ceiving a copy as aforesaid, shall not be entitled to another at the next session of the legislature.

JAMES ENGLE, *Speaker of the House of Representatives.*

P. C. LANE, *Speaker of the Senate.*

APPROVED—the third day of April, one thousand eight hundred and nine.

SIMON SNYDER.

CHAPTER VIII.

WHEREAS the Governor in a communication to the Legislature, has represented that the supreme court of the United States, had ordered a peremptory mandamus to be issued in the suit of Gideon Olmstead and others, *versus* Elizabeth Sergeant and Esther Waters, executrixes of the late Mr. Rittenhouse; and that immediate application will be made to Richard Peters, judge of the district court of Pennsylvania, for an execution against the persons and effects of the said Elizabeth Sergeant and Esther Waters; or that, rather an attachment against their persons will be the compulsory process adopted on the occasion. And that, in conformity to the provisions of an act of Assembly passed the 2d of April, 1803, it becomes the duty of the executive to protect the property and persons of the said executrixes against such process: And whereas the causes and reasons which have produced this conflict between the general and state government, should be made known, not only that the state may be justified to her sister states, who are equally interested in the preservation of the state rights; but to evince to the government of the United States, that the Legislature, in resisting encroachments on their rights, are not acting in a spirit of hostility to the legitimate powers of the United States' courts; but are actuated by a disposition to compromise, and to guard against future collisions of power, by an amendment to the constitution: and that, whilst they are contending for the rights of the state, that it will be attributed to a desire of preserving the federal government itself, the best features of which must depend upon keeping up a just balance between the general and state governments as guaranteed by the constitution.

BE IT THEREFORE KNOWN, that the present unhappy dispute has arisen out of the following circumstances:

Statement of the case respecting Gideon Olmstead and others, and the proceedings thereon.

That on the night of the 6th of September, 1778, Gideon Olmstead being a prisoner on board the armed sloop *Active*, bound to New York, on the passage prevailed on three of the seamen, to assist him in endeavouring to take the said sloop from the captain and the rest of the crew, and to carry her into an American port. In pursuance of this bold and hazardous design, they secured the captain and crew under deck, and contemplated running the sloop into Egg Harbour. A considerable contest then arose between those under and those on deck, for the command of the vessel.

On the 8th of September, they were boarded by the brigantine *Convention*, fitted out by the state of Pennsylvania, commanded by captain Thomas Houston, and in a very short time after the sloop Active was thus seized by the Convention, the privateer sloop *Le Gerard* of Philadelphia, commanded by captain James Josiah, hove in sight.

The prize was brought into the port of Philadelphia, and was libelled in the court of Admiralty of the state, on the 14th of September. Captain Thomas Houston for the state, himself and crew, claimed *one half*, captain James Josiah, commander of the privateer sloop Le Gerard, for himself, crew and owners, as consort of the Convention, and as in sight at the time of the capture, claimed *one fourth*, allowing *one fourth*

for the four persons who first rose upon the crew of the sloop Active. Gideon Olmstead and his companions claimed the whole, alledging that they had risen on the captain and crew—had confined them in the cabin —had assumed the whole command and direction of the sloop, and were proceeding towards Egg Harbour with the captain and crew, *subjected* and *reduced*, when the said sloop was seized by the brigantine *Convention*. And the great question for decision was, whether *Gideon Olmstead* had subdued the captain and crew of the Active, or, *whether hostilities had ceased*, when the *Convention* and *Le Gerard* came up with her.

The court of admiralty is the appropriate court for the trial and decision of all causes of prize. But how that court shall be constituted, must depend upon the will of the nation or state to which it belongs. The Legislature are, however, inclined to believe, that the interposition of a jury in admiralty causes was peculiar to some of the American states, and a remarkable instance of a departure from the usage of nations. It was however bottomed on the following resolution of Congress of November 25th, 1775: "That it be *recommended* to the several legislatures of the United Colonies, as soon as possible, to erect courts of justice, or give jurisdiction to the courts now in being, for the purpose of determining concerning the captures to be made as aforesaid, and to provide that *all trials, in such case, be had by a jury, under such qualifications as to the respective legislatures shall seem expedient*. That in *all cases* an appeal shall be allowed to the Congress, or such person or persons as they shall appoint for the trial of appeals," &c.

By an act of Assembly of Pennsylvania, passed September 9th, 1778; a court of admiralty was established. The trial was to be by jury, who were to be sworn or affirmed, "to return and give a true verdict according to evidence; and the finding of the said jury, *shall establish the facts, without re-examination or appeal.*"

In all cases of captures, an appeal from the decree of the judge of admiralty of this state, shall be allowed to the Continental Congress, or such person or persons, as they may from time to time appoint for hearing and trying appeals," &c.

On the 4th of November, 1778, the cause came on to be tried before a struck jury, who, after hearing all the exhibits, and the arguments of the respective advocates thereon, and taken time to consider thereof, on the following day returned their verdict, finding "one fourth part of the nett proceeds of the sloop Active and her cargo to the first claimants (Gideon Olmstead and others,) and three fourth parts of the nett proceeds of the said sloop and her cargo to the libellant (captain Houston) and the second claimant (captain Josiah,) as per agreement between them." The jury thus decided the great and important fact, "That hostilities had not ceased on board the sloop Active at the time the brigantine Convention came up with her—in other words, that the captain and crew had not been *then* subdued." The judge made his decree accordingly, and the same day Gideon Olmstead and the three seamen appealed from the verdict, decree and sentence.

At this period no *court* of appeals had been *established* under the authority of Congress, or in pursuance of the articles of confederation of the 9th of July, 1778. But committees of appeals had been from time to time appointed, consisting of *members of Congress*. By the 9th article of confederation, Congress was vested with power of "appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that *no member of Congress shall be appointed a judge of any of the said courts.*"

The time when Pennsylvania acceded to the confederation, is perhaps immaterial. It was not finally adopted by all the states, and ratified until the 1st March, 1781. It is therefore to be presumed, that the com-

mittee of appeals, as appointed by Congress, was competent as to authority, even under the provision of our own law, as no objection appears ever to have been suggested on this head.

But as to the authority, or extent of the jurisdiction of the committee of appeals, a difference of opinion has arisen among the wisest and best informed of our citizens; and this question, of mighty moment indeed, has agitated all Pennsylvania for thirty years.

If the committee of appeals had authority to revise facts which had been already established by the verdict of a jury, there was an end of the question. Their decree was conclusive and final: it could not be opened or reviewed—and it ought to have been carried into effect.

But, Pennsylvania has uniformly, by all her public acts, denied the authority of the court of appeals to re-examine or control the verdict of the jury. The decision of a state is always important, and of infinite weight in comparison with mere private opinion; an assertion of her right was an obvious consequence. And an attempt to interfere with that right, *ex parte*, cannot fail to call forth, on her part, feelings of the deepest regret.

It is true that Congress, with the approbation and acquiescence of the people, exercised the power of war and peace, and however imperfect their sovereignty might have been, they administered it with glory and advantage to the United States. It is equally true they commissioned privateers to cruise against the enemy—and to this high power, it is said, the question of prize is incidental. And if it would result from this, that they had power to establish courts of admiralty, yet it is equally clear they did not exercise this power; and by the articles of confederation it was not vested in them, but merely the power to establish a court of appeals *in cases of captures*, although by the same instrument they had power "to establish courts for the trial of piracies, and felonies upon the high seas, and the right of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces, *in the service of the United States*, shall be divided or appropriated." And whatever construction might have been had, if the decree of reversal had been in the court established after the confederation, yet in 1778 it had no binding force, nor did they profess to act under it. Courts of admiralty for the trial of captures, or the prize court, could then be established only by the respective states.

Congress *recommended* to the several states to establish courts of admiralty, and to provide that *all trials in such case be had by a jury, under such qualifications, as to the respective legislatures shall seem expedient*—reserving *in all cases*, an *appeal* to Congress, &c.

However incidental the question of prize, or cases of captures, may be to sovereign power, the principle cannot apply in its full extent to the imperfect sovereignty exercised by the United States. Their authority was gradually acquired by the consent or acquiescence of the states; and where it was thus acquired, the exigencies of the new formed union required that it should be deemed legitimate, *though never expressly assented to*. The power of establishing courts of admiralty they never assumed. The inference therefore, is forcible, that they had not the power, or why recommend to the states to establish courts of admiralty, if, by virtue of their newly acquired sovereignty, they could, themselves, have established them? If they could not erect courts of admiralty jurisdiction, in the first instance—they could not, without the consent of the state, erect the appellate court. The state which established the admiralty court, must likewise possess the power to regulate the appellate jurisdiction from its decrees. And by the assent of the state, the appellate jurisdiction was, at their own requisition, given to Congress, where the interest and safety of the Union required, it should be deposited, but under certain restrictions,

The admiralty court, being the court of all nations, has, by the usage of nations, been governed by the rules and principles of the civil law. It has always proceeded without a jury; and, from its decrees on an appeal, the facts as well as the law have always been subject to a re-examination. But when Congress recommended the decision of facts in that court by a jury, strangely departing from the usage of nations, the consequence inevitably followed, that the facts established by the jury, could never be re-examined on an appeal. The party dissatisfied might have applied for a new trial, but there is no other way of reversing the facts determined by a jury. When therefore, Congress recommended that the trial in such cases should be by jury, from the uniform course of proceeding in such trials, it is at least presumable they did not intend, by reserving an appeal, that the facts should be re-examined; and the only fair or consistent construction would be, that there should be an appeal on points of law appearing on the record. That such was the intention of the legislature of Pennsylvania is beyond doubt, when they declared "*that the finding of the jury shall establish the facts, without re-examination or appeal;*" and although by the same act they gave an appeal to Congress, it cannot be absurdly supposed that they meant to contradict and destroy the principle they had, at the same instant, so solemnly declared and adopted. The question itself to be tried was a mere fact, "*Who captured the sloop Active?*" The jury decided that fact. They could judge of the circumstances, as well as the credit or credibility of the witnesses. If their decision, therefore, was not to be conclusive, but to be open to a re-examination, on an appeal, before a committee of Congress, in the shape of a court of appeals, the jury trial was a solemn mockery, calculated for expence and trouble, but productive of no good. In the case of Ross and Rittenhouse, the chief justice declared, "that the genius and spirit of the common law will not suffer a sentence of the lowest court, founded on a *general verdict*, to be controlled or reversed by the highest jurisdiction, unless for error in matter of law apparent upon the face of the record."—And the same chief justice was also of opinion, that the principle was fortified by the resolution of Congress of January 15th, 1780, "That the trials in the *new court of appeals* should be according to *the usage of nations*, and *not by a jury*." And on the 31st of the same month, accordant with this resolution, the legislature of Pennsylvania appear to have been willing, for the future, to change the practice; for they resolved, "that if the mode of trial by jury (in cases of captures) as recommended by Congress, is found inconvenient to the circumstances of the United States, as being a mode unknown to most of the civilized states of Europe, this house is desirous of conforming to the customary practice."

But, notwithstanding this mode of reasoning, the committee of appeals undertook to re-examine the whole case; they set aside the verdict of the jury, reversed the sentence of the judge of the admiralty, and decreed the whole proceeds of the prize to the appellants, with costs. The judge of the admiralty refused to carry this decree into effect; and on the 28th of December, further decreed, "that although the court of appeals have full power to alter or set aside the decree of the judge of this court, yet that the finding of the jury in the cause, does establish the facts in the cause without re-examination or appeal, and therefore the verdict of the jury still standing and being in full force, the court cannot issue any process, or proceed in any manner whatsoever contradictory to the finding of the said jury:" and he ordered the money to be brought into court, there to remain ready to abide the further order of the court therein.

Here, then, began the great contest for jurisdiction. On the 4th of January, 1779, the committee of appeals issued their injunction to the marshal to detain the money in his custody, to wait the further orders of the court. The marshal, notwithstanding, paid the money to the judge

of the admiralty, in obedience to the decree of that court. The committee of appeals would proceed no further, but ordered to be entered on record, "that as the judge and marshal of the court of admiralty, for the state of Pennsylvania, had absolutely and respectively refused obedience to the decree and writ regularly made in and issued from this court, to which they and each of them were and was bound to pay obedience; the court being unwilling to enter into any proceedings for contempt, lest consequences might ensue at this juncture, dangerous to the public peace of the United States, will not proceed further in this affair, nor hear any appeal, until the authority of this court shall be so settled, as to give full efficacy to their decrees and process;" and they ordered a state of the proceedings to be prepared, that they might lay it before Congress. On the 21st of January, a committee was appointed by Congress, to examine into the principles of the powers of the committee of appeals, and the causes of the refusal of the judge of the court of admiralty in the state of Pennsylvania, to execute their decree; which committee, on the 6th of March following, reported specially—the finding of the jury, and decree thereon, the reversal thereof—the reasons of the judge, and act of Assembly of Pennsylvania, as they are before stated. Whereupon, it was resolved, "That Congress, or such person or persons as they appoint to hear and determine appeals from the courts of admiralty, have necessarily the power to examine as well into decisions on facts, as decisions on the law, and to decree finally thereon; and that no finding of a jury in any court of admiralty, or court for determining the legality of captures on the high seas, can, or ought to destroy the right of appeal, and the re-examination of the facts reserved to Congress."

"That no act of any one state can, or ought to destroy the right of appeal to Congress, in the sense above declared."

"That Congress is, by these United States, invested with the sovereign supreme power of war and peace."

"That the power of executing the law of nations, is essential to the sovereign supreme power of war and peace."

"That the legality of all captures on the high seas must be determined by the law of nations."

"That the authority, ultimately and finally, to decide on all matters and questions touching the law of nations, does reside and is vested in the sovereign supreme power of war and peace."

"That a control by appeal is necessary, in order to compel a just and uniform execution of the law of nations."

"That the said control must extend as well over the decisions of juries as judges, in courts for determining the legality of captures on the sea; otherwise the juries would be possessed of the ultimate supreme power of executing the law of nations, in all cases of captures; and might at any time exercise the same in such manner as to prevent a possibility of being controlled—a construction which involves many inconveniencies and absurdities, destroys an essential part of the power of war and peace, intrusted to Congress, and would disable the Congress of the United States from giving satisfaction to foreign nations, complaining of a violation of neutralities, of treaties, or other breaches of the law of nations, and would enable a jury in any one state to involve the United States in hostilities: A construction, which for these and many other reasons, is inadmissible."

"That this power of controlling by appeal, the several admiralty jurisdictions of the states has hitherto been exercised by Congress, by the medium of a committee of their own members."

"RESOLVED, that the committee, before whom was determined the appeal from the court of admiralty, for the state of Pennsylvania, in the case of the sloop Active, was duly constituted and authorized to determine the same."

"*Resolved*, that the said committee had competent jurisdiction to make thereon a final decree, and therefore their decree ought to be

carried into execution;" And they thereupon requested the assembly of Pennsylvania to appoint a committee to confer with a committee of Congress on the subject.

If the reasoning in the foregoing resolutions establishes the propriety of proceeding, in cases of admiralty jurisdiction, according to the law and usage of nations; and which is now the law of the land, it would not change the law as it then stood; therefore could have no effect upon Pennsylvania, tenacious of her own rights, resting upon her own laws, and understanding, as well as any other state, the extent of the power of Congress, and the authority she had consented to vest in that body. Committees were appointed to confer with a committee of Congress, but every conference was ineffectual: And on the the 31st January, 1780, by an unanimous vote of the General Assembly, the following decisive instructions were transmitted to the Pennsylvania delegation in Congress:

"GENTLEMEN,

"The house being informed that it has been proposed in the honorable Congress, that an order be drawn on the treasury of the United States, for the amount of three fourths of the nett proceeds of the sloop Active and her cargo, and to pay the same to Gideon Olmstead and others, appellants in that case, in order to satisfy the decree of the court of appeals for prizes made at sea, and that the same be charged to the state of Pennsylvania, referring said state for indemnification to the three-fourths in the hands of the judge of the admiralty of Pennsylvania.

"The house, in consequence of the above, have taken the premises into their most serious consideration, and adopted the instructions given by the last House of Assembly, (March 10th, 1779) to a committee of the said house, who had been appointed to confer with a committee of Congress in the case of the sloop Active, which instructions are in the following words:

"*Resolved*, 1st, That the power of establishing courts for receiving and determining finally, appeals in all cases of captures, is reserved in Congress by the articles of confederation; and as the state of Pennsylvania has acceded to these articles, this House esteem it their duty to adopt such regulations, consistent with the principles of the confederation, as Congress may judge necessary for the due exercise of the said power.

"*Resolved*, 2d, That by our act of this commonwealth for establishing a court of admiralty, it is declared and enacted, that the finding of the jury shall establish the facts without re-examination or appeal, and that the act is *not repugnant to, but consistent with the resolutions of Congress of the 25th of November*, 1775.

"*Resolved*, 3d, That the proceedings in the court of admiralty in the case of the sloop Active, were founded upon the aforesaid act of assembly, which, together with the said resolve, form the true ground whereupon the decision of the contested point should be made, without involving a consideration of the necessity or propriety of future alterations.

"The House likewise instruct you, immediately to inform the honorable body of which you are members, that this House will consider any application of the money of this state by Congress, to the purpose aforesaid, as an high infringement on the honor and rights of the commonwealth of Pennsylvania, and in this view will complain in an especial manner of those delegations which shall concur in any vote for that purpose, to the several legislative bodies from whom they respectively derive their powers.

"And you are further instructed, to enter a protest in behalf of this state, that we will pay no part of the sum which Congress shall award out of the treasury of the United States in consequence of the decree of the court of appeals.

"We also instruct you to inform Congress, that the manifest right of the citizens of this state to the benefit of its laws, has some time since obtained from the authority thereof, an order for the distribution of the three-fourths given by the verdict of the jury in this case, to the captains and crews of the brigantine Convention and her consort.

"The house views with astonishment, the perseverance and decision of Congress, in rolling upon this state, an embarrassment created by the court of appeals.

"Congress recommended a trial by jury to be introduced into the court of admiralty. The Assembly of Pennsylvania adopted the measure. A jury in the case of the sloop Active, founded their verdict upon the facts. It is the proper business, and the strict right of juries to establish facts: Yet the court of appeals took upon them to violate this essential part of jury trial, and to reduce in effect this mode of jurisprudence to the course of the civil law; *a proceeding to which the state of Pennsylvania cannot yield.*

"If the mode of trial by jury (in cases of captures) as recommended by Congress, is found inconvenient to the circumstances of the United States, as being a mode unknown to most of the civilized states in Europe, this House is desirous of conforming to the customary practice.

"The House finally remind you of the laws, which they understand have been passed in some of the states of the Union, denying all appeal in law as well as fact, to the court of appeals established by Congress for prize causes, except the claimants be foreigners, or captors in the pay of Congress by the operation of one of which laws, Mr. *Hugh M'Culloch*, a citizen of *Pennsylvania*, was debarred from removing the case of a ship and cargo condemned in *New England*, into the said court of appeals, *and that little notice appears to be taken of these laws*, whilst *Pennsylvania*, conforming to the *recommendation* of Congress, concerning admiralty jurisdiction, in the most *legal* and *usual* construction of the expression, has not, in our opinion, been treated by that honorable body, with sufficient respect and attention."

Such, then, has been the decisive stand which Pennsylvania has uniformly made against the decree of the committee of appeals. Can we undertake to say, from a view of the case, that our predecessors, for thirty years have been wrong? Yet the opinions of public men have been various. Chief justice M'Kean, in the case of *Ross* and *Rittenhouse*, judicially declares, "that the decree of the committee of appeals was contrary to the provisions of the act of Congress, and of the General Assembly, *extra-judicial, erroneous and void.*" Two of the judges, who sat in the same cause, although they do not expressly negative this opinion, appear not to concur in it. The supreme court of the United States, in the case of *Pennhallow and Doane*, unanimously affirm the authority of the court of appeals: and upon the decision in this case, it would appear this contest has been revived, after it had slumbered for twenty-three years—and, as it would seem, even after Congress had abandoned the right.

But the legislature cannot relinquish this part of the case, without once more referring to the proceedings of Congress on this long litigated point.

Mr. Ellery, Mr. Hand, Mr. Spraight, Mr. Jefferson, and *Mr. Lee*, a committee of Congress to whom was referred the proceedings and sentence of the court of appeals in cases of capture, on the case of the ship Lusanna, reported, and after stating that the resolution of the 25th of November, 1775, had been complied with by the several states, some of them CEDING appeals to congress on a larger, and some on a more contracted scale,—that the court of appeals had reversed the sentence passed by the inferior and superior courts of *New Hampshire*, in the case of the ship Lusanna;—that all these proceedings *were prior* to the completion of the confederation, which took place on the first day of March,

1781.—They *resolved* "That the said capture, having been made by citizens of *New Hampshire*, carried in, and submitted to the jurisdiction of that state, *before the completion of the confederation*, while appeals to Congress were absolutely refused by their legislature, neither Congress, nor any persons deriving authority from them, had jurisdiction in the said case." On the 30th of March, 1784, the report was taken up, and on the question of agreement, on the yeas and nays, six states voted for the resolution, two states, and *Mr. Read* from South Carolina, voted against it, and two states were divided; and in numbers the ayes were 15, the nays 9. But there not being a majority of states in the affirmative, the question was lost.

It may not be unworthy of remark, that, on the above resolution, Mr. Jefferson voted in the affirmative; as also did Mr. Ellery, who was one of the Court of Appeals, which reversed the decree of the Pennsylvania court of Admiralty; and, as Pennsylvania allowed an appeal only on a contracted scale, that could no more be exceeded, than it could in the case of New Hampshire, who allowed no appeal at ll.

There is no cause, therefore, for departing from the principles and opinions of our predecessors, unequivocally declared in their public votes and laws, respecting the case of the sloop Active, without a single exception, from the first moment of the contest.

The second part of the case, exhibits facts and circumstances of the deepest interest and concern to *Pennsylvania*. An attempt has been made, by the district court, deriving its authority from the constitution of the United States, to enforce the decree of the committee of appeals; the jurisdiction of which, to reverse the facts established by a jury, *Pennsylvania* had so long resisted; and which even Congress, under the confederation, had so long abandoned; not only to enforce it, but to enforce it *ex parte;* without power to examine the merits, or to control its errors; without notice to the state, or consulting its interests; not only thus to enforce it, but to convert the treasurer and agent of the state, acting under its immediate authority, into a *stake-holder*, as a mean to reach the funds of the state, and to affect its rights.

If this can be done, the amendment had to the constitution would be a dead letter. The state can act, under its laws, only by its agents. Its monies remain in the hands of its treasurers. If its officers can be converted, by the decree of a judge, into *stake-holders*, there can, perhaps, be no possible case in which the constitution may not be evaded.

It sufficiently appeared, in the answer to the libel, that Mr. Rittenhouse received the money as treasurer of the state, for *the use of the state*. It appeared decisively on the public records of the commonwealth. But it is alledged, "that the amendment to the constitution simply provides, that no suit shall be commenced or prosecuted against a state. That in this case the suit was not instituted against the state, or its treasurer, *but against the executors of David Rittenhouse*. That if the proceeds had been the actual property of *Pennsylvania*, however *wrongfully* acquired, the disclosure of that fact would have presented a case, on which it is unnecessary to give an opinion."

Such is the language of the supreme court of the United States! If the process and jurisdiction of the admiralty court will reach and extend over the proceeds of prize, found within the district; and individuals, no party to the original decree, can be libelled against—is all investigation to be foreclosed? Or, if it be not in the nature of an original suit, but merely a proceeding to *enforce a decree* of a former court; in which captain *Josiah* and captain *Houston* were parties; why are captain *Josiah* and the representatives of captain *Houston* unheard in this strange proceeding?

It is further alleged, and is made a ground of decision by the federal courts, "that the property which represented the *Active* and her cargo was in possession, not of the state of *Pennsylvania*, but of David Ritten-

house, as an *individual*, after whose death it passed, like other property, to his representatives."

It is, however, clear, that *David Rittenhouse* could not have received a farthing of the money, as *David Rittenhouse*, but *as treasurer of the state only*, and by order of the state. Although *David Rittenhouse* gave a bond to indemnify *George Ross*, yet that instant the state became bound to indemnify *David Rittenhouse*, and the real party then interested, was the commonwealth of *Pennsylvania*. A treasurer or other officer, retaining the public monies, upon any pretence whatever, cannot upon any principle, change the nature of the question.

Notwithstanding, by the highest judicial authority, the question is declared to be at rest. "That by the decree of reversal, the interest of the state of *Pennsylvania*, in the *Active* and her cargo, was extinguished. That although *Mr. Rittenhouse* was treasurer of the state of *Pennsylvania*, and the bond of indemnity which he executed states the money to have been paid to him, for the use of the state, it is apparent he held it in his own right, until he should be completely indemnified by the state, and that the evidence to this point was *conclusive*. That it did not appear that the original certificates were deposited in the state treasury, or in any manner designated as the property of the state, or delivered over to his successor; and, when funded, were funded in his own name, and the interest drawn by him. That the *memorandum* made by him at the foot of the list of certificates, in these words: "The above certificates will be the property of the state of *Pennsylvania*, when the state releases me from the bond I gave, in 1778, to indemnify *George Ross, esquire*, judge of the admiralty, for paying the fifty original certificates into the treasury, as the state's share of the prize;" demonstrates that he held the certificates as security against the bond he had executed, and that bond was obligatory, not on the state of *Pennsylvania*, but on *David Rittenhouse*, in his private capacity."

This statement by the court, as part of the broad ground on which they decided, may be plausible, may give colour to the decision: Yet it by no means appears, that he received it as a *stake-holder*, or upon a contingency; but for the use of the state, as its share of the prize. And even upon his own *memorandum*, so much relied on, it is stated, that the certificates were paid into the treasury, as the state's share of the prize; and, as the state was bound to indemnify him, when he acted under its orders, the state would have, of course, been the real party interested in any suit which may have been commenced upon it. And it would seem that the court was not possessed of the whole state of the case; which will appear from the authority under which the treasurer acted; which proves explicitly how, and in what character, he acted. In the minutes of the supreme executive council is the following resolution:

"*Philadelphia, April* 21, 1779. Resolved, That *David Rittenhouse*, the treasurer, be directed to find sufficient security, to be approved of by the judge of the admiralty, for the share adjudged to the state, of the prize-sloop *Active*, taken by the brigantine Convention, and the Gerard privateer; and take up the money, which will exceed eleven thousand pounds, for the use of the state; one half of the sum, allotted to the Convention coming to the state."

It here incontrovertibly appears, that he did not receive the money as a private individual: but for the use of the state, by the orders of the executive authority, and the bond which he executed was executed by him, by the like authority, as agent and security for the state. Having thus received the money, previously the property of the state, by the decree of the admiralty court, as treasurer, no detention of it, when he went out of office, ought in reason or principle to be considered as changing the nature of the original transaction. The Legislature at their session, November 23d following, passed a resolution similar to that of the executive council; and the act of February 26, 1801, still further corroborates all the former proceedings of the state.

The Legislature are also of opinion, that as the brigantine Convention was the property of the state, as soon as judgment was pronounced upon the verdict of the jury, its interest attached upon its proportion of the prize, and as soon as it was received by the state treasurer, it was so much, belonging to the state, actually in the treasury.

When it is said, that the state of *Pennsylvania* forbore to assert its title while the suit was depending, let it be for ever remembered, that the state of *Pennsylvania* had no notice. And if notice had been given, to what purpose could she have asserted her title, when by the high authority of the court it is declared, that the court had nothing to do with the question decided by the court of appeals, which must be enforced without an examination of its merits.

Although the Legislature reverence the constitution of the United States, and its lawful authorities, yet there is a respect due to the solemn and public acts, and to the honour and dignity of our own state, and the unvarying assertion of her right, for a period of thirty years, which right ought not to be relinquished. Therefore,

RESOLVED *by the Senate and House of Representatives of the Commonwealth of Pennsylvania, &c.* That, as a member of the Federal Union, the Legislature of Pennsylvania acknowledges the supremacy, and will cheerfully submit to the authority of the general government, as far as that authority is delegated by the constitution of the United States. But, whilst they yield to this authority, when exercised within constitutional limits, they trust they will not be considered as acting hostile to the general government, when, as *guardians of the State Rights*, they cannot permit an infringement of those rights, by an unconstitutional exercise of power in the United States' courts.

Reasons assigned by the Pennsylvan legislature for their proceedings in the foregoing case.

Resolved, That in a government like that of the United States, where there are powers granted to the general government, and rights reserved to the states, it is impossible, from the imperfection of language, so to define the limits of each, that difficulties should not sometimes arise, from a collision of powers: And it is to be lamented, that no provision is made in the constitution, for determining disputes between the general and state governments, by an impartial tribunal, when such cases occur.

Resolved, That from the construction the United States' courts give to their powers, the harmony of the states, if they resist encroachments on their rights, will frequently be interrupted; and if, to prevent this evil, they should on all occasions yield to stretches of power, the reserved rights will depend on the arbitrary power of the courts.

Resolved, That, should the independence of the states, as secured by the constitution, be destroyed, the liberties of the people in so extensive a country, cannot long survive. To suffer the United States' courts to decide on STATE RIGHTS, will from a bias *in favour of power*, necessarily destroy the FEDERAL PART of our government: And whenever the government of the United States becomes consolidated, we may learn from the history of nations, what will be the event.

To prevent the balance between the general and state governments from being destroyed, and the harmony of the states from being interrupted,

Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to procure an amendment to the constitution of the United States, that an impartial tribunal may be established, to determine disputes between the general and state governments; and, that they be further instructed to use their endeavors, that in the meanwhile, such arrangements may be made, between the government of the Union and of this state, as will put an end to existing difficulties.

Resolved, That the Governor be requested to transmit a copy of these resolutions, to the Executive of the United States, to be laid before Congress, at their next session. And that he be authorized and directed to

Governor to transmit copies of this.

Resolution to the President, &c.

correspond with the President on the subject in controversy, and to agree to such arrangements as may be in the power of the executive to make, or that congress may make, either by the appointment of commissioners or otherwise, for settling the difficulties between the two governments.

And, that the Governor be also requested to transmit a copy to the Executive of the several states in the Union, with a request, that the same be laid before their respective legislatures.

JAMES ENGLE, *Speaker of the House of Representatives.*

P. C. LANE, *Speaker of the Senate.*

APPROVED—the third day of April, one thousand eight hundred and nine.

SIMON SNYDER.

CHAPTER IX.

Secretary to distribute certain copies of the German digest;

And in what manner.

RESOLVED *by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met*, That the secretary of the Commonwealth shall distribute the remaining number of the digest of the laws in the German language, now in his office, and shall transmit the same at the time the laws and journals of the present session are sent to the commissioners of the respective counties, in proportion to the number in his office, agreeably to the first section of an act, entitled "An Act directing the distributing the digest of the laws of this Commonwealth, in the German language," passed the twenty-sixth day of March, one thousand eight hundred and eight. And the commissioners of the respective counties shall, after receiving, distribute the same amongst the citizens acquainted with the German language.

JAMES ENGLE, *Speaker of the House of Representatives.*

P. C. LANE, *Speaker of the Senate.*

APPROVED—the fourth day of April, one thousand eight hundred and nine.

SIMON SNYDER.

CHAPTER X.

Commonwealth of Pennsylvania.

Attorne General to appear in behalf of the state in case, &c.

RESOLVED *by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met*, That the Governor be, and he hereby is required to direct the attorney-general to appear in behalf of the state, in case an application should be made to the supreme court for a mandamus to the secretary of the commonwealth in the case of the application for a patent for the Mamoth Farm in the township of Claverack, in Luzerne county.

JAMES ENGLE, *Speaker of the House of Representatives.*

P. C. LANE, *Speaker of the Senate.*

APPROVED—the fourth day of April, one thousand eight hundred and nine.

SIMON SNYDER.