ftill in this cafe bound to inftitute and carry through, with the whole train of confequences refulting from the interpretation on which the faid propofitions were maintained, firft fuggefted, or only confirmed, the full extent of that opinion and judgment on the interpretation of the article, as applicable to this cafe, which a majority of the Board, upon mature deliberation, and without a veftige of doubt, now hold to be juft:—That to prevent mifapprehenfion it is fit to ftate, that the notes of an individual member of the board as entered on their minutes of the 25th day of July laft, from which a paffage has been quoted in the above-mentioned paper, to fhew that the faid individual member did not then, and before the fubject had been fully confidered and difcuffed in the board, entertain an opinion *to the full extent* of the principle laid down in the faid refolution, were fo entered on the minutes with the following prefatory obfervation; "Mr. Macdonald laid the following notes before the board, "as the fubftance of what he had occafionally, with great deference, fubmitted to "their confideration, which he wifhed to have entered on the minute book as fuch; "in order to fubject them to that clofe examination, which the importance of the "matter demands, and his defire to be explicit and correct, has prompted him "to invite;"——That it is only further neceffary to fay, that no part of the faid refolution can be fo conftrued as to charge or infinuate any imputation whatever on the integrity or ability of any of the judges within the United States:—

And in regard to the *right of fecceffion* affumed, and now acted upon by the commiffioners named on the part of the United States, (the merits of which are fufficiently difcuffed in the minute of the 11th of January laft) that as they have thought fit

fit to carry it into effect in the present case *on a question of evidence* upon which a majority of the board were compleatly satisfied, and on conclusions so little manifest as to require or admit of argument so voluminous, it is impossible to conceive a case in which the same course of conduct may not *ultimately* be pursued ;—thereby reducing the majority of the board to a state of absolute dependance on the minority, and (with all the powers of definitive settlement which they possess) consigning them to the occupation of investigating facts which they cannot apply, and maintaining discussions on which no decision may ever be permitted to follow.—

And the above resolution having been read *Mr. Fitzsimons and Mr. Sitgreaves withdrew.*

DAVID MOORE v. NATHAN PATCH.

S. T. Court Worcester, Term September 1791.

In the action David Moore appellant, *v.* Nathan Patch appellee :—Trespass for entering plaintiff's close, cutting taking and carrying fifteen tons of grass.—

THE parties agree to the following state of facts, viz : That one Nathaniel Adams, late of Worcester, deceased in the year 1776, indebted to James Putnam, Esq. late of Worcester, an absentee in a certain sum, that the said Nathaniel died seized of the close in question, and left a will making the said Nathan executor thereof, and thereby giving the said Nathan the improvement of the said close, together with other land for a term not expired at the time of the commencement of this action, that at a court of common pleas held at Worcester on the first Tuesday of December A. D. 1786, the said James recovered two judgments against the estate of the said Nathaniel Adams, in the hands of the said Nathan, and sued out two executions on said judgments, and caused them to be extended on the said close, as appears by the said executions here annexed to the case ; that the said Nathan hath never redeemed the said land or in any way satisfied the said judgments ; that the said Nathan continuing still to improve the said land ; the said James on a writ of ejectment at a court of common pleas held at Worcester on the last Tuesday of March A. D. 1789, recovered judgment for the possession of the said close by default, and thereupon sued out his writ of execution, and caused the same to be served and returned as by the same execution, No. 2, hereunto annexed appears, and that thereupon the said Patch made a parole verbal agreement touching the premises as appears by the annexed deposition, No. 3 : That afterwards the said James, the day of its date made and executed the deed hereunto annexed to the plaintiff in the action, and that afterwards on the day mentioned in the plaintiff's writ, the said Nathan cut and carried away the said grass.—And the parties further agree that the said James Putnam, after the 19th day of April, in the year of our Lord 1775, joined the fleets and armies of the king of Great Britain, renouncing all political and civil relation to this commonwealth, then State, and thereby became an alien ; of which the said James at a libel duly prosecuted according to law at a court of common pleas held at said Worcester, on the second Tuesday of December in the year of our Lord 1780 was convicted ; and that the said James was included, named and proscribed in the act of this commonwealth commonly called an act for confiscating the estate of absentees ; and that the said James Putnam at the times of extending the said executions and at the time of making and executing the said deed to the plaintiff and all times after the said 19th day of April until his decease, was an alien, being a subject of the said king of Great Britain, holding, executing a commission under him, and owing allegiance to the said king and his government. Now the parties agree if the court are of an opinion on the above state of facts, that by virtue of the said processes, executions and proceedings therein, the said James was by law so seized and possessed of the described premises, as to be capable by deed of conveying the same to the plaintiff, and that the plaintiff by the same deed, became seized and

possessed

possessed of the same; that then the defendant will be defaulted, and the court shall enter up judgment for the sum of £15 damages and cost of suit; but if the court shall be of a different opinion, that then the plaintiff shall become nonsuit, and the defendant shall recover his cost.

Signed

DAVID MOORE, *by his attorney, N. Payne.*
NATHAN PATCH,

A true copy.

Attr. CHARLES CUSHING, *Clerk.*

Worcester ss. Commonwealth of Massachusetts.

AT the supreme judicial court of the commonwealth of Massachusetts begun and holden at Worcester, within and for the county of Worcester, on the Tuesday next preceding the last Tuesday of April (being the seventeenth day of said month) A. D. 1792.

David Moore of Worcester in the county of Worcester gentleman appellant *v.* Nathan Patch of Worcester in the same county innkeeper appellee; from the judgment of a court of common pleas held at Worcester in and for the county of Worcester, on the first Tuesday of December, A. D. 1790, when and where the appellant was plaintiff and the appellee was defendant in a plea of trespass, &c. as in the writ on file, bearing date the 17th day of August, A. D. 1790, is at large set forth; at which said court of common pleas, judgment was rendered, that the said Nathan Patch recover against the said David Moore costs of suit. This appeal was brought forward at the supreme judicial court, held at Worcester in and for the county of Worcester, on the Tuesday next preceding the last Tuesday of April last, and from thence said appeal was continued unto the last term of this court for this county, and from that term to this; and now the appellant although solemnly called to come into court, does not appear but becomes non-suit, the appellee appears and prays judgment for his costs. *It is therefore considered by the court,* that the said Nathan Patch recover against the said David Moore, costs taxed at £4 3 0.

A true copy from record.

Attr. CHARLES CUSHING, *Clerk.*

Execution issued,
February, 21 1793.

DOUGLAS:

Douglass *v.* Stirk's *Executors.*

Judge Iredell thus delivered the judgment of the court :—

In this cafe, from the firft, I have not had a moment's doubt.

Douglafs was a citizen of this State: banifhed from it, and his eftate and debts confifcated.

This is a punifhment by a State of one of its own citizens.

There is no article in the treaty that can poffibly do away a forfeiture actually incurred by a citizen, actually named before the treaty took place, and with refpect to which no further enquiry is neceffary than what property and debts he poffeffed.

If his crime was ftill to be eftablifhed by any proof whatever, perhaps he would be protected by the 6th article in the treaty.

I am perfectly clear that the 4th article protects only *Britifh fubjects* on the one fide, and *American citizens* on the other.

An American citizen cannot fay he was on the fide of Great Britain, fo as to avail of that article without acknowledging himfelf guilty of *high treafon*; and no man to be fure can claim a benefit under that allegation from the country againft whom the treafon was committed.

If any doubt can be entertained on this fubject the 5th article would fhew this part of the treaty was not intended to operate on fuch perfons. But I think the conftruction from the article itfelf is clear.

I perfectly agree alfo with the defendant's counfel, that in this cafe the plaintiff, Douglafs, was as completely bound by this act as he could have been by a fentence at law; and that this law is to operate in the nature of a fentence. An obfervation which I think was made with much judgment and propriety.

My brother Pendleton authorizes me to fay, that he concurs in this opinion and therefore there muft be judgment for the defendants.

Judgment pronounced on Wednefday the 2d May, 1792.

ERRATA.

Page 4, line 4 from the bottom—after "Hezekiah," read "Mills and."
5, line 13—for "preperty," read "property."
58, laſt line but one—for "power," read "powe*rs*."
63, line 1—for "courts," read "courſe."
30—for "num me," read "minime."
64, line 14—for the word "the," at the end of the line, read "a"—a right.
67, line 3—after "laws," inſert a ſemi colon ;
20—after "recover," inſert a ſemi colon ;
68, line 9—for "1794," read "1774."
84, line 19—for "courts," read "courſe."
6 from the bottom—for "and," read "of."
95, line 4—after the word "doubt," inſert a ſemi colon ;
23—inſtead of "Jones *v.* Hylton, and all," read "Jones *v.* Hylton and al :"
96, line 9—dele "It is agreed on all hands that,"—and inſert "So alſo."
18—for "court*s*," read "court"
32—for "ralates," read "relates."
35—for "binding *to* them," read "binding *on* them."
99, line 5—after the word "caſe," inſert a ſemi colon ;
12—for "*in*trinſic," read "*ex*trinſic."
15—after "——cation," inſert a ſemi colon ;
17—inſtead of "*this* declaration," read "*the* declaration."
101, line 1—dele "new."
105, line 4—for "believe*d*," read "believe."