

**A** Introduction on Importance of the cause

+ practice of Nations -

Affects national character - national faith - confederation treaty - Immediate safety of the State. Frontier Posts character of our Jurisprudence - - -

It is said the Rules differ; so have judges in the common law Courts

Injurious Judgment a good cause of war *Molloy Book*  
I Chap 2 § 5 & 6 = 12

Lord Hardwicke says  
w/ law not obligatory

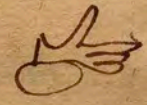
Question now is whether a judgment already given in an inferior Court consonant with our best Interests shall be reversed in a superior Court

But does he say law of Nations is not.

No Adjudications exactly in point to a case upon real property must be determined on principle: *Ubi lex tacet iudex loquitur* is a rule of the civil law & our law says a new case must be determined by the law of nature and Public good

**B**  
Viner Title Law  
Page 51 letter C pl 3 +  
Year Books 8<sup>th</sup> Ed 4<sup>th</sup>  
p. 12 -

**C** Question very comprehensive embraces whole Law of Nations where shall we find them. Injur from Principles



Coke L. 11. b  
4 Black C. 66 & 67  
3 Burrows R. 1480 : 1481

**I** *Jus gentium* and *jus belli* which part of it are part of common law -

Coke enumerates the *jus belli* as one of the 15 great heads of the Law. In Republica maxime conservanda sunt jura belli

Preliminaries  
from Page 2 to 7  
Read only § 6 § 17 § 22

**D** Vattel divides the law of nations into two parts  
I<sup>st</sup> The natural necessary or internal  
II<sup>nd</sup> The positive or external

This last is subdivided into  
I The Voluntary  
II The Customary  
III The Conventional

The Voluntary is that which principally concerns us -  
It may be defined "that system of rules which necessarily result from the associations of men into distinct Independent political associations qualifying their natural rights as Individuals."

Idem Preliminaries  
Page 3 § 20  
B: III Ch XII  
throughout but  
particularly § 192

And is as intrinsically obligatory as the necessary law of nations  
Which enjoins its observance

E Nations are under two sorts of Obligations  
 I The Internal  
 II The External

The first founded on Necessary or Internal Law of Nations the second on external or Voluntary Law of Nations.

This distinction of great importance

☞ This is what Grotius means in his

III The Internal obligation may be compared to

The obligation to pay a debt after recovery is barred by <sup>5 of law</sup> or

To observe a verbal agreement when statute of frauds prevents its being enforced

IV By the necessary law the party making an unjust war acquires NO rights is bound to make reparation for all damages

V By the voluntary both parties have equal rights, having no Common Judge

And the Effects of the war on both sides are the same - - -

These Effects are principally impunity and the acquisition of property !!!

F The rule has several objections

I The general Peace of Mankind

By removing discussions about the justice of the war and about the proportion of the damage to the injury for even the party in the right may take an excessive satisfaction

II The security of purchasers in general especially Neutral nations -

☞

All Writers acknowledge the principle though they form different theories - - -

Some ascribing it to a positive law others to the necessity of human affairs others to a tacit consent in making peace

Grotius B 3 Ch 10

Vattel

Vattel B III Ch XII before referred to

Idem C XIII § 195 & 196

Molloy B I Ch I Page 12 to 14

§ XII - XIII - Repeals from Grotius O. 580 B III Ch VI § II

Burlamaqui Vol 2. O. 302 §

33 to 37 -

And others deducing it with more reason from the  
Utility of the Peace

F For it is Agreed that every Treaty of Peace includes  
an Annex express or implied

G Hence we see that the Injustice of the war  
can be no objection; and whatever has been said  
<sup>about</sup> the obligation of restitution in an unjust war  
relates to the obligation in foro conscientiae  
not the external obligation —

Grotius who speaks most of it attributes the  
same effects to every solemn war or war in  
form what he calls a just war

H Objection This is not a solemn war; consequently  
the effects not the same — —

Vide B III Ch VI P 500 JTC  
Rutherford 2. Vol BII Ch IX  
Page 508 to 512 J

Rutherford BH Ch IX  
Page 563 & 564 — 578 to 580  
Bynkershoek

Hutchinson Vol 2 P. 257  
Burlamaqui Vol 2 P. 263 § 44  
Cunningham Policy of Insurances  
P. 276

States History Near of Crown  
Vol 1 P. 160 to 164  
P

Answer This by the best opinion and authorities  
makes no difference —

And the approved practice of nations is  
against the Objection

Bynkershoek enumerates many instances —

But the war between G B & America was  
a solemn War

Burlamaqui 271 § XXI Formalities are arbitrary L

The Act of Parliament authorizing certain  
hostilities was a Legislative declaration of War  
Declaration of Independence speaks of an open  
war existing —

Congress by a formal resolution authorized citizens  
of United Colonies to cruise against British

I 2<sup>o</sup> Objection. This was not a war between <sup>unknowingly</sup> Independent Nations; so the effects not the same

Answer The objection not good in our mouths; if the principle is true it applies to us not to Great Britain.

P  
Journal of Congress  
Page 245

All our public acts contradict the principle & claim the sanction of the law of Nations

~~It~~ Note they formally assent to that law

Walt Book 3<sup>o</sup> Chap 18<sup>o</sup> P. 111  
§ 295  
Burlamaque P. 302 § 33 to 37

And the best opinions are to the contrary

K It has been said and it may be said again that the state of New York has no common law of nations

The Answer is  
1 that it results from the relations of Unimpaled  
2 that our constitution adopts the common law of which the law of nations is a part

3<sup>dly</sup> The United States are the Directors of our Intercourse with foreign nations And

They have expressly become parties to the law of nations —

P  
L The Inquiry then is What are the effects of War?

Jussumm Institutio Lib II Tit I  
§ 17

Molloy B1 C1 P. 14 § 13

Grotius 580<sup>o</sup> Read before  
581<sup>o</sup>

Idem 586 Note Barbey 5<sup>o</sup>

Domat Vol 1 P 455 § 17 —

Burlamaque Vol 2 P 290 § 1

Viner Tit 4au Pub Pl 1 & 2

The general Proposition of the Jus belli is that " ea quae ab hostibus capiuntur statim jure gentium nostra fiunt "

Immoveable goods belong to the Captor forever as soon as the Battle is over

The fruits of immoveable goods while they

2. Blackstones Commentaries are in possession.  
Page 401 - No. 1  
402

Romans &  
other ancient nations

Other rules have been laid down with respect to moveables the bringing infra presidia and the being a night with the Captor; but the true Rule is the battle being over ---

As Molloy observes the Pleadings ancient precedents of pleading are not that the prize did permostare with the enemy but generally that the game was gained by battle of the enemy: & Pleading is the touchstone of the law ...

Register P. 102

The Common Law carries the rights of war so far as to give property in a prisoner & an action of Trespass for taking him away

Brooke Title Property  
P. 161 & No 10  
Year Books 7 Ed 4. Page 14  
Inference

Brooke gives the property of one subject taken in war to a fellow subject recaptor, if fresh pursuit & claim be not made the same day before the setting of the sun. And this doctrine is applied to real property as well as personal. Hence we see the common law not only adopts the law of nations in ~~its~~ its full extent as a general doctrine but particular adjudications recognize the operation of capture.

The last adjudication excludes all idea of question about the justice of the war; for the

The civil law of every state must presume its own Sovereign in the right

Objection But it may be said These Adjudications relate only to ~~private property~~ moveable goods - What is the law respecting real goods ---

The best Writs will tell us - The fruits during the possession belong to the Conqueror -

Grotius B III Ch XX  
§ 22 P. 701  
Hatchers Vol 2 P 363 &  
364  
Vattel B IV C 3 § 30  
Page 123

And the want of a precedent of an action brought amidst all the wars between the different possessors of the Country in England is a strong negative confirmation.

1 Objection Babel says the acquisition of immovables is not complete till peace

Answer - This is true the Conqueror has not the full domain so as <sup>to</sup> alienate it. But

This does not hinder that the fruits during possession are his -

This is precisely and Expressly Babel's meaning -

2 Object - Grocius in Another place says (at a Decree of Paulus the Civilian is quoted (extending it to the Slaves) that the profits return by Postlimony to the Original Owner - Gro P. 622 Book 3. C 9 § 13 p 2

Answer. This is all mistaken & for want of attending to the true meaning of words -

Grotius Lib III A 20  
§ 22 Page 701 English  
937 Latin

In the Latin Original the Difficulty is solved: In the authority we quote Lib III Cap XX § XXII <sup>701 English</sup> <sub>937 Latin</sub> the word used is fructus which properly signifies the fruits profits or issues.

In the Passage Quoted on the other side the word is usufructus L 3 Cap 9 § 13 No 2 Page 868 which is falsely translated profits; for usufructus, means the right of using the soil as contradistinguished from the absolute ownership of it - and is nearly equivalent to an use at common law -

Juffeneau's Impli:  
Lib II Tit IV intire

This appears from the authorities in the margin

The idea that he speaks in one place of a new grant in another of Restitution is not accurate - The context in both cases relates to restitution. The section immediately preceding § XXI proves this -

# But it may be said quid  
when does this right over  
real property commence

And the verb concedere what is made up of  
means <sup>as well</sup> ~~more naturally~~ a yielding up or surrendering  
~~than~~ <sup>as</sup> a new agreement grant; for which the more  
apt expression would have been the verb do

Answer from the time there  
is a firm possession Grotius  
B 3 C 6 § 4 - 5 page 583  
- C XX § 12 = 12 page 699

Wattel understands Grotius in the same sense for  
in the passage quoted from him he <sup>expressly</sup> refers  
to the passage quoted from Grotius - #

Carlamague at the time of  
capture vol 2 p. 295 to 298

612 § 12 no 2 & 2  
Grotius 622 B 3 C 9  
§ 13 & 14  
Wattel B III Chap XIII  
§ 196 & 197 page 77 & 78

We find that ~~immovables~~ <sup>moveables</sup> once taken are booty and gone  
for ever, immovables when recovered return by Postliminium  
to their Original owners -

It will be proper to settle accurate Ideas of Postliminium  
Wattel defines it " That right in virtue of which  
persons & things taken by the enemy are restored  
to their former state when coming again under the  
power of the nation to which they belonged.

It is plainly ~~the~~ a rule which regulates only the  
internal rights of a nation within itself and  
has no operation either with respect to the adverse  
party or to neutral nations -

Hence it has nothing to do with the Idea of  
a claim of damages from the adverse nation -

Having now shown what the law Permit.

Observation.

That the Conqueror may in rigor avail himself  
of the profits of all real property - A defense  
to be remarked

That the laws of the most Mitigated Hostels  
permitted him doing it with respect to defeated  
property

The Romans & other ancient nations used  
to divide the <sup>conquered</sup> lands immediately among themselves

But now with respect to slaves that remain  
with their possessors Contributions are substituted.

## Consequence

The enemy having a right to the use of the Plaintiffs  
Property & having exercised their right through  
the Defendant & for valuable consideration he  
cannot be made answerable to another without  
injustice and a violation of the Law of universal  
Society.

## Further

Burlamaqui Vol 2. Page 353  
§ 7-143  
Grotius B 3 CXX § 15 # 699  
Barbeyrac note thereupon —

It cannot be done without a violation of the  
Treaty of Peace.

Vattel B 4. Chap 2 § 10. 19. 20 &  
21 Page 120 & 121 —

For every treaty of Peace includes an Amnesty,  
which indeed is of its essence; and between private  
persons as well as the contending public.

## Objection

1<sup>st</sup> It may be said Congress had no right to bind us  
in meddling with our Internal Police.

## Answer

Then the Confederation is the shadow of a shade!

But Congress had an unquestionable right  
Our Sovereignty and Independence began by  
a Federal Act

Our External sovereignty is only known in  
the Union.

Foreign Nations only recognize it in the Union.  
By the declaration of Independence, what  
is the fundamental constitution of every state, the  
United States assert their power to levy war,  
conclude peace and contract alliances all which  
is acceded to by

vide Proceedings of Convention  
p. 12

The New York Convention who do not  
pretend to authenticate the act, but only to  
give their approbation to it



Congress had then complete sovereignty !!!

Article XXX page 26 The Union is known and legalized in the Constitution previous to the Confederation and the first act of our government adopts it as a fundamental Law

These Reflections teach us to respect the sovereignty of the Union & to consider its constitutional powers as not controulable by any State!

The Confederation is an abridgement of those Powers —

Write Article IX of the Confederation

But mutilating as it is it leaves Congress the full and exclusive powers of War Peace & Treaty —

The Power of <sup>making</sup> determining on Peace is the power of determining on the conditions of it

copy

It is a rule of reason & Law that to whomsoever any thing is granted that also is granted without what it cannot exist " Lex est quicumque aliquis aliquid concedit concedere videtur et id sine quo res ipsa esse non potest " — 11 Coke 52 a

See

If Congress have not a power to adjust an equivalent for damages sustained and remit the rest, they have no power to make peace.

It is true as quoted from Vattel that this power does not permit the making all possible conditions such as dismembering the empire surrendering the liberties of the people &c

But it includes the power of making all reasonable and usual conditions —

Such is a remission of damages: For without it the State of War continues —

But it may be asked how could they give away the rights of the Citizens of New York?

The answer is two fold

First the Citizens of New York gave them power to do it for their own safety —

And secondly - The power results from the principles of all Governments -

Case B 2 C VII § 31.  
Page 147

That the property of all the Individuals of a state is the property of the state itself in regard to other nations.

Hence an injury from the Government gives a right to take in war the property of its innocent subjects.

Hence also the claim of damages for injuries done is in the public who may agree for an equivalent or release the claim without it.

Our External sovereignty existing in the Union the ~~right~~ property of all the citizens in regard to foreign states belongs to the United States.

This is a consequence of what is called the eminent domain.

2 Objction That injuries only are forgiven which are done in relation to the War. This is a private speculation

The relation ship to the war consists in the capture of the city - The commander in chief took possession of the premises & let rented them to the defendant

A ship captured & sold to a private merchant is in the same predicament.

Hence to make the Defendant answerable would be a breach of the Treaty of Peace

Further

It would be a breach of the Confederation

- This result from the former -

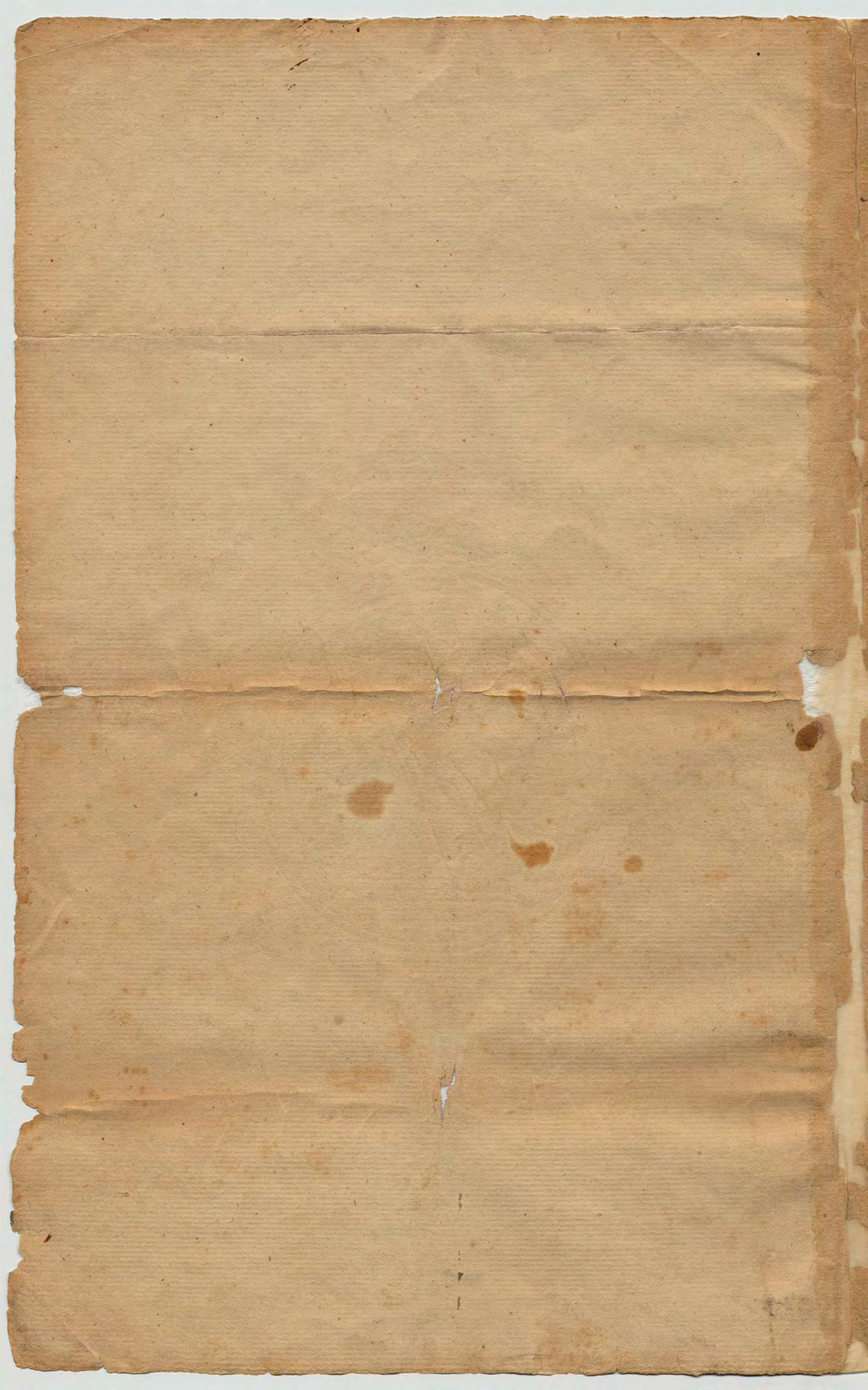
Congress have ~~made~~ the exclusive right of war & peace  
Congress have made a Treaty of peace pursuant  
to their power  
A breach of the treaty is a violation of their constitution  
and the acts of a breach of the Confederation

2 Brown 11 Weston's case  
Jenk fol 22  
117

Journal of Bonquet 1781 O. 245

When a man may appeal to the  
Court of Nations, Valde B 2 C 3 S 101 & 107

valuable  
Brief and the  
to pass Act



in making Treaties

The power of Congress is of a Legislative kind  
 Their proclamation enjoining the observance of it  
 is a law.

And a law Paramount to that of any particular  
 State.

Here let us examine some important Questions

It is said the Sovereign Authority may for reasons  
 of State violate its treaties and the Laws in violation  
 bind its own subjects —

This however goes on bold ground to wit that the  
 Legislature intended to violate the treaty —

But in our Constitution it is not true that the  
 Sovereignty of any one State has legally this power —

Each Nat. has delegated all power of this kind  
 to Congress.

They are equally to judge of the necessity of breaking  
 as the propriety of making treaties —

The Legislature of any one State has nothing to  
 do with what are called reasons of State —

We might as well say a particular has a right  
 to alter the Laws of the State as a particular  
 State the laws of the Confederation —

It has been said and it may be said again  
 that the Legislature may alter the Laws of Nations —

Elements of Jurisprudence  
 #62 Vol. H. E. P. Book 1 § 10  
 Vattel B. 3. § 12 O. 76 O. 3

This is not true in theory —

The example quoted respecting ransom bills is not in point. Nor is it constitutional in our government; for Congress have the exclusive direction of our foreign affairs & of all matters relating to the Confederation & laws of nations.

No single state has any legal jurisdiction to alter them.

It may again be said that the accession to the Confederation was an act of our Legislature. Why may not another act alter or dissolve it?

Answer It is not true; for the Union is known in our constitution as preexisting — the act of Confederation is a modification & abridgement of Federal authority, by the original compact.

But if this were not the case, the reasoning would not apply —

In this Government in acting to the Confederation is to be considered not as a sovereign enacting a law but as a party to a contract; as a member of a more general extensive community, joining agreeing to a constitution of government.

It is absurd to say, One of the parties to a contract may at pleasure alter it without the consent of the others —

It will not be denied that a part of an empire may in certain cases dismember itself from the rest.

But this supposes a dissolution of the Original contract.

While the Confederation <sup>exists</sup>, a law of a particular state derogating from its constitutional authority is no law.

But how are the judges to decide — They are servants of the State?

Answer. The Confederation vests no judicial powers in Congress excepting in prize causes — In all other matters —

The judges of each State must of necessity be judges of the United States —

And they must take notice of the Law of Congress as a part of the Law of the Land —

Though it should be admitted that they would be absolutely concluded by a law of the State ~~as to~~ in respect to its own citizens in respect to foreigners they must judge according to that law which alone the constitution knows as regulating their concerns.

It must be conceded that the Legislature of one State can <sup>not</sup> repeal a Law of the United States —

See thereof

It is a rule of law that where there are two laws, one ~~not~~ not repealing the other expressly or virtually, the judges must construe them so as to make them stand together —

Here that golden rule of the Roman Cæsar may be applied

" Romanus Igitur leges oportet contendere, considerando utra lex ad majores, hoc est ad utiles, ad honestiores ac magis necessarias res pertineat. Ex quo confectum est ut si leges duæ, aut se plures aut quotquot erunt conservari non possint quia discrepant inter se, ea maxime conservanda putentur quæ ad maximas res pertinere videantur. Cicero de Inventione Lib 4 No 145

" When two <sup>or more</sup> laws clash that which relates to the most important concerns ought to prevail "

But many of these Arguments are on the supposition that the Trespas act cannot stand with the Laws of nations and the treaty — It may however legally receive just a construction as will stand with all — And to give it this construction is precisely the duty of the Court.

We have seen that to make the Defendant liable would be —

to Violate the Laws of nations & forfeit our character as a civilized people —

to violate a solemn Treaty of peace & revive the state of hostility

to infringe the Confederation of the United States —

And  
cattly to endanger the peace of the Whole.



The Question is can we suppose all this to have been intended by the Legislature?

The Answer plainly is "The Law cannot suppose it" If it was intended the actis void -

4. Coker Reports O. 13 a  
8 dillo O. 110 at 26 several examples

But let us see whether there are not rules of construction which under this extremity unnecessary

Cato *Sty*

*Leges aeternae sunt cupiunt ut jure regantur*  
And first the Rule in Plowden - We must suppose the Legislature good wife and honest and ask ourselves what would be their Intention in the present case being fully apprised of the merits?

Plowden 466 & 467

They could not help answering they did not mean to include it -

Observe <sup>upon</sup> the late resolution - of the house of Assembly - Or - the best way to construe statutes is by the rule of the common Law

10 Modern 245 Bacon  
Title Statute 240 - x

When the provisions of a statute are general they are subject to the control of the common Law and may be construed contrary to the general words in to render them agreeable to Natural Justice.

3 Reports Lib A O. 71 a  
Title Statute # 514  
# 27. 30. 31  
Idem O. 524 # 119 -  
Idem 527 - 145  
Idem - 528 # 154 & 156  
Shower O. 455

Somal vol 1 O. 7 § 2  
Appendix B s Cap 12 O. 61  
Example # 55

Many things within the letter of a statute are not within its Equity & Vice versa

Bacon Ab. Title Statute  
# 653 N. 92

No statute shall be construed so as to be inconvenient or against reason

and giving remedy where there was none before one to be construed strictly

When Statute contradict the essential policy of the common law the common law shall be preferred

Baron Tille Mapins

Letter A of 353 of 1

4 Coke Reports 71

Raymond 7 Coke by 49

R:6. 59

Examples of Exceptions out of Statute

Puffendorf of 55

Baron Tille Statutes

P. 649 of 57 cites

Plowden 36

confessing Statute by Equity  
Celebrated instance of Law of Bologna

The Statute of 13 Ed 1 though it mentions only Bishops of Norwich has been extended to other Bishops

Idem of 50 Plowden 467

Remedy given by the 9 of Edward 3 against Executors extended to Administrators

Idem of 60

Breaking prison is felony by the Statute Edward 2 yet breaking it when or for has been adjudged not

2 Coke of 118 before cited Justice

Several strong examples

1 Shange 506

4 Burrows 2161

Blak Rep. 602

No sale of goods exceeding 10 good unless earnest or writing

Executory contracts out of Statute

1 Blackf. Commentaries P. 88

Statute taking away benefit of Clergy from stealing horses and other cattle: words other cattle Rejected

Statute relating to bastards children

10 Modern 245-

Statute de donec says a fine levied of entailed lands shall be ipso jure nullus

Courts of law have said it shall work a discontinuance.

Same Statute intended to perpetuate Inheritance Courts of law have allowed common recoveries to bar

21 Janus 1

Statute of Bankruptes say "that all goods in the possession of a bankrupt whereby he gains a general credit shall be liable to his creditors"

Cowper Rep 232 & 233

1 Atkin 159  
2 Vesey R. 485

Nevertheless <sup>in strict</sup> goods which he has <sup>as executor or factor</sup> of another though they contribute to his false credit have been exempted "And thus say Lord Hardwick contrary to the words of the Statute in order to support the rights of the parties"

Statute of Gloucester says no alienation by father of the mothers inheritance unless by fine levied in the Kings Court shall bar the heir

see Lytleton  
Case 381 & 382  
§ 730

But Lytleton says it does for law that a fine by the husband without his wife shall not bar

Coke Lytleton  
§ 272 & 273  
at

The Statute the 22 of H 5 requires jurors who have lands or tenements of the value of 40 where the debt or damages exceed 40/- The Judges have said when the debt and damages exceed that sum; and qualify the cestui que use against the letter of the Statute

Coke Lytleton  
290 a

Statute 23 of H 3 upon Statute Staples &c gives a scire facias to recover the debt against just person or persons as were parties to the first execution their heirs Executors or Assigns. This shall not be taken so generally in the words for <sup>small</sup> the cases he purposed where the execution is against a purchaser here shall not be a scire facias against his heirs

Idem 359 & 360 a  
Lytleton § 685

Statute of Gloucester gives Damages to the Dispossess in a Writ of Entry against him that is found tenant <sup>or tenant</sup> by the act of another without his concurrence he shall be excepted

Statute 13 Eliz 610 declares void all leases <sup>of Ecclesiastical</sup> for corporations  
for more than three lives or 21 years:

1 Blackstone Commentaries  
# 07 folio  
like Lyttleton 45  
3 Rep 60  
10 Rep 58

Yet it has been adjudged that if made  
for longer time say 30 years, it shall be good  
during the life of the grantor, if by a sole  
corporator

The 4<sup>th</sup> Article of the Constitution of the State  
of New York says every male inhabitant of  
full age who has rented a tenement within  
a County of the yearly value of forty shillings  
and been rated and actually paid taxes to the  
State and who shall have resided therein six  
months previous to the day of election shall  
be entitled to vote for representatives of  
the County in Assembly —

No person will doubt that the Generality  
of this Clause must be qualified so as to  
exclude foreigners: because it would be  
inconsistent with the policy of the Law  
to suppose otherwise

For the meaning of the word inhabitant vide  
Authorities in the Margin

Jacob's Law Dict.  
Title Inhabitant  
6 Rep 60 a

This act being a <sup>private</sup> ~~public~~ act as the Plaintiff  
now pleads, ~~our~~ <sup>our</sup> ~~pleading~~ <sup>pleading</sup> ~~supp~~ <sup>supp</sup> may  
therefore receive a more latitude in construction

Courts of Equity will sometimes relieve against  
a private act

This act must necessarily have many exceptions.

Datchers reports P. 13  
Miles v. Henry  
Hiles 65 Smith v. Noun  
Dyer 66 4

As if a person had been ordered on pain of death to injure or occupy the property of a person entitled to the benefit of the Tresspass act. For an act of necessity is no trespass.

As if a person had been compelled to do some military service.

As if an American officer during the war had occupied a house for his quarters by authority of the enemy.

Sentence of condemnation makes no difference for legal judgment supposes legal authority —

What should we say of an action on this law against a subject of a neutral nation who had purchased an American ship ever after condemnation?

What should we say of an action against General Howe's blunder?

If they could be maintained the state of war still exists between us and great Britain.

And if these exceptions must be made where shall we stop, but where the laws of nations direct us to stop short of every thing that is a contravention of them?

But we shall be told this would render the act nugatory?

If it were true this is not a sufficient objection!

But it is not true

The present case goes no farther than to require the Court to say that British Subjects are not within the act —

The principles of this exposition would extend to all foreign nations —

But the act may still operate upon all the Citizens of the State of New York.

There is an essential difference between a foreigner and a subject of New York —

Strictly speaking foreigners only can claim the sanction of the laws of nations.

If one of our own citizens should be deprived of privileges under or which he might claim under the laws of nations, by our own laws, he might complain of hardship and injustice; but there would be no violation of the laws of nations —

I will not say however that a citizen may not in some cases have a good justification under those laws upon this act, but I wish to remark that he stands in a very different predicament from a foreigner

Further the act will give remedy in many cases where there was plainly none before or where it was doubtful.

Coker Rep Feb 11 Lefford's  
case Page 57

Bacon's Abridg Title Rent  
letter 4 Page 367

As against the Assignees of defectors

For Executors for injuries to real property  
against Executors

Against Executors for Injuries both  
to real and personal

The imagination has often met to do with Questions that ought to depend wholly on judgment.

It is this struck by public clamour what makes a difficulty in the present case —

There was an act of the Legislature declaring that no ~~man~~ <sup>person</sup> could bring a just who did not previously take an oath of abjuration & allegiance.

I never found a gentleman of the bar who doubted that this could not apply to foreigners —

For it would have been wicked to exclude them from remedy for rights which they had; and absurd to require an oath of allegiance and abjuration which they could not take.

And why not as wicked and as absurd to extend the present act to foreigners, in violation of the Law of universal Society of profiture treaties and of the Federal constitution?

The Charter of the City Corporation declares in as plain words as can be that the Mayor Court shall hold plea of actions real personal and mixed with as full and ample powers as any Court of Record in Great Britain or in the Colony of New York.

And yet this Court has never been deemed competent to exercise many powers known & exercised in those Courts —

And the negative usage of a century founded no doubt upon the general opinion of lawyers has excluded a construction favourable to the exercise of those powers. And

Why; but because general words are to receive a construction according to the subject matter and so as to exclude inconvenient consequences.

And those powers are considered by the general policy of the law as repugnant to the genius of a Court of limited Jurisdiction.

Instances would be endless

In Law, as in Religion the Letter kills, the Spirit makes alive

The Gentlemen in vain contend for the certainty of the act

The phrase military order has no definite appropriated sense in the law.

Every act of military authority is not a military order.

A passport or safe conduct  
a permission to go at large upon parole.  
Or a permission to occupy a tenement for valuable consideration is not a military order?

But it will be asked what is our justification?

The answer is

First that what we are charged with we did as a public enemy

Secondly that we hired a house of the Conqueror for so much a year.

But it will be said military order implies military ~~order~~ authority and the Mass includes the minor

Answer This is excluded our plea by inference and equity which is not warrantable in a statute like this.

Further we claim the benefit of a posterior law the Treaty and the act passed since does not affect. For it only ~~extends~~ provides a mode of obtaining relief against absentees who are properly chargeable by the first act

Charitableness to preserve the Confederation  
the National Faith

Lides sanctissimum humani pectoris bosum est.

Seneca



new operation — Allow that our plea is not a plea of a military order; but that it ought not to avail us because it is a rule that ~~no~~ a justification in trespass by the authority of a third person must show title in that third person, which the spirit of the act in question precludes us from doing —

Answer — If our plea is not a plea of a military order we escape the proviso of the act and are left upon the merits — We show upon the principles of the laws of nations, a good title <sup>recognized by the common law</sup> in the Conqueror: and as the proviso of the act seems to militate against general principles by every rule of law it ought not to be extended by equity, still further to operate to operate against those general principles — but whenever it does not expressly apply, the Court will reject its ~~constructive extension~~ —

Fourthly — Admits that many cases may be out of the act and ought to be so considered by the Court, but affirms that ours is not; because observes that the ~~deceit~~ article of the treaty upon which we rest only relates to public offences —

Answer — Though that article was mentioned by one of the Defendants Counsel it was not relied on — We rely on two things, one the right which the laws of nations give the captor; the other the ~~arrest~~ <sup>arrest</sup> etc. included in every treaty of peace whether expressed or not, agreeable to the current of authorities and to the reason of the thing — If the cases mentioned by the Attorney general are out of the law, it admits this principle that the letter of the Statute must be controuled, and if it must be controuled surely this must be the case — wherever it interferes with those great principles on which the tranquillity of nations depends

Notes on argument  
of counsel  
Trespass Act

Votes upon Mr. Benson's Argument  
what as the Def. Council were prevented from  
delivering are submitted

First Observation — He does not suppose the Court ought  
to go into an inquiry about the laws of nations but  
confine themselves to the consideration of the act —

Answer — This is not a law suggestion, for  
it is a known rule in construing every statute to inquire  
what was the law before that statute, what helps the Court  
to judge of the intention of the Statute, and of the cases upon  
upon principles ought to be excepted out of it — It  
was also essential to go into an inquiry into the laws  
of nations to ascertain the operation of the Treaty of Peace,  
for it ought <sup>not</sup> safety if at all to be presumed that the  
Legislature could not mean to contravene the Treaty —

Second observation — The Laws of nations have been  
gradually changing: the practice of war now is very  
different from what it formerly was, and hereafter  
may be mitigated still more —

Answer — The Municipal law has undergone  
and is undergoing considerable changes — but this does  
not hinder that the Law as it stands at the time is  
to govern. ~~and to govern~~ <sup>as</sup> to the point in question, construe  
the present state of the laws of nations is to ascertain  
the reciprocal rights of nations; as the present state  
of the Municipal law is to ascertain the reciprocal  
rights of individuals. . . . ~~the more~~ the more  
nations become refined too, the more the principle  
of the amity in the treaty of Peace will be extended  
because this principle tends to secure the peace of  
mankind and is therefore to be favoured as much  
as possible.