

AN
ADDRESS
FROM THE
COMMITTEE
APPOINTED AT

MRS. *VANDEWATER*'s

On the 13th Day of September, 1784.

To the PEOPLE of the STATE of
NEW-YORK.

NEW-YORK

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1784

AN ADDRESS, &c.

To the PEOPLE of the State Of *New-York*.

Fellow Citizens,

It is the happiness of people who live in a free government, that they may upon every occasion, when they conceive their rights in danger, from whatever cause, meet, consult and deliberate upon the proper mode of relief, and address their fellow citizens; pointing out the dangers which they apprehend, and inviting them to concur in measures for their removal.

In the exercise of this privilege, a number of the free citizens of New-York did assemble, and having appointed us their committee, gave it in charge to us to address you on the subject of a late decision of the Mayor's court, in this city, on the law commonly called the Trespass Law, in a case brought to issue in that court between Rutgers and Waddington.

This action was founded on a law of this state, entitled, 'An act for granting more effectual relief in cases of certain Trespasses,' passed in March, 1783; by which it is declared, that it shall and may be lawful for any person or persons who are or were inhabitants of this state, and who by reason of the invasion of the enemy, left his, her or their place or places of abode, and who have not voluntarily put themselves respectively in the power of the enemy since they so left their places of abode, &c. to bring an action of trespass against any person or persons who may have occupied, injured, or destroyed, his, her or their estate, either real or personal within the power of the enemy. And that no defendant or defendants shall be admitted to plead in justification any military order or command whatsoever for such occupancy.

The plaintiff charged the defendant for the use and occupancy of a certain brew-house and malt-house, in the city of New-York, the property of the plaintiff.

To this charge the defendant plead, that the premises in question were occupied part of the time under the British army, who took possession thereof by virtue of permission from the commander in chief of said army, and the remainder of the time by virtue of license and permission granted by the said commander in chief to a certain person, under whom the defendant held; which licenses and permissions the said commander had authority to give by the law of nations.

The defendant further plead, that by the treaty of peace, all right, claim, &c. which either of the contracting parties, and the subjects and citizens of either of them might otherwise have to any compensation, &c. whatsoever, for, or by reason of any injury or damage, whether to the public or individuals which either of the said contracting parties, and the subjects or citizens of either, might have done, or caused to be done to the other, in consequence of, or in any wise relating to the war between them, from the commencement to the determination thereof, were mutually and reciprocally, virtually and effectually relinquished, renounced and released to each other; and further averred, that the defendant was, from the time of his birth, and at all times since hath been, a British subject.

The plaintiff to the first plea of the defendant, namely, that the premises were held by virtue of authority and permission from the commander in chief of the British army, replied, that she ought not to be barred of her action by

reason of that plea; because the law under which she brought her suit did expressly declare, that no defendant or defendants should be admitted to plead any military order or command whatsoever for the occupancy.

As to the further plea of the defendant, namely, the treaty of peace, the plaintiff demurred, or denied its sufficiency in the law.

This cause, as above stated, was argued on the 29th of June past, before the Mayor's court, and on the 27th of August judgment was given.

The two points which presented for the court's determination upon, arising from the two pleas of the defendant, were,

1st. Whether permission and authority from the commander in chief of the British army, agreeably to the law of nations, was a sufficient justification to the defendant for the use and occupancy of the premises in question; notwithstanding the act of the legislature declares, 'that no defendant or defendants shall be admitted to plead in justification any military order or command whatsoever.'

2dly. Whether the treaty of peace includes in it such an indemnity as to justify the defendant for his use of the premises.

With respect to the first point, the judgment of the court was, that the plea of the defendant was good for so much of the time as he held the premises under the immediate authority of the British commander in chief; or in other words, notwithstanding the law declares that no defendant shall be allowed to plead in justification any military order or command whatsoever, yet the authority and permission of the British commander in chief shall be deemed a sufficient justification; because in the opinion of the court a liberal construction of the law of nations would make it so, and because the court could not believe that a repeal of, or an interference with the law of nations entered into the scheme of the legislature.

The second plea, namely, the Treaty of Peace, the Court declared insufficient.

From this state of the case it appears, that the Mayor's Court have assumed and exercised a power to set aside an act of the state. That it has permitted the *vague and doubtful* custom of nations to be plead against, and to render abortive, a *clear and positive* statute; and military authority of the enemy to be plead against the express prohibition of our legislature.

This proceeding, in the opinion of a great part of the citizens of this metropolis, and in our opinion, is an assumption of power in that Court, which is inconsistent with the nature and genius of our government, and threatening to the liberties of the people.

We think the controversy, notwithstanding the immense learning and abilities which we are told have been displayed in it, lies within a narrow compass, and within the reach of every common understanding.

It is reducible to the two following questions, Does the plain and obvious meaning of the statute prohibit the pleading of any military orders, commands, permission and authority of the enemy in justification of any trespass for which a suit can be brought under it?

Can a Court of Judicature, consistently with our constitution and laws, adjudge contrary to the plain and obvious meaning of a statute?

If these questions are answered in the negative, authorities from Grotius, Puffendorff, Wolsius, Burlamaqui, Vattel, or any other Civilians, are no more to the purpose than so many opinions drawn from sages of the Six Nations.

If they are answered in the affirmative, then there can be no disputing against the opinion of the Court.

With regard to the meaning and intention of the Legislature, it may be inferred from the very enacting of the law; for in doing that they suppose that as laws before stood, actions could not lie in cases of this nature; to remedy this, they make it lawful for persons described in the act, to bring actions of trespass against, &c. and declare that no military authority whatsoever of the enemy shall be plead, or evidenced in justification of the trespass.

No point of controversy can arise on the case but must turn upon the propriety or impropriety of the law itself; not upon its construction. For the plain language of the law is this, that the military power of Great-Britain, by taking possession of these estates, and giving authority, permission, order or command to persons for occupying and improving them, should not excuse the occupier from being considered as a trespasser, and thereby not liable to pay damages to the owner. We can hardly conceive it possible for the legislature to have chosen words that would make the intention of their law more clear.

If what we have stated be not the true meaning of the law, then we conceive that it has no meaning.

The time of passing the law, and the evident grounds of it, show the intention of the legislature, and put it beyond a doubt that the spirit and literal construction of it are the same. To give a remedy to those citizens who had abandoned their estates on the approach of the enemy, and who had adhered to the fortunes of their country in all its vicissitudes; most of whom had suffered very great loss of personal property, and many of them reduced from affluence to penury and want. The real estates which they owned in the Southern district, it was well known, had been greatly injured; most of them irreparably so.

We were then at the close of the war. The legislature had certain accounts that the preliminary articles of peace were signed. The time was considered as just at hand, when the exiles, the greater part of whom had expended all their loose property, were to be put in possession of their real estates, from which they had suffered voluntary banishment for more than seven years. The bad condition of their estates, and their incapacity to improve them, made the case, which the legislature thought proper to afford relief in by the law.

It is well known that most of these estates were at that time held, or pretended to be held by virtue of authority from the British Commander in Chief. The law of nations was the same then as at this time, and the immutable principles of justice have not changed. Yet the wisdom and supreme authority of the state did declare that no military order or command of the enemy should be plead, or given in evidence. The law being thus plain and explicit, it was never apprehended that its operation would be defeated by the plea of authority from the enemy[.]

Impressed with a belief of its compleat and entire operation, many of the persons themselves who held the estates of exiles under the British, abandoned the place with them to avoid paying the damages which would accrue from it.

The gentlemen of the law, we are confident, almost universally considered it as expressed in plain and unequivocal language that could not be misunderstood or explained away. In short, no doubt was entertained of the meaning of the law, until the case of *Rutgers* and *Waddington* was agitated, and then there was no way left for the

Defendant to justify himself, but by inventing distinctions where there was no difference, and introducing matter which the law prohibited.

From what has been said, we think that no one can doubt of the meaning of the law. It remains to enquire, Whether a Court of Judicature can consistently, with our constitution and laws, adjudge contrary to the plain and obvious meaning of a statute.

That the Mayor's Court have done so in this case, we think is manifest from the foregoing remarks.

That there should be a power vested in courts of judicature, whereby they might controul the supreme legislative power we think is absurd in itself. Such power in courts would be destructive of liberty, and remove all security of property. The design of courts of justice in our government, from the very nature of their institution, is to declare laws, not to alter them.

Whenever they depart from this design of their institution, they confound legislative and judicial powers.

The laws govern where a government is free, and every citizen knows what remedy the laws give him, for every injury. But this cannot be the case, where Courts, if they deem a law to be unreasonable, may set it aside.

Here, however plainly the law may be in his favour, he cannot be certain of redress, until he has the opinion of the Court.

It may be *expressed generally*, and only say, that all persons in certain circumstances shall recover in certain cases. But it may not by name bar every objection that might possibly be argued against it, where interest and inclination hold invention upon the rack.

It may not particularly describe the man, say what country he is to spring from, or what his occupation is to be, and being thus *generally expressed*, it cannot be from the nature of things, but it will admit of some exceptions, and as it may admit of some exceptions, it must receive a *reasonable* and liberal interpretation from the Court, *however arduous the task may be*. Now the reasoning of the Court and the reasoning of the legislature may lead them to very different conclusions, and as the Court reason last upon the case, it is utterly impossible for any man to guess when he brings a suit, however exactly it may apply to the law, until by a tedious and expensive process, he obtains the opinion of the Court whether he shall recover or not.

It is not our intention to enter into a particular consideration of the evils which would result from the exercise of such a power in our courts; much less to consider all the arguments used to vindicate the decision in the case of Rutgers and Waddington. We are addressing an enlightened people, who are awake to every thing that may affect their dearly attained freedom; who know that the consequences which would flow from the establishment of such a power, would be of the most serious and pernicious kind; rendering abortive the first and great privilege of freemen, the privilege of making their own laws by their representatives. For if the power of abrogating or altering them be assumed by our courts, and submitted to by the people, then, as far as liberty and the security of property are concerned, they become as useless as other opinions which are not precedents, and from which judges may vary.

It is to be observed that the principal judges are in most cases appointed to act within the limits of a certain age, or during good behaviour, We do not wish to lessen their independency;—for while they are content to move in their proper sphere, while they speak the plain and obvious meaning of the law, and do not presume to alter it, or explain it to mean any thing or nothing. While in the duties of their real province they cannot be too independent; nor ought

they to be liable to a remove but for misbehaviour. But if they are to be invested with a power to over-rule a plain law, tho' expressed in *general words*, as all general laws are and must be. When they may judge the law unreasonable, because not consonant to the law of nations, or to the opinions of antient or modern civilians and philosophers, for whom they may have a greater veneration than for the solid statutes and supreme legislative power of the state. We say, if they are to assume and exercise such a power, the probable consequence of their independence will be, the most deplorable and wretched dependency of the people.

That the laws should be no longer absolute, would be in itself a great evil; but a far more dreadful consequence arises; for that power is not lost in the controversy, but transferred to judges who are independent of the people.

These being our apprehensions, we have, in compliance with the request of our fellow-citizens, and from a conviction of its propriety, briefly stated to you our ideas on this important affair.

In a free government people should be informed of the conduct of their rulers and magistrates. It is a knowledge that is absolutely necessary to the preserving of their freedom.

Power presents so many charms to mankind, that there are very few indeed, even of the best of men who have their avarice and ambition so perfectly under the correction of virtue and true wisdom, as not to feel an inclination to surmount the limits assigned them; especially, when the additional temptation of ignorance or inattention on the side of the people prompt to it.

A private and individual case would not justify the measures which we have taken. But we consider the decision in the case of Rutgers and Waddington as an adjudication which may be drawn into precedent, and eventually affect every citizen of this state. It therefore merits the attention of us all.

To prevent this mischief, we do not advise our fellow-citizens to measures which are unconstitutional; nor do we mean to use them ourselves. The mode of redress which our excellent constitution points out is, First, by an appeal to the supreme court, where this cause will be carried by Writ of Error. We feel a confidence from the characters of the gentlemen who preside in that court, that the law will have its operation restored in its plain and obvious meaning. But if we should be disappointed, the cause is of too much consequence to rest here. Its importance will grow with the difficulties and defeats it may meet with; for each of these will make a new discovery of the strength of its opponents; each defeat will create a new triumph over freedom, and give additional courage and importance to her adversaries, and all call upon us the more earnestly to support that cause, to defend that ground upon which the standard of liberty is erected, and which, if ever surrendered, we should be prepared to surrender with it every less and consequent privilege, whereby we might be allowed better terms, from despotism, than we should by discovering our wretchedness and imbecility in a contest which the first defeat will have rendered vain and hopeless.

The next mode pointed out by the constitution, is an appeal to the court of Errors, one part of which the Senate constitute. Preparatory to such an event, we exhort you to be cautious in your future choice of members, that none be elected but those on whom, from long and certain experience you can rely, as men attached to the liberties of America, and firm friends to our law and constitution. Men who will spurn at any proposition that has a tendency to curtail the privileges of the people, and who at the same time, that they protect us against judicial tyranny, have wisdom to see the propriety of supporting that necessary independency in courts of justice, both of the legislature

and people, without which the fear of dismissal from office on the one hand, and of personal violence on the other, might steal into their decisions, and render them interested and corrupt.

Having confined ourselves to constitutional measures, and now solemnly declaring our disapprobation of all others, and having solely for our object, the support of our excellent constitution, and the absolute and entire operation of our laws, we feel a freedom in sounding the alarm to our fellow citizens.

If that Independence and freedom which we have obtained at a risque which makes the acquisition little less than miraculous, was worth contending for against a powerful and enraged Monarch, and at the expence of the best blood in America, surely its preservation is worth contending for against those among ourselves, who might impiously hope to build their greatness upon the ruins of that fabric which was so dearly established?

That the principle of decision in the case of *Rutgers* and *Waddington* is dangerous to the freedom of our government, and that a perseverance in that principle would leave our Legislature nothing but a name, and render their sessions nothing more than an expensive form of government, the preceding remarks must evidence.

Permit us, upon this occasion, earnestly to intreat you, to join us in a watchfulness against every attempt that may be used, either violently and suddenly, or gently and imperceptibly, to effect a revolution in the spirit and genius of our government; and should there be amongst us, characters to whom the simplicity of it is offensive; let our attention and perseverance be such, as to preclude the hopes of a change. For even if our government was less excellent than it is, it would be better for us to be reconciled to a few inconveniencies, than by a hasty and ill-judged revolution, to put to the hazard all that we now enjoy under the present.

Frequent changes or even alterations in government, where the people have so lately come to the exercise of one, may produce an instability in them that will be more disagreeable than trifling inconveniencies in the one already established.

Melancton Smith,

Thomas Tucker,

Peter Ricker,

Daniel Shaw,

Jonathan Lawrence,

Adam Gilchrist, jun.

Anthony Rutgers,

John Wiley.

Peter T. Curtenius,