

Camp Vs. Lockwood

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Appellant : Camp

Respondent : Lockwood

Judgement :

CAMP v. LOCKWOOD - 1 U.S. 393 (1788)

U.S. Supreme Court CAMP v. LOCKWOOD, 1 U.S. 393 (1788)

1 U.S. 393 (Dall.)

Camp

v.

Lockwood

Court of Common Pleas of Philadelphia County

December Term, 1788

The Plaintiff and Defendant had both been inhabitants of Connecticut previous to the revolution, when 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 continues to reside. On the second Thursday of May in the year 1778, the Legislature of Connecticut enacted a law declaring that all the estate, real and personal, of any person or persons who had joined the enemies of the United States, or had assisted them, or should thereafter do so, should be confiscated; and that, with respect to those persons who had been inhabitants of the State (the last section of the act providing for the case of persons who had never been inhabitants) the County Court upon application was empowered and directed to give judgment, that all their estate should be forfeited to the Commonwealth, and thereupon to appoint administrators (as in the case of intestates) who were to sell such confiscated estate, institute suits, recover and pay debts, and to deliver the surplus, if any, into the Treasury of the State &c.; In September 1779, the Plaintiff was proceeded against under this law, as one who had been lately a resident of the town of Newhaven; and, it being duly adjudged that he was guilty of joining the enemies of the United States, his estate was declared to be forfeited for the use of the State of Connecticut, and certain parts of it were seized and sold; but no steps were taken to recover from the Defendant the debt said to be due from him to the Plaintiff, although the Defendant at the time of the confiscation, and for sometime afterwards, remained an inhabitant of Connecticut, and has always had property there, liable to legal process. Under these circumstances, Camp instituted this suit; in bar of which Lockwood pleaded, 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 the State: And to the efficacy of this plea the present argument was confined, upon a demurrer and joinder in demurrer. The point was first opened on the 16th of August, 1788, and finally argued by Ingersol, for the Defendant, and Rawle, for the Plaintiff, on the 21st of November following. Ingersol. The forfeiture of an enemy's estate, moveable or immoveable, and of his rights, corporeal or incorporeal, is a matter of strict sovereignty, although, by the courtesy of nations, debts are allowed to revive at the conclusion of a war. Lee on

Capt. iii. The Plaintiff, however, comes not within the rule respecting an enemy, but having been proceeded against as a delinquent subject, he must be considered as an attainted traitor; and, by such attainder, all his estate, real and personal, were absolutely and irrecoverably forfeited. 3 Bac. Abr. 755. And a forfeiture of real and personal estate extends to things in action as well as in possession. 2 Bac. Abr. 577. in which general point of view the law of Pennsylvania has also expressly regarded the subject. 2 State Laws99. The act of Connecticut is as clear and comprehensive as words can make it, considering the party as actually dead, and appointing administrators of his

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estate. Nor can the provisions contained in the treaty of peace affect the question; for, the treaty does not operate like the reversal of an outlawry, but like a pardon. 22 Vin. tit. Outlawry. Rawle contended, that, whether the question was considered, 1st, upon the pleadings here; or, 2ndly, upon a supposition that the suit had been instituted in Connecticut, the Plaintiff was not barred of his recovery.

1. Arguing the case on the pleadings here, he premised, that it was a general principle, that nations, with respect to each other, must be considered as individuals in a state of nature. Puff. lib.

2. c.

3. sect.

23. 1 Vat.

4.

5. Burlam.

195. Moral entities, or persons, are given to them, in order to render them subjects of action; but, as to what relates to a nation itself, or the property which it has acquired, there is no power that can direct or restrain its conduct. In a state of society private property yields to the general good; but this is not the case in a

state of nature; and, therefore, it may be taken as an axiom, that where the act of a particular nation vests in itself the property of an individual, whether a subject or not, the right, thus acquired, extends no further than the jurisdiction of that nation, and the act on which it is founded can have no extra-territorial force. 1 Vat.

145. This principle has, indeed, been recognized by the practice of the United States. For, there is no instance of the agents for forfeited estates passing from one State into another; but, on the contrary, acts of attainder have always been passed against the same person in the several States where his property was found; which would not, surely, have been necessary, if, either on general law, or under the articles of Confederation, the act of one State, appropriating private property to its own use, had any effect beyond the limits of its own jurisdiction. If then the State which has passed the law of confiscation, has forbore to reduce the Defendants debt into possession, and the State where the debtor resides has no power to do so, it necessarily follows, that the debt, remaining on its original footing, is liable to the Plaintiff's demand. When, indeed, the act of Connecticut was passed, the Defendant resided in that State; but when this suit was instituted he had removed hither; and the law is clear, that the debt follows the person in every instance, except that of a distribution in the case of intestacy. Carth.

373.

2. Considering the point, in the second place, upon a supposition that the action had been brought in Connecticut, the question arises, whether a right not reduced into possession within due time, can afterwards be recovered? If the administrators had recovered from the Defendant, it would certainly have been sufficient to bar the Plaintiff's claim; but, when the State allowed the debtor to remove from its jurisdiction, an implied power was given to the creditor to pursue him elsewhere. Should a husband neglect during his life time to recover choses in action belonging to his wife, she is entitled to them afterwards, and not his executors or administrators; for, the law will never favor negligence. The reasoning in this

case will apply as well with respect to nations as individuals. Lee on Capt. 119. Besides, a right vested for a particular purpose, ceases with that purpose: The war being at an end, the object of confiscating the Plaintiff's debts, &c.; is also extinguished; and if the Administrators could not recover the debt in Connecticut, nor, a fortiori, in Pennsylvania, by the rules of natural justice, Camp may recover it; for, there can be no plausible reason why Lockwood should be exonerated. Under the Treaty of Peace, indeed, and the law of Connecticut (passed the 2nd Thursday of May, 1787) repealing all acts repugnant to the Treaty, the Administrators could not now interfere to prevent the Plaintiff's recovery; for, the act by virtue of which they were appointed, is certainly of that description; so that by the 4th article Lockwood is estopped from saying that he will pay the debt to the Administrators; and, by the 6th article, they are precluded from compelling him to do so. This exposition has also prevailed in England; for, the Agents on the claims of the Loyalists make no allowance for outstanding debts; because, as it has been already observed, they may be recovered under the Treaty. Rawle then proceeded to consider, particularly, the objections offered by the Defendant's Counsel, in support of his plea; which were, he stated, 1st. That the Plaintiff was not an enemy, but a rebellious subject; 2ndly. That by the act of Connecticut, and the proceedings under it, he was attained, and considered as actually dead; and 3rdly. That he was not entitled to any benefit under the Treaty of Peace. 1. To the first objection, he answered, that the proceedings were expressly against Camp as an enemy; that it was by reason of his adherence to the enemies of the United States, and of actions not merely criminal as they relate to his duty to the State, but to a Foreign nation at war with the State, that the forfeiture had been effected; and that the law of Connecticut neither knew, nor indicated, a distinction between the inimical character of a subject and a Foreigner. But, he urged, that, as against a delinquent citizen, merely in relation to the State of which he was a member, not an enemy in the strict sense of the word, the act of the State, non valet extra territorium; that, therefore, it could never be any bar to Camp's recovery in Pennsylvania; and that, even in Connecticut, he would now be entitled by the Treaty of Peace, and the law passed there in support of it, to recover all the property not actually vested and in possession of the State. If, on the other hand he was proceeded against as an offending subject, in relation to his adherence to

a foreign power, the general principles entitle him to recover after the war has ceased. But, in either point of view, the allowance of the present plea would contravene the established principles in the cases enumerated by Vattel 1 Vol. p. 4. sect. 13. 14. p. 121. sect. 2. 3. p. 129. sect. 25. Besides, his offences as a Subject, though committed against a nation confederated and allied with our's, do not allow us to

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join in the infliction of punishment. 1. Vat. 98. sect. 232. We cannot, therefore, make ourselves parties to the public severities of Connecticut, nor interfere in the relation and conflict, between that State and its Subjects: And, as no public proceedings have taken place against the Plaintiff here, there is not any authority for denominating him an offender against Pennsylvania. The only instance in which these general principles have sustained an alteration by the articles of Confederation, is confined to the persons of offenders; and *expressio unius est exclusio alterius*. But the admission of this plea would be attended with consequences so inconvenient, that the mere argument *ab inconvenienti* ought to prevent it. In whatever shape it is claimed, it would interfere with the axiom, that one nation cannot intermeddle with the government of another. Vatt. p. 138. sect. 54. If the Plaintiff was attainted, or in debt, here, his property could not be forfeited or attached, since, by the adverse argument, it belongs to Connecticut: Nay, if he came hither with a view to settle, he could not act, trade, or become a useful Citizen on the funds he found here. Thus a *collisio legum* would arise; the universal rule of which, is, that the laws and the interest of the State having jurisdiction of the cause, shall be preferred. 2 Hub. 26. 3 axiom. 2. To the second objection he answered, that it was not founded in the truth of the case. Names ought not to mislead us; for although his property in Connecticut had been confiscated, and an administrator appointed to collect it; yet nothing appears to prove that the Plaintiff is not still alive to every legal purpose there, as well as here; independent too of the Treaty of Peace. 3. But, in answer to the third objection, he insisted, that the Treaty of Peace removes not only the personal disability, if any such there was, but also the particular Bar. Whether, indeed, it operates as a

general reversal, or a general pardon, may be questionable; although the former is the more probable conjecture, since the provision made in favor of recovering property sold as confiscated, would have been needless if it was only considered in the light of a pardon. But, admitting it to be only a pardon, and that it has no effect against bona fide purchasers, he contended, that it was conclusively in favour of the Plaintiff on the point of restitution, as against the State; and, a fortiori, in a case where his credits had not been reduced into possession. The fair construction of the Treaty necessarily warrants this doctrine. Ingersol, in reply. There are a variety of instances in which this question will be agitated, if the Plaintiff should now prevail; and the purses of individuals, as well as the coffers of the State, will be deeply affected by the decision. It must be remarked that neither the Defendant, nor Connecticut, ask the interposition of this Court, but the person who was the object of the law of that State, that the Defendant does not intercept the money in its course to the public Treasury; but prevents its being remitted to Nova-Scotia; and that the contest, in fact, lies between an individual and a sister State.

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He observed, that he did not controvert the general doctrine advanced by the opposite council, that the law of nations, is the law of nature applied to nations, and that one sovereign power cannot be bound by another; but he distinguished between the necessary, and the voluntary law of nations, which arises ex comitate. Vatt. pref. 12. Ibid. p. 6. and insisted that the laws of a nation actually enforced, are every where obligatory, unless they interfere with the independency of another Legislature. 2. Hub. 26. for, common conveniency renders it necessary to give a certain degree of force to the statutes of foreign nations. 2 Ld. Kaim. Prin. Eq. 350. 360. If nations, unconnected by any tie, thus indirectly give effect to the laws of each other, the principle upon which it is done, must with greater strength prevail in the case of a political union like that of the American States. It is true, that these States are said to be sovereign and independent; but they are evidently bound by a link which must be taken into view, or we shall argue wrong in the abstract. Thus, it is declared by the articles of Confederation, that a citizen of one

State, is a citizen of every State; and the Congress are not, as Mr. Adams* has termed them, an Assemblage of Ambassadors; but a sovereign power, and capable of suing like a corporation, without any express statute to enable them. See ant. 41. But, the operation and effect of a sentence, or judgment, of a foreign Court, cannot surely be more binding than the act of a foreign Legislature; and these, *ex comitate et jure gentium*, are in many cases final, 1 Black. Rep. 258. 262. Vatt. lib. 2. c. 7. sect. 84. p. 147. If a debtor be discharged where the debt was contracted, he is equally so in every other place; so that if Lockwood had been discharged by the State of Connecticut, this suit would not be maintainable against him even in the King's Bench of England. Co. B. L. 347. The Court of Chancery held itself bound by the decision of a competent foreign jurisdiction, declaring an acceptance to be void; 2 Stra. 733. and, because a debt had been discharged according to the *lex loci*, though in the depreciated paper money of North-Carolina, Lord Thurlow, since the revolution, has refused a *ne exeat regno*. Brown. 376. A similar principle has governed the Supreme Court, in the case of *Millar v. Hall* (ant. 229.) and this Court, in the cases of *Thompson vs. Young* (ant. 294.) and *Le Clercus. Richette*. A distinction is likewise to be observed between a foreign sentence authorizing, and a foreign sentence dismissing, a claim; for, if the proper tribunal dismisses a claim, the sentence is definitive. 2 Ld. Kaim. Prin. Eq. 375. and in that description the proceedings, as far as they affect Lockwood, must be included. The case in *Carth*. 373. is certainly right as a general rule; but it is liable to several exceptions; for, 1st, The law of one country may indirectly have effect in another, by the voluntary law of nations; 2ndly, If a right of action has been legally transferred in one jurisdiction, the rule by which it is to operate, is the same in every other jurisdiction, and 3rdly, Where a debtor has been dismissed

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by the proper tribunal, it is a protection every where else: And these exceptions take place in considering the question as between nations totally independent and unconnected. It is true, that the American States have hitherto been held by a very slight confederacy; but what remedy is to be pursued? Shall we, if the knot is loose, make it still looser? If the union is weak, shall we encrease the debility? Or,

when a more perfect consolidation is essential to the national existence, shall we employ repulsion instead of attraction, and thus widen the inconvenient and ruinous distance between the different members of our political body? Neither reason or experience would justify such a construction; and the United States, though individually sovereign and independent, must admit, not only the voluntary law of nations, but a peculiar law resulting from their relative situation.

No cases can be more distinguishable than the present, and that in which the rule for reviving rights and credits at the expiration of a war occurs. There is no doubt, that, on the declaration of peace, a British subject could sue here; and, we find, that although our government conceived that they might act as they thought proper with respect to the citizens of the State, yet the instalment laws were never extended to obstruct and protract the recovery of debts due to foreigners. If, therefore, Camp is to be considered in the honorable light of an open enemy, the argument for the Defendant is unfounded: but, when it is recollected, that he did not avow his sentiments on the declaration of Independence; and that, nevertheless, he remained in the enjoyment of his property under the laws of Connecticut for some time afterwards, it is impossible to regard him in any other light than that of a subject, and subjects are the objects of the municipal law, not of the law of nations. In the case of *Respublica v. Chapman* on an indictment for treason (See ant. 53.) The Defendant was acquitted, because, in the opinion of the Court, he was not a subject: If he had been a subject, he must have been attainted; and being so attainted, he could never have claimed any advantage from the law of nations on the return of Peace. Thus, with respect to Camp, he was a Traitor; the proceedings under the Act of Connecticut produced a forfeiture and attainder; and the right of action was as exclusively vested in the State (and by the power of that State alone can it be divested) as if he had been taken and executed. The Act, indeed, does not speak at all of an enemy, but of such persons as were resident in Connecticut, and had joined the British troops; for proceedings of this kind are never carried on against an open enemy. The profits of his property may be sequestered during the war, in order to prevent their being remitted, but no forfeiture can take place.

If then Camp was a subject of Connecticut, he derives no right from the Treaty of Peace; for, Great Britain could not mean to interfere between that State and her own citizens. The description in the fourth Article cannot be extended to him; and though

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the sixth Article certainly designates persons acting as he has done, yet it gives no farther advantage than to protect his person from molestation, and to preclude any future confiscations of his property. The confiscation of the present debt, &c.; was in the year 1779, and no further proceedings are requisite to retain the right which the State thereby acquired. The Marquis of Carmarthaen's complaint of laws passed against the Treaty did not include laws of this description; for although he must have known that similar ones existed in Pennsylvania, he admits, that here there are no acts passed against the Treaty. Purchasers under the State are considered by the Treaty as holding a good title; but it provides for persons entering into a negotiation for the reconveyance of their forfeited estates from such purchasers. In the case of *Respublica v. Gordon*, (ant. 233.) the confiscation was complete before the treaty; and, therefore, thought it would have been incompatible with it to have sustained any legal proceedings afterwards in the Supreme Court against the Defendant, an act of the Legislature became necessary to divest the right, which the State had acquired by the previous confiscation. The conduct of the British agents can furnish no authority to us; but the reason for their refusing to make an allowance for debts was the difficulty of ascertaining them, and not the presumption of their being recoverable after the peace. Nor does the act of Connecticut, repealing all laws against the treaty, affect the law in question, which is directed to an object of mere municipal regulation. The State had a right to do as they pleased with all the confiscated property; and on any, or no consideration, to release all his debtors. Whether, indeed, they had recovered the whole, or a part, or whether they have compounded, or dismissed the debt, it could not enure to the benefit of Camp. He cannot now be punished for past depredations; but the property vested in the State of Connecticut, cannot be re-vested without her authority. If the treaty is to be considered as a reversal of

outlawry, then a restitution would ensue; but if it is taken in the light of a pardon, that does not divest any thing previously vested in a subject, nor even in the King who grants it, unless by express words. 3 Bac. Abr. 810. 2 Vin. 401. pl. 4. p. 404. The right of action in the present case was clearly transferred to Connecticut, and neither expressly, or by implication, has she waved it. After considering the case and arguments, the President delivered the opinion of the Court in these words:

Shippen, President. The question in this case is of importance, both on account of the principles to be established by the decision, and the many cases which may possibly be affected by it. It has been learnedly and ingeniously argued on both sides; but, though large ground has been taken, I think the whole may be reduced to a very moderate compass.

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This is not a suit brought by the State of Connecticut, or any person claiming property under their local laws, wherein a question can arise, whether effects forfeited by the laws of that State can be recovered here, by the administrators of the person whose estate is confiscated. It is simply, whether the debt has been forfeited there, and actually vested in that State; and whether any thing has occurred which divests it; and whether, under the peculiar circumstances of our relative situation with regard to each other, the Courts of this State can take notice of such confiscation and vesting, so as to preclude the Plaintiff from recovering here, a debt due to him there, before that confiscation. In order to pave the way for a decision of these questions, and to distinguish between the situation of this country, and those treated of by the learned writers on the laws of nature and nations, and the rights of distinct independent sovereignties quoted by the counsel, it will be necessary to point out that peculiar, relative situation which these States stand in with regard to each other. When a resistance was made to the execution of the laws of Great Britain, and an actual war took place between us and them, we were not thirteen independent States, but Colonies and Provinces, belonging to, and a part of, a great Empire, comprehending both countries. The resistance was made in consequence of common grievances suffered by all the Provinces, from the head of that empire; and it was a struggle to

untie the knot that bound us together. and to emancipate us from the dominion of our then mother country. In the prosecution of this plan, all were equally principals, and carried on the war as a common cause, and by common consent, without being tied together by any regularly organized system of Government. The first body that exercised any thing like a sovereign authority, was the Congress of the then United Colonies, who superintended the whole, and, by the like common consent, were invested with such general powers as were necessary for the prosecution of the war. We afterwards divided ourselves into several distinct governments, by the name of States; still leaving the general power in Congress, which, being in a great measure undefined, was exercised, with regard to internal matters, by recommendations to the several Governments, instead of laws; which however had generally the force of laws. The articles of Confederation were not acceded to by all the States for some years. By these articles, each State was to retain its sovereignty, freedom, and independence, and every right not expressly delegated to Congress; but the free inhabitants of each State were to be intitled to all the privileges and immunities of free citizens in the several States. Before the articles of Confederation were agreed to, Congress had recommended to the several States to confiscate, as soon as might be, and to make sale of all the real and personal estates therein of the inhabitants, and other persons, who had forfeited the same, and the right to the protection of their respective States.

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In consequence of this recommendation, the State of Connecticut, in the month of May, 1778, passed an act to confiscate the estates of persons inimical to the independence and liberties of the United States, within that State. By this law, all estates, real and personal, within the State, which belonged to any person, or persons, who had gone over and joined with the enemies of the United States, or had aided or assisted them, or should thereafter do so, were declared to be confiscated. 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 persons should be forfeited for the use of the State. The Court is then directed to grant administration of the

estates, as in case of intestates estates. The administrators were to sell such estates, institute suits, recover and pay debts, and deliver over the surplus, if any, into the Treasury 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, Abiathar Camp, (who is stated to have been lately a resident of the town of Newhaven,) 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 protection 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. Certain parts of Camp's estate were in consequence of this forfeiture seized and sold; but no proceeding was had to recover against James Lockwood, the present Defendant, the debt said to be due from him to the Plaintiff, although the Defendant was at that time, and for some time afterwards, an inhabitant of Connecticut, and amenable for the same. And here the question arises, whether the Plaintiff himself can now recover it? It is contended, on the part of the Plaintiff, that the proceeding against him was as an enemy, and not as a traitor, and that, therefore, the war being over, his right revives. The sentence against him was certainly not expressly for treason, and there is no judgment against him that, in terms, subjects his person to punishment as a traitor. 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 former description, being late a resident in the town of Newhaven, and is 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 such 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.

The objection to the Courts of this State, as a sovereign independent State, interposing to prevent the recovery of a debt, on account of the confiscation of it in another independent State, is in a great measure obviated by the statement which I have before made of the peculiar relation that these States stand in to one another. Though free and independent States, they appear not to be such distinct sovereignties as have no relation to each other but by general treaties and alliances, but are bound together by common interests, and are jointly represented and directed as to national purposes, by one body as the head of the whole. The offence, which incurred the forfeiture, was not an offence against the State of Connecticut alone, but against all the States in the union: And the act, which directed the forfeiture, was made in consequence of the recommendation of Congress, composed of the Representatives of all the States, and was a case within the general powers vested in them as conductors of a war, in which we were all equally principals. Our Courts must, therefore, necessarily take notice of the confiscations made in a sister State on these grounds.

It remains, then, only to consider, whether this debt was vested in the State of Connecticut, and, if it was, whether it is re-vested in the Plaintiff by the treaty of peace?

All his estate, both real and personal, in that State was confiscated. All things come within the description of confiscable personal estate, which a man has in his own right, whether they be in action or possession: This debt was due from a person then residing within the State of Connecticut, and was, consequently, confiscated as other debts due there, and the right of action, as well as the debt, was vested in the State.

The 4th article of the treaty of peace, which directs that creditors, on either side, shall meet with no lawful impediment to the recovery of all bona fide debts theretofore contracted, is most certainly confined to real British subjects, on the one side, and the citizens of America, on the other; and it has been always so

construed.

As to the restitution 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 5th article, that Congress shall recommend it to the several Legislatures to provide for such a restitution; and, as to those of another description, they have liberty given them by the treaty, to reside twelve months in the United States to solicit a restitution and composition with the purchasers of their estates, and Congress is to recommend to the States, that they be restored on refunding the money paid for them.

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But no acts for those purposes have been passed by the Legislatures in consequence of any such recommendations. Indeed, the ample provision made for these people in England, seems to have been considered by the Government there as an act of justice, for not having been able to obtain a restitution for them by the treaty.

For these reasons, we are of opinion, that Abiathar Camp is not such a person as has a right to sue for and recover this debt, already vested by confiscation in the State of Connecticut. Footnotes

[[Footnote *](#)] See Mr. Adams's 'Defence of the American Constitutions.'

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