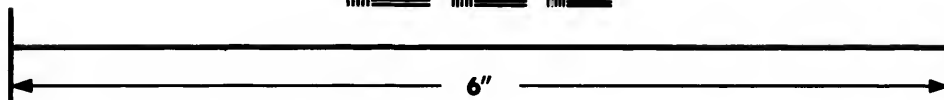
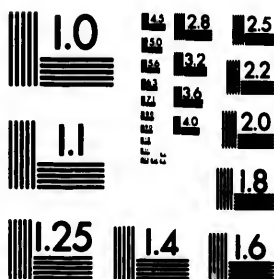


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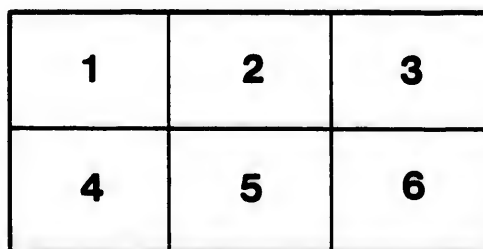
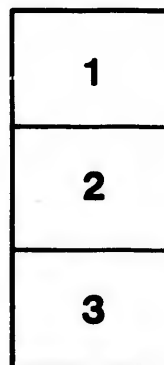
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OF

AMITY, COMMERCE, AND NAVIGATION,

BETWEEN

HIS BRITANNIC MAJESTY,

AND THE

UNITED STATES OF AMERICA,

CONDITIONALLY RATIFIED

BY THE SENATE OF THE UNITED STATES, AT PHILADELPHIA, JUNE 24, 1796

TO WHICH IS ANNEXED

A COPIOUS APPENDIX.

SECOND EDITION.

PHILADELPHIA,

PRINTED BY LANG & USTICK,

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NOV. 2, 1795.

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THE importance of the pending Treaty with Britain, and the frequent references, in the discussion of its merits, to the Treaties with France, the Federal Constitution, &c. have induced the Editor to make a compilation of as many of the documents connected with this interesting subject, as might be necessary to enable the reader to decide for himself, and not take, on trust, the interested quotations of party writers.

From among the multiplicity of publications, *pro* and *con*, the "Features of Mr. Jay's Treaty," and the "Vindication" of that instrument, have been selected, as including nearly all the arguments that have been advanced by the writers on both sides of the question.

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TREATY of Amity, Commerce, and Navigation, between his Britannic Majesty and the United States of America, conditionally ratified by the Senate of the United States, at Philadelphia, June 24, 1795.

HIS Britannic Majesty and the United States of America, being desirous, by a Treaty of Amity, Commerce, and Navigation, to terminate their differences in such a manner, as, without reference to the merits of their respective complaints and pretensions, may be the best calculated to produce mutual satisfaction and good understanding: And also to regulate the Commerce and Navigation between their respective countries, territories and people, in such a manner as to render the same reciprocally beneficial and satisfactory; they have, respectively, named their Plenipotentiaries, and given them full power to treat of, and conclude, the said Treaty, that is to say: His Britannic Majesty has named for his Plenipotentiary, the Right Honorable William Wyndham, Baron Grenville, of Wotton, one of his Majesty's Privy Council, and his Majesty's Principal Secretary of State for Foreign Affairs; and the President of the said United States, by and with the advice and consent of the Senate thereof, hath appointed for their Plenipotentiary, the Honorable John Jay, Chief Justice of the said United States, and their Envoy Extraordinary to his Majesty, who have agreed and concluded the following articles:

ARTICLE I.

There shall be a firm, inviolable, and universal peace, and a true and sincere friendship between his Britannic Majesty, his heirs and successors, and the United States of America; and between their respective countries, territories, cities, towns, and people of every degree, without exception of persons or places.

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ARTICLE II.

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the Treaty of Peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall, in the interval, be taken by concert between the government of the United States, and his Majesty's Governor General in America, for settling the previous arrangements, which may be necessary respecting the delivery of the said posts: The United States, in the mean time, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof; but shall be at full liberty so to do if they think proper; and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of his Britannic Majesty, shall be considered as having elected to become citizens of the United States.

ARTICLE III.

It is agreed, that it shall, at all times, be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay company only excepted) and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the sea-ports, harbors, bays, or creeks of his Majesty's said territories; nor into such parts of the rivers in his Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading *bona fide* between Montreal and Quebec, under such regulations as

shall be established to prevent the possibility of any frauds in this respect; nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for vessels from the sea. The river Mississippi shall, however, according to the Treaty of Peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to, and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his Majesty in Great Britain.

All goods and merchandize, whose importation into his Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties, than would be payable by his Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner, all goods and merchandize, whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by his Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties, than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States. And all goods not prohibited to be exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, paying duty as aforesaid.

No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively; nor shall the Indians passing or repassing with their own proper goods and effects, of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging *bona fide* to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall be merely carried over any of the portages or carrying places on either side, for the purpose of being immediately re embarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides; it is agreed, that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage

TREATY OF AMITY

across the same; and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed, that the respective governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

ARTICLE IV.

Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between his Majesty and the United States: it is agreed, that measures shall be taken in concert between his Majesty's government in America and the government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of said river, and the parts adjacent thereto; and that if on the result of such survey, it should appear that the said river, would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said Treaty.

ARTICLE V.

Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said Treaty of Peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of Commissioners to be appointed in the following manner, viz.

One Commissioner shall be named by his Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners shall agree on the choice of a third; or if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original Commissioners. And the three Commissioners so appointed, shall be sworn, impartially to examine and decide the said question, according to such evidence as shall respectively be laid before them on the part of the British government and of the United States. The said Commissioners shall meet at Halifax, and shall have power to adjourn to such other place or

places as they shall think fit. They shall have power to appoint a Secretary, and to employ such Surveyors or other persons as they shall judge necessary. The said commissioners shall, by a declaration under their hands and seals, decide what river is the river St. Croix intended by the Treaty. The said declaration shall contain a description of the said river, and shall particularize the latitude and longitude of its mouth and of its source. Duplicates of this declaration and of the statements of their accounts, and of the journal of their proceedings, shall be delivered by them to the agent of his Majesty, and to the agent of the United States, who may be respectively appointed and authorized to manage the business on behalf of the respective governments. And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called in question, or made the subject of dispute or difference between them.

ARTICLE VI.

Whereas it is alleged by divers British merchants and others his Majesty's subjects, that debts to a considerable amount, which were *bona fide* contracted before the peace, still remain owing to them by citizens or inhabitants of the United States; and that by the operation of various lawful impediments since the Peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained. It is agreed, that in all such cases, where full compensation for such losses and damages cannot for whatever reason be actually obtained, had and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors; but it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors, or other causes as would equally have operated to produce such a loss, if the same impediments had not existed: nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

For the purpose of ascertaining the amount of any such losses or damages, five Commissioners shall be appointed, and authorized to meet and act in manner following, viz. Two of them shall be appointed by his Majesty, two of them by the President of the United States by and with the advice and consent of the Senate thereof, and

the fifth by the unanimous voice of the other four; and if they should not agree in such choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by lot, in the presence of the four original Commissioners. When the five Commissioners thus appointed shall first meet, they shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other, which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz. "I *A. B.* one of the Commissioners appointed in pursuance of the sixth article of the Treaty of Amity, Commerce, and Navigation, between his Britannic Majesty and the United States of America, do solemnly swear, or affirm, that I will honestly, diligently, impartially, and carefully examine, and to the best of my judgment, according to justice and equity, decide all such complaints, as, under the said article, shall be preferred to the said Commissioners: and that I will forbear to act as a Commissioner, in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the said commission, provided that one of the Commissioners named on each side, and the fifth Commissioner shall be present, and all decisions shall be made by the majority of the voices of the Commissioners then present. Eighteen months from the day on which the said Commissioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless authorised in any particular cases in which it shall appear to them to be reasonable and just, to extend the same term of eighteen months for any term not exceeding six months, after the expiration thereof. The said Commissioners shall first meet at Philadelphia, but they shall have power to adjourn from place to place as they shall see cause.

The said Commissioners in examining the complaints and applications so preferred to them, are empowered and required, in pursuance of the true intent and meaning of this article, to take into their consideration all claims, whether of principal or interest, and balances of principal or interest, to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require. And the said Commissioners shall have power to examine all such persons as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies, or extracts thereof, every such deposition, book, or paper, or extract, being duly authen-

icated, either according to the legal forms now respectively existing in the two countries, or in such other manner as the said Commissioners shall see cause to require or allow.

The award of the said Commissioners or of any three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant: and the United States undertake to cause the sum so awarded to be paid in specie to such creditor or claimant without deduction; and at such time or times, and at such place or places as shall be awarded by the said Commissioners; and on condition of such releases or assignments to be given by the creditor or claimant, as by the said Commissioners may be directed: Provided always, that no such payment shall be fixed by the said Commissioners to take place sooner than twelve months from the day of exchange of the ratifications of this Treaty.

ARTICLE VII.

Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which his Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from his Majesty; and that from various circumstances belonging to the said cases, adequate compensation for the losses and damages so sustained cannot now be actually obtained, had and received by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason, be now actually obtained, had and received by the said merchants and others in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the said complainants. But it is distinctly understood that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimants.

That for the purpose of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed and authorized to act in London, exactly in the manner directed with respect to those mentioned in the preceding article, and after having taken the same oath or affirmation (*mutatis mutandis*), the same term of eighteen months is also assigned for the reception of claims, and they are, in like manner, authorized to extend the same in particular cases. They shall receive testimony, books, papers, and evidence in the same latitude, and exercise the like discretion and powers respecting that subject; and shall decide the claims in question according to the merits

TREATY OF AMITY

of the several cases, and to justice, equity, and the laws of nations. The award of the said Commissioners, or any such three of them as aforesaid, shall, in all cases, be final and conclusive, both as to the justice of the claim and the amount of the sum to be paid to the claimant; and his Britannic Majesty undertakes to cause the same to be paid to such claimant in specie, without any deduction, at such place or places, and at such time or times as shall be awarded by the said Commissioners; and on condition of such releases or assignments to be given by the claimants, as by the said Commissioners may be directed.

And whereas certain merchants and others his Majesty's subjects complain, that in the course of the war, they have sustained loss and damage, by reason of the capture of the vessels and merchandize, taken within the limits and jurisdiction of the states, and brought into the ports of the same, or taken by vessels originally armed in ports of the said states:

It is agreed, that in all such cases, where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, Sept. 5, 1793, a copy of which is annexed to this Treaty; the complaints of the parties shall be and hereby are referred to the Commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them; and the United States undertake to pay to the complainants or claimants in specie, without deduction, the amount of such sums as shall be awarded to them respectively by the said Commissioners, and at the times and places which in such awards shall be specified; and on condition of such releases or assignments to be given by the claimants as in the said awards may be directed: And it is further agreed, that not only the now existing cases of both descriptions, but also all such as shall exist at the time of exchanging the ratifications of this Treaty, shall be considered as being within the provisions, intent, and meaning of this article.

ARTICLE VIII.

It is further agreed, that the Commissioners mentioned in this and the two preceding articles, shall be respectively paid in such manner as shall be agreed upon by the two parties; such agreement being to be settled at the time of the exchange of the ratifications of this Treaty. And all other expences attending the said commissions, shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the majority of the Commissioners. And in the case of death, sickness, or necessary absence, the place of every such Commissioner respectively, shall be supplied in such manner as such Com-

missioner was first appointed, and the new Commissioners shall take the same oath or affirmation, and do the same duties,

ARTICLE IX.

It is agreed, that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of his Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens.

ARTICLE X.

Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies which they may have in the public funds, or in the public or private banks, shall ever in any event of war or national differences, be sequestered or confiscated, it being unjust and impolitic, that debts and engagements contracted and made by individuals having confidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority, on account of national differences and discontents.

ARTICLE XI.

It is agreed, between his Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective people, in the manner, under the limitations and on the conditions specified in the following articles:

ARTICLE XII.

His Majesty consents, that it shall and may be lawful during the time herein after limited, for the citizens of the United States to carry to any of his Majesty's islands and ports in the West-Indies from the United States, in their own vessels, not being above the burthen of seventy tons, any goods or merchandizes being of the growth, manufacture or produce of the said states, which it is or may be lawful to carry to the said islands or ports from the said states in British vessels; and that the said American vessels shall be subject there to no other or higher tonnage duties or charges, than shall be payable by British vessels in the ports of the United States; and that the cargoes of the said American vessels shall be subject there to no other or higher duties or charges, than shall be payable on the like articles if imported there from the said states in British vessels.

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And his Majesty also consents, that it shall be lawful for the said American citizens to purchase, load, and carry away in their said vessels to the United States, from the said islands and ports, all such articles being of the growth, manufacture or produce of the said islands, as may now by law be carried from thence to the said states in British vessels, and subject only to the same duties and charges on exportation, to which British vessels and their cargoes are or shall be subject in similar circumstances.

Provided always, that the said American vessels do carry and land their cargoes in the United States only, it being expressly agreed and declared, that during the continuance of this article, the United States will prohibit and restrain the carrying away any molasses, sugar, coffee, cocoa or cotton in American vessels, either from his Majesty's islands, or from the United States to any part of the world except the United States, reasonable sea stores excepted. Provided also, that it shall and may be lawful, during the same period, for British vessels to import from the said islands into the United States, and to export from the United States to the said islands, all articles whatever being of the growth, produce or manufacture of the said islands, or of the United States respectively, which now may, by the laws of the said states, be so imported and exported. And that the cargoes of the said British vessels shall be subject to no other or higher duties or charges, than shall be payable on the same articles, if so imported or exported in American vessels.

It is agreed, that this article and every matter and thing therein contained, shall continue to be in force during the continuance of the war in which his Majesty is now engaged; and also for two years from and after the day of the signature of the preliminary or other articles of peace, by which the same may be terminated.

And it is further agreed, that at the expiration of the said term, the two contracting parties will endeavour further to regulate their commerce in this respect according to the situation in which his Majesty may then find himself with respect to the West-Indies, and with a view to such arrangements as may best conduce to the mutual advantage and extension of commerce. And the said parties will then also renew their discussions, and endeavour to agree, whether in any and what cases, neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such. But in the mean time, their conduct towards each other in these respects, shall be regulated by the articles herein after inserted on those subjects.

ARTICLE XIII.

His Majesty consents, that the vessels belonging to the citizens of the United States of America, shall be admitted and hospitably received, in all the sea ports and harbours of the British territories in the East-Indies. And that the citizens of the said United States, may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. Provided only, that it shall not be lawful for them in any time of war between the British government and any other power or state whatever, to export from the said territories, without the special permission of the British government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels, when admitted into the said ports, no other or higher tonnage duty than shall be payable on British vessels, when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British territories, to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both parties, as shall from time to time be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article, is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting trade. Neither is this article to be construed to allow the citizens of the said states to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British government established there; and if any transgression should be attempted against the regulations of the British government in this respect, the observance of the same shall and may be enforced against the citizens of America in the same manner as against British subjects, or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbour in the said territories, or if they should be permitted in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government and jurisdiction of what nature established in such harbour, port or place, according as the same may be. The citizens of the United States may also

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touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British government may from time to time establish there.

ARTICLE XIV.

There shall be between all the dominions of his Majesty in Europe and the territories of the United States, a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places, and rivers, within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally the merchants and traders on each side, shall enjoy the most complete protection and security for their commerce; but subject always, as to what respects this article, to the laws and statutes of the two countries respectively.

ARTICLE XV.

It is agreed, that no other or higher duties shall be paid by the ships or merchandize of the one party in the ports of the other, than such as are paid by the like vessels or merchandize of all other nations. Nor shall any other or higher duty be imposed, in one country, on the importation of any articles of the growth, produce, or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations.

But the British government reserves to itself the right of imposing on American vessels entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America: And also such duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods, when imported into the United States in British or in American vessels.

The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries. The arrangements for this purpose shall be made at the same time, with those mentioned at the conclusion of the twelfth article of this treaty, and are to be considered as a part thereof. In the interval, it is

agreed, that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now subsisting difference between the duties payable on the importation of any articles in British or in American vessels.

ARTICLE XVI.

It shall be free for the two contracting parties, respectively to appoint consuls for the protection of trade, to reside in the dominions and territories aforesaid; and the said consuls shall enjoy those liberties and rights which belong to them by reason of their function. But before any consul shall act as such, he shall be in the usual forms approved and admitted by the party to whom he is sent; and it is hereby declared to be lawful and proper, that in case of illegal or improper conduct towards the laws or government, a consul may either be punished according to law, if the laws will reach the case, or be dismissed, or even sent back, the offended government assigning to the other their reasons for the same.

Either of the parties may except from the residence of consuls such particular places, as such party shall judge proper to be so excepted.

ARTICLE XVII.

It is agreed, that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war; the said vessel shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed, that all proper measures shall be taken to prevent delay, in deciding the cases of ships or cargoes so brought in for adjudication; and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the master or owners of such ships.

ARTICLE XVIII.

In order to regulate what is in future to be deemed contraband of war, it is agreed, that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, muskets' rests, bandoliers, gun powder, match, salt-petre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp and cordage, and

generally whatever may serve directly to the equipment of vessels, unwrought iron and fir-planks only excepted; and all the above articles are hereby declared to be just objects of confiscation, whenever they are attempted to be carried to any enemy.

And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniencies and misunderstandings which might thence arise: It is further agreed, that whenever any such articles so becoming contraband, according to the existing laws of Nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

And whereas it frequently happens that vessels sail for a port or place belonging to the enemy, without knowing that the same is either besieged, blockaded, or invested; it is agreed, that every vessel so circumstanced, may be turned away from such port or place, but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter; but she shall be permitted to go to any other port or place she may think proper: Nor shall any vessel or goods of either party, that may have entered into such port or place, before the same was besieged, blockaded or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors thereof.

ARTICLE XIX.

And that more abundant care be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men of war, or privateers of either party, all commanders of ships of war, privateers, and all others the said subjects and citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them, and if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

For this cause all commanders of privateers, before they receive their commissions, shall hereafter be obliged to give before a competent judge, sufficient security, by at least two responsible sureties, who have no interest in the said privateer, each of whom, together with

the said commander, shall be jointly and severally bound in the sum of fifteen hundred pounds sterling, or if such ships be provided with above one hundred and fifty seamen or soldiers, in the sum of three thousand pounds sterling, to satisfy all damages and injuries, which the said privateer, or her officers or men, or any of them may do or commit during their cruise, contrary to the tenor of this Treaty, or to the laws and instructions for regulating their conduct; and further, that in all cases of aggressions, the said commissions shall be revoked and annulled.

It is also agreed, that whenever a judge of a court of admiralty of either of the parties, shall pronounce sentence against any vessel, or goods or property belonging to the subjects or citizens of the other party, a formal and duly authenticated copy of all the proceedings in the cause, and of the said sentence, shall, if required, be delivered to the commander of the said vessel, without the smallest delay, he paying all legal fees and demands for the same.

ARTICLE XX.

It is further agreed, that both the said contracting parties, shall not only refuse to receive any pirates into any of their ports, havens, or towns, or permit any of their inhabitants to receive, protect, harbour, conceal or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offences.

And all their ships, with the goods or merchandizes taken by them and brought into the port of either of the said parties, shall be seized as far as they can be discovered, and shall be restored to the owners, or their factors or agents, duly deputed and authorized in writing by them (proper evidence being first given in the court of admiralty for proving the property) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew, or had good reason to believe, or suspect that they had been piratically taken.

ARTICLE XXI.

It is likewise agreed, that the subjects and citizens of the two nations, shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign prince or state, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite, or endeavor to enlist in their military service any of the subjects or citizens of the other party; and the laws against all such offences and aggressions, shall be punctually executed. And if any subject or citizen of the said parties respectively, shall accept any foreign commission, or letters of marque, for arming any vessel to act as a privateer against the other party, and

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be taken by the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen, having such commission or letters of marque, as a pirate.

ARTICLE XXII.

It is expressly stipulated, that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries or damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanding justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

ARTICLE XXIII.

The ships of war of each of the contracting parties shall at all times be hospitably received in the ports of the other, their officers and crews paying due respect to the laws and government of the country. The officers shall be treated with that respect which is due to the commissions which they bear, and if any insult should be offered to them by any of the inhabitants, all offenders in this respect shall be punished as disturbers of the peace and amity between the two countries.—And his Majesty consents, that in case an American vessel should, by stress of weather, danger from enemies or other misfortunes, be reduced to the necessity of seeking shelter in any of his Majesty's ports, into which such vessel could not in an ordinary case claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the government of the place, be hospitably received and permitted to rest, and to purchase at the market price, such necessaries as she may stand in need of, conformable to such orders and regulations as the government of the place, having respect to the circumstances of each case, shall prescribe. She shall not be allowed to break bulk or unload her cargo, unless the same shall be *bona fide* necessary to her being refitted. Nor shall she be permitted to sell any part of her cargo, unless so much only as may be necessary to defray her expences, and then not without the express permission of the government of the place. Nor shall she be obliged to pay any duties whatever, except only on such articles as she may be permitted to sell for the purpose aforesaid.

ARTICLE XXIV.

It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other prince or state in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any manner to exchange the same; nor shall they

be allowed to purchase more provisions, than shall be necessary for their going to the nearest port of that prince or state from whom they obtained their commissions.

ARTICLE XXV.

It shall be lawful for the ships of war and privateers belonging to the said parties respectively, to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor shall the said prizes when they arrive at, and enter the ports of the said parties be detained or seized; neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce) nor shall such officers take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail, and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to shew. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but if forced by stress of weather, or the danger of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this Treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or states. But the two parties agree, that while they continue in amity, neither of them will, in future, make any Treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories by ships of war, or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

ARTICLE XXVI.

If, at any time, a rupture should take place (which God forbid!) between his Majesty and the United States, the merchants and others of each of the two nations, residing in the dominions of the other, shall have the privilege of remaining and continuing their trade,

so long as they behave peaceably and commit no offence against the laws; and in case their conduct should render them suspected, and the respective governments should think proper to order them to remove, the term of twelve months from the publication of the order, shall be allowed them for that purpose, to remove with their families, effects and property; but this favour shall not be extended to those who shall act contrary to the established laws; and for greater certainty, it is declared that such rupture shall not be deemed to exist while negotiations for accommodating differences shall be depending, nor until the respective ambassadors or ministers, if such there shall be, shall be recalled, or sent home on account of such differences, and not on account of personal misconduct, according to the nature and degrees of which both parties retain their rights, either to request the recal, or immediately to send home the ambassador or minister of the other; and that without prejudice to their mutual friendship and good understanding.

ARTICLE XXVII.

It is further agreed, that his Majesty and the United States, on mutual requisitions, by them respectively, or by their respective ministers or officers authorized to make the same, will deliver up to justice all persons, who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expence of such apprehension and delivery shall be borne and defrayed, by those who make the requisition and receive the fugitive.

ARTICLE XXVIII.

It is agreed, that the first ten articles of this Treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this Treaty shall be exchanged, but subject to this condition, That whereas the said twelfth article will expire, by the limitation therein contained, at the end of two years from the signing the preliminary or other articles of peace, which shall terminate the present war in which his Majesty is engaged, it is agreed, that proper measures shall by concert be taken, for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term, as that new arrangements on that head, may by that time be perfected and ready to take place.

But if it should unfortunately happen, that his Majesty and the United States, should not be able to agree on such new arrangements, in that case, all the articles of this Treaty, except the first ten, then shall cease and expire together.

L A S T L Y.

This Treaty, when the same shall have been ratified by his Majesty, and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on his Majesty and on the said States, and shall be by them respectively executed, and observed, with punctuality and the most sincere regard to good faith; and whereas it will be expedient, in order the better to facilitate intercourse and obviate difficulties, that other articles be proposed and added to this Treaty, which articles, from want of time and other circumstances, cannot now be perfected—it is agreed, that the said parties will, from time to time, readily treat of and concerning such articles, and will sincerely endeavour so to form them, as that they may conduce to mutual convenience, and tend to promote mutual satisfaction and friendship; and that the said articles, after having been duly ratified, shall be added to, and make a part of this Treaty. In faith whereof, we, the undersigned Ministers Plenipotentiary of his Majesty the King of Great Britain, and the United States of America, have signed this present Treaty, and have caused to be affixed thereto the seal of our arms.

Done at London, this nineteenth day of November, One
Thousand Seven Hundred and Ninety-four.

GRENVILLE.

(Seal.)

JOHN JAY.

(Seal.)

CONDITIONAL RATIFICATION
ON THE PART OF THE UNITED STATES.

IN SENATE, June 24, 1795.

RESOLVED, That the Senate do consent to, and advise the President of the United States to ratify the Treaty of Amity, Commerce and Navigation, between his Britannic Majesty and the United States of America, concluded at London, the 19th of November, 1794, on condition that there be added to the said Treaty, an Article, whereby it shall be agreed to suspend the operation of so much of the 12th Article, as respects the trade which his said Majesty thereby consents may be carried on between the United States and his islands in the West-Indies, in the manner, and on the terms and conditions therein specified.

And the Senate recommend to the President, to proceed, without delay, to further friendly negotiations with his Majesty, on the subject of the said trade, and of the terms and conditions in question.

A P P E N D I X.

L E T T E R

FROM MR. JEFFERSON TO MR. HAMMOND.

Philadelphia, Sept. 5, 1794.

S I R,

I AM honoured with yours, of August 30. Mine of the 7th of that month assured you, that measures were taken for excluding from all further asylum in our ports, vessels armed in them to cruize on nations with which we are at peace, and for the restoration of the prizes the *Lovely Lass*, *Prince William Henry*, and the *Jane*, of *Dublin*; and that should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

We are bound, by our treaties with three of the belligerent nations, by all the means in our power, to protect and defend their vessels and effects in our ports, or waters, or on the seas near our shores, and to recover and restore the same to the right owners, when taken from them. If all the means in our power are used, and fail in their effect, we are not bound, by our treaties with those nations, to make compensation.

Though we have no similar treaty with Great Britain, it was the opinion of the President, that we should use, towards that nation, the same rule, which, under this article, was to govern us with the other nations; and even to extend it to captures made on the high seas, and brought into our ports, if done by vessels which had been armed within them.

Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7th, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels, taken under like circumstances, and brought in after the fifth of June, and before the date of that letter, yet, when the same forbearance had taken place, it was, and is, his opinion, that compensation would be equally due.

As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our treaties to make compensation to other powers in the analogous case, he did not mean to give an opi-

nion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

Instructions are given to the governors of the different states, to use all the means in their power for restoring prizes of this last description found within their ports. Though they will of course take measures to be informed of them, and the general government has given them the aid of the custom-house officers for this purpose; yet you will be sensible of the importance of multiplying the channels of their information as far as shall depend on yourself, or any other person under your direction, in order that the governors may use the means in their power for making restitution.

Without knowledge of the capture, they cannot restore it. It will always be best to give the notice to them directly; but any information which you shall be pleased to send to me, also, at any time, shall be forwarded to them as quickly as distance will permit.

Hence you will perceive, Sir, that the President contemplates restitution or compensation in the cases before the 7th of August; and, after that date, restitution if it can be effected by any means in our power. And that it will be important that you should substantiate the fact, that such prizes are in our ports or waters.

Your list of the privateers illicitly armed in our ports, is, I believe, correct.

With respect to losses by detention, waste, spoliation sustained by vessels taken as before mentioned, between the dates of June 5th and August 7th, it is proposed as a provisional measure, that the collector of the customs of the district, and the British consul, or any other person you please, shall appoint persons to establish the value of the vessel and cargo, at the time of her capture and of her arrival in the port into which she is brought, according to their value in that port. If this shall be agreeable to you, and you will be pleased to signify it to me, with the names of the prizes understood to be of this description, instructions will be given accordingly, to the collectors of the customs where the respective vessels are.

I have the honour to be, &c.

(Signed)

THOMAS JEFFERSON.

Geo. HAMMOND, Esq.

WHILST the Treaty was under discussion in the Senate, the following propositions were brought forward, and respectfully offered as Substitutes to the resolution of Ratification, which ultimately prevailed:

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MR. BURR'S MOTION.

THAT the further consideration of the Treaty concluded at London the 19th of November, 1794, be postponed; and that it be recommended to the President of the United States to proceed without delay, to further friendly negotiation with his Britannic Majesty, in order to effect alterations in the said Treaty, in the following particulars:

That the 9th 10th and 24th Articles, and so much of the 25th as relates to the shelter or refuge, to be given to the armed vessels of states or sovereigns at war with either party, be expunged.

2d Art. That no privilege or right be allowed to the settlers or traders mentioned in the 2d Article, other than those which are secured to them by the Treaty of 1783, and existing laws.

3d Art. That the 3d Article be expunged, or so modified that the citizens of the United States may have the use of *all* rivers, ports and places within the territories of his Britannic Majesty in North America, in the same manner as his subjects may have of those of the United States.

6th Art. That the value of the negroes and other property, carried away contrary to the 7th article of the Treaty of 1783, and the loss and damages sustained by the United States by the detention of the posts, be paid for by the British government: the amount to be ascertained by the Commissioners who may be appointed to liquidate the claims of the British creditors.

12th Art. That what relates to the West-India trade, and the provisos and conditions thereof in the 12th article, be expunged; or be rendered much more favourable to the United States, and without any restraint on the exportation in vessels of the United States, of any articles, not the growth, produce or manufacture of the said islands of his Britannic Majesty.

15th Art. That no clause be admitted which may restrain the United States from reciprocating benefits by discriminating between foreign nations in their commercial arrangements, or prevent them from increasing the tonnage, or other duties on British vessels, on terms of reciprocity, or in a stipulated ratio.

21st Art. That the subjects or citizens of either party, be not restrained from accepting commissions in the army or navy of any foreign power.

THAT the President of the United States be informed, that the Senate will not consent to the ratification of the Treaty of Amity, Commerce and Navigation, between the United States and his Britannic Majesty, concluded at London on the 19th of November, 1794, for the reasons following—

1. Because so much of the Treaty as was intended to terminate the complaints, flowing from the inexecution of the Treaty of 1783, contains stipulations that were not rightfully or justly requireable of the United States, and which are both impolitic and injurious to their interest; and because the Treaty hath not secured that satisfaction from the British government, for the removal of negroes, in violation of the Treaty of 1783, to which the citizens of the United States were justly entitled.

2. Because the rights of individual States are by the 9th article of the Treaty, unconstitutionally invaded.

3. Because, however impolitic or unjust it may generally be, to exercise the power prohibited by the 10th article, yet it rests on legislative discretion, and ought not to be prohibited by Treaty.

4. Because so much of the Treaty, as relates to commercial arrangements between the parties, wants that reciprocity, upon which alone, such like arrangements ought to be founded, and will operate ruinously to the American commerce and navigation.

5. Because the Treaty prevents the United States from the exercise of that controul over their commerce and navigation, as connected with other nations, which might better the condition of their intercourse with friendly nations.

6. Because the Treaty asserts a power in the President and Senate, to controul and even annihilate the constitutional right of the Congress of the United States, over their commercial intercourse with foreign nations.

7. Because, if the construction of this Treaty should not produce an infraction of the treaties now subsisting between the United States and their allies, it is calculated to excite sensations, which may not operate beneficially to the United States.

Notwithstanding the Senate will not consent to the ratification of this Treaty, they advise the President of the United States to continue his endeavours by friendly discussion with his Britannic Majesty, to adjust all the real causes of complaint between the two nations.

These propositions were both rejected by a vote of 20 to 10. We are informed that the members who voted in the affirmative were,

Brown, Bloodworth, Burr, Butler, Jackson, Langdon, Martin, Mason, Robinson, and Tazewell.

In the negative,

Bingham, Bradford, Cabot, Elsworth, Freckinbushen, Foster, Gunn, Henry, King, Latimer, Paine, Potts, Read, Ross, Rutherford, Strong, Trumbull, Vining, Livermore, and Marshall.

TREATY of Amity and Commerce between his Most Christian Majesty, and the thirteen United States of America.

THE most Christian King, and the thirteen United States of North America, *to wit*, New-Hampshire, Massachusetts-bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, willing to fix, in an equitable and permanent manner, the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish between their respective countries, states, and subjects; his Most Christian Majesty, and the said United States, have judged, that the said end could not be better obtained, than by taking for the basis of their agreement, the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences, which are usually sources of debate, embarrassment, and discontent—by leaving also each party at liberty to make, respecting commerce and navigation, those interior regulations, which it shall find most convenient to itself—and by founding the advantage of commerce solely upon reciprocal utility, and the just rules of free intercourse—reserving withal, to each party, the liberty of admitting, at its pleasure, other nations to a participation of the same advantages. It is in the spirit of this intention, and to fulfil these views, that his said Majesty having named and appointed for his Plenipotentiary, Conrod Alexander Gerard, royal syndic of the city of Strasbourg, secretary of his Majesty's council of state—and the United States on their part, having fully empowered Benjamin Franklin, deputy from the state of Pennsylvania to the general Congress, and president to the convention of said state—Silas Deane, late deputy from the state of Connecticut, to the said Congress—and Arthur Lee, counsellor at law: the said respective plenipotentiaries, after exchanging their powers, and after mature deliberation, have concluded and agreed upon the following articles:

ART. I. THERE shall be a firm, inviolable, and universal peace, and a true and sincere friendship, between the Most Christian King, his heirs and successors, and the United States of America, and the subjects of the Most Christian King, and of the said states, and between the countries, islands, cities, and towns, situate under the jurisdiction of the Most Christian King, and of the said United States, and the people and inhabitants of every degree, without exception of persons or places, and the terms herein after mentioned, shall be perpetual between the Most Christian King, his heirs, and successors, and the said United States.

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II. The Most Christian King, and the United States, engage mutually not to grant any particular favour to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour freely, if the concession was freely made—or on allowing the same compensation, if the concession was conditional.

III. The subjects of the Most Christian King, shall pay in the ports, havens, roads, countries, islands, cities, or towns of the United States, or any of them, no other or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which the nations most favoured are or shall be obliged to pay: and they shall enjoy all the rights, liberties, privileges, immunities, and exemptions in trade, navigation and commerce, whether in passing from one port in the said states to another, or in going to and from the same, from and to any part of the world, which the said nations do or shall enjoy.

IV. The subjects, people, and inhabitants of the said United States, and each of them, shall not pay in the ports, havens, roads, isles, cities, and places, under the domination of his Most Christian Majesty in Europe, any other or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which the most favoured nations are or shall be obliged to pay: and they shall enjoy all the rights, liberties, privileges, immunities, and exemptions in trade, navigation, and commerce, whether in passing from one port in the said dominions in Europe, to another, or in going to and from the same, from and to any part of the world, which the said nations do or shall enjoy.

V. In the above exemption is particularly comprised the imposition of one hundred sols per ton, established in France on foreign ships, unless when the ships of the United States shall load with the merchandise of France, for another port of the same dominion: in which case, the said ships shall pay the duty above mentioned, so long as other nations the most favoured shall be obliged to pay it: but it is understood, that the said United States, or any of them, are at liberty, when they shall judge it proper, to establish a duty equivalent in the same case.

VI. The Most Christian King shall endeavour, by all the means in his power, to protect and defend all vessels, and the effects, belonging to the subjects, people, or inhabitants of the said United States, or any of them, being in his ports, havens or roads, or on the seas near to his countries, islands, cities or towns; and to recover and restore to the right owners, their agents, or attorneys, all such vessels and effects, which shall be taken within his jurisdiction: and the ships of war of his Most Christian Majesty, or any convoy sailing under his authority, shall, upon all occasions, take under their protection, all vessels belonging to the subjects, people, or inhabitants of the said United States, or any of them, and holding the same course, or going the same way, and shall defend such vessels as long as they hold the same course, or go the same way, against all

attacks, force, and violence, in the same manner as they ought to protect and defend the vessels belonging to the subjects of the Most Christian King.

VII. In like manner the said United States, and their ships of war sailing under their authority, shall protect and defend, conformably to the tenor of the preceding article, all the vessels and effects belonging to the subjects of the Most Christian King, and use all their endeavours to recover, and cause to be restored, the said vessels and effects that shall have been taken within the jurisdiction of the said United States, or any of them.

VIII. The Most Christian King will employ his good offices and interposition with the King or Emperor of Morocco or Fez—the Regencies of Algiers, Tunis, and Tripoli, or with any of them—and also with every other prince, state, or power, of the coast of Barbary in Africa—and the subjects of the said king, emperor, states, and powers, and each of them, in order to provide, as fully and efficaciously as possible, for the benefit, conveniency, and safety of the United States, and each of them, their subjects, people, and inhabitants, and their vessels and effects, against all violence, insult, attacks, or depredations, on the part of the said princes and states of Barbary, or their subjects.

IX. The subjects, inhabitants, merchants, commanders of ships, masters, and mariners of the states, provinces, and dominions of each respectively, shall abstain and forbear to fish in all places possessed, or which shall be possessed by the other party. The Most Christian King's subjects shall not fish in the havens, bays, creeks, roads, coasts, or places, which the said United States hold, or shall hereafter hold: and in like manner, the subjects, people, and inhabitants of the said United States, shall not fish in the havens, bays, creeks, roads, coasts, or places, which the Most Christian King possesses, or shall hereafter possess: and if any ship or vessel shall be found fishing, contrary to the tenor of this Treaty, the said ship or vessel with its lading (proof being made thereof) shall be confiscated: it is, however, understood that the exclusion stipulated in the present article, shall take place only so long and so far, as the Most Christian King or the United States shall not, in this respect, have granted an exemption to some other nation.

X. The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King, in the enjoyment and exercise of the right of fishing on the banks of Newfoundland—nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island, which is designed by the treaty of Utrecht—nor in the rights relative to all and each of the isles, which belong to his Most Christian Majesty, the whole conformable to the true sense of the treaties of Utrecht and Paris.

XI. The subjects and inhabitants of the said United States, or any of them, shall not be reputed aubains in France; and consequently shall be exempted from the *droit d'aubaine*, or other similar duty, under what name soever. They may, by testament, donation, or otherwise, dispose of their goods, moveable and immoveable, in fa-

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vour of such persons as to them shall seem good; and their heirs, subjects of the said United States, residing whether in France or elsewhere, may succeed them, *ab intestat*, without being obliged to obtain letters of naturalization, and without having the effect of this concession contested or impeded, under pretext of any rights or prerogatives of provinces, cities, or private persons. And the said heirs, whether such by particular title, or *ab intestat*, shall be exempt from all duty called *droit de detraction*, or other duty of the same kind; saving nevertheless the local rights or duties, as much and as long as similar ones are not established by the United States, or any of them. The subjects of the Most Christian king shall enjoy on their part, in all the dominions of the said States, an entire and perfect reciprocity, relative to the stipulations contained in the present article: but it is at the same time agreed, that its contents shall not affect the laws made, or that may be made hereafter in France, against emigrations, which shall remain in all their force and vigour: and the United States on their part, or any of them, shall be at liberty to enact such laws, relative to that matter, as to them shall seem proper.

XII. The merchant-ships of either of the parties, which shall be making into a port belonging to the enemy of the other ally, and concerning whose voyage, and the species of goods on board her, there shall be just grounds of suspicion, shall be obliged to exhibit, as well upon the high seas, as in the ports and havens, not only her passports, but likewise certificates, expressly shewing that her goods are not of the number of those which have been prohibited as contraband.

XIII. If, by the exhibiting of the above-said certificates, the other party discover there are any of those sorts of goods which are prohibited and declared contraband, and consigned for a port under the obedience of his enemies, it shall not be lawful to break up the hatches of such ship, or to open any chests, coffers, packs, casks, or any other vessels found therein, or to remove the smallest parcels of her goods, whether such ship belongs to the subjects of France, or the inhabitants of the said United States, unless the lading be brought on shore, in the presence of the officers of the court of admiralty, and an inventory thereof made: but there shall be no allowance to sell, exchange, or alienate the same in any manner, until after that due and lawful process shall have been had against such prohibited goods, and the court of admiralty shall, by a sentence pronounced, have confiscated the same; saving always as well the ship itself, as any other goods found therein, which by this Treaty are to be esteemed free: neither may they be detained on pretence of their being as it were infected by the prohibited goods; much less shall they be confiscated as lawful prize: but if not the whole cargo, but only part thereof shall consist of prohibited or contraband goods, and the commander of the ship shall be ready and willing to deliver them to the captor, who has discovered them, in such case the captor having received those goods, shall forthwith discharge the ship, and not hinder her by any means freely to prosecute the voyage on which she was bound: but in case the contraband merchandises cannot

be all received on board the vessel of the captor, then the captor may, notwithstanding the offer of delivering him the contraband goods, carry the vessel into the nearest port, agreeable to what is above directed.

XIV. On the contrary, it is agreed, that whatever shall be found to be laden by the subjects and inhabitants of either party on any ship belonging to the enemies of the other, or to their subjects, the whole, although it be not of the sort of prohibited goods, may be confiscated in the same manner as if it belonged to the enemy, except such goods and merchandises as were put on board such ship before the declaration of war, or even after such declaration if so be it were done without knowledge of such declaration: so that the goods of the subjects and people of either party, whether they be of the nature of such as are prohibited or otherwise, which, as is aforesaid, were put on board any ship belonging to an enemy before the war, or after the declaration of the same, without the knowledge of it, shall no ways be liable to confiscation, but shall well and truly be restored without delay to the proprietors demanding the same; but so as that if the said merchandises be contraband, it shall not be any-ways lawful to carry them afterwards to any ports belonging to the enemy. The two contracting parties agree, that the term of, two months being passed after the declaration of war, their respective subjects, from whatever part of the world they come, shall not plead the ignorance mentioned in this article.

XV. And that more effectual care may be taken for the security of the subjects and inhabitants of both parties, that they suffer no injury by the men of war or privateers of the other party, all the commanders of the ships of his Most Christian Majesty and of the said United States, and all their subjects and inhabitants, shall be forbidden doing any injury or damage to the other side; and if they act to the contrary, they shall be punished: and shall moreover be bound to make satisfaction for all matter of damage, and the interest thereof, by reparation, under the pain and obligation of their person and goods.

XVI. All ships and merchandises, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.

XVII. It shall be lawful for the ships of war of either party, and privateers, freely to carry, whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty, or any other judges: nor shall such prizes be arrested or seized, when they come to and enter the ports of either party: nor shall the searchers or other officers of those places search the same, or make examination concerning the lawfulness of the prizes: but they may hoist sail at any time, and depart, and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to shew;

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on the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people, or property of either of the parties; but if such shall come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used, that they go out and retire from thence as soon as possible.

XVIII. If any ship, belonging to either of the parties, their people, or subjects, shall, within the coasts or dominions of the other, stiook upon the sands, or be wrecked, or suffer any other damage—all friendly assistance and relief shall be given to the persons shipwrecked, or such as shall be in danger thereof. And letters of safe-conduct shall likewise be given to them, for their free and quiet passage from thence, and the return of every one to his own country.

XIX. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced through stress of weather, pursuit of pirates, or enemies, or any other urgent necessity for seeking of shelter and harbour, to retreat and enter into any of the rivers, bays, roads, or ports belonging to the other party, they shall be received and treated with all humanity and kindness, and enjoy all friendly protection and help: and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals, and all things needful for the sustenance of their persons, or reparation of their ships, and convenience of their voyage: and they shall no ways be detained or hindered from returning out of the said ports or roads, but may remove and depart, when, and whither they please, without any let or hinderance.

XX. For the better promoting of commerce on both sides, it is agreed, that if a war shall break out between the said two nations, six months after the proclamation of war, shall be allowed to the merchants, in the cities and towns where they live, for selling and transporting their goods and merchandises: and, if any thing be taken from them, or any injury be done them within that term, by either party, or the people or subjects of either, full satisfaction shall be made for the same.

XXI. No subjects of the Most Christian King shall apply for, or take any commission or letters of marque, for arming any ship or ships to act as privateers against the said United States, or any of them, or against the subjects, people, or inhabitants of the said United States, or any of them, or against the property of any of the inhabitants of any of them, from any prince or state with which the said United States shall be at war: nor shall any citizen, subject, or inhabitant of the said United States, or any of them, apply for, or take any commission or letters of marque, for arming any ship or ships, to act as privateers against the subjects of the Most Christian King, or any of them, or the property of any of them, from any prince or state with which the said king shall be at war: and if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate.

XXII. It shall not be lawful for any foreign privateers, not belonging to subjects of the Most Christian King, nor citizens of the said United States, who have commissions from any other prince or

state in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever, to exchange their ships, merchandises, or any other lading: neither shall they be allowed even to purchase victuals, except such as shall be necessary for their going to the next port of that prince or state from which they have commissions.

XXIII. It shall be lawful for all and singular the subjects of the Most Christian King, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port, to the places of those who now are or hereafter shall be at enmity with the Most Christian King or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandises aforementioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned, to neutral places; but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of the same prince, or under several. And it is hereby stipulated, that free ships shall also give a freedom to goods; and that every thing shall be deemed to be free and exempt, which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemy.

XXIV. This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband, and under this name of contraband or prohibited goods shall be comprehended arms, great guns, bombs, with the fuses and other things belonging to them, cannon-ball, gun-powder, match, pikes, swords, lances, spears, halberds, mortars, petards, grenades, saltpetre, muskets, musket ball, bucklers, helmets, breast-plates, coats of mail, and the like kinds of arms, proper for arming soldiers, musket-rests, belts, horses with their furniture, and all other warlike instruments whatever. These merchandises that follow, shall not be reckoned among contraband or prohibited goods; that is to say, all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever; all kinds of wearing apparel, together with the species whereof they are used to be made; gold and silver, as well coined as uncoined, tin, iron, latten, copper, brass, coals; as also wheat and barley, and any other kind of corn, and pulse, tobacco, and likewise all manner of spices, salted and

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smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salts, and in general all provisions which serve for the nourishment of mankind and the sustenance of life; furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, failcloths, anchors, and any parts of anchor, also ships, masts, planks, boards, and beams of what trees soever: and all other things proper either for building or repairing ships, and all other goods whatever which have not been worked into the form of any instrument or thing prepared for war by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use; all which shall be wholly reckoned among free goods; as likewise all other merchandises and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods, so that they may be transported and carried in the freest manner by the subjects of both confederates, even to places belonging to an enemy—such towns or places being only excepted, as are at that time besieged blocked up, or invested.

XXV. To the end that all manner of dissensions and quarrels may be avoided and prevented, on one side and the other, it is agreed, that in case either of the parties hereto should be engaged in war, the ships and vessels belonging to the subjects or people of the other ally, must be furnished with sea letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the commander of the said ship, that it may appear thereby that the ship really and truly belongs to the subjects of one of the parties, which passport shall be made out and granted according to the form annexed to this treaty. They shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year; it is likewise agreed, that such ships, being laden, are to be provided not only with passports as above mentioned, but also with certificates, containing the several particulars of the cargo, the place whence the ship sailed, and whither she is bound; that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship set sail, in the accustomed form: and if any one shall think it fit or adviseable to express in the said certificates the person to whom the goods on board belong, he may freely do so.

XXVI. The ships of the subjects and inhabitants of either of the parties coming upon any coasts belonging to either of the said allies, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, they shall be treated according to the general rules prescribed or to be prescribed relative to the object in question.

XXVII. If the ships of the said subjects, people, or inhabitants of either of the parties, shall be met with, either sailing along the coasts, or on the high seas, by any ships of war of the other, or by any privateers, the said ships of war or privateers for the avoiding of any disorder, shall remain out of cannon shot, and may send their boats on

board the merchant ship, which they shall so meet with; and may enter her to the number of two or three men only; to whom the master or commander of such ship or vessel shall exhibit his passport, concerning the property of the ship, made out according to the form inserted in this present Treaty: and the ship, when she shall have shewed such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or search her in any manner, or to give her chase, or force her to quit her intended course.

XXVIII. It is also agreed, that all goods, when once put on board the ships or vessels of either of the two contracting parties, shall be subject to no further visitation; but all visitation or search shall be made beforehand; and all prohibited goods shall be stopped on the spot before the same be put on board, unless there be manifest tokens or proofs of fraudulent practice: nor shall either the persons or goods of the subjects of his Most Christian Majesty, or the United States, be put under any arrest, or molested by any other kind of embargo for that cause: and only the subject of that state to whom the said goods have been or shall be prohibited, and who shall presume to sell or alienate such sort of goods, shall be duly punished for the offence.

XXIX. The two contracting parties grant mutually the liberty of having each in the ports of the other, consuls, vice-consuls, agents and commissaries, whose functions shall be regulated by a particular agreement.

XXX. And the more to favour and facilitate the commerce which the subjects of the United States may have with France, the Most Christian King will grant them in Europe, one or more free ports, where they may bring and dispose of all the produce and merchandise of the thirteen United States: and his Majesty will also continue to the subjects of the said States, the free ports which have been and are open in the French islands of America; of all which free ports the said subjects of the United States shall enjoy the use, agreeably to the regulations which relate to them.

XXXI. The present treaty shall be ratified on both sides, and the ratifications shall be exchanged in the space of six months, or sooner, if possible.

In faith whereof the respective plenipotentiaries have signed the above articles, both in the French and English languages; declaring, nevertheless, that the present treaty was originally composed and concluded in the French language; and they have hereto affixed their seals.

Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

C. A. GERARD, (L. S.)
 B. FRANKLIN, (L. S.)
 SILAS DEANE, (L. S.)
 ARTHUR LEE, (L. S.)

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TREATY of Alliance Eventual and Defensive, between his Most Christian Majesty and the thirteen United States of America.

THE Most Christian King, and the United States of North-America, to wit, New-Hampshire, Massachusetts-bay, Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, having this day concluded a Treaty of Amity and Commerce, for the reciprocal advantage of their subjects and citizens, have thought it necessary to take into consideration the means of strengthening those engagements, and of rendering them useful to the safety and tranquillity of the two parties; particularly in case Great Britain, in resentment of that connexion, and of the good correspondence which is the object of the said treaty, should break the peace with France, either by direct hostilities, or by hindering her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two crowns. And his Majesty and the said United States, having resolved in that case, to join their councils and efforts against the enterprises of their common enemy—

The respective Plenipotentiaries, empowered to concert the clauses and conditions proper to fulfil the said intentions, have, after the most mature deliberation, concluded and determined on the following articles.

I. If war should break out between France and Great Britain, during the continuance of the present war between the United States and England, his Majesty and the said United States shall make it a common cause, and aid each other mutually with their good offices, their counsels, and their forces, according to the exigence of conjunctures, as becomes good and faithful allies.

II. The essential and direct end of the present defensive alliance is, to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the said United States, as well in matters of government, as of commerce.

III. The two contracting parties shall, each on its own part, and in the manner it may judge most proper, make all the efforts in its power against their common enemy, in order to attain the end proposed.

IV. The contracting parties agree, that in case either of them should form any particular enterprize, in which the concurrence of

the other may be desired, the party, whose concurrence is desired, shall readily and with good faith join to act in concert for that purpose, as far as circumstances and its own particular situation will permit. And in that case, they shall regulate by a particular convention, the quantity and kind of succour to be furnished, and the time and manner of its being brought into action, as well as the advantages which are to be its compensation.

V. If the United States should think fit to attempt the reduction of the British power, remaining in the northern parts of America, or the islands of Bermudas, those countries or islands, in case of success, shall be confederated with, or dependent upon the said United States.

VI. The Most Christian King renounces forever, the possession of the islands of Bermudas, as well as of any part of the continent of North America, which before the Treaty of Paris, in 1763, or in virtue of that Treaty, were acknowledged to belong to the crown of Great Britain, or to the United States, heretofore called British colonies, or which are at this time, or have lately been under the power of the king and crown of Great Britain.

VII. If his Most Christian Majesty shall think proper to attack any of the islands situated in the gulph of Mexico, or near that gulph, which are at present under the power of Great Britain, all the said isles, in case of success, shall appertain to the crown of France.

VIII. Neither of the two parties shall conclude either truce or peace with Great Britain, without the formal consent of the other first obtained: and they mutually engage not to lay down their arms, until the independence of the United States shall have been formally or tacitly assured, by the treaty or treaties that shall terminate the war.

IX. The contracting parties declare, that being resolved to fulfil each on its own part, the clauses and conditions of the present Treaty of Alliance, according to its own power and circumstances, there shall be no after-claim of compensation, on one side or the other, whatever may be the event of the war.

X. The Most Christian King and the United States, agree to invite or admit other powers, who may have received injuries from England, to make a common cause with them, and to accede to the present alliance, under such conditions as shall be freely agreed to, and settled between all the parties.

XI. The two parties guarantee mutually from the present time and for ever, against all other powers, to wit, the United States to his Most Christian Majesty, the present possessions of the crown of France in America, as well as those which it may acquire by the future Treaty of Peace: and his Most Christian Majesty guarantees on his part to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government, as commerce—and also their possessions, and the additions or conquests that their confederation may obtain during the war, from any of the dominions now or heretofore possessed by Great Britain, in North

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America, conformable to the fifth and sixth articles above written ; the whole, as their possessions shall be fixed and assured to the said states, at the moment of the cessation of their present war with England.

XII. In order to fix more precisely the sense and application of the preceding article, the contracting parties declare, that in case of a rupture between France and England, the reciprocal guarantee declared in the said article, shall have its full force and effect, the moment such war shall break out : and if such rupture shall not take place, the mutual obligations of the said guarantee shall not commence until the moment of the cessation of the present war, between the United States and England, shall have ascertained their possessions.

XIII. The present Treaty shall be ratified on both sides, and the ratification shall be exchanged in the space of six months, or sooner, if possible.

In faith whereof the respective Plenipotentiaries, to wit, on the part of the Most Christian King, Conrad Alexander Gerard, royal syndic of the city of Strasbourg, and secretary of his Majesty's council of state—and on the part of the United States, Benjamin Franklin, deputy to the general Congress from the state of Pennsylvania, and president of the Convention of said state—Silas Deane, heretofore deputy from the state of Connecticut—and Arthur Lee, counsellor at law, have signed the above articles both in the French and English languages ; declaring, nevertheless, that the present Treaty was originally composed and concluded in the French language ; and they have hereunto affixed their seals.

Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

C. A. GERARD,	(L. S.)
B. FRANKLIN,	(L. S.)
SILAS DEANE,	(L. S.)
ARTHUR LEE,	(L. S.)

*The Definitive Treaty between Great Britain
and the thirteen United States of America.*

In the Name of the Most Holy and Undivided Trinity.

IT having pleased the Divine Providence to dispose the hearts of the most serene and most potent prince George the Third, by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, duke of Brunswick and Lunenburg, arch treasurer and prince elector of the holy Roman empire, &c. and of the United States of America, to forget all past misunderstandings and differences, that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore—and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony—and having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the 30th of November 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in, and to constitute the treaty of peace proposed to be concluded between the crown of Great Britain, and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between G. Britain and France, and his Britannic majesty should be ready to conclude such treaty accordingly—and the treaty between Great Britain and France having since been concluded, his Britannic majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, his Britannic majesty on his part, David Hartley, Esq. member of the parliament of Great Britain; and the said United States on their part, John Adams, Esq. late a commissioner of the United States of America, at the court of Versailles, late delegate in Congress from the state of Massachusetts, and chief justice of the said state, and minister plenipotentiary of the said United States, to their high mightinesses the States General of the United Netherlands; Benjamin Franklin, Esq. late delegate in Congress, from the state of Pennsylvania, president of the convention of the said state, and minister plenipotentiary from the United States of America at the court of Versailles; and John Jay, Esq. late president of Congress, chief justice of the state of New-York, and minister plenipotentiary from the said United States at the court of Madrid—to be the plenipotentiaries for concluding and signing the present definitive treaty; who, after having recipro-

cally communicated their respective full powers, have agreed upon and confirmed the following articles.

Art. I. His Britannic majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts-bay, Rhode Island and Providence plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, to be free, sovereign, and independent states; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

II. And that all disputes, which might arise in future, on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz. from the northwest angle of Nova-Scotia, viz. That angle which is formed by a line drawn due north from the source of St. Croix river to the highlands, along the said highlands, which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the north-westermost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude, until it strikes the river Iriquois or Cataraquy; thence along the middle of said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the isles Royal and Philipeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola, or Catahouche; thence along the middle thereof to its junction with the Flint river; thence strait to the head of St. Mary's River; and thence down along the middle of St. Mary's river to the Atlantic ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy, to its source; and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean, from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part of the shores of

the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic ocean, excepting such islands as now are, or heretofore have been within the limits of the said province of Nova-Scotia.

III. It is agreed, that the people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland, also in the Gulph of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also, that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland, as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of his Britannic majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova-Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose, with the inhabitants, proprietors, or possessors of the ground.

IV. It is agreed, that creditors on either side, shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted.

V. It is agreed, that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights, and properties, which have been confiscated, belonging to real British subjects: and also of the estates, rights, and properties of persons resident in districts in the possession of his majesty's arms, and who have not borne arms against the said United States; and that persons of any other description, shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties, as may have been confiscated; and that Congress shall also earnestly recommend to the several states, a re-consideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail: and that Congress shall also earnestly recommend to the several states, that the estates, rights, and properties of such last mentioned persons shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid, on purchasing any of the said lands, rights, or properties since the confiscation. And it is agreed, that all persons, who have any interest in confiscated lands, either by debts marriage settlements,

or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

VI. That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war: and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty, or property: and that those, who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecution, so commenced, be discontinued.

VII. There shall be a firm and perpetual peace between his Britannic majesty and the said states, and between the subjects of the one, and the citizens of the other: wherefore, all hostilities, both by sea and land, shall from henceforth cease: all prisoners, on both sides, shall be set at liberty: and his Britannic majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States, and from every post, place, and harbour within the same, leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds, and papers belonging to any of the said states, or their citizens, which in the course of the war, may have fallen into the hands of his officers, to be forthwith restored, and delivered to the proper states and persons to whom they belong.

VIII. The navigation of the river Mississippi, from its source to the ocean, shall forever remain free, and open to the subjects of Great Britain, and the citizens of the United States.

IX. In case it should so happen, that any place or territory belonging to Great Britain, or to the United States, should have been conquered by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

X. The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties in the space of six months, or sooner, if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their ministers plenipotentiary, have, in their name, and in virtue of our full powers, signed with our hands, the present definitive treaty, and caused the seals our arms to be affixed thereto.

Done at Paris, this third day of September, one thousand, seven hundred and eighty-three.

DAVID HARTLEY,	(L. S.)
JOHN ADAMS,	(L. S.)
B. FRANKLIN,	(L. S.)
JOHN JAY,	(L. S.)

CONSTITUTION

OF THE

United States.

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1.

ALL legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. 11.

1. The House of Representatives shall consist of members chosen every second year, by the people of the several states; and the electors in each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives, and direct taxes shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to serve for

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a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States; and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand; but each state shall have at least one representative: and, until such enumeration shall be made, the state of New-Hampshire, shall be entitled to choose three; Massachusetts eight; Rhode-Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North-Carolina five; South-Carolina five; and Georgia three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECT. III.

1. The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six years: and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year: so that one-third may be chosen every second year. And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice-president of the United States shall be President of the Senate; but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted, without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

SECT. IV.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year: and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. V.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members: and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings; and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy: and the yeas and nays, of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to, and returning from the same: and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during such time: and no

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person holding any office under the United States, shall be a member of either house, during his continuance in office.

SECT. VII.

1. All bills, for raising revenue, shall originate in the house of representatives: but the Senate shall propose or concur with amendments, as on other bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it: but if not, he shall return it, with his objections, to that house, in which it shall have originated, who shall enter their objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered: and if approved by two-thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays: and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, be approved by him; or, being disapproved by him, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in the case of a bill.

SECT. VIII.

The Congress shall have power

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence, and general welfare, of the United States: but all duties, imposts, and excises, shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States.

5. To coin money; regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post-offices and post-roads.

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8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the supreme court.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

11. To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water.

12. To raise and support armies. But no appropriation of money for that use, shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia, to execute the laws of the union, suppress insurrections, and repel invasions.

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States: reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation, in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

18. To make all laws, which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECT. IX.

1. The migration or importation of such persons, as any of the states now existing, shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight: but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another: nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.

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6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States. And no person, holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. X.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II,

SECT. I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the Congress. But no senator, or representative, or person holding any office of trust or profit, under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the

senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president: and if no person have a majority, then, from the five highest on the list, the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states: and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more, who have equal votes, the senate shall choose from them, by ballot, the vice-president.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president: and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected: and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

“ I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.”

SECT. 11.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may

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require the opinion, in writing, of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective offices: and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen, during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SECT. III.

He shall, from time to time, give to the Congress information of the state of the Union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECT. IV.

The president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECT. I.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECT. II.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the Congress may by law have directed.

SECT. III.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason: but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECT. I.

Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the Congress may, by penal laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. II.

1. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

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2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person, held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECT. III.

1. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state—nor any state be formed by the junction of two or more states, or parts of states—without the consent of the legislatures of the states concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States: and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

SECT. IV.

The United States shall guarantee to every state in this union, a republican form of government; and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the judges, in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the twelfth. In witness whereof, &c.

GEO. WASHINGTON, president.

New-Hampshire—John Langdon, Nicholas Gilman. *Massachusetts*—Nathaniel Gorham, Rufus King. *Connecticut*—Wm. Samuel Johnson, Roger Sherman. *New-York*—Alexander Hamilton. *New-Jersey*—Wm. Livingston, David Brearly, William Paterson, Jonathan Dayton. *Pennsylvania*—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingerfoll, James Wilson, Gouverneur Morris. *Delaware*—George Reed, Gunning Bedford, jun. John Dickinson, Richard Bassett, Jacob Broom. *Maryland*—James McHenry, Daniel of St. Thomas Jenifer, Daniel Carrol. *Virginia*—John Blair, James Madison, jun. *North-Carolina*—William Blount, Richard Dobbs Spaight, Hugh Williamson. *South-Carolina*—John Rutledge, Charles Cotefworth Pinckney, Charles Pinckney, Pierce Butler. *Georgia*—William Few, Abraham Baldwin.

Attest.

WILLIAM JACKSON, sec'y.

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CONGRESS OF THE UNITED STATES,

Begun and held at the city of New-York, on Wednesday, the fourth of March, one thousand seven hundred and eighty-nine. The convention of a number of the states, having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added—and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution—

RESOLVED, by the senate and house of representatives of the United States of America, in Congress assembled, two-thirds of both houses concurring, That the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all, or any of which articles, when ratified by three-fourths of the said legislatures, to be valid, to all intents and purposes, as part of the said constitution, viz.

ARTICLES, in addition to, and amendment of the constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

I. After the first enumeration, required by the first article of the constitution, there shall be one representative for every thirty-thousand, until the number shall amount to one hundred; after which, the proportion shall be so regulated by Congress, that there shall be not less than one hundred representatives—nor less than one representative for every forty thousand persons—until the number of representatives shall amount to two hundred; after which, the proportion shall be so regulated by Congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand persons.

II. No law, varying the compensation for the services of the senators and representatives, shall take effect, until an election of representatives shall have intervened.

III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

IV. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

V. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

VI. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated: and no warrants shall issue, but upon probable cause, supported by oath or affirmation—and particularly describing the place to be searched, and the persons or things to be seized.

VII. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger: nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use, without just compensation.

VIII. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the state and district, wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

IX. In suits at common law, where the value in controversy, shall exceed twenty dollars, the right of trial by jury shall be preserved: and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

X. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

XI. The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others, retained by the people.

XII. The powers, not delegated to the United States, by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FREDERICK A. MUHLENBERG,
Speaker of the House of Representatives.

JOHN ADAMS, Vice-president of the
United States and President of the Senate.

Attest.

JOHN BECKLEY, Clerk of the House of Representatives.

SAMUEL A. OTIS, Secretary of the Senate.

N. B. By the returns made into the secretary of state's office, it appears that the first article of the above amendments is agreed to by only seven states—the second by only four—and therefore these are not obligatory. All the remainder, having been ratified by nine states are of equal obligation with the constitution itself.

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Vindication of the Treaty of Amity, Commerce, and Navigation, with Great-Britain.

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NUMBER I.

THE Treaty between Great Britain and America, has been a matter of Great public expectation, and it has been rendered more interesting by the time and manner in which the negotiation originated.

Before the revolution in America, the people of the then colonies were under the government of Great Britain; they considered themselves as children of the same family; their trade was almost limited to the British dominions; the Americans had estates in Great Britain, and monies in her funds: an extensive commerce had created innumerable debts and connections between the two countries, which could not be at once discharged and dissolved.

A long, expensive, and bloody war, to resist the unjust claims of the British parliament, attended with many instances of atrocious cruelty and perfidy on the part of the British governors and commanders, alienated the affections of the great body of Americans from the mother country. On the restoration of peace, however, and the acquisition of independence, the enmity of the Americans gradually subsided; and the usefulness of the commerce of England to these states, being everywhere experienced, soon revived the habits of friendly intercourse between America and Great Britain, which had been interrupted by the war—an intercourse which was not much affected by the controversies between the two governments on account of the inexecution of the treaty of peace. Almost as soon as the acceptance and organization of a constitution for the United States had given them a national capacity, it was the wish and desire of America to form a commercial treaty with Great Britain; and Mr. Jefferson, in a letter to Mr. Hammond, dated Nov. 29, 1791, requested to know whether he was authorized to enter into a negotiation for that purpose.

The circumstances which operated to defeat the attempts of our executive, and the controversies between the governments of the two countries, relative to the non-fulfilment of the treaty on one side and the other, are in every man's recollection; it is needless to mention them here. It is sufficient for my purpose, that the President was authorized by the public wishes, to negotiate a commercial treaty with Great Britain; and he is vested with full powers for this purpose by the constitution.

The uniform desire of Congress on this subject, is a complete answer to all cavils about the exertion of the President's constitutional powers. It was the nation, the United States, that requested and urged for a negotiation.

This also is an answer to the men who say, the people of America supposed the appointment of Mr. Jay as envoy extraordinary, was intended only to demand and procure a redress of wrongs, and indemnification for spoliations on our trade; and not for the negotiation of a commercial treaty.—Whatever opinion people formed of the embassy, the instructions given to the envoy were in pursuance of constitutional powers; and if the people were surprised with a treaty of amity and commerce, before they expected it, this forms no objection to the treaty itself.

The time selected for this negotiation, and the exercise of the President's powers, at the critical moment, when the public mind in America was in a violent flame, on account of the seizure of our vessels by British privateers, and when hostilities were expected between the two countries, however offensive to a party in America, are among the most fortunate circumstances of this whole business.

The sequestration bill, then before Congress, involved in it the events of peace or war. The bill, had it passed, would have been considered by Great Britain equivalent to issuing letters of marque and reprisal, and tantamount to a declaration of hostilities; and probably that act, had it been sanctioned by the several branches of the legislature, would have plunged us into the present most calamitous war.

Such a consequence was considered by the President as little less than inevitable. As a constituent branch of the legislature, and chief magistrate of the nation, he had a right to exert the powers he possessed—and if he thought the house of representatives were rash in their measures, it was his duty, as the chief guardian of the public safety, to exert any of his constitutional powers for the purposes of arresting those measures. It was as much his right and his duty to interpose negotiation as a means of checking any measures that he deemed inconsistent with our national interest, if he judged that the best means, as it is to give his negative to a bill that has passed the other branches of the legislature, when he judges the bill unconstitutional or inexpedient.

The *right* of the President to interpose negotiation, at the time he did, cannot be disputed. The *expediency* of the measure will perhaps never be admitted by its opposers; but every subsequent event has served to convince the friends of our present administration, that the measure was highly expedient and the time well chosen.

That the President was right in resorting to a *peaceable demand* of indemnification for spoliations on our commerce, is capable of the highest proof. The law of nations makes it a duty, on the part of a nation thus injured, to make a peaceable requisition of damages or restoration of property, from the aggressing nation, before the commencement of hostilities.

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Vattel, book 3, chap. 3, lays it down in the most unequivocal language, that an injured nation has no right to resort to force for satisfaction, until other means of obtaining it have proved fruitless.

In conformity with this principle of the law of nations, it is often stipulated by treaty, that letters of marque and reprisal shall not be granted by an injured nation, until means of redress have been sought in the ordinary course of justice. Of this tenor is the third article of the treaty of navigation and commerce between Great Britain and Spain, dated 1713.

It was in pursuance of this most salutary principle, that the President appointed an envoy extraordinary at the time he did; and it was, undoubtedly, in other respects, highly expedient; as no moment could be more eligible for a negotiation with England, than when she was engaged in an expensive and unsuccessful war: a war that entrenches deeply on her resources, and demands a minute attention to her commercial interests.

But my opposers will say, "We admit the propriety of negotiation, before the commencement of hostilities; but we contend that our envoy should have been restricted to a demand of the western posts, and indemnification for losses by illegal captures, and condemnation of our vessels and property. It was never understood, that Mr. Jay had instructions to make a commercial treaty."

This objection amounts to nothing, and deserves no answer. The President had as good a right to authorise Mr. Jay to conclude a treaty of amity and commerce as any other man; and he had the same right to choose one time as another.

Having made these preliminary remarks on the origin of this negotiation and treaty, I will proceed to answer such objections to the treaty as have come to my knowledge.

The daily invectives of news-paper paragraphists will be passed without notice. This is treating them as they deserve to be treated, and as they are in fact treated by the public.

A writer in a morning paper under the signature of *Decius*, appears to have assailed the treaty with more ingenuity than any other writer whose arguments I have read; and it is probable that his writings comprise the amount and force of all the objections that are made to it. I shall therefore take his objections in the order they are published, and endeavour to prove them of little weight, or wholly unfounded.

The first remarks of this writer are aimed at the candour and integrity of the twenty members of the Senate, who, he insinuates, ratified the treaty from *motives of party spirit*. He does not indeed exempt the minority from the same censure of their conduct. But what refutes the insinuation is, the rejection of the twelfth article by the men thus criminated. Certainly the spirit of party was not the governing motive; for party spirit is unconceding, and goes all lengths to carry its points. The rejection of that article, because it entrenches too much on our carrying trade, in the opinion of those gentlemen, is a proof that the *interest of commerce and the public good*

were the motives of their conduct in assenting to every other part of the treaty.

His next remark is levelled at the secrecy of the senate, in conducting the debates on the Treaty. "Is not this secrecy alone, (says *Decius*,) a proof that the senate conceived it disgraceful and prejudicial to the United States?"

Let me ask that writer a candid question: Has not every treaty which we have made with other nations been concluded and ratified in secret? And is there one of those treaties disgraceful or prejudicial to our nation? No objection was formerly made to these secret ratifications. Why should reasons now exist for opening the discussion of treaties to the people, which did not exist in 1783 and 1785? The reason is obvious: Americans were formerly under no influence but that of propriety; they acted themselves—Now a party of them have deserted the principles which formerly guided our councils, and appear to be ambitious only of finding opportunities to rail at all steady wisdom, and to commit our interests to passion and party.

The secrecy of negotiations with foreign powers, through every stage of the business, is dictated by sound policy. By making treaties public before they are ratified, advantages would often be lost, and by destroying confidence and freedom of communication, the business would be often impeded or wholly defeated. Nothing marks the sense of mankind on this subject, better than the practice of individuals, who generally use secrecy in all important contracts of their own. This common practice is a proof of its utility. Much more necessary is it in treaties, which are national contracts or conventions.

Another remark of *Decius*, worthy of notice, is, that the "first impressions made by the treaty were unfavourable—all men and all ranks [what ranks? this writer has certainly forgotten one article of democracy—equality] united in condemning it."

This remark has some foundation, and the fact is easily accounted for. The first impressions on the minds of the public were made by an abstract of the treaty, which was published incorrectly, and there are strong suspicions that it was done with the insidious view of exciting improper impressions. The abstract was said to have been made from memory. This cannot be true. It is not in the power of man, after the most careful perusal, to make so large an abstract, without the help of notes, of twenty-eight articles of a treaty, without intermixing the articles in the sketch. The business must have been done with design; and it was inexcusable in any man to offer to the public a *sketch*, much more an *incorrect* one, of so important an instrument.

These unfavourable impressions, however, answered the views of men who perfectly well understood the importance of *prepossessing* the public mind. They excited a temporary clamor, and have perhaps made a few weak friends to an expiring cause.

But the clamor of the moment subsided on reading a correct copy of the treaty—men all agreed it was not so bad as they expected.

Still many well meaning people do not understand it; and every possible effort is used to distort and misconstrue some passages of the treaty which affect the commerce of the country.

The violent censure of the treaty which prevailed on its first publication, in skeleton, and the moderation of the clamor on further perusal of it, instead of being a proof that the treaty is in itself bad, is a substantial argument in its favor—it is a proof that it bears examination—and it is a proof, further, of what we should all regret, that the *passions* of men outstrip their *judgment*.

Should the final result of the business prove to be, what I am confident it will be, a general conviction that the treaty is, on the whole, a favourable one for the United States, and the most favourable of any treaty we have yet formed; the public will view with indignation, the insidious attempts that have been made to excite a ferment, and opposition to its ratification, as well as to load with unmerited censure, the able minister who conducted the negotiation.

CURTIUS.

NUMBER II.

THE preamble of the Treaty, says *Decius*, is not free from objections. It states that the differences between the countries are to be terminated “without reference to the merits of their complaints.” *Decius* says, the merits of the controversy should never be lost sight of. But when this expression is explained, I believe every candid man will justify it in the present instance.

The *merits of the complaints*, in this instance, refer solely to the question, which party first violated the treaty of Peace.” On the first opening of the negotiation between the ministers of the two countries, this became an important point of discussion. The American envoy alleged the first breach of the treaty to be on the part of Great Britain, and mentioned the carrying away of the negroes.

The English minister maintained that this was *not* a violation of the treaty. As this subject has occasioned as much altercation as any point between the two countries, and as the silence of the present treaty on that subject, is the ground of violent clamour, I will anticipate a consideration of this point, which would more properly fall under a subsequent article.

Whenever our ministers have urged the claim of restitution or compensation for the negroes, the British ministry have, invariably, answered them with the following remarks:

“The negroes carried from America by the British armies, were taken by the troops on their marches through the country, or came in by proclamation, and put themselves under our protection.

“The clause of the treaty on which you ground your claim is in these words—“His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away *any negroes or other property* of the *American* inhabitants, withdraw all his armies, &c.”

"By the laws of the American states, negroes are considered as property as much as cattle; you claim them as property for the men who were their proprietors. By the laws of war, universally admitted, every species of moveable property found and taken in an enemy's country, becomes the property of the captors. By the seizure and possession of the negroes, the British armies became the rightful owners; the negroes were booty, as much as the horses and cattle taken by the same troops.

"Suppose an American boat loaded with goods, to be taken on one of your rivers in the time of war, would not that boat and goods be a fair prize? Suppose a horse to stray into the British lines and be taken, would not that horse belong to the captors? Could a claim be reasonably interposed for restitution or compensation in these cases? Whether they were seduced or forced from the plantations, if they were property, that property, on their coming into possession of the British army, was changed, according to all the laws of war.

"The clause of the treaty contemplates negroes which were American property at the date of the stipulation. 'Negroes or other property' are the words. But the negroes which our troops had taken in their marches, or which had put themselves under their protection, were not, at that time, the property of Americans.

"On this construction, which we hold to be the only rational one, that clause of the treaty will not maintain your claim. The treaty may include slaves which were within the British lines, in possession of their American masters; but there is no pretence that such were carried away by the British troops.

"Besides, we cannot surrender negroes which came into our lines on the faith of proclamations, without a violation of that faith; which cannot be done. We promised them freedom and protection—we gave them that freedom, and we must protect them."

Such is the substance of the ministry's reply, to the claims of our envoy, which were repeatedly urged without success.—And the British ministry have invariably put the same construction on that clause of the treaty of peace. Indeed it seems difficult to answer this reasoning.

Either the negroes were slaves and property, or they were not. If they were slaves and property, as considered by the laws of most of the American states, the British had the same right to seize and carry them away as booty, as they had to seize and carry away horses and cattle; a right of war that was never disputed. In this case, the property was changed the moment they came into the possession of the British armies; and at the date of the treaty, they were not American property, and consequently not included in the stipulation of the treaty.

If, on the other hand, the negroes were freemen, they had a right to put themselves under British protection, and we have no shadow of claim to restitution or compensation.

I am one who believe that no property can be obtained in human flesh, and any law authorizing the purchase and detention of a human being, as property, is, ipso facto, void.—Should this position be

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well founded, we have not a shadow of pretension to the negroes carried away by the British troops.

But the laws of many of the states do consider them as property; whether rightfully or wrongfully, is not now the question. If we consider them as *property*, they are to be ranked among *personal* estates, for they certainly are not *real* estate.

Now Mr. Jefferson, a man of eminent talents, and the oracle of my antagonists, admits, in the fullest extent, the doctrine, that all personal estate is rightfully seizable by enemies in war. The following are his words:

“It cannot be denied, that the state of war strictly admits a nation to seize the property of its enemies, found within its own limits, or taken in war, and in whatever form it exists—whether in action or possession.”

In confirmation of this, he quotes Bynkershoek, l. 1. c. 7. who is clear and explicit on the subject. See papers relative to Great Britain, published by order of Congress, p. 29. This doctrine is the universal law of nations.

“As the towns and lands taken from the enemy, are called conquests, all *moveable things* constitute the *booty*. The booty belongs to the sovereign.” Vattel, b. 3. c. 9.

In the interpretation of treaties where there are two constructions, the one favourable, the other odious, that which is odious is always to be rejected: and what can be more odious than to construe this article of the treaty, so as to violate faith towards the wretched blacks, and render them back to the whips and scourges of slavery?

At any rate, this point of the business the British ministry will not yield, as the first infraction of the treaty.

Then came the detention of the western posts, which our minister alleged to be a breach of the treaty, anterior to any violation on the part of the United States.—Here was introduced the correspondence between Mr. Jefferson and Mr. Hammond, and Mr. Jefferson's reasoning on the subject.

To this the British minister answered, by referring to dates of transactions.

The provisional articles between Great Britain and America, were signed, November 30th, 1782, at Paris; and notice of this was officially received by Sir Guy Carlton, April 5th, 1783. But the definitive treaty was not signed till September 3d, 1783, and the ratifications were not finally exchanged, till some time in 1784, though I do not know the day and month.

A treaty is binding on a nation from the moment of signature; but its ultimate validity depends on its passing through all the usual forms. According to the modern practice, the exchange of ratifications puts the seal to the validity of a treaty, and gives it an effect from the time of signature.

The British ministry state that, *ex gratia*, or as a matter of convenience to the nation, orders were given to Sir Guy Carleton to evacuate New-York, immediately on signing the provisional articles in

1782. But they allege they were not bound to do this, until they had been notified of the ratification of those articles by Congress, which could not have been till the middle of the year 1784.

The demand made by the Baron Steuben, by order of General Washington, of the surrender of the western posts, and the first demand made, was by his letter to General Haldimand, dated August 2, 1783. At this time the British minister could scarcely have heard whether Congress had agreed to the treaty or not; much less could any orders have been sent from them to Canada, for withdrawing the troops from the garrison.

Admitting this fact, that the British ministry were not bound by treaty to give orders for the troops to withdraw, until the treaty had gone through its usual forms, then the detention of the posts, till long after they had been demanded by Baron Steuben, and perhaps as late as the demand of Colonel Hull, in July, 1784, was justifiable and authorized by the practice of nations.

But long before this, Congress had declared the carrying away of the negroes, an infraction of the treaty; and in May, 1793, had sent orders to our foreign ministers to remonstrate against this measure, and demand reparation.

The state of New-York, so early as March 17, 1783, passed an act authorising any citizen to bring actions of trespass against any person who had occupied, or injured his estate, real or personal, within the power of the enemy. This was an express violation of the 6th article of the treaty, which declares that no person shall suffer any loss or damage, or any prosecution, on account of the part he had taken during the war. And Virginia, in December, 1783, passed an act, suspending executions on certain judgments, which materially affected British creditors. South-Carolina, in March 1784, followed, and passed an act suspending all actions, both British and American, for nine months.

These legal impediments to the recovery of old British debts, determined the ministry *not* to surrender the posts, but to hold them as a security for these debts. And whatever clamour we may raise about this business, we may be assured, that the western posts will never be delivered peaceably, until the payment of those debts has been amply secured.

I have been thus full in explaining what is meant by the *merits of complaints*, in the preamble of the treaty, to show, that our minister was justifiable in passing over the discussion of a point of extreme difficulty—a point which would have wasted time and embarrassed, perhaps defeated, the negotiation. The question of the *first infraction* of the treaty of peace had been ably discussed before; and at the close of the controversy, the parties were as remote from the probability of agreement as when they began.

Neither party would yield the point to his antagonist. The British ministry, it is evidently known, are determined never to admit the carrying away the negroes to be an infraction of the treaty, and

they are equally determined not to surrender the western posts without a guarantee for the payment of old debts.

In this situation, was it not prudent and wise to pass over the first subjects of crimination, and proceed to an amicable adjustment of all differences, if it could be done, without attempting to decide who first infringed the treaty? I am persuaded that every candid man who reads this explanation of the business, will be fully satisfied with the conduct of our envoy.

[Note. I generally use the word envoy or minister, in the singular, as referring to Mr. Jay, the principal in the negotiation. But it is proper to observe once for all, that Mr. Jay, by order, communicated his instructions to Mr. Pinckney, consulted him on every point, and that the treaty and every article of it had the approbation of that gentleman.]

CURTIS.

NUMBER III.

THE first article of the Treaty contains words of course, which deserve no notice.

Article 2.

The first objection made to this article is the inexplicitness of it. It is said that the article should have defined from *what places* his Majesty was to withdraw his troops.

The answer to this objection is, that there is not any dispute about the boundary line of the United States, except at the north-east extremity, on St. Croix river. The posts which we claim are acknowledged to be in the United States. It is possible, that the British officers at some of those places, as a pretext for some purposes of their own, may have pretended they were on their own ground; but I never heard it suggested that the ministry dispute the boundary line, at or near any of the garrisoned places.

The time assigned for the evacuation, is said to be too distant. But if we calculate, we shall find no ground for this objection. There was required time to exchange ratifications, and then for orders to be dispatched from England, to the farthest post westward. If we allow a reasonable time for these transactions, it will require the whole period assigned by the treaty.

The jurisdiction of a military post will doubtless be considered, the reach of a cannon shot, or a league.

“Lastly, (says *Decius*) as the treaty of peace gave us these posts, what great benefit is obtained by this article? Who would regard the second promise of a man, who had already, without an excuse, violated the first?”

But, *Decius* will please to remember, that there are two sides to a question—The legal impediments to a collection of old debts were an excuse for the detention of the posts which they deemed sufficient.

If we comply with the sixth article, Great Britain will consequently comply with the second.

Article 3.

Even this article of the treaty, which breaks down the barriers which have hitherto obstructed our trade to Canada, and opens a general intercourse upon most liberal principles, has not escaped criticism and censure. *Decius* says, the advantages in this article are on the side of Great Britain; and the reason assigned is, that the extent of the United States is greater than that of the British territories. Now this is the very reason why the advantages of this article are in favor of the United States.

What is the present state of trade between Canada and the United States? and what will its situation be under the treaty? This is a fair way of determining the goodness of the treaty.

In the present state of things, almost all trade is prohibited on the part of Canada.—Not a skin in the fur-trade can be brought into the United States except by stealth. This prohibition makes the little trade in peltry, now actually carried on, very hazardous, and raises the article to a very high price. The peltry, it must be admitted, is almost *all* collected within the British territories; the British have command of it by right; and the removal of those garrisons to the other side of the lakes, without a removal of the prohibition on the peltry trade, would not have been of much advantage to the United States.

We have then every thing to gain by a free intercourse—the British, every thing to lose, so far as regards *that trade*.

Decius says, “the fur-trade will probably fall altogether into the hands of British traders.” This is a most extraordinary supposition.

The truth is, the peltry-trade now is all in their hands—What we want is to get that *out* of their hands. That is, we want to obtain a share of that trade on equal terms with British subjects. This we have obtained by the article under consideration.

What right, what pretence have we to a monopoly of that trade? Do we expect that Great Britain would permit us, as *Decius* says, “to secure to ourselves the whole fur-trade?” To demand such a privilege on our part would be extravagant and ridiculous.

The trade by the third article of the treaty, is placed on a fair and liberal footing.—Both parties are free to use all the rivers and lakes for the purpose of inland navigation, subject only to the common tolls and ferriages. The exception of the limits of the Hudson's Bay company is of no importance at present to the United States; and the exception was a necessary consequence of the exclusive rights of the company.

Decius supposes there is a manifest inequality in permitting British traders to use all our ports and rivers, and in restricting the Americans from the same use of the ports of the British territories, and the rivers between the mouths thereof and the highest ports of entry. But *Decius* will please to recollect, that this privilege enjoyed by British

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subjects, and the restriction of American subjects, are not created by the present treaty. In this respect the parties are as they were before. American vessels have never been permitted to carry on the coasting trade of the British possessions in America; and therefore we suffer no new abridgment of business by this article. On the other hand, British vessels are *now* admitted into all our harbours, and to the highest port of entry for foreign vessels, so that this article gives no new privilege to such vessels. But we have obtained by the treaty a *free inland trade with Canada*. We can navigate all the rivers and lakes—we can go down the St. Lawrence to Quebec. Articles are to be carried from the United States to Canada, and vice versa, subject to the lowest duties ever paid on these articles;—and peltry pays no duty at all.

This free intercourse will be highly advantageous to our citizens on the frontiers. They will be deeply concerned in the fur-trade, and we shall obtain furs much lower than formerly. At the same time the inhabitants on our frontiers will find a market at Montreal or Quebec, and bring back in return such heavy articles as will come cheaper, through the St. Lawrence and the lakes, than through the Atlantic ports.

This trade is extremely wanted by our frontier settlements, which are every day increasing. Their distance from the Atlantic lays them under heavy disadvantages, which the treaty before us alleviates, as much as possible, by taking off all restrictions on inland trade. And just in proportion to the number of people in the United States, who are to carry on and partake of that free trade, will be the benefits of this article of the treaty.

It should be considered further, that the citizens of the United States are taking up large tracts of land in Canada, and emigrating to that province.—This business is encouraged by the British government. But while the people who settle in Canada, for the purposes of trade or agriculture, become subjects of Great Britain, they retain their attachment to the United States; and from this circumstance important and beneficial consequences may hereafter be expected.

Articles 4 and 5.

These articles have not been the subjects of much censure; perhaps the mode prescribed for ascertaining doubtful points, relative to the boundary line of the United States, is as eligible as we could wish.

Article 6.

This is a most important article. It involves in it the primary and principal causes of all the differences now existing between the two countries.

Before the war, most of the trade of Virginia, and a great portion of that of the states to the southward, was carried on by foreigners. I am well assured that it was esteemed in Virginia, disreputable for planters and their sons to engage in trade. This prejudice, which was, like a thousand follies adopted by Americans, introduced from Europe, and a remnant of the aristocracy of the feudal system, operated powerfully to keep trade in the hands of foreigners.

The British merchants availed themselves of the prejudice. They were the agents or factors for the planters, and gave extensive credit. The confidence created by this friendly intercourse, together with the prodigal habits of many planters, extended this credit to a very large amount.

The war necessarily suspended the payment of these debts. The treaty of peace provided that no lawful impediments should be interposed to prevent the recovery of those debts. The carrying away of the negroes by the British, when they left New-York, exasperated the southern states: they considered it as an infraction of the treaty, and, as such, an excuse for violating it on their part. They passed laws which were impediments to the recovery of old debts. The British ministry, on their part, detained the western posts, as security for those debts, and damages sustained by the British merchants, in consequence of those legal impediments. Here the parties are at issue—here are differences between the two nations which can be settled only by the sword or amicable adjustment.

This is precisely the situation of the parties.—Neither party will yield the point of *first infraction*; and paper correspondence, to prove the point, has been exhausted, without giving any satisfaction to either.

The issue then is, the alternative of *war* or *accommodation*. But if we enter into a war, will this settle the points in dispute? Not at all. A ten years war, and a waste of half the blood and treasure of the United States, would leave the controversy just where it now is—to be settled by negotiation.

It is no answer to these remarks, to make outcries about British injustice. Admitting this in the fullest extent, that injustice is to be refrained only by the sword, or amicable agreement—we have our choice.

Is it not prudent and wise to make an effort to adjust all differences by a reference to equitable principles? What better mode could be devised to settle differences so numerous, so complicated, as those which exist between the two countries, than by Commissioners fairly and impartially appointed? This is the mode which has been practiced for centuries, in like cases. In looking into collections of treaties, I find the same mode prescribed in all cases of difficult disputes between nations; and the universal practice of resorting to this mode, is a proof that none better has yet been devised.

But it is said, “this mode of adjusting sums due to British creditors, is unjust towards those states which have interposed no lawful impediments in the way of recovering such debts; as they must bear a part of the burden, and thus suffer for the delinquency of others.”

This objection is susceptible of a very satisfactory answer.

Our capacity, as a nation, arises from the union of the states under the constitution.

All our intercourse with foreign nations is conducted by the *United States*, in that national capacity. Foreign nations cannot negotiate with any of our individual states; and the states are expressly

prohibited, by our constitution, from entering into any treaty, compact, or agreement, with any foreign power.

The moment our union took place, the United States became, to a certain degree, responsible for acts done by states or individuals towards foreign nations. This responsibility results from the national capacity derived from the union.

Whatever hardships this may impose on particular states, it is a necessary consequence of the character we have assumed among the powers of the earth; and indeed it is much more than counterbalanced by the protection and security derived from the same national capacity.

CURTIUS.

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NUMBER IV.

Article 7.

THIS article is said to be wholly exceptionable, because it places at too great a distance, compensation to which our citizens are entitled, for the most atrocious acts of piracy.

I will admit what my antagonists please to allege against the injurious treatment of our vessels at sea by British privateers. I know that the right which the law of nations gives to powers at war, of stopping and examining neutral vessels, and seizing them when they have contraband goods on board, has been abused, and that great injuries and insolence have been suffered by our seamen; and great losses have been incurred by our merchants by illegal detention and condemnation. My own feelings are keenly alive to such abuses, and I wish we had the means of vindicating our rights in a more ample manner.

But let me observe, that these injuries do not excite greater resentment in the breasts of Americans, than laws of our states, suspending the recovery of old debts, or making lands, goods, and depreciated paper currency, a legal tender for these debts, awakened in the breasts of the British nation. As to every thing of this nature, anger, resentment, and disgust are reciprocal: and ill usage alleged on one part, is retorted with ill usage in some other particular on the other part. There is no common tribunal, to decide this question, Who has been guilty of the greatest outrage on faith and honesty? We are satisfied that the charge belongs to Great Britain—they are as confident the blame is on our side. It is idle to waste time in criminating each other—Our interest and happiness, and those of Great Britain, demand an amicable accommodation, and to that point all our efforts should be directed.

The time which will be required to examine the claims of American merchants for losses, is certainly to be regretted. But how can this delay be prevented?

If we admit the right of powers at war to stop neutral vessels and examine them, a right which has never been disputed, do we not

admit the right of ascertaining whether such vessels have contraband property on board or not? How shall this point be settled, where suspicion occurs? The papers of neutral vessels are not always to be relied on. We all know that subjects of nations at war, procure neutral vessels and neutral names to cover property of their own.— This happens every day. We all know that contraband goods are often concealed in bales or casks of goods not contraband. We all know that masters, supercargoes, and seamen, will evade direct answers, equivocate, and sometimes men are abandoned enough to perjure themselves in a court, to save property of their own or their friends.

What says the law of nations on this subject? Vattel, b. 3. ch. 7. lays it down with great precision. "Without searching neutral ships at sea, the commerce of contraband goods cannot be prevented.— There is then a right of searching. At present a neutral ship refusing to be searched, would, from that proceeding alone, be condemned as lawful prize. But to avoid inconveniences, violence, and every other irregularity, the manner of the search is settled in the treaties of navigation and commerce. According to the present custom, credit is to be given to certificates and bills of lading, produced by the master of the ship, *unless any fraud appear in them, or there be very good reason to suspect their validity.*"

The mode of searching neutral vessels is regulated by our treaties, with the States General, with Sweden and France, in which it is stipulated that credit shall be given to the ships' papers. But we have had no such treaty with Great Britain, and the treatment of our vessels depends on the law of nations, or the licentious will of the masters of privateers.—Wherever there is suspicion of fraud in the papers, the vessels may, by the law of nations, be carried into port for examination and trial; and it is probable, this license has been carried to a most unwarrantable length, during the present war. The general expression, *cause of suspicion*, gives an almost unbounded latitude to those unprincipled men, who are usually engaged in the detestable business of privateering.

Such is the situation of our trade, in the present unhappy war. But making every allowance for ill usage, it must be admitted that great numbers of American vessels have, according to the laws of nations, been justly seized, and carried into port for trial. When this is the case, what mode of process must be had to determine what property is liable to confiscation, and what is not?

Our existing treaties with other nations admit the right of trial in the admiralty courts of the nation capturing the neutral vessels; and in these treaties, there are stipulations that bulk shall not be broke, until the cargo has been landed in presence of proper officers, and no part of the cargo sold, till legal process shall have been had, and sentence pronounced against the goods liable to condemnation.

Must not the same process be had in the British courts, though we have had no treaty with the nation? Where is the ground for maintaining a different doctrine?

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We must then admit the principle, that American vessels seized and carried into port, with prohibited goods on board, or on suspicion of fraudulent papers, are subject to the usual legal process of British Courts of admiralty. However hard this may appear, the effect flows directly from the state of war and the law of nations.

If we admit this principle, we admit all its consequences. If our vessels are liable to legal process, it is necessary that all the documents relative to the question of *legal capture or not*, should be produced and examined. And when we consider the distance from which many of these documents are to be procured, and the numerous cases that have arisen, who can say that final decisions can be had on the American claims in a moment? And in cases which involve equitable considerations, not proper for the decision of courts of law, what mode could be devised, more eligible for the claimants, than that of commissioners? Is the term of eighteen months too long for receiving claims? It appears to me the time is not unreasonably long; and even the length of the time is favourable for the claimants.

It is said that the British government ought to advance a sum on account, to be distributed among the sufferers. This suggestion seems to be grounded on an idea that has prevailed, that such a sum has been advanced by Great Britain to Denmark and Sweden—an opinion which, I have authority to say, is not well founded.

But to this measure there are insurmountable objections. The impracticability of doing even partial justice, before it is ascertained who are the objects of it, is merely chimerical.

Many of my countrymen are great sufferers, and I trust their just claims will be supported, and their just damages paid. But a summary trial might do great injustice—the innocent might suffer, and the guilty obtain reparation.

On the whole, the time and mode appear as eligible, as justice and the nature of the cases will admit.

With respect to the stipulation in the last clause of the 7th article, that engages payment for certain vessels taken by privateers within our jurisdiction or by vessels armed in our ports, I trust no man, who has a regard for honesty or national character, will ever object to it. I am one of those American citizens, that hold it as a duty for us to preserve a strict neutrality in the present war, and honourable in our government to make indemnification for every illegal proceeding of the nation and of individuals, towards foreign nations. Let him who demands justice, do justice himself. The amount of the sums to be paid, does not vary the principle, nor should it vary our conduct as a nation. I hope and trust the character of the United States, will never be stained with a violation of faith and justice, even towards the corsairs of Barbary. Self-defence, only, will authorize any nation in arresting or withholding the property of individuals, even of an enemy nation. To withhold or to authorize the withholding of private property, contrary to law, is to degrade our nation to the rank of Algerines.

POSTSCRIPT to No. IV.

TO convince the public more fully of the little ground for objection, on account of delays in admiralty courts, adjusting differences between nations, I will make several extracts from the correspondence between our minister at Paris, and the French minister for foreign affairs. This correspondence was published in January, 1794, by order of Congress. It relates to the captures of our vessels by French privateers, under the decrees of the Convention of May 9th, and July 27th, 1793, in express violation of our treaty with France.

Letter from Mr. MORRIS, Oct. 12, 1793.

[TRANSLATION.]

Paris, the 12th Oct. 1793.

The Minister Plenipotentiary of the United States of America to the Republic of France, to M. Deforgues, Minister of Foreign Affairs.

SIR,

I HAVE the honour to send you herein inclosed, the copy of a letter, which has been addressed to me by citizen Postic, a lawyer residing at Morlaix. It appears, that in the proceedings of which he has given an account, there are extraordinary irregularities; and I think it my duty to inform you of them, as on the justice of tribunals often depends the salvation, and always the prosperity of a state.

I request of you at the same time, sir, to permit me to make two general observations on the whole of this business; one of which applies to the organization, and the other to the proceedings, of the commercial tribunals. The referring of questions on sea prizes, to these tribunals, appears to me dangerous, since they involve the interpretation of the treaties, and the application of the law of nations: consequently of peace and of war. Now we may be permitted to entertain some doubt as to the knowledge of the judges, and we ought besides to fear, lest they may be interested, as owners of privateers, in the questions which are submitted to them.

But whatever may be the organization of the tribunals, it appears to me essential, sir, that in their proceedings they should receive all the claims which may be made to them; that they should even invite without waiting for the authority of persons interested, who are often at the distance of one thousand leagues. The jurisdiction of the tribunals within whose cognizance are the questions of prize, is in rem. They take possession of the things, and by that means render them-

selves responsible for it. Now as the tribunal, which is the depository of the thing, ought not dispossess themselves of it, without a formal authoritative act of the true proprietor, it is certainly their duty, not only to admit, but also to seek proofs, which may establish to whom the property truly belongs. This is a double duty towards the neutral proprietor, and towards their own nation: for every government which permits its citizens to fit out privateers, arms with the destructive sword of war, hands which are interested to extend its ravages, and renders itself responsible for the abuses which result from so dangerous a delegation of sovereignty. For the purpose of repossessing them, the admiralty tribunals have been established throughout the different nations of Europe. In these tribunals, the government furnishes the means of information, by the facility with which it admits therein every species of claim. It preserves, by appeals, the right of deciding, in the last resort, on the contests which shall therein arise: and it gives the necessary time to enlighten its conscience on thorny questions, before the pronouncing of a sentence, which might extend or prolong the horrors of war.

These, sir, are the questions which experience has dictated to me. They daily make on me a more lively impression on account of the claims addressed to me by my countrymen, of which I have communicated to you a very small part. I always send to the tribunals the injured persons, by giving them the most positive assurances that they will there obtain complete and prompt justice.

I have the honour to be, &c.

GOUV. MORRIS.

Extract from the French Minister's answer to Mr. Morris, dated Paris, Oct. 14, 1793.

"THESE observations, sir, which you are too just not to appreciate, apply to the greater part of the claims, which you have addressed to me for some time. I have done, with respect to several of them, all that depended on me, in order to obtain in favour of your countrymen, an exception of the general measures, adopted with regard to neutral nations. I have used among others, all the means with which your letters furnished me, to have restored the ship *Laurens*; but I have met with insurmountable obstacles, in the established laws, and in the opinion of the commercial tribunal at *Havre*. The tribunal has neglected nothing to render justice to the owners of this vessel. It has consented, among other things, to have translated 361 letters, merely to prove, in the most authentic manner, the property of the cargo. The interested have, besides, avowed themselves; that they had neglected an essential formality required by our laws.

"We hope that the government of the United States, will attribute to their true cause, the abuses of which you complain, as well

as other violations of which our cruisers may render themselves guilty, in the course of the present war. It must perceive how difficult it is, to contain within just limits, the indignation of our marines, and in general of all the French patriots, against a people who speak the same language, and have the same habits, as the free Americans. The difficulty of distinguishing our allies from our enemies, has often been the cause of offences, committed on board your vessels; all that the administration could do, is to order indemnification to those who have suffered, and to punish the guilty."

Let any candid man view the whole of the transactions of England and France, and say, whether in proportion to the number of vessels captured, the delays and difficulties have been greater in England than in France.

N. B. Mr. Jefferson's letter on the right of nations at war, to seize enemy's property in neutral bottoms, will fall more properly under the 8th number of this discussion.

CURTIUS.

NUMBER V.

Article 8.

THIS article solely regards the mode of defraying the expenses of the commissioners, and supplying vacancies. No objection appears against it.

Article 9.

This article gives the present holders of lands in the two countries the right of disposing of them, &c. without being considered as aliens.

In the first abstract of the treaty which was published, this article was erroneously stated, as extending to give the rights of citizens to any and all British subjects purchasing lands hereafter in the United States. The truth is, the article extends only to persons holding lands at the time the treaty was signed, and some provision of this kind was necessary.

To understand this article, it must be remembered, that the United States were settled from the British dominions, and till lately, remained a part of the nation. Some persons in the United States now hold lands in England, which they inherit from branches of their families which are extinct in that country. Great numbers in the British dominions hold lands which they formerly enjoyed as inhabitants of the colonies, and which were not confiscated. Others have been compelled to take lands in payment of debts.

The circumstances of these two countries differ from those of all other countries. They were formerly *one country*, and linked together by a variety of individual interests.

These private interests have been mostly created under one common government. They originated when the countries were one in

empire, and without any fault on the part of the persons interested. Was it not reasonable and just, that interests thus created should be secured by the provisions of a treaty which was to adjust all old differences? Most certainly it was.

It has been said that this article infringes the rights of the states. As I have never seen any argument to prove this assertion, it will be sufficient to answer it by another assertion, and say it does *not*.

It is said also that article impairs the obligation of private contracts. As this is asserted without explanation or proof, it will be passed without notice.

The danger of aliens holding real estate in any country, is an idea that was propagated over Europe in feudal times, and modern writers on law have continued to transcribe the reasoning on that subject, from one generation to another, as they have on usury, intolerance, natural allegiance, and many other ancient errors, without allowing for the ameliorated state of society and civil policy. The danger, however, is now a mere bug-bear, and deserves no notice. Men may hold real estates, without the other privileges of citizens; and it tends to promote commerce to admit foreigners to this privilege, under suitable restrictions.

The only danger that now exists in an unlimited privilege of this kind is, that persons might possess themselves of large estates, and spend the income abroad, as is the case with the planters in the West-Indies and the Irish nobility. Should this ever become an evil of extent, it will require legislative remedies.

But it is an important idea which the United States should cherish, that men are never enemies to a free country. Men may scramble for offices, and oppose the administration of a government from selfish views—but if foreigners find peace, liberty, and safety in our country, they will hardly give themselves the trouble of subjecting us to other governments. A liberality in our measures towards foreigners, strict justice and impartiality in our laws, will make all parties our friends, and this is one great object of the present treaty.

Decius attempts to make an invidious comparison between this article of the treaty and the eleventh article of our treaty with France; which, he says, is all in favor of the Americans, because it abolishes the droit d'aubaine in their favour, and gives the French nothing which the law of nations did not secure them before. To prove this he goes into a *common law* explanation of the terms used in the French treaty—*goods moveable and immoveable*.—The words of the eleventh article of the treaty with France are, "The subjects and inhabitants of the United States shall not be reputed aubains in France,—they may dispose of their goods, moveable and immoveable, by testament, donation, &c."—*Immoveable goods*, *Decius* says, mean chattels real, but not estates in fee, and quotes Sir Edward Coke and Blackstone.

If *Decius* is a lawyer of great ingenuity, as he doubtless is, he ought to be very cautious to conceal his subtleties. His far-fetched arguments to make the French treaty a mere act of benevolence on

the part of Louis XVI. and the present *treaty* a mere sacrifice on our part, will not, ultimately, succeed.

The explanation given by *Decius* to the terms *immovable goods* is unequivocally wrong. Does not *Decius* know, that a treaty with France is not to be interpreted by the common law of England? Does he know that the terms *bona immobilia*, immoveable goods, are borrowed from the *civil law*; that the *civil law* is the basis of almost every municipal constitution in Europe? Does he not recollect that the municipal laws of France were derived from that source, and that terms used in that country are to be explained by the *civil law*? Is not a treaty with France to be interpreted according to the legal import of the words in that country?

Let *Decius* then be apprized, that *bona immobilia* is a technical phrase as old as the *civil law*, and that it comprehended formerly, and still comprehends, in most countries of Europe, real estate, that is, a freehold estate, and lands in fee, as well as chattels, real. When used by writers on the law of nations, the phrase has that sense.

"Every state has the liberty of granting or refusing foreigners the power of possessing lands or other *immovable goods*, within its territory."—Vattel, b. 2. ch. 8: In the same page are these expressions: "If the sovereign does not permit aliens to possess immoveables, no one has a right to complain of it, as the sovereign may refuse strangers the power of possessing immoveables." So also in b. 3. ch. 5. sec. 76.

The foregoing paragraph relates to moveable goods, but the rule is different with regard to *immovables*, to *estates in lands*, as they all, in some measure, belong to the nation, are part of its domain, &c. and the proprietor being always a subject of the country as possessor of a parcel of *land*, and *goods of this nature* do not cease to be the enemy's goods, though possessed by a neutral stranger. "Nevertheless, war being now carried on with so much moderation and indulgence, safe-guards are allowed to *houses and lands* possessed by foreigners in an enemy's country. For the same reason, he who declares war does not confiscate the *immovable goods* possessed in his country by his enemy's subjects. In permitting them to purchase and possess *those goods*, he has, in this respect, admitted them into the number of his subjects. But the income may be sequestrated, for hindering the remittance of it to the enemy's country."

Bynkerhoek, *Quest. Jur. Pub.* 1. c. 7. uses the word *immobilia* in the same sense, and lays down the doctrine above quoted from Vattel.

But the most direct authority in point, is from Domat's *Civil Law*, Preliminary Book, title 3. sect. 1. the following passage is express: "Immoveables are all the parts of the surface of the earth, in what manner soever they are distinguished, whether into places for buildings, or into woods, meadow, arable lands, vineyards, orchards, or otherwise, and to whomsoever they belong."

In sect. 2. of the same title, Domat expressly enumerates lands, whether *allodial* or charged with quit rents, among *immovables*.* As

* It deserves remark, that the French word "biens," goods, comprehends estate in land. This sense is borrowed from the *civil law*.

this writer was a French civilian, he doubtless used the word in its technical sense, as understood in France, and by this sense must our treaty with France be interpreted. Indeed, whatever, may be the opinion of lawyers here, I have no doubt that, by the 11th article of that treaty, French citizens are fully entitled to hold real estate in the United States, and American citizens, in France.

In all our other treaties, the article in question restricts the subjects of the two countries, to the enjoyment of *personal estate or effects*, in the jurisdiction each of the other. Most nations retain the old feudal jealousy respecting foreigners possessing lands in their countries. But the liberality of France in her treaty with America, ought to be an example to all nations; and the United States, of all countries on earth, ought to reject all such remains of feudal prejudice. I trust the explanation before given of the terms *immoveable goods*, will be satisfactory; and will evince the truth of what was advanced by the writer of "Candid Remarks on the Treaty," that the 11th article of our treaty with France amounts to a *total abolition of alienism*, between the two countries.

Unless *Decius* succeeds better hereafter in "detecting fallacies," he may as well let his pen rest, or to employ it more to his own reputation. His writings on the subject, so far as they have hitherto appeared, are little more than a series of misrepresentation.

CURTIUS.

NUMBER VI.

THE 10th article of the treaty provides that "neither the debts due from individuals of the one nation to individuals of the other, nor shares nor monies which they may have in the public funds, or in the public banks, shall ever in any event of war or national differences, be sequestered or confiscated." The faithful observance of the restriction contained in this article is so much for our interest as well as honor, that we should naturally have concluded, the most determined enemies to any good understanding with Great Britain, would at least have passed it by in silence. But so strong are the prejudices of a certain party amongst us, or so virulent their passions, that they have given to almost every paragraph in the treaty an equal condemnation. *Decius* has complained of this article as being, like many others, exclusively advantageous to England, and as arresting from our government a lawful and powerful weapon of war. I am greatly mistaken, however, if it is not completely defensible against every part of this accusation.

It is true that by the law of nations, as existing a century ago, the debts owing from one nation to another, were legal objects of sequestration in war. "But at present, (to use the language of Vattel, b. 3. ch. 5. sec. 77.) in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigour.

And as this *custom has been generally received*, he who should act contrary to it, would *injure the public faith*; for strangers trusted his subjects only from a firm persuasion that the *general custom* would be observed. The state does not so much as touch the sums which it owes to the enemy. Every where, in case of a war, funds credited to the public, are exempt from confiscation and seizure." This clear explanation of the modern law of nations, as far as it relates to public funds, is also to be found in a report of the English judges, in the year 1753, in answer to the Prussian memorial; a report of much authority, which Vattel does not scruple to call an excellent piece on the law of nations. "It will not be easy, say the judges, to find an instance where a prince has thought fit to make reprisals upon a debt due from himself to private men. There is a confidence that this will not be done. A private man sends money to a prince upon the faith of an engagement of honor, because a prince cannot be compelled, like other men, in an adverse way, by a court of justice. So scrupulously did England, France, and Spain adhere to this public faith, that, even during the war, they suffered no enquiry to be made whether any part of the public debts was due to the subjects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours."

But these principles have received sanction from a source, which the adversaries of the article will be disposed to admit as of still greater authority and respectability, I mean from the proceedings and decision of the French Convention. It appears from Paris papers which in April last were translated and republished in the *Aurora*, that in the sitting of the convention, Dec. 29, 1794, after the house had passed the order of the day, "Johannot read the following articles of the projected decree, which were as follow:—(here follow five articles.)

Art. VI.

"The decree concerning the sequestration of the property of the subjects of the powers at war with the Republic is annulled. Such sums as have been paid by French citizens into the treasury in consequence of those decrees, will be reimbursed." This article occasioned some debate. Gaston was against it. Cambon observed, that the law of sequestration was extorted from the convention by the faction of Fabre d'Eglantine and Danton, but ought you to return the property of the Spanish to the despot of Madrid? Thiriot agreed with Cambon. Colombel desired the assembly to annul only the sequestration of the sums due for commercial relations. Ranel shewed that the law of sequestration had been urged by the foreigners themselves and stockjobbers, that it had prepared the ruin of commerce, and broken off, against the right of nations, the obligations of merchants in different states; though the powers at war with the Republic should not repeal the sequestration of French property, it is our duty to set the example. The sixth article was maintained as reported."

I have thought it not useless to give a brief sketch of this very interesting proceeding in the French convention; because it not only

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establishes what I contend to be the law of nations, but exposes the injury and injustice of departing from this part of it even in the midst of the most violent war. And it ought to be remarked to the honor of our country, that during the course of our revolution, notwithstanding the warm resentments it called forth, we never attempted to annul the British debts, but finally agreed to the 4th article of the treaty of peace, "That creditors on either side should meet with no lawful impediment to the recovery of all bona fide debts heretofore contracted." So also in the Amsterdam and Antwerp loans, we expressly stipulated, that they should not be impaired on the event of a future war between the two countries.

I think it will be evident from the authorities which I have adduced, that the sequestration and confiscation of debts and public stock, are not *now* the customary and admissible weapons of war. The ancient maxims on this head are justly and generally exploded by civilized nations, and the interests of commerce in this, as in many other instances, have happily set bounds to the intemperance of Gothic rage. In stipulating to a formal renunciation of this mode of warfare, we have done no more than what we were bound to do by the acknowledged dictates of good faith. We have renounced a weapon which our own sense of right and policy had before forbidden us to use. If, however, it should be supposed that occasions may sometimes arise in which it would be expedient for the purpose of more effectually wounding our enemies, to attack public or private contracts, then let me ask, what difficulty has the treaty thrown in the way? The same fierceness of character which would lead us to violate the received maxims of war and national duty, would readily set aside the moral obligation of this article. Its only effect arises from laying down in the rational season of peace, the rule of conduct in war, and by superadding an express, to the implied, sanction of good faith.

But it is alleged that this article has no actual reciprocity, because all the debts are due from us either as a nation or as individuals, and that our citizens hold no British stock, and have few or no demands upon their subjects. If, however, this species of confiscation be really repugnant to the present usage of nations, and is unjust and impolitic, the renunciation was equally fit and proper, whether it was mutual or not, and in proportion to the means we had of using this mode of warfare, does the sacrifice redound to our credit and character. But the truth is, that the beneficial operation of this article is principally on our side. It is much more satisfactory and necessary to us, than it is to Great Britain, because it tends directly to foster and strengthen the credit of the United States, both public and private, a circumstance of the utmost moment to our prosperity as an infant nation.

It is by force of public credit, that our government has attained to its present stability, and has so many competent means of acting with efficacy whenever the public exigencies require it. Credit, as a good judge of our interest has observed, is *the invigorating principle of this*

country. Any addition to it, however small, will give much greater power of self-defence, than the little perfidious and exploded resource of confiscating debts or violating the pledged negociability, and sacredness of public stock. Nor is private credit of much less utility in a country which has so little capital, in proportion to the extent and variety of the demands for it. We have immense territories of waste land to clear and settle; and abundance of raw materials for nourishing the manufacturing and mechanic arts: but to answer these ends, requires an unceasing supply of capital, or credit, which in most cases is its eligible substitute. In short, there are no people upon earth who have so many inducements as the United States, to declare unequivocally to the world, that the claims of their creditors shall always be deemed sacred in peace and in war.

After taking such a full view of the subject, we cannot withhold our astonishment that Mr. Burr, and Mr. Tazewell, should each of them, in the senate, by formal propositions of amendment, single out this article, among others, as a proper object for censure and repeal.

There is one more objection to this article, which merits some attention for its singularity; and because it places in a strong light, the extreme jealousy or predetermination to condemn, with which every part of the treaty has been read. It is apprehended or rather pretended to be, that the king of Great Britain will engross all the shares of our several American banks, and thereby obtain the entire controul of them and fill them with British directors. It is just as rational to suppose that he will buy up all our goods and chattels, and thereby put a total stop to agriculture and manufactures. If the king of Great Britain is disposed to expend his money for the disturbance of our government, there are much more effective methods of doing it than by the indirect means of our banks. Such an apprehension is ridiculous in the extreme, and cannot surely impose on the most credulous mind, especially when it is known that the several bank charters expressly provide that *all the directors shall be American citizens*, and that no stockholder shall be entitled to vote for a director unless he either *attends in person or resides within the United States*.

We have now finished an examination of the first ten articles of the treaty; and which form the permanent part; for the commercial articles which follow being of more difficult adjustment, and their effect not being so easily ascertained by theory as experience, were wisely limited to a short period. It has often been asked, and with an air of conscious triumph, what single equivalent have we got for so many and great concessions on our part? Let us review for a moment the ground we have gone over, and see if an answer cannot be given which will satisfy all the real friends to the interest of our country.

We have gained all the western posts without bloodshed—we have obtained a promise of complete indemnity for all unlawful spoiliations on our trade, as soon as an impartial tribunal shall have ascertained the amount of our losses—we have obtained a liberal and permanent

commerce between our frontiers and the whole frontier of the British provinces in America, and we have by these means removed the principal sources of national complaint against Great Britain, and secured to our country the continuance of the blessings of Peace. And what have we conceded on our part? We have promised to pay such losses only as British creditors have suffered in their debts, by occasion of legal impediments in this country, as soon as an impartial tribunal shall have ascertained the amount of such losses, and to pay for such British vessels only as we have suffered, without using the means in our power to prevent it, to be captured within our territory, contrary to the law of nations. And we have also allowed a liberal and permanent commerce between Canada and our interior possessions. These are the material parts of the permanent treaty, and it appears that both nations have conceded, in those instances, what, in justice and equity, they ought to have done, and to have manifested a mutual disposition to forget past animosity, and to live upon friendly terms hereafter.

CURTIUS.

NUMBER VII.

IN examining the commercial part of the treaty, we are not to enquire, as we have heretofore done, into matter of strict right. Arrangements of commerce must depend upon the good will and pleasure of the contracting parties. They are things of imperfect obligation only, and cannot be preceptorily demanded. Every nation will accommodate so far, and so far only, as suits her interest and policy, and it will always be a question to be determined in found discretion by other powers, how far *their* interest or policy will admit of a connexion, on such terms as can be obtained. Commercial propositions may be granted, acceded to, or rejected by either party, without affording to the other any just cause of war. It is therefore a matter for consideration, how far the remaining articles of the treaty are admissible or not, upon the principles of public expediency.

Although the 12th article may now very properly be left out of discussion, yet since it is the fashion to reprobate it in the most unqualified terms, and to use it as an instrument for inflaming the public passions, as well as to carry disgrace to the other parts of the work, it may not be amiss to give it some examination.

It is well known that every European nation has endeavoured, more or less, to monopolize to itself, the commerce of these colonies, and upon that account prohibited the ships of foreign nations from trading to them, and has prohibited them from importing European goods from any foreign nation.—This has been the case with Denmark, Holland, France, Spain, Portugal, and Great Britain, although the manner in which this monopoly has been exercised in those different nations, has been very different. Great Britain has been as much distinguished as any of her neighbours, during a century

past, for a pertinacious adherence to the monopoly system, and it has become one of the rivetted maxims of her policy, to regard the exclusive enjoyment of her colony trade, as an essential nursery of seamen, and a constant support of her naval power. So late as the year 1783, Lord Sheffield gave his sanction to this ancient doctrine, and said, that it would be impolitic in Great Britain to admit American vessels into the British West India islands, and we see with what great allowance we ought to compare the privileges conceded in this article, with the theory of an unlimited commerce.

The French convention, during their present revolution, have recognised and adopted the English policy. This appears from the eloquent report of Barrere, upon their navigation act, which is intended for perpetuity, and is declared to be the basis of their policy and commerce. The act ordains, that no commodities shall be imported into France, but in French vessels, or in those of the country which produced the commodity; and that foreign vessels shall not transport from one French port to another, any commodities of the growth or manufactures of France or her colonies.—And, notwithstanding the necessities of the war may have induced the French to a temporary departure from this act, we may be assured, the principles advanced in the report, are too generally and powerfully felt, not to induce them to adhere to it on the return of peace, as the sure basis of their maritime strength. “The prohibitions of a navigation act,” says Barrere, “should be as extensive as they could be made, for without them it would be a mere illusory measure. The English,” continues he, “from whom we borrow this system, have given it that extension, and, indeed, they are to be applauded for it.”

When we consider the value that is attached to the carrying trade, in the opinion of the European nations, we have no reason to be disappointed that Mr. Jay could not get access to the British Islands on better terms. It was to have been wished that he could have got the admission of vessels of any burden into this trade, but this was undoubtedly beyond his power. While Great Britain consented to admit us to trade to her islands in our own bottoms, we may be assured she was determined to do it in such a manner as not materially to affect her carrying trade, the source of her security and greatness. This must have been the reason with her for restricting our vessels to 70 tons and under (and indeed it is understood that the treaty was kept open for some time on the part of Mr. Jay, while he was endeavouring to extend this clause) and from carrying any molasses, sugar, coffee, or cotton, either from her islands or the U. States, in vessels of the United States, to any where but this country. It will be asked why Great Britain should wish to restrain us from carrying any of these articles to Europe, provided they are not the growth of her islands? the answer is, that nothing short of a total prohibition, would in her opinion, effectually secure her carrying trade, since her own and foreign sugar or coffee would not easily be distinguished, and any modification would have opened a wide door to elude the whole intent of the restraint,

would have rendered the whole prohibition, to use the words of Barrere, *a mere illusory measure*.

It is not my intention to vindicate either the justice or liberality of this policy on the part of Great Britain. It is sufficient to say that it appears to have been her inflexible policy, and to which she thought herself bound in duty to adhere. The only question is, whether there was any reasonable prospect at present of our obtaining better terms; and, if not, whether it was not upon the whole for our interest to accept of the trade upon those terms? This may yet be a doubtful point, though I acknowledge a considerable objection to the 12th article as it now stands, that is, the prohibition to carry melasses, sugar, cotton, &c. to Europe, is so general as to include those articles even of our own production. This prohibition, with respect to coffee and sugar in particular, it is said, would be very inconvenient to us during the present war, though in time of peace it would be of no consequence.—The 12th article does not prohibit us from exporting any of those articles from the other West India islands to any part of the world. We are only restricted from exporting them from the British West-India islands (except to the United States) in order to preserve to the English their carrying trade, and from the United States in order to preserve the other restraint from evasion.

It ought not to be forgotten that this article was limited to two years from the conclusion of the present war, and then the contracting parties were to endeavour to regulate this trade, with a view to their mutual advantage, and *the extension of commerce*; and, if they should not agree on new arrangements, all the articles, except the first ten, were to fall to the ground. At the end of the two years, we should most probably have entered on the negotiation with much less difficulty than at present.—The British West-Indies should have been for some time accustomed to the benefits of our trade, and have got into the habit of placing their dependence as well as their affections upon it; while the mother country would have been a little familiarised to our trade with her colonies, and her jealousies and prejudices would probably have greatly diminished with regard to it. We should have renewed the discussion with all those advantages which we now want, and the chance is, that the intercourse would not only have been continued, but been attended with a favourable enlargement. And if eventually the negotiation should have failed, and left only the ten first articles of the treaty remaining, yet those articles, as we noticed in the last number, are well worthy of the mission, since they restore tranquillity and justice to our country.

The 13th article of the treaty relates to our commerce with the British East-Indies, and all the advantages which are conceded to us by this article, are without the smallest pretended equivalent on our part. The privileges of this article are not denied by those who have been most distinguished for their indiscriminate condemnation of the whole treaty. *Decius* complains, however, that our commerce was on a better footing before, by the mere permission of the British government. It is sufficient to observe in answer to this, that the

same permission can still be continued : there is nothing in this article which prohibits the India coasting trade. It would have been unnecessary, for such prohibition existed before. The article barely declares, that none of its privileges shall be construed to extend to the coasting trade. In other respects it leaves that trade just as it found it, under the precarious pleasure of the British government. But prior to this article, our whole intercourse with British East-India was a matter of favour, and surely it is a very important consideration that we can now claim it as a matter of right. Mr. Jefferson, in his report on the privileges and restrictions of our commerce in foreign countries, seems to have thought very differently from *Decius*, on the subject of a precarious trade. He considered a commerce depending on the sole discretion of a foreign power, as a real inconvenience. "The disadvantage (he observes) of a tenure which may be suddenly discontinued, was experienced by our merchants on a late occasion. The embarrassments of the moment were great, and the possibility of their renewal lays our commerce to England under a species of discouragement. The distinction is too remarkable not to be noticed, that our navigation is excluded from the security of fixed laws, while that security is given to the navigation of others."

These remarks of Mr. Jefferson are solid; and they out-weigh a thousand town-meeting resolves. *Without this treaty our trade to every British port can be interdicted by a nod of the British executive.* But by this treaty, our commerce to England and the East Indies, which now rests on the will of the ministry or the colonial government, is placed on the footing of permanent right. In this respect; we gain an immense advantage—an advantage that we do not enjoy to the same extent, with any other nation upon earth.

The commercial concessions on the part of Great Britain, which we have been just reviewing, are not only equal, but superior to those which are to be met with in the commercial treaties between her and other powers, for more than a century past.

The treaty between Great Britain and Spain, in 1667, and which for its advantages in matters of trade, was confirmed in 1713, takes special care to limit the commerce of the two nations to the territories, provinces and islands, *to which trade and commerce had before been accustomed.* And yet two years afterwards his Catholic majesty, as an evidence of his inclination to cultivate friendship, does indeed allow the English to gather salt in the isle of Tortugas, *because they had enjoyed that liberty in the reign of Charles II.*

In the treaty of commerce and navigation between Great Britain and Russia, which was made in the year 1766, the friendly privileges of trade between the two powers, were confined to such places *where leave is granted to the subjects of other nations.* In the same spirit of jealousy and colony monopoly, which appears but too prevalent throughout Europe, Russia takes care in her treaty of amity and commerce with Denmark, in the year 1782, to except from the commercial grant, her ports of the Black and Caspian seas, and all her other possessions in Asia—and the king of Denmark, on his part,

excepts also his possessions in America, and elsewhere out of Europe. Nay, in the more recent treaty between France and England, in 1786, and which was made with the express view of promoting a more liberal intercourse, the trade is limited to each others territories *situated in Europe.*

Nor have our own treaties of commerce with the powers of Europe been more favoured in this respect. In the treaty with France, on which so much unqualified applause has been bestowed by the enemies of the instrument under consideration, there is no very extensive admission to her colonial possessions. France indeed grants us as a matter of favour, one or more free ports in Europe, and *the free ports which have been and are open in the French islands in America.* And in our treaty of commerce with Holland, we expressly stipulate to leave to the Dutch the *peaceable enjoyment of their rights in the countries, islands, and seas, in the East and West Indies, without any hindrance or molestation.* This is, indeed, stipulating for the perpetuity of their monopoly. On the other hand, Great Britain, by the 13th article of the present treaty, gives us a free and liberal admission into all her territories in the East Indies; an immense country, which contains more than 20 millions of inhabitants, is guarded by any army of above 70,000 men—and yields an annual revenue of more than eight millions sterling. And the only restriction to which we bind ourselves, in return, is not to carry *her* East India commodities to any country but America, where they shall be unladen—a restriction which Britain could very reasonably ask as a security to her carrying trade.

I cannot but conclude, that every reasonable man will see, in this article, some evidence of a spirit of accommodation on the part of Great Britain, and much proof of influence and ability in our negotiator.

CURTIUS.

NUMBER VIII.

Article 14.

THIS article admits Americans to a free trade to the British dominions in Europe, and British subjects to the same free trade in the United States.

One would think that this article was so reciprocal as to admit of no ground of censure. But even this article has not given us an equivalent in the opinion of some men, who contend, that as British vessels are excluded from *no port* in the United States, so American vessels ought to be excluded from no port in the *British territories.*

Decius says, “we can only go to a small part of the British dominions, viz. to those in Europe;” and he should have added, we are admitted there only by proclamation from year to year.

But does *Decius* value a commercial country by its geographical dimensions? Do these constitute the greatness or smallness of commercial privileges? This certainly is a new doctrine; and the chicanery of such insinuations, deserves reprobation by every honest man.

No matter what is the size of Great Britain—admit that it does not comprehend more land than the state of New-York, has, in a *republican humour*, sold to an individual: this is nothing to the point. The trade of that spot of earth, is at least double, not to say treble, the trade of the United States.—By admitting American citizens to a free participation of this commerce, we have more than an equivalent for a free admission of British vessels into all the ports of the United States.

The reflection of *Decius*, that our “envoy has, in this place, brought the principles of inequality into conspicuous action, as if anxious to circumscribe our commerce, and that he loses no opportunity of imposing restrictions on it,” has not a shadow of foundation—it is the fabrication of a most malignant mind. The whole article is founded on most equal and reciprocal principles, so far as regards Great Britain, independent of her colonies: but in proportion to the extent of the manufactures and export of that country, it is most advantageous to America.

It is said that we are not admitted into all the British colonies—True; but such admission would be a concession to us without an equivalent, for we have no colonies to exchange the benefit.

Let us contrast this article with the privileges obtained by the treaty with France, negotiated by the “Venerable Franklin.” By the 30th article of that treaty, “The most christian majesty will grant the subjects of the United States *one or more free ports in Europe*, and the free ports which have been and are open in the French islands.” Since the revolution, necessity has compelled the convention to open all the ports in France; but which nation was most liberal in times of peace, or most jealous of its trade?

Great Britain opens *all* her ports in Europe—all her ports in the East Indies—and all her ports in the West Indies, to vessels of small burden, restricting only the direct carrying trade from her colonies to Europe. France opened one or more ports in Europe, some of her ports in the West Indies, and not one in the East Indies.

This is a fair statement of the advantages of trade with the two countries, as we enjoyed them with France before the revolution, and as we should enjoy them by the present treaty with Great Britain; and let any man decide, which treaty is the most liberal, in respect to opening the ports of the two countries and their colonies. The advantage is infinitely on the side of the present treaty with Great Britain.

Article 15.

This article stipulates that each nation shall be treated by the other, on the footing of the most favoured nation. So far the article corresponds exactly with all our other treaties: viz. with France, Sweden, Holland and Prussia. The second clause of the article, re-

erving to Great Britain the right of imposing duties on our tonnage, equal to what we impose on British tonnage in our ports, concedes nothing but what Great Britain now enjoys; that is, the right of treating our trade as we treat her's. And the agreement in the last clause, that the United States will not, for a certain period, increase the duties on British tonnage, as a restriction that cannot injure our trade.

Indeed no objection seems to be made to this article, except that it binds the United States to treat Great Britain as well as we treat other nations. This, with men of party spirit, who suffer their passions to lead their opinions, is a most unpardonable crime.

I trust, however, that the government of America will regulate its measures, even towards Great Britain, with justice and impartiality. I am persuaded it is not only most honourable, but most expedient; and that justice and a spirit of accommodation will procure more advantages than a revengeful, retaliating, hostile disposition.

The 16th, respecting consuls, is probably not objectionable.

Article 17.

This is one of the articles which has excited the most violent clamours. Indeed we cannot but observe, that such articles as may affect the French, are reprobated with more warmth than those which affect solely the interests of the United States. It would seem by the zeal discovered on this occasion, that this treaty ought first to have consulted the wants and wishes of France; and the interests of the United States ought to have been only a *secondary* consideration. There is certainly a precept of high authority, "that we should love our neighbour as ourselves;" but I know of no rule that requires one nation to love another *better* than itself.

I am disposed to treat the French nation with the utmost impartiality, justice and friendship; and in our compacts with their enemies, we ought to make no sacrifices of their interest, and yield no points to their enemies, which the necessity of the case, and the essential interests of our own country do not require.

By this maxim let the articles which may affect France be fairly examined.

The great objection to the 17th article, is, that it "has solemnly relinquished a point, which, to us, was of more value than the amount of all the depredations on our trade, the sums due to us for negroes, and losses by detention of our posts." Now, what is the point relinquished? The answer is, nothing which was our own; nothing which we could command: nothing which the British nation did not enjoy before.

The article stipulates, that vessels captured on suspicion of having enemies property on board, or of carrying contraband articles to an enemy, shall be brought into the nearest or most convenient port, and if any property of an enemy is found on board, that part only which belongs to the enemy shall be made prize. This is said to be a re-

linquishment of an important point on our part. This is a gross misrepresentation.

Relinquishment implies an abandonment of something possessed. If we never had a right to prevent the capture of our vessels, on suspicion of having enemies property on board, and to prevent the seizure of that property, then we have not relinquished it. But that right, with respect to nations not in treaty with us, we never possessed; we, therefore, have yielded nothing that we before enjoyed.

By the law of nations, any neutral vessel may be stopped and searched, and any property of an enemy found on board may be seized. This law cannot be altered but by consent of the contracting parties. Great Britain has that right confessedly, and she will not, at present, consent to relinquish it. She *will* exercise that right—she *does* exercise it—and where is the power to compel her to abandon it?—*We* have no such power, nor is there a power on earth that has a right to demand it, or authority to enforce such a demand. If that is ever surrendered, it must be by voluntary consent.

This being the true state of things, what has the article of the treaty stipulated? Observe the trade. It is not said the property of an enemy *may* be taken—but, taking the right for granted, it says, the *enemy's property, only, shall* be made prize.

The article further stipulates, and this was obviously the main purpose of inserting it in the treaty, that the vessel shall be suffered to proceed with the rest of her cargo, without impediment—that there shall be no delay in deciding on such cases, and in the payment or recovery of indemnification by the owners or by the master of the vessels.

In short, the whole amount of the article is, that the practice of stopping and examining ships for enemy's property—a practice authorized by the law of nations—a practice which Great Britain will not resign, and which we cannot persuade or compel her to resign—that this practice shall be rendered as little inconvenient to our trade as possible. The article was intended to restrain, as far as possible, the abuses of this practice by licentious privateers.

There are many men, who, without any rule of conduct prescribed to them, would behave with unbounded licentiousness; but if a national compact is before their eyes, they will respect the rules prescribed. So far, therefore, as the article goes, it can do no harm; but it may, and often will, do good.

But to exhibit this thing in still stronger light, I will give the whole of Mr. Jefferson's letter on the subject. It is an answer to a remonstrance from Mr. Genet to the president, respecting the seizure of French property on board of American vessels, dated July 9, 1793. It is the very point in question, and as the reasoning of Mr. Jefferson is, in the present case, unanswerable, it is proper the public should have the letter entire.

Philadelphia, July 24th, 1793.

Mr. Jefferson, Secretary of State, to Mr. Genet, Minister Plenipotentiary of France.

SIR,

YOUR favour of the 9th inst. covered the information of Silvat Ducamp, Pierre Neuvel, Chouquet de Savarence, Gaston de Nogere, and G. Beaultier, that being on their passage from the French West Indies to the United States, with slaves and merchandise of their property, these vessels were stopped by British armed vessels, and their property taken out as lawful prize.

I believe it cannot be doubted, but that by the general law of nations, the goods of a friend found in the vessels of an enemy, are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels, in the cases above mentioned, and I confess I should be at a loss on what principle to reclaim it. It is true, that sundry nations, desirous of avoiding the inconvenience of having their vessels stopped at sea, ransacked, carried into port, detained, under pretence of having enemy's goods on board, have, in many instances, introduced by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controuling, in special cases, the general principle of the law of nations, and therefore taking effect between such nations only as have so agreed to controul it. England has generally determined to adhere to the rigorous principle, having, in no instance, as far as I recollect, agreed to modification of letting the property of the goods follow that of the vessel, except in the single one of her treaty with France. We have adopted this modification in our treaties with France, the United Netherlands, and Prussia; and therefore, as to them, our vessels cover the goods of their enemies, and we lose our goods when in the vessels of their enemies. Accordingly, you will be pleased to recollect, that in the late case of Holland and Mackie, citizens of the United States, who had laden a cargo of flour on board a British vessel, which was taken by the French frigate *Ambuscade*, and brought into this port; when I reclaimed the cargo, it was only on the ground that they were ignorant of the declaration of war when it was shipped.

You observed, however, that the 14th article of our treaty had provided, that ignorance should not be pleaded beyond two months after the declaration of war, which term had elapsed, in this case, by some few days; and finding that to be the truth, though their real ignorance was equally true, I declined the reclamation, as it never

was in my view to reclaim the cargo, nor in yours to offer to restore it, by questioning the rule established in our treaty, that enemy bottoms make enemy goods. With England, Spain, Portugal and Austria, we have no treaties; therefore we have nothing to oppose to their acting according to the general law of nations, that enemy goods are lawful prize, though found in the bottoms of a friend. Nor do I see that France can suffer, on the whole, for though she loses her goods in our vessels, when found therein by England, Spain, Portugal or Austria, yet she gains our goods when found in the vessels of England, Spain, Portugal, Austria, the United Netherlands, or Prussia; and I believe I may safely affirm, that we have more goods afloat in the vessels of these six nations, than France has afloat in our vessels, and consequently, that France is the gainer, and we the loser, by the principle of our treaty; indeed we are losers in every application of that principle; for when it works in our favour, it is to find the goods of our friends; when it works against us, it is to lose our own; and we shall continue to lose, while the rule is only partially established. When we shall have established it with all nations, we shall be in a condition neither to gain nor lose, but shall be less exposed to vexatious searches at sea. To this condition we are endeavouring to advance; but as it depends on the will of other nations, as well as our own, we can only obtain it when they shall be ready to concur.

I cannot, therefore, but flatter myself, that on revising the cases of Ducamp and others, you will perceive, that their losses result from the state of war, which has permitted their enemies to take their goods, though found in our vessels, and consequently, from circumstances over which we have no controul.

The rudeness to their persons practised by their enemies, is certainly not favourable to the character of the latter. We feel for it as much as for the extension of it to our own citizens, their companions, and find in it a motive for requiring measures to be taken, which may prevent repetitions of it.

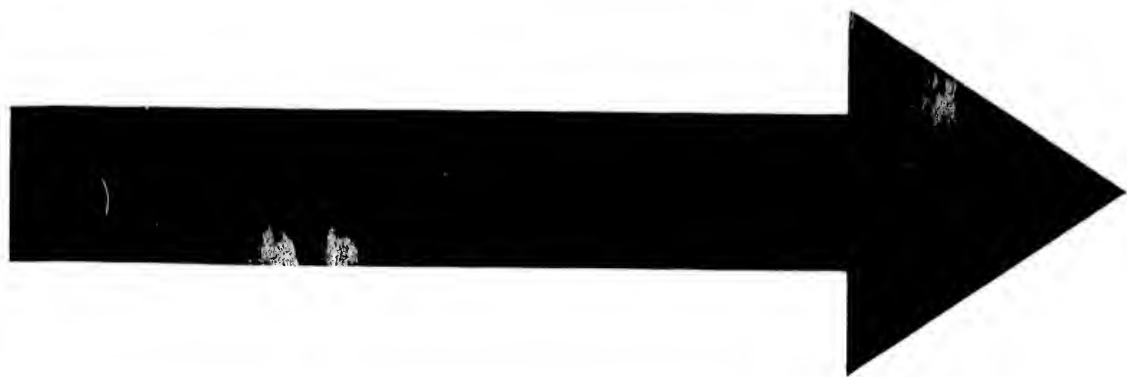
I have the honour to be, &c.

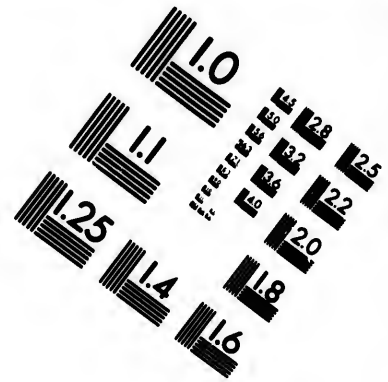
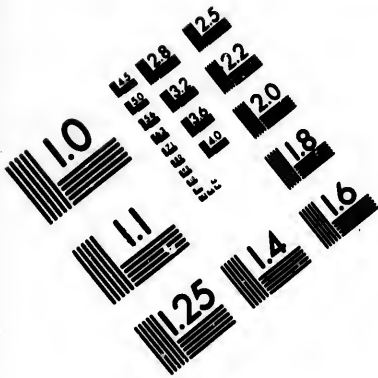
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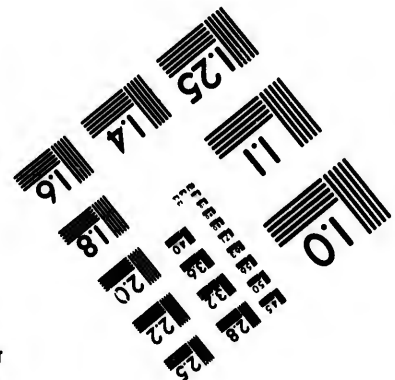
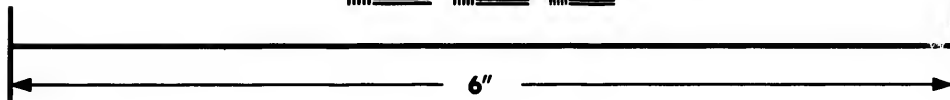
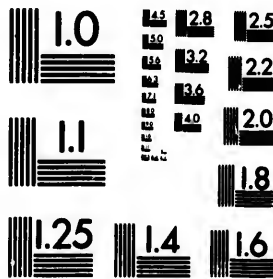
I beg the reader to note the following clause of the foregoing letter: "To this condition, we are endeavouring to advance; but as it depends on the *will of other nations*, as well as our own, we can only obtain it, when *THEY* shall be ready to concur."

I will close with remarking, that by our treaty with France, it is expressly stipulated, that *free ships* should make *free goods*. The convention, however, in 1793, ordered vessels, laden with provisions, to be carried into their ports, in violation of that treaty. They afterwards revoked the decree with respect to American vessels. They afterwards extended the decree to American vessels, in defiance of the treaty. A few months ago, they relented, confessed they had





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ill-treated their allies, and annulled the decree a second time. A statement of these facts was made by the President to Congress, Dec. 5, 1793. See his address of that date, prefixed to the correspondence between Mr. Jefferson and Mr. Hammond.

Such unsteadiness in public measures operates peculiarly to the prejudice of trade. The merchant, if he knows enemy's property is liable to seizure, may avoid risk, by declining to take it on board. But, when a nation is changing its regulations on this head, the merchant is exposed to vexations, without the power of avoiding the evil.

CURTIUS.

NUMBER IX.

Article 18.

THIS is one of the articles in the treaty, which gives great offence. The objections to it are—"That it enumerates among contraband goods, timber for ship building, tar and rozin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and that it admits provisions, in certain cases, to be contraband," contrary to all our other treaties, and even contrary to the treaty of 1786, between Great Britain and France.

I frankly acknowledge that no part of the treaty is more vulnerable than this: no part can furnish more substantial grounds of complaint.

This article proceeds from a strict adherence, on the part of Great Britain, to every part of the law of nations, which favours her superiority as a great maritime power; and its defence rests on the inability of our envoy to procure a relaxation of those laws.

The time for negotiating this article was unfavourable, as in most other respects it was favourable. Great Britain, always anxious to preserve her naval strength, the great and only bulwark of the nation, is now engaged in a most inveterate war with France, a war on which her very existence depends, and at this time, will not yield one clause of the law of nations, to abridge her own power of crippling the naval force of her enemy. This is a fixed point; and our envoy could only admit the article in that form.

There were but two alterations; both of which would result in the same consequences to our trade. This idea is an important one. If the article had been rejected by our minister, Great Britain *has*, and actually *exercises*, the right by the general laws of nations, to consider all those articles contraband, and to declare them such, when she judges that by these means she can reduce her enemy. If the article was received, it could give no greater latitude to Great Britain than she enjoyed before. Whichever alternative our envoy

might choose, our trade must be subject to the exercise of the same right and to the same embarrassments.

If the right of treating all the articles mentioned as contraband, results from the law of nations; and if Great Britain will not abandon that right, is it not better, in a treaty of a temporary nature, to accede to the right, and enumerate the articles which are liable to seizure and confiscation, that our merchants may know the law, and avoid losses, than to suffer that right to stand on the law of nations, which is less known, and which might expose our citizens to heavy losses?

Every liberal man must wish to see the field of confiscations in war narrowed as much as possible: but, if we cannot circumscribe that field, is it not of great importance to our citizens, to mark out the ground with distinct lines, that every man may distinguish it and shun the danger?

Every rational person will say, *it is*; and this is the effect of this article of the treaty.

I know it has been contended, that timber and provisions are not, by the law of nations, contraband. But Vattel, a modern French writer, of the highest authority, includes them among contraband goods. His words are; "Commodities particularly used in war, and the importation of which to an enemy is prohibited, are called contraband goods. Such are arms, military and naval stores, timber, horses, and even provisions, in certain junctures, when there are hopes of reducing the enemy by famine." Book 3. chap. 7. Sect. 112.

The words, naval stores, includes cordage, hemp, tar, rozin, and every thing that serves for the equipment of ships of war. In the treaty of 1786, Great Britain and France had excepted naval stores and provisions from the list of contraband articles. That treaty is annulled by the present war; and in a numerous collection of treaties now before me, I find no instance of an enumeration of naval stores, as excepted from contraband, by Great Britain. But naval stores are generally left, by that nation, as contraband by the general law of nations. The right to consider them so, can be abridged only by treaty; and Great Britain, at this moment, will consent to no such abridgment.

Some people say, it is better to let this point rest on the law of nations, than to admit it in a treaty. This is merely a matter of expedience; but if the safety of the merchants' property is consulted, it is, unquestionably, better to have the contraband articles enumerated.

The stipulations in the 2d and 3d clause, of the 18th article, are in favour of neutral vessels. The agreement, that when provisions are regarded as contraband, they shall be paid for to their full value, with a mercantile profit, freight and demurrage, is a rule of direction to the captors, that may prove favourable to a neutral trade, subject to be embarrassed by powers at war. And the provision of the last clause, that neutral vessels entering a blockaded port, not knowing

it to be blockaded, shall not be seized and confiscated for the first attempt, is equally salutary and favourable.

Article 19.

This article provides against the ill usage which the subjects of neutral powers are liable to receive from the commanders of ships of war and privateers. This article is common in treaties—it is in nearly the same words, as in all our other treaties with foreign nations.

But it will be of much more use between Great Britain and America, as it will operate as a prohibition against impressing American seamen on board of English ships. It has been objected to the treaty, that no provision of this kind is included in it; but the 19th article is a direct prohibition of this practice.

On account of a sameness of language, it is desirable that some effectual mode might be devised to distinguish American from British seamen. It might be of importance that American seamen should be provided with certificates of their citizenship, under the seal of some public officer. This doubtless deserves the attention of our executive, perhaps of Congress, as not only British commanders, but French also, have mistaken American seamen for British, and our citizens are thus exposed to injustice from both parties.

It has been objected, that the bonds required of the commanders of privateers to indemnify persons injured are not large enough—the sums being limited to 1500l. sterling for small privateers, and 3000l. sterling, in case the privateer carries more than one hundred and fifty men. It is sufficient to say, in answer to this, that few cases can occur, where damages to a greater amount will be incurred: and where the bonds do not secure the damages, a complaint to government will insure any further claims founded in justice.

It may be observed, that this clause of the article is copied nearly from a similar one in the treaty of 1786, between Great Britain and France. The sums limited by that treaty are the same; and will probably be found equal to all necessary purposes.

The last clause obliges judges of admiralty, in case any sentence of condemnation has been pronounced against vessels or goods, to deliver, on demand, authentic copies of the proceedings to the master, he paying the legal fees. A stipulation of this kind was necessary; as instances of delay and refusal of such copies have been experienced by our citizens during the present war.

The 20th article is usual in all treaties. It makes provision for guarding property from piracy, or restoring it to its proper owners—a provision of mutual benefit, to the contracting parties, and liable to no objection.

CURTIUS.

NUMBER X.

Article 21.

THIS article prohibits the subjects of the contracting parties, to commit acts of hostility against each other—to accept commissions from a foreign prince or state, enemies to the other party—to enlist them into military service, &c. and declares that the laws against such offences shall be punctually executed. The law of the United States, passed in June, 1794, enacts the penalty of a fine, not exceeding 2000 dollars, and imprisonment for the foregoing offences.

The same article of the treaty makes it piracy to accept a foreign commission or letter of marque, for arming any privateer to act against the other party. This is prohibited also by the same law of the United States, under penalty of imprisonment, at the discretion of the court, and a fine not exceeding 5000 dollars.

When the treaty first appeared, this article excited much acrimony. It was considered as pointed at the military manœuvres of a late French minister, who had attempted to excite Americans to war against the Spanish settlements, and to privateering against Great Britain. It was supposed to restrain the right of *expatriation*; a doctrine first propagated by the same Frenchman, to evade the law of nations, and a doctrine which never would have entered the heads of our citizens, had it not been taught by that artful sophist. In giving their decided opinion against this article of the treaty, many rash men found themselves in a dilemma, when they were informed that the article was in our treaty with France.

So eager were people of a certain faction to condemn the whole treaty, that they would not give themselves time to be informed whether it was right or wrong: but when they came to be told that they were restrained from taking foreign commissions to act against a power at peace with the United States, by the acknowledged laws of nations, by an express statute of the United States, and by an article in all our other treaties, they began to blush for their haste in giving opinions on what they did not understand. No article in the treaty is more requisite for the peace of our nation, and none more conformable to the principles of justice between governments.

Vattel says, “a nation ought not to suffer the citizens to do an injury to the subjects of another state, much less to offend the state itself. If you let loose the reins of your subjects against foreign nations, these will behave in the same manner to you; and instead of that friendly intercourse which nature has established between all men, we should see nothing but one nation robbing another.”—B. 2. ch. 6.

“I account associates of an enemy, those who assist him in his war without being obliged to it by treaty.”—B. 3. ch. 6.

A nation is not accountable for every act of an individual citizen; but if a state or nation openly permits the citizens to take part with

the enemies of a third nation, that third nation has a right to consider that state as making a common cause with its enemies, and to declare war against it of course. The peace of neutral nations depends on the prohibitions of this article of the treaty.

It has been objected to this article, that it is unconstitutional, as it creates the crime of piracy, when the power of defining piracy is vested in Congress. But the act of Congress before mentioned, admits the right of the President and Senate to define piracy in treaties; as the 9th section enacts, "that nothing in the act shall be construed to prevent the prosecution or punishment of treason, or a piracy defined by a treaty, or other law of the United States."

Nothing marks the partiality of a certain faction more distinctly than their objections to this article. We have had a similar article in our treaty with France more than seventeen years: and in our treaties with Sweden, Prussia, and the States General, more than ten years, and not a syllable of objection was lifted against the principle. People did not generally know that such an article existed. But the moment our government treats Great Britain with the same measure of justice, as we had before observed towards other nations, our Jacobins begin to clamour.

It is this popular partiality for France; this disposition to favour every thing French, at the expence of every principle of justice and equity, which occasions all the difficulty our executive has encountered in preserving our peace, and in accommodating our differences with Great Britain. Nay more; this partiality displayed on all occasions, and to a degree highly improper for a neutral nation, has been a principal cause of the abusive treatment our seamen have received from British privateers.

It is agreed on all hands, that our interest as a nation is super-eminently concerned in preserving peace. But how can peace be secured unless we treat the powers at war with impartiality and justice? Vattel observes, "A neutral nation, desirous safely to enjoy the conveniences of that state, is, in all things, to shew an exact impartiality between the parties at war; for should one nation favour another to its detriment, that nation cannot complain if the other treats it as an adherent and confederate of his enemy."

Our people have indeed a fine apology for shewing a preference to France; that of favouring liberty and republicanism. So far as the French fight for national independence, against the combined powers, they are engaged in a just and necessary war, and the wishes of all Americans must be with them. But people who think France has a republican government, or any other free government, are egregiously mistaken. Nor is there as great a prospect of her establishing a republic, as there is that she is doomed to despotism, or to be split into a multitude of small factious democracies, perpetually at war with each other.

People are, therefore, in every view, unjustifiable in aiding any of the powers at war, in a manner not warranted by the laws of neutrality. As we value our own government, and the prosperity of the

country, we are to avoid every act which can commit a breach on our public peace. It is rashness and madness to combine our interest with any European power in such a manner, as to be drawn into their political contentions. The pretence of aiding the *cause of liberty* is a mere artifice to catch our passions. If the nations of Europe cannot defend their liberties, we cannot be answerable for their ill success. We aid them best by our peace and our industry.

The 22d article of the treaty stipulates, that in case of injuries or damage on one side or the other, neither party will authorise reprisals, until a statement of the same, verified by proof, shall be presented to the other, and satisfaction demanded. This stipulation is in exact conformity with the law of nations, and is supported by principles of policy and justice.

The provisions in the 23d article are well adapted to advance the intentions of the contracting parties, and are reciprocally beneficial. The permission of American vessels to enter prohibited ports in case of distress, is a concession conformable to the laws of hospitality.

The objection to the clause which enjoins a respect to be paid to officers according to their commissions, can be raised only by men who are destitute of the civility, which enjoins that respect.

The 24th article prohibits foreign privateers with commissions, from a prince or state in enmity with either nation, to arm or sell prizes in the ports of the parties.

The 25th article makes it lawful for the ships of war and privateers of either party to enter the ports of the other, without being liable to be searched, seized, or detained, or to pay admiralty fees.

These stipulations are also in our treaty with France; and no well grounded objection has been made to them. Some superficial people have supposed that they clash with our treaty with France. But there is an express declaration that these stipulations shall not be construed to operate contrary to former existing treaties. And if no such caution had been taken, the treaty with Great Britain could not have operated to the prejudice of France: for it is an express law of nations, "That a sovereign (or state) already bound by a treaty, cannot make others contrary to the first. The things about which he has entered into engagements, are no longer at his disposal."

"If it happens that a posterior treaty is found, in some point, to contradict one that is more ancient, the *new treaty is null with respect to that point*—This relates to treaties with different powers." Vattel, B. 2. ch. 12. sect. 165.

So far the fears of people are totally groundless. But the following clause has excited acrimonious remarks. "The two parties agree, that while they continue in amity, neither of them will, in future, make a treaty that shall be inconsistent with this and the preceding article." What can be the objection to this clause? The laws of nations, and the rules of moral justice, forbid a state to make a subsequent treaty to infringe a prior one. No nation can do it.—The passage just quoted from Vattel is expressly to this purpose: and

the clause has done nothing more than convert a moral obligation into a contract, a law of nations into a conventional law between the parties. Stipulations of this kind, like statutes in affirming of common law, add the sanction of a positive contract to an implied one. No new obligation is created; an agreement of this sort may be considered as strengthening the old one.

The 26th article provides, that in case of war, merchants may continue to reside in the respective dominions, behaving peaceably—and in case their conduct shall render them suspected, the term of twelve months is allowed to settle their accounts and remove their families and effects. This is a favourable provision, and highly necessary, between countries so extensively connected in commerce. The term of 12 months for removal, is longer than usually allowed; the term generally assigned in treaties is 6 or 9 months.

To the two last articles, I presume, no objections are made.

CURTIVS.

NUMBER XI.

THUS having attempted to remove every objection of consequence that has been urged against the treaty, I will lay before the public a general view of our trade with the different countries of Europe, Asia, and the West Indies.

It has been stated by the opposers of the treaty, that the commercial arrangements want reciprocity—that we concede much, and gain nothing which we did not before enjoy.

With respect to the inland trade to Canada, the converse of the proposition is the truth. The United States *gain* a free trade to Canada, on equal terms with British subjects, which we did *not* before enjoy. British subjects gain little or nothing by the stipulation, which they did not before enjoy. In this part of the treaty, the advantage is on the side of the United States.

With respect to our foreign commerce, it depends on the will of nations over whom we have no controul. All nations claim the right of admitting ships and goods into their ports, or prohibiting them at pleasure; or of burdening our commerce with heavy duties. This right is absolute, and when we obtain any privilege in their trade, it is by way of grant or concession. The United States have the same right as to their own ports; but they have not seen fit to exclude the ships of any nation from a free participation of their trade.

The maritime powers of Europe find a navy so necessary to their safety, amidst the contending interests of the different nations, that every measure is taken to multiply their seamen, and increase their shipping. Great Britain is the nation most interested in this system. From her insular situation, a navy is her only defence—to man a navy, she must raise seamen—to secure a supply of seamen, she must extend her commerce and her carrying trade as far as possible,

In pursuance of this system of defence, originated her navigation act, in 1660, which restricts her trade to British vessels, and manned mostly with British seamen. That act has been in operation from its first passing to the present day; and to prevent temporary or local inconveniences, from a rigid execution, the parliament have empowered the king and council to dispense with it on occasion, and open the ports of Great Britain, or her colonies, at such times and to such nations, as necessities may require.

All the nations of Europe have laws respecting their trade, which operate more or less to encourage their own commerce, and lay that of their neighbours to their own dominions under restrictions.

A view of the privileges and restrictions of commerce, was offered to Congress, Dec. 16, 1793, by Mr. Jefferson, which, though not sufficiently correct or comprehensive, throws much light on the subject. These general facts will be sufficient for my purpose in this place.

The admission of our vessels into the British dominions in Europe rests now on an annual proclamation of the king and council. Although interest and expedience may operate to continue the privilege of entering those ports at all times, and with vessels of any burthen, yet the tenure of the privilege is precarious.

By the present treaty, this precarious privilege becomes a right, which cannot be abridged by the executive of the English nation. This is an advantage; and Mr. Jefferson, in his Report, admits it to be such. It was an objection he urged against our former state of commerce to Great Britain, that it was precarious—That objection by the treaty is removed.

With respect to her colonial possessions, Great Britain has observed the jealous policy common to all the nations of Europe. The ships of all nations are excluded from her colonies, unless it may be a port in the West Indies, where the Spaniards are permitted to enter with logwood.

In opening her W. Indies to American vessels of 70 tons burthen, and her East India ports to American vessels of any burthen, she has conceded a privilege, which she grants to no other nation on earth. The sacrifice of the carrying trade on the part of the United States, to obtain admission into the English West Indies, is deemed more than equivalent, and that stipulation will fall to the ground. But the direct trade to the British East Indies, is generally admitted to be highly beneficial.

Let us contrast these advantages in trade with those we enjoy with other nations.

Our navigation to Spain and Portugal is free: but many of our exports are prohibited, as tobacco, and rice and whale oils to Portugal. The American trade however to Spain and Portugal is highly advantageous in a number of articles. But both these countries prohibit all intercourse with their colonial possessions. The ports of Sweden and Denmark are open, but the duties paid on most of the American productions amount to a prohibition.

Our navigation to the United Netherlands is free; but some of the most material articles of our country, as beef, pork and bread-stuff,

are prohibited, as well as by Great Britain. We can have no intercourse with their possessions in the East Indies.

France, before the war, guaranteed to the United States, one or more free ports in Europe, and such ports in the West-Indies as were free. In general, her West-Indies were open by an arret of the king. Even the coasting trade in France was principally carried on by foreign vessels.

The revolution has sensibly varied the whole scene of commerce. Necessity has opened all French ports to neutral nations. But a navigation act, similar to that of Great-Britain, was decreed, September 2, 1763, to take place January 1, 1794. This, with a long spirited report of Barrere, was transmitted to Congress, and published by their order in February, 1794. This act is suspended only on account of the necessities of France, her commerce being wholly dependant on neutral bottoms. The moment this act shall take place, we shall be cut off from all right to the trade of France, except what is guaranteed by treaty, that is, *one or more free ports*; and such privileges as we shall be able to obtain by future stipulations.

The decree is in these words:—

ACT of NAVIGATION of the FRENCH REPUBLIC.

THE National Convention, after having heard the report of their committees of marine, of commerce, and of public safety, considering that the French nation has the incontestible right of securing, by every method, the prosperity of her agriculture, commerce and industry; that nothing has a more direct tendency to this end than a navigation act; and that, in the solemn declaration of this act, she only makes use of the same right which she acknowledges to belong to all other nations—Decrees as follows:

Art. 1. That no foreign commodities, productions, or merchandise, shall be imported but directly by French vessels, or those belonging to the inhabitants of the country of which they are the growth, produce or manufacture, or to the inhabitants of the country of the ordinary ports of sale and first exportation; the officers, and three fourths of the crew, of a foreign vessel, being of the country whose flag the vessel bears; the whole on pain of confiscation of the vessel and cargo, and a fine of 3000 livres, jointly and severally against the owners, consignees, and agents of the vessel and cargo, the captain and lieutenant of the vessel.

2. That foreign vessels shall not transport from one French port to another French port, any commodities, productions or merchandises of the growth, produce, or manufacture of France, the colonies or possessions of France, under the penalties declared in art. 1.

3. That after the 10th of August next, no vessel shall be reputed French, nor enjoy the privileges, of a French vessel, unless such vessel shall have been built in the colonies or possessions of France, or declared a good prize taken from an enemy, or confiscated for contra-

vention of the laws of France, and unless the officers and three-fourths of the crew are Frenchmen.

On the whole, it is demonstrated, that no country on earth yields more extensive privileges to the American merchant, than Great Britain. It is also equally demonstrable, that Great Britain yields more privileges in her trade with the United States, than she grants to any other nation.

It has been objected to several articles of the treaty, that they are *not reciprocal*, because, from the circumstances of the two countries, British subjects will be principally benefited. Thus the 9th and 10th articles are said to yield advantages to Great Britain, without an *equivalent*, because her subjects hold large tracts of land in the United States, and have debts due them to a great amount: whereas, American subjects hold little or no land, and have no debts or monies, in Great Britain.

Objections of this kind must proceed from a peevish, captious, disposition. It may just as well be objected, that we should have no trade with Great Britain at all, because her exports to this country exceed her imports from it—or because her dominions contain double the number of people that are in the United States. Nay, it may just as well be said that every man has not an *equal right* to a highway, because some use the highway ten times as much as others.

In all conventions between states, an *equality in principle constitutes an equivalent*. If an article of any treaty gives to both parties a right of doing the same things, and under the same advantages, that article is reciprocal, though one of the parties never make use of the right.

Thus in our treaty with France, we permit French armed vessels to bring their prizes into the ports of the United States. The French also permit the American vessels to carry their prizes into French ports. The French are in a condition to use the privilege, and do use it every day—We are not at war, and do not use it: but, will any man say, that article of the treaty is not *mutual*? Will any man deny that we have an *equivalent* for the right conceded to France?

Just so with respect to our commerce with England or any other power. Suppose a nation to have but a single port for shipping and commerce, and the United States to have a thousand. Each party agrees to open all their ports, and admit the other to a free trade; will it be denied that this is reciprocal? Certainly not. It is *equality in the principle*, not in the amount or extent of its operation, which constitutes *reciprocity*.

If people are disposed to cavil at *inequalities of condition*, as well as of *principle*, they may find as many causes of discontent, in all other treaties, as in this with Great Britain.

The truth is, when our other treaties were formed, Americans had confidence in the constituted authorities of our country. They believed men, who had made commerce, treaties, and the laws of nations; a study and matter of contemplation, were best capable of negotiating treaties. They trusted to the men appointed for this pur-

pose. The great mass of people are not competent to decide what is, or is not, for our public interests, in complicated negotiations and national compacts; and unless they repose confidence in public characters, we shall forever be embroiled with factions.

NUMBER XII.

HAVING, in the preceding papers, answered such objections to the treaty, as appear to have any weight, I will close this vindication, by addressing to my fellow citizens, some considerations of a more general nature.

It was the public opinion the last year, and it is an opinion still maintained among one description of Americans, that Great Britain has been so humbled by France, that she will consent to make great sacrifices for the purpose of securing peace and commerce with this country. It is also believed by many people, that the kingdom is upon the point of an internal revolution: and that, holding in our hands the power of sequestrating the debts of her citizens, we may command, at all times, peace and favourable treatment.

All these opinions, though unquestionably erroneous, have contributed to raise the public expectation, respecting the success of the treaty, to an unwarrantable pitch.

With respect to the humble condition of Great Britain, where are the proofs? That her land-forces were defeated and cut to pieces, the last campaign, is undeniable; and there is no question that any combat by land, would be decided in favour of France. The numbers, the discipline, and the enthusiasm of the French forces on land render them irresistible. But the best troops and the best discipline, without other resources, will not maintain the greatness of a state or kingdom, for any length of time.

France now supports her armies mostly upon her conquered countries. Her finances are exhausted; and what is, if possible, a more serious calamity, her internal dissensions debilitate her force, distract her councils, and disconcert her operations.

The plan of Robespierre was a system of despair. By putting every thing in requisition, the persons of men, their goods, provisions, and money, the whole force of France was collected to a point, and the whole energy of that force was exerted to defeat the most formidable combination ever raised against the independence of a nation.

This measure was perhaps indispensable in the crisis when it was adopted. But, unfortunately, violent exertions in the body politic, as well as in the human body, are ever followed by debility and languor. The system of requisitions and the maximum, were calculated to destroy the capital of a country, which, in all cases, ought to be left untouched, as a source of further productions. The interest or income only of a country, can be safely used for national purposes; and

when a state is compelled to seize the capital stock, though its exertions may be great, they must certainly be of short duration.

But this is not the only calamity incurred by the system of terror. To enforce such an arbitrary system, recourse must be had to violent punishment, for refusals to comply with it; and the summary mode of condemning, as well as the sanguinary process of executing, tend to excite all the malicious and revengeful passions of men. The guillotine of France has left every deadly and rancorous passion, waiting only for a favourable moment for vengeance. The surviving friends of those who sell victims to the system of terror, will not easily forget or forgive the injuries they suffered; and thus, that terrible despotism, which for a few months, compelled all men to unite to defeat foreign foes, and to crush internal insurrections; that system has spread over France the seeds of faction and dissention, which will afflict the country and weaken all its exertions, for at least a generation to come. Thus the last season, the victories of France by land, astonished all nations, and spread dismay through Europe, while her frigates scourged the ocean, and marred the commerce of her enemies. But the present season, her armies and her fleet are inactive, her resources fail, and all is debility and languor.

Great Britain, on the other hand, though her army was destroyed in the Netherlands, retains all her activity and resources. Her territories have not been the seat of war; her land has been under full cultivation; her manufactures have been carried on as usual; her goods are exported nearly as cheap, and in nearly the same quantities, as in time of peace; her government retains its vigour, and her fleet, notwithstanding a scarcity of seamen, still rides mistress of the ocean. The commerce of Great Britain, though a little impaired, still exceeds that of any other country; and the government has not been compelled to distress her trade to man her navy. Were there a pressing necessity for so violent a step, that country, by stripping her merchantmen for a time, would bring upon the ocean a fleet superior to any that has ever appeared under one command. But Great Britain has not yet been compelled to adopt this ruinous expedient; she has not materially impaired her commerce by impressing seamen; she has not entrenched upon the capital stock of her husbandmen and manufacturers. Her debt has indeed been augmented; but still immense sums of money are offered, and the only question with government, is, whose money shall be received on loan; for the competitors are numerous. Such is the monied capital of that country, and such the resources, that Great Britain will, probably, be able to carry on the war longer than any other power.

Nor is the idea of an approaching revolution well founded. Ireland may perhaps give trouble; but the government of England has seldom ever been supported by a more numerous and powerful majority of the people. The private associations in England and Scotland, gave some uneasiness for a time; but the moment government called for a suspension of the *habeas corpus* act, it was granted, and the executive dissipated all private societies, with their plans of revo-

lution. The ease with which this whole business was conducted, certainly does not mark either fear or weakness in the administration of the government of Great Britain.

Where, then, is the ground for supposing Great Britain in a distressed state of humiliation, compelling her to make sacrifices to the United States?

On the contrary, Great Britain, at this moment, maintains as commanding an attitude among the powers of the earth, as at any former period. All the hopes of Americans, founded on an opinion of the depressed state of that nation, are wholly delusory. Nor can we expect any thing from the generosity or good will of the British, or any other nation. National generosity is a mere phantom of the imagination. It is to the interest, or, at most, to the justice of a nation we must address ourselves; and no nation will make concessions beyond what these require. We are not in a situation to *command* any foreign nation to *enforce* our claims, or to *compel* the exercise of justice.

If our sanguine enthusiasts are mistaken totally as to the present power of Great Britain, they are equally so, as to the force and effect of sequestration. The injustice of attacking private debts for national wrongs, is generally admitted; but many people contend, that it may be necessary at times to resort to this measure, as the only effectual weapon in our power, to terrify Great Britain, a perfidious nation, into a sense of justice.

It is surprising how such reasoners mistake the real and certain effects of such a step. Any man who will give himself time to reflect on the pride of nations, and especially of the English nation, must be convinced, that the use of this weapon, instead of inducing concessions on the part of Great Britain, would excite every hostile feeling, not only in the government, but in the very creditors whose debts should be sequestered. Such a violation of all good faith, such an attack upon commercial confidence, as the sequestration of private debts, to avenge national injuries, would put it out of our power to accommodate differences but by the sword. It would provoke a war of double fury; and the very man whose debts should be detained, would be the first to encourage and the last to abandon the contest.

All the high raised expectations of our citizens of obtaining from Great Britain in her present state, humiliating concessions which her pride would forbid her to yield in time of peace, are supported by not one circumstance of rational probability. People who dwell on such prospects of success, are grossly deceived, both as to facts, and as to the character of the English nation.

But Judge Rutledge, of South Carolina, has, on this subject, uttered the silliest expressions that ever fell from human lips. "England (says he) is hoping for peace on whatever terms France may grant it: she is reduced to the last gasp, and were America to seize her by the throat, she would expire in agonies at her feet."

A man must be little less than insane, to utter such absurd ideas, especially at a moment when Great Britain possesses more actual re-

sources, the sinews of war, than all the other powers at war, even France included. And no man, but an insolvent debtor, who hates his creditor, because he has injured him, would wish to see a great agricultural, manufacturing, and commercial nation *expiring in agonies*. Whatever be the injuries Great Britain has done this country, it is not for the interest of mankind, that she should be blotted out of existence. In no country on earth do the American merchants find more good faith, fair dealing, and convenient credit, than among British merchants—no creditors are more indulgent to debtors than the British—and no country on earth finds extensive credits more useful than the United States.

Whatever be the resentments of our citizens towards Great Britain, they may rest assured of one fact, and it is of no small moment to some of the United States, that the treatment Americans will receive from that country will be *more friendly*, when the conduct of American debtors is more *just*.

Another objection to the treaty, or to any treaty with Great Britain, is, that it begets an unnatural alliance between a monarchy and a republic. This is clearly the most trifling objection ever offered, and is beneath a serious answer. And those who make it, ought to blush at their inconsistency, especially as these very men are rejoicing at the late treaty between France and the monarch of Prussia, and earnestly expecting every day, to hear of a treaty between France and Spain.

On the whole, let me ask my fellow citizens what sacrifices we may make by the treaty?

We have old inveterate disputes with Great Britain, which must be terminated. War or accommodation are the alternatives. If we wish a war, we waste the blood and treasure of America, without an object: for at the close of the war, the old disputes will remain, and new ones be originated. Instead of bettering our condition, we render it infinitely worse by hostilities.

Is it not wise, therefore, to compromise the differences? And though considerable time and expence, perhaps some sacrifices of just claims, should be incurred on our part, yet, between these evils, and the continuance of inveterate enmity and hostile views, on which side does the balance lie? Every reflecting man must say, *on the side of accommodation and peace*.

The commercial part of the treaty is of a temporary nature; and even if some sacrifices were to be made, these will not come in competition with the other great and important objects of the treaty. But it is not true that any material sacrifice is made in the commercial part of this compact. We do not cede *one material privilege* which Great Britain does not enjoy by the laws of nations or the laws of the United States. I am bold in the assertion, and call on my opposers to name the part in which such sacrifice is made.

On the other hand, some *material concessions* on the part of Great Britain, are made to the United States by the treaty.

It is said, Great Britain may enter with her ships into *all* the ports of the United States—True; but she enjoys that privilege

without this treaty. She gains nothing in this respect, except that she changes a *precarious privilege* for a *right*; just as we do, in the trade to the British *European* dominions.

It is said, we bind ourselves not to increase the duties on British tonnage and goods imported in her ships beyond what we lay on those of other nations—True; we agree on this head, to treat Great Britain as well as the most favoured nation. If this is a concession on our part, it cannot be a *material sacrifice*, for we have an equivalent in this, that Great Britain stipulates the same thing to the United States.

It is said *we cede* to Great Britain the right of increasing duties on our tonnage to equal our present duties on hers, and on goods imported in British bottoms. Nothing can be more puerile than such an allegation. In this respect, we *cede* nothing.—Great Britain had that right before the treaty; and her right is precisely the same as before.

It has been said, we *cede* to Great Britain the right of seizing our vessels, and taking the enemy's property; and that we have made naval stores and provisions contraband by treaty.

These charges have been proved *not true*. Great Britain enjoys these rights by the *law of nations*, independent of all treaties.

We have, therefore, made very few sacrifices in this part of the treaty; but we have gained something. We have obtained a permanence of trade with Great Britain. We have gained a free trade to Canada and the British East Indies, without any considerable concessions, and what is more, we have preserved the BLESSINGS OF PEACE.

Why, then, my fellow citizens, will you not leave the management of this Treaty where the Constitution has placed it? What ground have you to suppose, that the President, our late Envoy and the majority of the Senate have, in a moment, and on this single occasion, deserted the interest of our country? What reason have you to believe, that old tried patriots have renounced the uniform principles of their lives, and turned apostates? Is there a shadow of reason to believe, that men grown grey in the service of their country, whose patriotism and virtue were never suspected, have now, in the evening of life, and at the close of all their active public scenes, commenced traitors? You cannot believe insinuations of this kind. The suggestion of British gold and undue influence, is the work of dark malicious hearts, detested by all good men, and discredited by the very children in the streets.

No, my countrymen, you have been deceived. Your passions have been taken by surprise; you have been precipitated into rash opinions, and violent measures, by a set of men who are the foes of our present free and happy government and its administration. You may be assured, there is a confederation of characters, from New-Hampshire to Georgia, arrayed in opposition, either to the Constitution of the United States, to its administration, or to particular men in office. The opposition of the principal men in this confederacy can be traced to some known causes, originally of a personal nature. Disappointment in application for some office, or the failure of some favourite scheme in their political system, has converted many of the friends

of our late revolution, into determined opposers of the general system of the present administration. These men will never be contented till they can displace the present officers of government, and introduce themselves, their friends, and their measures, into our councils. You may rest assured, that most of the ferment raised against the treaty, originated with men of this description.

This confederacy was formed and is still maintained and strengthened, by spreading jealousies and suspicions among the people, who, though honest in their views, are very liable to be misled by artful men. One of the most successful weapons ever wielded by this coalition of disappointed men, is furnished them by the present war in Europe. The combination of powers against France, which we all reprobate, is said to be a combination against *liberty in general*, and if France should fail of success, it is said we shall be the next object of attack.

This is a mere suggestion of our restless men, to alarm your fears, and drive you, if possible, from your neutral ground into hostilities. The suggestion was first made by the late French minister, whose mission to this country was for *the express purpose of flattering, intriguing, or forcing you into the war*. His instructions are clear and explicit on this point.

That minister was displaced, and his views counteracted by the firmness of our President, seconded by the northern states. But the party which originally rallied under that man, still exists, and forms a league, co-extensive with the United States, connected in all its parts and acting by a single impulse.

Thus, in the infancy of our empire, the bane of all republics, is already diffused over our country, and poisons the whole body politic. Faction is a disease which has proved fatal to all popular governments; but in America it has assumed an aspect more formidable than in any other country. In ancient republics, popular commotions were sudden things, excited by the emergencies of the moment, bursting instantly on the existing government, producing a revolution, banishing a tyrant who was powerful, or a patriot who was popular, and an object of jealousy to some ambitious competitor.

But in America, faction has assumed consistency and system—it is a *conspiracy perpetually existing*—an opposition organized and disciplined, for the purposes of defeating the regular exercise of the constitutional powers of our government; whenever a measure does not please the secret leaders of the confederacy:—

My countrymen, be watchful of the progress of the associations, formed on the plan of the Jacobin Society in France. That society was a powerful instrument in the work of demolishing the monarchy; but on the ruins of monarchy, it raised the most frightful despotism recorded in history. Leagued with sister societies in every village and city of France, the Jacobins governed the Convention, Paris and all France for a long time, and filled it with blood, confiscation and ruin. So terrible was the tyranny of these associations, that the Convention were compelled to prohibit their meetings; but so numerous are the members, and so active the spirit of revenge, that two or three insurrections have been raised by the Jacobins in Paris, blood

has been shed in various parts by that faction, they have been in possession of Toulon, a civil war is often excited, and it seems yet doubtful whether the *national representatives*, or *private unauthorised clubs* shall govern France.

My countrymen, you are threatened with a similar evil. Under the pretended mask of *patriotism and watching over our liberties*, private associations are formed and extending their influence over our country. The popular Societies of France did the same. The cry of *patriotism* was forever on their tongue; but when they became strong enough, they ruled with a rod of iron. Fire, sword and the guillotine were instruments of their administration.

Be not deceived into a belief that our citizens are incapable of similar outrages. Violent men may be found in every country, and already are the heads of our government denounced as traitors; already is our country threatened with blood and civil war.—If men who regard their rights, and who believe the constitution and laws alone to be the guarantee of those rights, do not unite and shew a formidable countenance against all irregular opposition to those laws, our whole country will be speedily subject to a confederacy of men, a small minority indeed, but bold, though secret in their machinations, indefatigable in their measures, and determined on success.

It is not the treaty alone which is opposed; this is a convenient instrument for them to wield; but the causes of opposition lie deeper. The treaty is not altogether satisfactory; but if carried into effect, it will not be followed with any dangerous consequences, except what will be created by its opposers. If left to go peaceably into operation, it would have no general effect on business which people at large could feel—agriculture would still flourish; trade would be carried on as usual with little variation; national disputes would be in a train of adjustment, and peace and tranquillity would reign throughout our happy land. But if the opposers of the treaty can possibly embroil our country in civil war, it will be effected—From such a frightful calamity, may your good sense, my fellow citizens, preserve us! Should the treaty not be ratified, and should the consequences be foreign war, the *people, not the government of America*, must be answerable for all its melancholy consequences.

No period of our political life has been more critical—or deserving of more temper on the part of the people, and of more prudence and firmness on the part of our executive.

One party wishes to *draw closer our alliance with France*, even at the hazard of war with all the world. Our government and its supporters wish for perfect neutrality towards all the powers at war—they wish for strict justice and impartiality to be preserved towards all parties, and they wish for friendly intercourse with all—in fine they wish for uninterrupted peace.

When parties are thus marshalled, it behoves all good men to determine on which side they will range themselves. One or the other must prevail; and on the final prevalence of one or the other of these parties, are suspended the peace, prosperity and happiness of the United States.

CURTIS.

[FROM THE AMERICAN DAILY ADVERTISER.]

Messrs. Dunlap & Claypoole,

THE following Sketch of "The Features of Mr. Jay's Treaty," was made, originally, with a view to ascertain, for private satisfaction, the principles and operation of an Instrument, which has excited such extensive curiosity, and is calculated to produce such important effects. It is published, however, at the influence of several persons, who think that the subject should be placed in every possible light; and that no citizen can be justified at this crisis, in suppressing his opinions, or in withholding his share of information from the common stock. But while it is committed to the press, I wish it to be considered merely as a text, which may hereafter be extended by commentary or explained by illustration; and though it will give me pleasure (since my sole object on this occasion is the investigation of political truth) to see it become a source of candid animadversion, I trust it will not, according to the custom of contending parties, be regarded as an instrument of faction, nor be made the fountain of slander and abuse.

Features of Mr. Jay's Treaty.

I. The origin and progress of the negotiation for the Treaty, are not calculated to excite confidence.

THE administration of our government have, seemingly at least, manifested a policy favourable to Great Britain, and adverse to France.

2. But the house of representatives of Congress, impressed with the general ill conduct of Great Britain towards America, were adopting measures, of a mild, though retaliating nature, to obtain redress and indemnification. The injuries complained of were, principally, 1st. The detention of the western posts—2dly. The delay in compensating for the negroes carried off at the close of the war—and 3dly, The spoliations committed on our commerce. The remedies proposed, were, principally, 1st. The commercial regulations of Mr. Madison—2dly. The non-intercourse proposition of Mr. Clarke—3dly. The sequestration motion of Mr. Dayton—4thly. An embargo—and 5thly, Military preparation.

3. Every plan of the legislature was, however, suspended, or rather annihilated, by the interposition of the executive authority; and Mr. Jay, the chief Justice of the United States, was taken from his judicial seat, to negotiate with Great Britain, under the influence of

the prevailing sentiment of the people, *for the redress of our wrongs*. Query—Are not his commission and the execution of it, at variance? Is any one of our wrongs actually redressed? Is not an atonement to Great Britain, for the injuries which she *pretends to have suffered*, a preliminary stipulation?

4. The political dogma of Mr. Jay are well known; his predilection, in relation to France and Great Britain, has not been disguised; and even on the topic of American complaints, his reports, while in the office of secretary for foreign affairs, and his adjudications while in the office of chief justice, were not calculated to point him out as the single citizen of America, fitted for the service in which he was employed. Query—Do not personal feelings too often dictate and govern the public conduct of ministers? But whatever may have been his personal disqualifications, they are absorbed in the more important consideration of the apparent violence committed by Mr. Jay's appointment, on the essential principles of the constitution. That topic, however, has already been discussed, and we may pass to the manner of negotiating the treaty in England, which was at once obscure and illusory. We heard of Mr. Jay's diplomatic honours; of the royal and ministerial courtesy which was shewn to him, and of the convivial boards to which he was invited: but, no more! Mr. Jay, enveloped by a dangerous confidence in the intuitive faculties of his own mind, or the inexhaustible fund of his diplomatic information, neither possessed nor wished for external aid; while the British negotiator, besides his own acquirements, entered on the points of negotiation, fraught with all the auxiliary sagacity of his brother ministers, and with all the practical knowledge of the most enlightened merchants of a commercial nation. The result corresponds with that inauspicious state of things. Mr. Jay was driven from the ground of an injured, to the ground of an aggressing, party; he made atonement for imaginary wrongs, before he was allowed justice for real ones; he converted the *resentments* of the American citizens (under the impressions of which he was avowedly sent to England) into *amity and concord*; and seems to have been so anxious to rivet a commercial chain about the neck of America, that he even forgot, or disregarded, a principal item of her own produce, (cotton) in order to make a sweeping sacrifice to the insatiable appetite of his maritime antagonist. But the idea of the treaty, given by Mr. Pitt in answer to Mr. Fox, who, before he had seen, applauded it as an act of liberality and justice towards America, was the first authoritative alarm to our interests and our feelings. "When the treaty is laid before the parliament (said the minister) you will best judge whether any improper concession has been made to America!"

5. The treaty being sent here for ratification, the President and the Senate pursue the mysterious plan in which it was negotiated. It has been intimated, that till the meeting of the senate, the instrument was not communicated even to the most confidential officers of the government: and the first resolution taken by the senate, was to stop the lips and ears of its members against every possibility of giving

or receiving information. Every man, like Mr. Jay, was presumed to be inspired. In the course of the discussion, however, some occurrences flashed from beneath the veil of secrecy; and it is conjectured that the whole treaty was, at one time, in jeopardy. But the rhetoric of a minister (not remarkable for the *volubility of his tongue*) who was brought post-haste from the country; the danger of exposing to odium and disgrace the distinguished American characters, who would be affected by a total rejection of the treaty; and the feeble, but operative, vote of a member transported from the languor and imbecility of a sick room, to decide in the senate a great national question, whose merits he had not heard discussed; triumphed over principle, argument and decorum!

6. But still the treaty remains *unratified*; for, unless the British government shall assent to suspend the obnoxious twelfth article, (in favour of which, however, many *patriotic* members declared their readiness to vote) the whole is destroyed by the terms of the ratification: and if the British government shall agree to add an article allowing the suspension, the whole must return for the reconsideration of the senate. But the forms of mystery are still preserved by our government; and attempts to deceive the people have been made abroad, upon a vain presumption, that the treaty could remain *a secret*, till it became obligatory as a *law*.

For instance, in *Fenno's* paper of the 25th of June, it is unequivocally declared, "the treaty of amity, commerce and navigation, was ratified yesterday by the Senate of the United States; and, even while he corrects that mistake in the paper of the following day, he commits *an error* of a more extraordinary kind (particularly when we consider that he is the confidential person, who printed the treaty for the use of the senate) by asserting, that in the twelfth article, "the United States are prohibited from exporting to Europe from the said states, sugar, coffee, cotton and cocoa, *the produce of any of the West India islands.*" The fact must have been known to Mr. Fenno, that the prohibition operates universally; whether the prohibited articles are the produce of the West India islands, of the East Indies, of the United States, or of any other part of the world. The next essay to render the envelopments of the treaty still more opaque, appeared in the American Daily Advertiser, of the 27th of June. The writer (who is said to be a member of the Senate) likewise regards the ratification, in his introduction, as a perfect one; and after giving a gloss to the general texture of the treaty, he ascribes the obnoxious principle of the twelfth article, *to an error which, it appears, has been inadvertently introduced.* An error inadvertently introduced into an instrument, which was under the consideration of the chief justice of the United States, and the British minister, for a term of eight months! and introduced too, into a part of that very article, which is made the sole foundation of the whole commercial superstructure!! Whenever the twelfth article ceases, the treaty declares every other article, except the ten first articles, shall also cease! But the author of that sketch proceeds one step further—he says, "that

every cause of offence or collision towards the French, seems to have been studiously avoided, in the progress of the negotiation; for, "no article of the treaty clashes in the smallest degree, with the obligations and engagements contracted with that gallant nation!" Let the treaty speak for itself—it is more to be hoped than expected, that the voice of France should not likewise be heard in opposition to so bold an assertion.

II. *Nothing is settled by the Treaty.*

1. The western posts are *to be given up.*
2. The northern boundary of the United States is *to be amicably settled.*
3. The river meant by St. Croix river in the treaty, is *to be settled.*
4. The payment for spoliations is *to be adjusted and made.*
5. The ultimate regulation of the West India trade is to depend on a negotiation *to be made* in the course of two years after the termination of the existing war.
6. The question of neutral bottoms making neutral goods is *to be considered* at the same time.
7. The articles that may be deemed contraband, are *to be settled* at the same time.
8. The equalization of duties laid by the contracting parties on one another, is *to be hereafter treated of.*
9. All the commercial articles depend on the existence of the twelfth article, which may continue twelve years, if it is so agreed within two years after the expiration of the war; but if it is not so agreed, it expires, and with it all the dependent parts of the treaty.
Query—Does not the Senate's suspension of the twelfth article bring us to the same ground?
10. The whole business of Mr. Jay's negotiation is left open by the twenty-eighth article, for alteration, amendment and addition, by new articles, which, when agreed upon and ratified, *shall become a part of this treaty.*

Query—Does not the history of treaties prove, that whenever commissioners have been appointed by the parties, to take all the subjects of their dispute *ad referendum*, for the sake of getting rid of an immediate pressure, and patching up a peace, the matter terminates in *creating*, not in *settling* differences?

III. *The Treaty contains a colourable, but no real, Reciprocity.*

1. The second article provides for the surrender of the western posts in June, 1796; but it stipulates, that in the mean time, the citizens of the United States shall not settle within the precincts and jurisdiction of those posts; that the British settlers there shall hold and enjoy all their property of every kind, real and personal; and that when the posts are surrendered, such settlers shall have an election

either to remain British subjects, or to become American citizens. Query—Were not the western posts, and all their precincts and jurisdiction, the absolute property of the United States by the treaty of peace? Query—What equivalent is given for this cession of the territory of the United States to a foreign power? Query—How far do the precincts and jurisdiction of the posts extend? Query—Does not the treaty give an implied assent to major Campbell's claim, by adopting its language, as far as the falls of the Miami, and to the northern claim upon the territories of New-York and Vermont?

2. The third article stipulates that the two contracting parties may frequent the ports of *either party*, on the eastern banks of the Mississippi. Query—What ports has Great Britain on the eastern banks of the Mississippi?

3. The third article likewise opens an amicable intercourse on the lakes; but excludes us from their sea-ports, and the limits of the Hudson's bay company; and excludes them from navigating our Atlantic rivers, higher than the highest port of entry in each. Query—What are the limits of the Hudson's bay company? Query—What equivalent do the United States obtain for the general freedom of navigation, portage and passage? For it must be remembered, that the British rivers penetrate the heart of the country, but of those we can take no advantage; while Great Britain is in fact admitted to all the advantages of which our Atlantic rivers are susceptible.

4. The sixth and seventh articles provide for satisfying every demand which Great Britain has been able, at any time, to make against the United States (the payment of the British debts due before the war, and the indemnification for vessels captured within our territorial jurisdiction) but the provision made for the American claims upon Great Britain, is not equally explicit or efficient in its terms, nor is it co-extensive with the object. Query—Why is the demand for the negroes, carried off by the British troops, suppressed, waved, or abandoned? The preamble to the treaty recites an intention to terminate the differences between the nations: was not the affair of the negroes a difference between the nations? and how has it been terminated?

5. The ninth article stipulates, that the subjects of Great Britain and the citizens of the United States, respectively, who now hold lands within the territories of either nation, shall hold the lands in the same manner as natives do. Query—What is the relative proportion of lands so held? Query—The effect to revive the claims of British subjects, who, either as traitors or aliens, have forfeited their property within the respective states? Query—The operation of such a compact on the internal policy of the union, combined with the solemn recognition of a colony of British subjects, professing and owing allegiance to the British crown, though settled within the acknowledged territory of the United States, by virtue of the second article?

6. The tenth article declares, that neither party shall sequester or confiscate the debts or property in the funds, &c. belonging to the

citizens of the other, in case of a war, or of national differences. Great Britain has fleets and armies; America has none. Query—Does not this, supported by other provisions, which forbid our changing the commercial situation of Great Britain, or imposing higher duties on her than on other nations, deprive the United States of their best means of retaliation and coercion? Query—Is it not taking from America her only weapon of defence; but from Great Britain the least of two weapons which she possesses? What is the relative proportion held by the citizens of the contracting nations, respectively, in the funds, &c. of each other.

7. The twelfth article opens to our vessels, not exceeding seventy tons, an intercourse with the British West India islands, during the present war, and for two years after: but it prohibits our exporting from the United States, melasses, sugar, cocoa, coffee, or cotton, to any part of the world, whether those articles are brought from British, French, or Spanish islands, or even raised (as cotton is) within our own territory. Query—Are vessels of seventy tons equal to maintain the most beneficial part of our trade with the West Indies, the transportation of lumber, &c.? Query—Do we not, *in the time of war* (and the continuance of the privilege, for more than two years after the war depends on the situation in which his majesty of Great Britain shall then find himself in relation to the islands) enjoy a greater privilege, under the temporary proclamations of the colonial governors, than this article admits? Query—Have not the articles which we are prohibited from exporting, formed, of late, a valuable part of our trade? Is not cocoa chiefly cultivated by the Spaniards? Is not cotton a staple of America? Is our own consumption equal to our importation or growth of the prohibited articles? Will not the want of a vent for any surplus quantity, affect the other branches of our commerce, diminish the demand for ship building, and injure our agriculture? If we are now thrown out of this branch of the carrying trade, shall we be ever able to recover it? and, in short, will not the loss be of lasting detriment to all our maritime exertions?

8. The thirteenth article admits us to trade in the British settlements in the East Indies: but it excludes us from any share in the coasting trade of that country; it forbids our penetrating the interior of the country, or holding an intercourse with the natives, unless under a license from the local British government; and it compels us to land all the articles that are there shipped, in the United States. Is not China the independent territory of the emperor? Is not Canton an open port accessible to all nations? Do we not obtain there, and at independent places in the East Indies with which we have, at present, an uninterrupted communication, tea, porcelain, nankeens, silk, &c. upon the principles of a free trade? Does not a very advantageous part of the trade in that quarter of the globe, consist in the exchange of the products and manufactures of the East Indies for those of China, and *vice versa*? Do not our importations of East India goods far exceed our consumption? Is not the trade which we carry on with those goods in Europe, highly beneficial?

Are not sugar and coffee a part of our importations from India, and does not the 12th article prohibit our re-exporting them? Does our trade to Europe, founded on the previous intercourse with India, depend on the British licence; and can it be maintained, under the disadvantage of a double voyage? Are we not, every voyage, making favourable impressions on the natives of China? Do we not participate, at present, in the carrying trade of that country? Does not our interest in it increase rapidly?

9. The several articles that regulate the rights and privileges of the contracting parties within their respective territories, in case either of them is engaged in a war, may cease in two years after the present war is terminated, and cannot be protracted beyond twelve years.

Query—Are not all these advantages, in effect, *exclusively favourable to Great Britain*, a principal maritime power of Europe; often engaged in wars; and interested to obtain for her ships, her colonies, and herself, the ports and supplies of this extensive continent?

Is it probable that, during the longest possible existence of this treaty (twelve years) America will be engaged in maritime wars, will want English ports as a refuge for men of war, or as a retreat for prizes? Or that it will, during that period, be of importance to her objects, to prevent her enemies from arming in English ports, or selling their prizes there?

10. The twenty-second article provides for ships of war being hospitably treated in the ports of the respective contracting parties; and that officers shall be treated with the respect that is due to the commissions which they bear. Query—Could not the principle of reciprocity, as well as humanity, suggest to Mr. Jay, that some provision should be made to protect our citizen sailors from the fangs of British press-gangs in England; and from the horrors of their prison-ships in the West Indies? Were the commissions of his Britannic majesty of more regard than the liberties of American freemen? Or, was it unknown, that thousands of our sailors have been occasionally enslaved by the impress tyranny of the British government? Or, that thousands have lost their lives in noxious prisons, while their vessels were carried into British ports for “LEGAL ADJUDICATION?”

11. The fourteenth article provides for a perfect liberty of commerce and navigation, and for the accommodation of traders; but subject always to the laws and statutes of the two countries respectively: Query—Are not the laws and statutes of England infinitely more rigid, on the subjects of this article, than the laws and statutes of America?

IV. *The Treaty is an Instrument of Party.*

1. The discussions, during the session of Congress in which Mr. Jay's mission was projected, evinced the existence of two parties, upon the question, whether it was more our interest to be allied with the republic of France, than with the monarchy of Great Britain. Query—Does

not the general complexion of the treaty decide the question in favour of the alliance with Great Britain? Query—Whether that complexion does not manifestly arise from the provisions, for admitting a British colony within our territory, in the neighbourhood of the western posts; for admitting the whole British nation, without an equivalent, into a participation of our territory on the eastern bank of the Mississippi; for naturalizing all the holders of lands; for opening a general intercourse with their traders on the lakes, in the interior of our country, rendering (as it is idly said) the local advantages of each party common to both; for regulating the external trade of the two nations with each other; for admitting citizens to be punished as pirates, who take commissions, &c. from a belligerent power, adverse to either contracting party; for fettering the operations of our treaty with France; for surrendering criminals, &c. &c. &c.

2. The measures proposed by one party to retaliate the injuries offered by Great Britain to our territorial, commercial and political rights, were opposed by the other, precisely as the treaty opposes them. For instance:—

(1.) Mr. Madison projects a regulation of our commerce with Great Britain, by which the hostile spirit of that nation, might be controuled on the footing of its interest. The treaty legitimizes the opposition, which was given to the measure in Congress, by declaring in article fifteen, “that no other or higher duties shall be paid by the ships or merchandise of the one party, in the ports of the other, than such as are paid by the like vessels or merchandise of all other nations; nor shall any other or higher duty be imposed in one country on the importation of any articles of the growth, produce, or manufactures of the other, than are, or shall be, payable on the importation of the like articles of the growth, &c. of any foreign country.

(2.) Mr. Clarke proposes to manifest and enforce the public resentment, by prohibiting all intercourse between the two nations. The treaty destroys the very right to attempt that species of national denunciation, by declaring in the same article, that “no prohibition shall be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations.”

(3.) But Mr. Dayton moves, and the house of representatives support his motion, for the sequestration of British debts, &c. to ensure a fund for paying the spoliations committed on our trade. The treaty (without regarding the respect due to the commission which is borne by our members of Congress) not only despoils the government of this important instrument to coerce a powerful, yet interested adversary into acts of justice, but enters likewise into a commentary, which, considering the conduct of one of the branches of our legislature, Lord Grenville, consistently with decorum, could not have expressed, or at least, Mr. Jay, for the sake of our national dignity, ought not to have adopted. The tenth article declares, that “neither the debts due from individuals of the one nation to individuals of the other,

not shares nor monies which they may have in the public funds, or in the public or private banks, shall ever, in any event of war or national difference, be sequestered or confiscated, *it being unjust and impolitic*, that debts and engagements contracted and made by individuals having confidence in each other and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents." The terms are very similar to those that gave Mr. Dayton offence in a speech pronounced by Mr. Ames; and certainly it will be deemed no mitigation, that the charge of committing "*an unjust and impolitic act*," has been wantonly engrafted upon the most solemn of all instruments, — a public treaty! Query:—Would Lord Grenville have consented to brand his Royal Master with the title of *Great Sea Robber*, if Mr. Jay's urbanity could have permitted him to borrow the epithet from another member of Congress, in order to insert it, in the article that relates to the British spoliations on our trade? But perhaps, Mr. Jay forgot, that the commentary operated as a reflection on the government of the United States, and only meant it as a reproach to Great Britain, for sequestering during the late war, and retaining at this moment, the property belonging to Maryland, lying in the bank of England. It might, likewise, be intended as a satire upon the parliamentary sequestration of French property in the famous "*Inter-course Act*;" or, perhaps, Mr. Jay anticipated the revolution in Holland, and designed his commentary as a warning against the seizing of Dutch property, public and private; which, however, has since taken place, in spite of his solemn admonition.

3. The trials that had occurred relative to the equipment of French privateers in our ports; and the enlistment of our citizens in the service of the republic, had produced some embarrassment in the course of party pursuits. These are obviated by the treaty. The British nation by which the empress of Russia has always been supplied with naval officers, and whose fleets and armies are always crowded with volunteers from other nations, consents that her subjects shall not serve against us; and stipulates that our citizens shall not serve against her. This contract is made with a power actually engaged in a war; and seldom more than seven years clear of one; by a power at peace, not liable, from her local position, and political constitution, to be involved in war, and in strict alliance with the nation against whom the stipulation will immediately operate. Captain Barney and the other Americans, who have joined the arms of France, are thus involved in the most serious dilemma. If they expatriate themselves, they may possibly escape the vengeance of the American government; but will that save them from the vengeance of Great Britain, whose concessions on the doctrine of expatriation are not quite so liberal? By the bye, it may here be seasonably repeated, that while Mr. Jay was so willing to prevent American citizens from *entering* into the service of France, he might surely have taken some pains to secure them from being *pressed* into the service of England. He would have found, on enquiry, that the in-

stances of the latter kind are infinitely more numerous than of the former. But it is enough that the measure will be introductory of a law, favourable to the view of a party which reprobates every idea of assisting the French, and cultivates every means of conciliating the British.

4. It has, likewise, been thought by some politicians, that the energies of our executive department require every aid that can be given to them, in order more effectually to resist and controul the popular branches of the government. Hence we find the treaty-making power employed in that service; and Congress cannot exercise a legislative discretion on the prohibited points (though it did not participate in making the cession of its authority) without a declaration of war against Great Britain. George the third enjoys by the treaty a more complete negative to bind us as states, than he ever claimed over us as colonies.

V. *The treaty is a violation of the general principles of neutrality, and is in collision with the positive previous engagements which subsist between America and France.*

1. It is a general principle of the law of nations, that during the existence of a war, neutral powers shall not, by favour or by treaty, so alter the situation of one of the belligerent parties, as to enable him more advantageously to prosecute hostilities against his adversary. If, likewise, a neutral power shall refuse or evade treating with one of the parties, but eagerly enter into a treaty with the other, it is a partiality, that amounts to a breach of neutrality. These positions may be supported by the authority of the most esteemed writers on the subject; but it will be sufficient in the present case, to cite the conduct of Great Britain herself. Thus, it has been adjudged by Lord Mansfield, "that if a neutral ship trades to a French colony, with all the privileges of a French ship, and is thus adopted and naturalized, it must be looked upon as a French ship, liable to be taken." See *Judge Blackstone's reports*, 1 vol. p. 313, 314. According to the principle on which this judgment was given, the act of issuing the memorable orders of the 6th of November, 1793, and the consequent seizure of all our vessels, are attempted to be justified. Great Britain alleges (when it is injurious to France) that trading with the French islands, on a footing not allowed before the war, is a breach of neutrality, and cause of confiscation: and, therefore, Great Britain must also admit, at least America will not deny, that trading with the British islands, on a footing not allowed before the war; or, in different words, altering and enlarging the commercial relations of the two countries, is equally a breach of our neutrality towards France. When the sword is found to cut both ways, the party who uses it, has no right to complain.

2. That we have, on the one hand, evaded the overtures of a treaty with France, and on the other hand, solicited a treaty from Great Britain, are facts public and notorious. Let us enquire, then,

what Great Britain has gained on the occasion, to enable her more advantageously to prosecute her hostilities against France.

(1.) *Great Britain has gained time.* As nothing is settled by the treaty, she has it in her power to turn all the chances of the war in her favour; and, in the interim, being relieved from the odium and embarrassment of adding America to her enemies, the current of her operations against France is undivided, and will of course flow with greater vigour and certainty. We have been for so many years satisfied with the promises of the treaty of peace, that Great Britain has cause to expect, at least, an equal period of credit, for the promises of the treaty of amity. If, indeed, it is true, that the reasons assigned by Lord Grenville to Mr. Jay, for declining an immediate surrender of the posts, were, first, that the British traders might have time to arrange their out-standing business; a privilege that is expressly granted by the treaty, and could not therefore, furnish a real excuse for delay; and secondly, that the British government might be able to ascertain what would be the probable effect of the surrender, on the Indians; a reservation that demonstrates an intention to be governed by events; we can very well account for the late extensive shipment of artillery and ammunition to Canada; and may easily calculate the importance of gaining time, in order to promote the American, as well as European, objects of Great Britain.

(2.) *Great Britain gains supplies for her West India colonies; and that for a period almost limited to the continuance of the war, under circumstances which incapacitate her from furnishing the colonial supplies herself; and, indeed, compel her to invite the aid of all nations, in furnishing provisions for her own domestic support.* The supplies may be carried to the islands either in American bottoms not exceeding seventy tons, or in British bottoms of any tonnage.

(3.) *Great Britain gains an advantage over France, by prohibiting the exportation of sugar, &c. in consequence of which the colonies of France must, in a great measure, remain unsupplied with provisions, &c. as they can only in general pay for them in those articles, whose use is confined to the American consumption.* It will be remembered, that the produce of the French islands has of late constituted a great part of our European remittances. If, therefore, that trade is cut off, and at the same time, besides employing our own small craft of seventy tons, Great Britain is allowed, to any extent of tonnage, to be our West India factor, it is obvious that our consumption of sugar, coffee, &c. &c. will be abundantly supplied, without maintaining an intercourse with the French, or even with the East Indies, to procure any of those articles. Perhaps this method, though less bold, will be more effectual to prevent our furnishing the French islands with provision, than declaring them to be in a state of blockade, and seizing the vessels that attempt to visit them.

(4.) *It is another important gain to Great Britain (which might, likewise, have been adverted to under the feature of reciprocity) that, to any extent of tonnage, her vessels may carry on the West India trade for us, either to supply our domestic consumption, or European en-*

agements, *subject to no other or higher duties than our own vessels*, while our own vessels are restricted to a pitiful size, and circumscribed to a particular voyage. But whatever may be thought of the benefit of acquiring for America even this scanty participation in the West India trade, no one (after the rejection of the twelfth article) will deny that the whole measure changes the relative situation of the two countries, avowedly in favour of Great Britain, and operatively injurious to France; and every such change is derogatory to our boasted neutral character.

(5.) *The admission of Great Britain to all the commercial advantages of the most favoured nation, and the restraints imposed upon our legislative independence*, as stated in the *party feature* of the treaty, are proofs of predilection and partiality in the American government, which cannot fail to improve the resources of Great Britain, and to impair the interests, as well as the attachments, of France.

(6.) *The assent to the seizure of all provision-ships, and that, in effect, upon any pretext, at a period when Great Britain is distressed for provisions, as well as France; and when the system of subduing by famine has been adopted by the former against the latter nation*, is clearly changing our position, as an independent republic, in a manner detrimental to our original ally. That our merchants will be paid a reasonable profit for their cargoes, &c. may render the measure more palatable to us; even under the loss of the return cargo, the derangement of the voyage, and the destruction of the spirit of commercial enterprise; but that consideration cannot render it less offensive to France. It may properly be here remarked, that Sweden and Denmark have obtained, by a spirited resistance, an actual indemnification for the seizures which have heretofore taken place, and an exemption from all such outrages in future; while America has only put those which are past, in a train of negotiation, and has given a *legitimate effect* to those which are to come. The order, which, the English gazettes say, has recently been issued for seizing American provision-ships, on their passage to France, ought not, therefore, to be complained of, as it is merely an exercise, by anticipation, of the right granted by the treaty.

(7.) *Great Britain has gained the right of preventing our Citizens from being volunteers in the armies or ships of France!* This is not simply the grant of a new right to Great Britain, but is, at the same time, a positive deprivation of a benefit, hitherto enjoyed by France. Neither the laws of nations, nor our municipal constitution and laws, prohibited our citizens from *going to another country, and there*, either for the sake of honour, reward, or instruction, serving in a foreign navy, or army:—Colonel Oswald and many others have done it:—Captain Barney and many others are doing it. But a proclamation must issue to recal all such volunteers, and punishment must follow disobedience, if the twenty-first article of the treaty is to be effectuated, as the supreme law of the land.

(8.) *Great Britain has gained a right to treat and punish as pirates, any of our citizens who shall accept, even while they are in France, any*

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commission to arm a privateer, or letter of marque. It is true, that a similar provision is contained in other treaties; but we are now only considering the alterations which are made by the treaty under discussion, in favour of Great Britain, and injurious to France. How far there exists a power to define piracy, by treaty, will be remarked in delineating another feature of Mr. Jay's diplomatic offspring.

(9.) *Great Britain has doubly gained, by obtaining in our ports, an asylum for her ships of war, privateers, prizes, &c. stipulating for an exclusion of those of her enemies, other (it is admitted) than France.* The twenty-fourth and twenty-fifth articles of the projected treaty, are nearly copied from the subsisting treaty with France. It would be curious, however, to reflect on the very different motives, which must justify (if the idea of justification could, in the late instance, be at all admissible) these analogous grants. The concession to France was made *when we were at war, and she was not*; it was made upon a certainty of reciprocal advantage; and it was made *as a price for obtaining the aid of that gallant nation, in the establishment of our independence.* The concession is made to Great Britain *when she is at war, and we are not*;—without any rational prospect of deriving any reciprocal advantage from it; and under such circumstances of injury and insult, as might have admonished us to reserve it as the price for obtaining aid from other nations, in resisting her hostilities, instead of paying it for smiles without affection, and promises without sincerity. When we were making treaties with Holland, Prussia, &c. did we not expressly exclude them from such important, and, as we have already seriously experienced, such dangerous privileges?

But it will be asked, perhaps what mighty benefit has Great Britain gained, in this case, at the expence of France, since the prior similar privileges of France are exclusive? *Answer:—That as the privilege of Great Britain will operate against every other nation, it will immediately affect the French republic's alliance, offensive and defensive, with the United Provinces, which preceded the ratification, at least, of the treaty: and it may, eventually, have the same pernicious influence in relation to Prussia, Spain and Portugal, whose disposition to change sides, in the present war, has been unequivocally expressed.* Thus, though Holland and Prussia made treaties with us, long before Great Britain would admit the idea of a negotiation, and though Spain and Portugal are the only customers, who furnish us with the ready money balance, for the very purpose of paying our annual accumulation of debt to Britain, the harbours of America are open to their vessels *as prizes*, but shut to them as *friends*: They may be brought hither and sold by their enemies: but if they have captured their enemy, all, but common necessaries, shall be denied to them! The habits, bias, and opinions of a people, ought not to be altogether disregarded in making a treaty. What honest, feeling American, could patiently see an Englishman, *our sunshine ally*, bringing into our ports, *as prizes*, the ships of Holland, *our ally in the times that tried men's souls*;—a republic, indissolubly

united with France,—that earliest, latest, best of friends? What honest, feeling American, even submitting to a scene so painful, would willingly assist in expelling from our ports the ships of Holland, *which had merely retaliated, by the capture of their foe?*

3. But it is time to advert to *the cases of collision* between the two treaties; and these are of such a nature as to produce a violation of the spirit, though not a positive violation of the words, of the previous engagements, that subsist between France and America—They are *causes of offence, and clash in the highest degree.*

(1.) *By the ninth article of the treaty of alliance with France, we guarantee the possessions of that nation in America.* It is true, that our situation is such as to incapacitate, and of course to excuse us, from a *direct* fulfilment of this guarantee; but it is equally true, that we violate our faith, whenever we do any thing that will, either directly or indirectly, endanger those possessions. Query—Whether facilitating the means of supplying the British forces in the West Indies, will not be the effect of the arrangements relative to the trade with the British islands? Query—Whether restraining our intercourse with the French islands, as a consequence of the treaty already predicated, will not expose them to want, and of course to the necessity of yielding to their enemies? Does not every such advantage given to Great Britain, *clash* with our engagements to France?

(2.) By our treaty with France, and indeed with several other nations, *it is expressly stipulated, that free vessels shall make free goods.* At the time of entering into the stipulation, and even at this moment, the maritime strength of France (always superior to that of Denmark and Sweden, which has, under similar circumstances, been successful) could command the respect of the world for her engagements. It is true, America neither was, nor is, in a situation to produce the same complaisance; and, on the ground of that weakness, France has, hitherto, candidly dispensed with a strict performance of the treaty. But though America cannot *enforce*, she ought not to *abandon* her engagements: she may submit to imperious necessity, but *she cannot voluntarily bring into question* the right of protecting, as a neutral power, the property of France; while France is not only ready and able to afford her property the stipulated protection, but, in conformity to the stipulation, *actually allows the property of Great Britain to pass free, under the sanction of the American flag.* When, therefore, the treaty with Great Britain *agrees*, that within two years after the termination of the existing war, *it shall be discussed* “whether in any, and what cases, neutral vessels shall protect enemies’ property” —*does it not clash with our previous promise to France, that free ships shall make free goods?* And when the treaty with Great Britain, in formal and explicit terms, *further agrees*, “that in all cases where vessels shall be captured or detained, on suspicion of having on board enemies’ property, &c. *the part which belongs to the enemy shall be made prize*”—Is not this an *evident collision with our previous agreement with France*, and with the security which British property enjoys in consequence of it? While France adheres to her treaty, by per-

mitting *British goods* to be protected by American bottoms, is it honest, honourable, or consistent, on our part, to *enter voluntarily into a compact with the enemies of France*, for permitting them to take *French goods* out of our vessels? We may not be able to *prevent*, but ought we to *agree* to the proceeding? Let the question be repeated—Does not such an *express agreement* clash with our *express*, as well as implied, obligations to France?

(3.) By enumerating, as contraband articles, in the treaty with Great Britain, certain articles which are declared free in the treaty with France, *we may, consistently with the latter, supply Great Britain; but, consistently with the former, we cannot supply France.*

Thus, *our treaty with France* (and, indeed, every treaty which we have) expressly declares, that, “in general, all provisions which serve for the nourishment of mankind and sustenance of life; furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sail cloths, anchors and any part of anchors, also ships, masts, planks, boards and beams of what trees soever; and all other things proper either for building, or repairing ships, and all other goods whatever, which have not been worked into the form of any instrument for war, by land or by sea, shall not be reputed contraband.”

The treaty with Great Britain expressly declares, “that timber for ship building, tar or rozin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron, and fir planks only excepted, shall be objects of confiscation, whenever they are attempted to be carried to an enemy.”

Whether this stipulation can be considered as founded on a principle of *reciprocity*, since the articles declared to be contraband are *among our principal exports*, but *among the principal imports of Great Britain*, might have been adverted to, in tracing a former feature of the treaty; but let it be now candidly answered, whether it is not *in collision* with our previous engagements with France? The right to make such a stipulation, is not, at present, controverted; but only the assertion, that *exercising the right does not clash in any degree* with the terms and spirit of the French treaty. France exempts those important materials of our commerce from confiscation, in favour of all the world: Great Britain condemns them to confiscation, whenever they shall be carried to her enemies; and the compact is made, while France is one of her enemies!!

VI. *The Treaty with Great Britain is calculated to injure the United States, in the friendship and favour of other foreign nations.*

1. That the friendship and favour of France will be affected by the formation of so heterogeneous an alliance with her most implacable enemy, cannot be doubted, if we reason upon any scale applicable to the policy of nations, or the passions of man. From that republic, therefore, if not an explicit renunciation of all connection with the United States, we may at least expect an alteration of conduct: and,

finding the success which has flowed from the hostile treatment that Great Britain has shown towards us, she may be, at length, tempted to endeavour at *extorting from fear*, what she has not been able to obtain from *affection*. She will, probably, declare Great Britain in a state of blockade, for the purpose of seizing our vessels in Europe; and she may institute courts for "legal adjudication," in order to confiscate our vessels in the West Indies. *Great Britain will then chuckle at the scene*. No one can doubt that our embarrassments will gratify, not only the avowed objects, but the latent resentments, of that nation. Even if she could obliterate the memory of our revolution; she cannot, with pleasure, behold the successful experiment of a republican system of government; nor the rapid advances of a commercial competitor. The moment she has produced a quarrel between America and France, she may exclaim, "*Delenda est Carthago*." America is again a colony! How different were the interests and dispositions of our tried friend! That our government should preserve its purity and independence—that our commerce and agriculture should attain their zenith—were views *once* congenial with the policy and affections of the French nation: Heart, head, and hand, she would have joined in promoting them, against the arts and enmities of all the rest of the world! What a change, then, have we made!

"Look on *this* picture, and on *that* :

"The counterfeit presentment of two *Allies*!

"Who would on this fair mountain leave to feed,

"To batten on that moor!"

2. During the war, we, likewise, formed a reasonable and serviceable treaty with the United Netherlands; and, shortly after the war, treaties were established with Sweden, Prussia, &c. But in order to avoid *even the appearance of clashing or collision* with the French treaty, the powers, thus early in courting our alliance, were not allowed those privileges of asylum for themselves, and of excluding their enemies from our ports, which are conceded in the projected treaty to Great Britain. Have those nations no cause for jealousy and reproach? What principle of policy, or justice, can vindicate the partiality and predilection, that has been thus shown?

3. But the projected treaty (after an affected recognition of pre-existing public treaties) declares, that while Great Britain and America continue in amity, no future treaty shall be made, inconsistent with the articles, that grant the high and dangerous privileges, that have been mentioned. Every nation of the earth (except France) is thus sacrificed to the pride and interest of Great Britain. And with what motive, or upon what consideration, is the sacrifice made? It has been stated in a former, and will be more fully shewn in a future, feature of Mr. Jay's treaty, that the United States do not enjoy any equivalent for this, nor for any other, concession which is made to Great Britain: But the mischief does not end with the folly of a lop-sided bargain. By granting these exclusive privileges to Great Britain, by declaring that no commercial favour

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shall be conferred on other nations, without her participating in them, we have thrown away the surest means of purchasing, on any emergency, the good will and good offices of any other power: We cannot even improve the terms of our old treaty with France. For all the advantages of trade that Spain, Portugal, Holland, &c. might, and probably would, upon a liberal footing of reciprocity, have given us,—what have we now left, to offer as the basis of negotiation and compact?

4. The alteration which the treaty makes in the relative situation of several nations with America, and the conduct, that is likely to be pursued by those nations, in order to counteract its effect, merit serious reflection. Will Spain see without some solicitude, the partition which we have made with Great Britain, of our territory on the eastern bank of the Mississippi? How would our projected treaty work, if France should recover Pondicherry, &c. in the East Indies; should subdue and retain the West India islands; should stipulate with Spain for the cession of Louisiana; and should conquer Nova Scotia? The curious *cordon* with which we have allowed Great Britain to circumvent us (and of which more will be said hereafter) being thus broken, how are we to calculate the consequences?

5. Considering the Indians as a foreign nation, is not the treaty calculated to exalt the character of Great Britain, and to depreciate the character of America, throughout the savage world? What right has Great Britain to negotiate for Indians, within the limits of our jurisdiction? Suppose the existing western posts surrendered, may not Great Britain establish other posts in a contiguous or more advantageous station? Is she not left at liberty to pursue the fur trade in our territory as well as her own? Will not her enterprize in traffic, superior capital and experience, enable her to monopolize that trade? And will she not, in future, have the same motives, and the same means, to foment Indian hostilities, that have hitherto been indulged and employed, at the expense of so much American blood and treasure?

VII. *The Treaty with Great Britain is impolitic and pernicious, in respect to the domestic interests and happiness of the United States.*

1. If it is true, and incontrovertibly it is true, that the *interest* and *happiness* of America, consist (as our patriotic president, in his letter to Lord *Buchan*, declares) “in being little heard of in the great world of politics; in having nothing to do in the political intrigues, or the squabbles of European nations; but, on the contrary, in exchanging commodities, and living in peace and amity with all the inhabitants of the earth; and in doing justice to, and in receiving it from, every power we are connected with;” it is likewise manifest, that all the wisdom and energy of those who administer our government, should be constantly and sedulously employed to preserve, or to attain, for the United States, that enviable rank among nations. To refrain from forming hasty and unequal alliances; to let

commerce flow in its own natural channels ; to afford every man, whether alien or citizen, a remedy for every wrong ; and to resist, on the first appearance, every violation of our national rights and independence, are the means best adapted to the end which we contemplate. It maybe objected, that we are already involved in some alliances, that have had a tendency rather to destroy our public tranquillity, than to promote our public interest. But a difference of circumstances will require and justify a difference of conduct. For instance—it was necessary and politic, in the state of our affairs at the commencement of the revolution, to pay a premium for the friendship and alliance of France : we could not have insured success without the cooperation of that nation : and as *the price* that we paid for it was not greater than *the benefit* that we derived from it, we cannot now, with justice, cavil at our bargain. But was the inducement to form an alliance with Great Britain, of a nature equally momentous ? Is the advantage flowing from the sacrifices that are made, equally compensatory ? Why should we, at this auspicious season of our affairs, venture to undermine the fundamental maxim of our domestic happiness, by wilfully obtruding on the great world of politics, or wantonly involving ourselves in the political intrigues and the squabbles of European nations ? Suppose (as it is often alleged and sometimes proved) that our treaty with France is productive of inconveniences ; will it happen in the political, any more than in the physical or moral world, that by multiplying the sources of evil, we shall get rid of the evil itself ? If, according to the *quondam* opinion of the friends of a British alliance, our commerce has been restrained in its operations ; or if our government has been menaced in its peace and stability, by a practical development of *the terms* of our treaty with France, shall we better our situation, because we make *another treaty upon the same terms* with Great Britain ; and furnish two nations, instead of one, with an opportunity to perplex and distress us in pursuing our natural and laudable policy—the *policy of exchanging commodities, and living in peace and amity with all the inhabitants of the earth ; doing justice to, and in receiving it from, every power we are connected with !*

2. But even if the question was at large, and we were now under a necessity of deciding, for the first time, whether we would be allied to the monarchy of Great Britain, or to the republic of France, how would a rational estimate of *the interests and happiness* of the United States (the true and only touch-stone for solving, in the mind of an American, such an enquiry) lead us to decide ? To those members of the senate, who could regard *the twelfth article* of the treaty as a mark of parental care and wisdom, by which Great Britain was fondly desirous of restraining the excesses of our commercial ardour ; excesses that might eventually and prematurely debilitate and destroy us ! To those members of the senate, who could, with filial gratitude, declare, that an alliance with Great Britain was natural ; that an alliance with France was artificial ; since, although we were partially indebted to France for our independence, we were entirely indebted to Great Britain for our being ! To all who can cherish such ideas, or utter such language,

these strictures will be ungracious and unprofitable : but they claim candid attention from *the patriot*, who remembers, that when *the parent* sought to destroy, *the friend* interposed to save ; and from *the statesman*, who possesses too much wisdom to be influenced by prejudice, and too much fortitude to be controuled by fear.

Are the *interests and happiness* of the United States involved in the permanent establishment of a republican government ? Yes :—Then she ought rather to cultivate the friendship of a republic, actuated by a fellow feeling, than the alliance of a monarchy impressed with jealousy and apprehension. Are *the interest and happiness* of the United States connected with her territorial and political independence ? Yes :—Then she ought rather to fortify herself by an alliance with a nation, whose territorial jurisdiction, and physical characteristics, preclude the possibility of collision ; than attach herself to a nation whose language, manners and habits, facilitate the execution of every attempt to encroach ; and whose territorial possessions are in an irritating and dangerous contact with our own. Are *the interest and happiness* of America to be promoted by an active employment of the vast store of *materials of the first necessity*, which nature has bestowed on her ; by the extension of her commerce ; and by the freedom of her navigation ? Yes :—Then she ought rather to court the countenance and protection of a nation, whose occasions of envy are comparatively few ;—whose temptations are to foster, not to counteract, our schemes of commercial opulence and enterprise ;—and whose imperial glory and existence do not depend upon a claim of universal maritime superiority ;—rather than consent to bask beneath the baneful shade of an alliance with a nation, whose very existence is, probably, the tremendous stake in opposition to our prosperity : and whose embraces, like the embraces of the tyrant's image, may be rendered the most effectual instruments of torture and destruction. Are *the interest and happiness* of the United States dependant on the cordiality of their union, and the permanency of their government ? And again—Do that cordiality and that permanency, depend upon the confidence and mutual good understanding, which subsist between the people who formed the government, and the officers whom the people have appointed to administer it ? Yes :—Then it would be the part of duty, as well as policy, in those officers to follow *the unanimous sentiment of the people*, by preferring a liberal and faithful alliance with France, to a constrained and hypocritical alliance with Great Britain.

3. The first striking effect of the treaty, *to endanger the interests, and disturb the happiness* of the United States, may be detected by a geographical sketch of the *cordon, or line of circumvallation, with which it enables Great Britain to fetter and enclose us*. The proximity of Canada and the western posts, has heretofore been a cause of great uneasiness ; but that is a trifling source of vexation, compared with what we shall have in future to encounter. Suppose ten thousand radii were drawn diverging from the centre of the United States ; not one of them could escape the conventional circle of British territory,

jurisdiction and occupancy. Has an American occasion to travel to the east or the north? *The barriers of Nova Scotia and Canada* present themselves. Is it his wish to penetrate the great western wilderness? *A new set of British posts* will intercept his progress, even if he shall be allowed peaceably to pass *the British colony* within the precincts and jurisdiction of Detroit. Does business require him to cross, or float down, the Mississippi? He may evade the vigilance of the Spaniard, but he will find the eastern bank of the river monopolized by British traders, and probably protected by British gun-boats. He is in hopes, however, to avoid all difficulty by a passage on the ocean? Alas! our Atlantic harbours are crowded with prizes to British privateers, and our sea coast is lined with British cruisers! Yet, let us for a moment imagine, that this ill fated traveller has surmounted his *domestic* obstacles, whither can he fly, to be emancipated from the *foreign* jurisdiction of Great Britain? In the West Indies, his *cock boat* is measured and steered; according to the scale and course prescribed by the treaty. In the East Indies he can hardly exchange a commodity, or make a single acquaintance, without the British license. In Europe, if, during a British war, he carries goods belonging to an enemy of Great Britain, they will be seized as prize; if he takes ship-timber, tar, rosin, &c. they are liable to be confiscated as contraband; and if his cargo consists of provisions, the British may take it, *by treaty, at their own market price!*

One idea more about the boundary of the United States. Before the revolution, Great Britain had projected that general arrangement and division of her colonial possessions in America, which she has since, upon a smaller scale, carried into execution with respect to Canada. The territory then intended to be allotted to the government of the Canadas, was extended by a line running along the northern boundaries of the eastern colonies, along the western boundary of Pennsylvania, and along the courses of the Ohio, into the Mississippi. Since we are left at a loss for a positive definition of *the precincts and jurisdiction of the western posts, as ceded by the treaty to the settlers under British titles*, may we not conjecture, that Great Britain contemplates the territorial extent of her original project? Does not major Campbell's unexpected pretension, and the constant claim of the Indians, *at the instigation of the British*, to establish the Ohio as a boundary between them and the United States, give some countenance to such a conjecture?

4. But should an American, not stimulated by the desire of travelling into foreign countries, be content to prosecute the objects of his honest industry within the British territorial circle, bounding and constituting *his own home*, will his condition be much better than the condition of his itinerant fellow citizen? What with the establishment of British colonies and British ware-houses; the naturalization of British land-holders; and, in short, the *unqualified admission* of Englishmen, owing allegiance to the British crown, throughout our lakes, rivers and territory, while we are *excluded* from their sea-ports, company-lands, &c. &c. an American will hardly be able to find el,

bow-room for himself and family. Their pecuniary capital being larger; their means being easier; their experience being greater,—they must, inevitably, under such circumstances, become our merchants, manufacturers, farmers, &c. &c. They will import for us, in *their vessels*, all the products and fabrics of Europe, Asia and Africa—They will export for us, in *their vessels*, every article that our soil can furnish; our merchants will dwindle into clerks; our husbandmen will degenerate into the condition of the feudal villenage; and thus, in a short course of years, *America will probably exhibit the astonishing spectacle of a country possessed, cultivated, and enjoyed by aliens!* The ancient inhabitants of Great Britain, in a similar manner, invited those Saxons to their island as *friends and allies*, who soon afterwards became their *conquerors and masters*.

5. In such a state of things, *the interest and happiness* of the United States must languish and expire! At first the American mind will be corroded, by contrasting the elevation of *the guest* with the depression of *the host*. A struggle will probably ensue; but the influence of wealth, and the patronage of extensive commercial and manufactural institutions, &c. *will even divide the Americans themselves*; and, by *dividing*, incapacitate the British settlers to rule them. Is this an idle phantasm—a visionary suggestion? No! For, is not a great part of our trade, at this moment, monopolised by British subjects, under *the mask* of American citizenship? Has not the influence of British credits, and British politics already formed a considerable party in our government, and among our merchants? Disguise it as you will—let pride deny, and shame suppress the sentiment—still, it is too evident to every candid and discerning observer, that the only subsisting difference in the opinions and conduct of the citizens of America, arises from this fatal cause. Why, at the moment of reprobating *self-created societies for civil purposes*, do we gladly see the formation of *self-created societies for military purposes*; the city cohorts and Prætorian bands? Why are our merchants, who so anxiously called forth the voice of their fellow citizens in applauding the proclamation of neutrality, so circumspect and so torpid in giving their testimony about the treaty? How comes it, that amidst the acclamations of the 4th of July, the treaty is *toasted* in the little circle of English manufacturers, on the banks of the Passayik; and at the convivial tables of the English emigrants on the plains of the Genesee? How comes it that every man who prefers France to Great Britain—republicanism to monarchy,—is denominated *Antifederalist, Jacobin, Disorganiser, Miscreant*, &c. while men of another humour arrogantly and exclusively assume the titles of *Federalists, Friends to order*, &c. &c.? But let every honest American reflect seriously and seasonably, upon the means of promoting *the interest and happiness* of the United States, and he will disdain, as well as dread, to augment, by the adventitious force of treaties, that paramount interest, which Great Britain has already insidiously acquired in our commerce, navigation, manufactures, territory, and government.

6. Besides the injury eventually to be apprehended from these causes, the treaty is calculated to impair *the interest and happiness* of the United States, by producing an immediate and violent concussion in the federal atmosphere. For,

It ransacks the archives of our revolutionary transactions; and re-judges the solemn judgments of our courts of justice.

It condemns individuals to the payment of debts, from which they had previously been discharged by law.

It makes the government of the union responsible for the contracts of private citizens, and the defalcations of bankrupts.

It disregards the freedom of our commerce and navigation: and it restrains the use of our staple commodities.

It does *not* exact a just indemnification for the detention of the western posts.

It does *not* require the payment, stipulated by the preceding treaty, for the value of the negroes carried off at the close of the war.

It does *not* provide for the freedom and safety of our seamen, in their intercourse with the British dominions.

Let any one of these propositions be separately analysed, and sufficient cause will be found to excite and justify popular dissatisfaction; but view them combined, and the mind is shocked with an apprehension, that *the ratification of the treaty, may be the death-warrant of the union!*

VIII. *The British Treaty and the Constitution of the United States are at war with each other.*

1. Self-preservation is the first law of society, as well as of individuals: It is the radical principle of all political compacts. Nations (says *Vattel*) are bound to guard *their own preservation, and to pursue their own perfection*. We have incessant opportunities, indeed, of observing the operation of this universal rule; in animals of *instinct*, as well as in animals of *reason*; in the world of *things*, as well as in the world of *beings*.

2. Self-preservation, however, is a relative idea: it relates to the nature of the animal; to the constitution of the society. A man may lose his *human character*, without destroying his *vital existence*; and a government may be changed in its *essence*, without being subverted in its *forms*.

3. So, likewise, without open assault or positive violence, the sources of animal life may be poisoned, by the imperceptible contaminations of a luxurious habit: so, without the aid of terror or force, the legitimate foundations of government may be undermined, by the insidious encroachment of the rulers, and by the sedative acquiescence of the people. Governments, indeed, have too generally proved to be a kind of *political chrysalis*, passing, by progressive transmigrations, from the grub of pure democracy, to the butterfly of absolute monarchy.

4. But it will not yet be denied in America, that as the people have the sole right to constitute their government, the rule of *self-preservation* requires that the government should be maintained, in practice as well as in theory, *such as they have constituted it*. To render it, by any construction of the written articles of our social compact, *other than a republican government*, would be as fatal a subversion, as daring usurpation, or military conquest, could achieve. For, what real difference does it make to a nation, whether its constitution is *seized upon* by an enterprising individual, as in the Swedish revolution of 1770; or *overthrown* by a triumphant warrior, as in the recent extinction of the Polish monarchy; or *voted out of doors*, as in the disorganizing edicts of the long parliament of England? Thus, likewise, for one department of the government to assume the authority of another; or, by constructive amplifications of its own jurisdiction, so to monopolize the attributes of government, as to render the other departments useless and inefficient, must ever be deemed an effectual subversion of any constitution. The mode of distributing and organizing the powers of government, as well as the consideration of the nature and extent of the powers to be delegated, essentially belongs to the people; and in the body politic, as well as in the body natural, whenever any particular member absorbs more than its allotted portion of the aliment, that is destined to vivify and invigorate the whole, debility and disease will infallibly ensue. After the emperors had usurped the functions, privileges and powers of the senate, and of the popular magistrates of Rome, they preserved the formalities of the commonwealth, but they trampled on the liberties of the people. Though the parliaments of France had long been deprived of every deliberative faculty, as the representatives of the people, they were summoned to the last, as the ministerial officers of the monarch, for the purpose of registering his edicts.

5. The government of the United States, being then theoretically a *republican government*, and with great propriety denominated a *government of departments*, let us proceed to examine how far the *principles of self-preservation*, and the duty of *pursuing the perfection* of our political system, are involved in the ratification of the projected treaty with Great Britain.

The second section of the second article of the constitution says, that, "The President shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur."

To the exercise of this power no immediate qualification, or restriction, is attached: but must we therefore suppose that the jurisdiction of the President and senate, like the jurisdiction ascribed to the British parliament, is omnipotent? To place the authority of our President and senate on the same footing with the prerogative of the king of Great Britain, will not be commensurate with the objects to which the treaty extends. It must be remembered, that the treaty of peace, by which the rights of sovereignty and soil were ceded by the king of Great Britain to the United States, was negotiated

and ratified under the positive sanction of an act of parliament: And it is expressly stated in *Vattel*, that the king of Great Britain cannot, by *treaty*, confer the rights of citizenship on an alien. B. 1. c. 19. §. 214. Now, Mr. Jay's treaty does both these things (as will be hereafter demonstrated) without the intervention of the legislative authority of the union.

6. The consequence of admitting this unqualified claim to omnipotence, in transacting the business of the nation, would be so hostile to the principle and preservation of our government, that it is an indispensable duty (*obsta principiis*) to controvert and resist it. Whenever the President and two-thirds of the Senate shall be desirous to counteract the conduct of the house of representatives; whenever they may wish to enforce a particular point of legislation; or whenever they shall be disposed to circumscribe the power of a succeeding Congress; a treaty with a foreign nation, nay, a talk with a savage tribe, affords the ready and effectual instrument for accomplishing their views; since the treaty or the talk will constitute the supreme law of the land. That *such things may happen*, let the history of Mr. Jay's mission and negotiation testify.

7. If the extraordinary *treaty-making power* is paramount to the ordinary *legislative power*—supercedes its exercise—and embraces all its objects; let us endeavour to trace whither the proposition will carry us.

The fifth article of the constitution vests a power in two-thirds of both houses of Congress, to *propose amendments to the constitution*.

Let us suppose that a defect in our judiciary, or in any other department, operated injuriously to a foreign nation,—could the Senate, and President, uniting with that foreign nation, and excluding the house of representatives *propose an amendment upon the subject*? If they could by these means *originate*, might they not by other means *effequate*, alterations in the fundamental points of our government; and make, in fact, a new constitution for us?

By the eighth section of the first article, *Congress is empowered to borrow money on the credit of the United States*.

Suppose it was deemed expedient to subsidize Portugal, instead of building frigates, to keep the Algerines within the streights of the Mediterranean:—Could two-thirds of the Senate and the President, either borrow, or guarantee a loan for that purpose *by treaty*?

The same section empowers *Congress* to establish uniform laws on *the subject of bankruptcies*.

Suppose Great Britain had remarked, that, as her subjects were constantly the creditors of the citizens of the United States, she was deeply interested in our system of bankrupt laws:—Had the President and two-thirds of the Senate, a right to incorporate such a system with the projected treaty?

The same section empowers *Congress* to *coin money*, to regulate the value thereof, and of *foreign coin*, and fix the *standards of weights and measures*.

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Suppose the Birmingham manufacturers offered, on a cheap plan, to supply us with coin? Suppose Great Britain were pleased to insist upon our receiving her guineas at their English value, and upon our promising not to sweat, deface, or clip them, according to the current practice of the union? Suppose France were desirous that we should adopt the fanciful project of that republic, respecting weights and measures?—Could all, or any, of these propositions be acceded to and established by *treaty*?

The ninth section of the same article declares “that the migration or importation of such persons as the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year eighteen hundred and eight.”

Suppose Mr. Wilberforce had negotiated on the part of Great Britain, instead of Lord Grenville, and had made the prohibition of the importation of slaves into the United States, in the year eighteen hundred and eight, *sine qua non*:—Could the President and two-thirds of the Senate admit and legitimise the stipulation by *treaty*?

By the constitution, *Congress* has the power to constitute tribunals inferior to the supreme court.

Suppose Great Britain desired, for the future, as well as for the past, to establish a tribunal of her own judges in America, for deciding controversies between British subjects and American citizens:—Could this be accomplished through the medium of a *treaty*?

By the constitution, *Congress* is endowed with the power of declaring war.

Suppose Lord Grenville had insisted, and Mr. Jay had approved, that the *treaty* should be an offensive and defensive alliance; and, that we should forthwith join Great Britain in her hostilities against France:—Could the President and Senate thus *negotiate* us into a war?

By the constitution it is declared, “that no person holding any office, &c. under the United States, shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatsoever, from any king, prince, or foreign state.”

Suppose our envoy had been offered a present or a title by the British monarch—would the consent of the *treaty* be tantamount to the consent of Congress, for the purpose of approving and justifying his acceptance?

By the constitution it is provided, that all bills for raising revenues, shall originate in the house of representatives; and, that no money shall be drawn from the treasury, but in consequence of appropriations made by law.

Suppose Great Britain had stipulated, that as soon as the commissioners had fixed the sum due to her subjects for old debts, the President should draw a warrant for the amount, and that the same should be paid out of all public monies, in the treasury of the United States, prior to the payment of any antecedent appropriation by law:—Would this be the proper subject for a *treaty*, or for an impeachment?

8. But fatigued and disgusted with displaying, thus hypothetically the monstrous consequences, which will inevitably flow from *the jurisdiction claimed on behalf of the President and Senate, to bind the United States by any treaty, and in all cases whatsoever*; let us particularly examine *the numerous and extravagant infractions of the constitution, which the projected treaty actually commits*. Recent as is the establishment of the federal constitution, it is, indeed, to be lamented, that the possibility of violating it, is not a matter of floating and fluctuating popular opinion; but a matter susceptible of fixed and positive proof. For, who does not recollect, that a bill touching the fundamental principle of the government (its representative quality) *after having passed both houses of Congress, was declared by the President to be unconstitutional; and, therefore, undeserving of his official approbation and signature?* Who can forget, that a law touching the essential properties of the judicial department of our government, *after being ratified by every organ of legislative authority (the president, senate, and house of representatives) was declared by chief justice Jay, and his associate judges, to be unconstitutional; and, therefore, incapable of being executed and enforced?* With such authoritative precedents (and there are many others that might be adduced from the transactions of individual states) of the possibility of deviating from the rule and meaning of our constitution, are we to be damned for political heresy, merely because we doubt, or deny *the infallibility of Mr. Jay's negotiating talents?* And must every man be accursed (to use, for a moment, the intolerant language of the late secretary of the treasury, in his character of *the New York Camillus*) who thinks, that *the American envoy and the British minister were at least as likely to mistake, or misconstrue, the constitutional boundaries of the American government, as the president, senate, and house of representatives of the United States?* It is certainly, upon the whole, more candid, and more convincing, to put "the defence" of the treaty upon the *true trading ground*, taken by the New York, chamber of commerce;—to wit,—"*that we have made as good a market as such pedlars had a right to expect on the royal exchange; and that we cannot afford to fight, though we must submit to be plundered.*"

9. Let us proceed, however, in examining the points on which *the British treaty is at war with the American constitution*.

(1.) *By the constitution of the United States, the JUDICIAL POWER* is vested in one supreme court, and in such inferior courts as the Congress may from time to time establish; and its jurisdiction embraces, among other things, "*controversies between a state, or citizens thereof, and foreign states, citizens or subjects.*"

By the treaty, a tribunal other than the supreme court, or any inferior court established by Congress, is erected, with a jurisdiction to ascertain the amount of any losses or damages sustained "by divers British merchants and others, his majesty's subjects, on account of debts, &c. that still remain owing to them by citizens or inhabitants of the United States:" And it is agreed, "that in all such cases, where full compensation for such losses and damages cannot, for

whatever reason, be actually had and received by the said creditors, in the ordinary course of justice, the United States will make full and complete compensation, for the same, to the creditors," &c.

Remarks. 1. It is the right of every independent nation to establish and maintain a judicial authority, co-extensive with its territorial possessions. The principle is indisputable, and it is incidentally recognized by Lord Mansfield and other great lawyers, in the celebrated controversy between the king of Prussia and Great Britain, relative to the Silesia Loan. 2. The constitutional tribunals of the United States were adequate to the administration of complete justice, in the very cases for which the treaty provides a special tribunal. 3. If it is possible in any case, with any nation, and at any time, to stipulate, by treaty, for the erection of a tribunal, in order to ascertain and liquidate debts due from citizens to foreigners, may it not be done in every case, with every nation, and at every time? 4. Is not the Court of Commissioners, in effect, an High Court of Errors and Appeals for the United States with power to revise and reverse every judgment, that has been given since the year 1783, either in a federal or state court, in every cause between a British subject and an American citizen? 5. Wherever the recovery of the principal debt has been protracted by the forms of law—wherever there has been an abatement of interest, by the compromise of the parties, or the verdict of a jury—wherever the debtor has become insolvent; this high court of Commissioners may sustain an appeal, and can award damages for the detention or loss of the debt. It is true, the treaty adds, that this "provision is to extend to such losses only as have been occasioned by lawful impediments;" but the extent of the discretion of the commissioners, in adjudging what constitutes a lawful impediment, is without limitation or controul; and the nature of the evidence, by which their minds are to be informed, is without rule or definition; since (in the language of the treaty) it may be "either according to the legal forms now respectively existing in the two countries, or in such other manner as the said commissioners shall see cause to require or allow." Thus, not only erecting a court unknown to our constitution, but admitting a species of proof, not recognized by the legal forms of our country. 6. Let us appeal to Mr. Jay himself, upon the constitutionality of such proceedings. By an act of Congress, the judges of the circuit courts were required to take, and report to the secretary at war, certain proofs in the case of invalids and pensioners. The judges refused (as we have already noticed) to execute the act, declaring it to be unconstitutional, as well on account of the nature of the duty imposed upon them, as on account of the revisionary power, which was vested in the secretary at war. By the treaty, the President and Senate will appoint commissioners, in conjunction with the king of Great Britain, to hold a court of appeals from every court in the union; and to determine judicial questions, upon private controversies, between British subjects and American citizens. Now, let us ask, whether it is more unconstitutional for the legislature to impose new and extraordinary duties upon a

court, *existing according to the constitution*, than for the executive to create a new and extraordinary tribunal, *incompatible with the constitution*; inasmuch as it can only act upon the alienation of the jurisdiction; *previously and exclusively vested in our domestic courts*;—the jurisdiction of hearing and deciding judicial questions, upon private controversies, between British subjects and American citizens? 7. But this is not the only infraction of the constitution, involved in the arrangement alluded to—*the obligation of private contracts is transferred from individuals to the public*. The framers of the constitution, in declaring that “all debts contracted, and engagements entered into, before its adoption, shall be as valid against the United States under the constitution, as under the confederation,” could hardly anticipate, that they charged the treasury of the union with the payment of all the outstanding debts of the individual citizens of America! And when Congress was vested with a power “to lay and collect taxes, to pay the debts, and provide for the common defence and general welfare of the United States;” it certainly was never contemplated, that the government of America became the insurer of every British merchant, against litigious delays, and fraudulent or accidental bankruptcies! It cannot be suggested that Great Britain acts in a similar manner upon our complaints of the spoliations on our trade. For, the injury that we have sustained, originated in an act of government—the injured individuals are, in the first instance, bound to apply to the British courts of justice—and the public are only responsible in the last resort, for the individual aggressors.

(2.) By the constitution of the United States, Congress is empowered to establish “an uniform rule of naturalization;” and that power has accordingly been exercised in an act that provides, among other things, that “no person heretofore proscribed by any state, shall be admitted a citizen, except by an act of the legislature of the state in which such person was proscribed.”

By the Treaty, all the British settlers and traders, within the precincts or jurisdiction of the western posts, are allowed an election either to remain British subjects, or to become citizens of the United States: And it is agreed, “that British subjects who now hold lands in the territories of the United States, may hold, grant, sell or devise the same, to whom they please, in like manner as if they were natives; and that neither they, nor their heirs or assigns, shall, so far as may respect the said lands, and the legal remedies incident thereto, be regarded as aliens.”

Remarks. Is not the treaty at war with the constitution in this great and delicate point of naturalization? A British colony is, *ipso facto*, by the magic of Mr. Jay's pen, converted into an American settlement! Every British subject, who now holds lands (and when we recollect the recent speculations for the sale of lands, how can we calculate the extent of the adoption?) is, without ordeal or restraint, endowed with all the rights of a native American! If it is possible, by treaty, to give the rights of property to aliens, may not the civil rights of the community be disposed of by the same potent intru-

ment? If it is possible, by treaty, to confer citizenship on the British garrison at Detroit, and its contiguous settlers, why may we not, by treaty, also confer an instantaneous citizenship on every flight of emigrants, that shall hasten to our shores from Germany or Ireland? It may not be amiss here to intimate a doubt of the power of the federal government to regulate the tenure of real estates: it is no where expressly given, and, therefore, cannot be constitutionally implied; and it seems to be among the necessary and natural objects of state legislation. But let us presume (what is highly probable) that there are amongst the settlers within the precincts or jurisdiction of the western posts, certain proscribed persons—can the treaty, in spite of the law, restore them to the rights of citizenship, without the authoritative assent of the state that proscribed them? Again—In every man whose estate was liable to confiscation as a traitor, or as an alien, in consequence of the revolution, entitled now to hold lands as a native? The Fairfax claim in Virginia; the claim of the Penns in Pennsylvania; and the claims of Galloway, Allen, &c. &c. may hence derive a dangerous principle of resuscitation. *Look to it well.*

(3.) By the constitution, Congress is empowered to regulate commerce with foreign nations.

By the treaty, the commerce of the United States, not only directly with Great Britain, but incidentally with every foreign nation, is regulated.

Remarks. There is not a source of legislative jurisdiction, upon the subject of commerce, which is not absorbed by this executive compact. The power of regulating commerce with foreign nations, is expressly and specifically given to Congress: Can a power so given to one department, be divested by implication, in order to amplify and invigorate another power, given in general terms to another department? But more of that hereafter.

(4.) By the constitution, Congress is empowered to regulate commerce with the Indian tribes.

By the treaty, it is agreed, that "it shall at all times be free to British subjects, &c. and also to the Indians dwelling on either side of the boundary line of the United States, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties on the continent of America, &c. and freely to carry on trade and commerce with each other." The treaty, likewise, provides, that "no duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively; nor shall the Indians passing or repassing with their own proper goods and effects, of whatever nature, pay for the same any import or duty whatever."

Remarks. It is easy to perceive that the stipulations, in favour of the Indians, were introduced at the instance of Great Britain; and her motives are not even attempted to be disguised. Her traders will boast of the favour and security, which she has compelled America to grant to the Indians; and so engage their confidence and attachment; while the privilege of free passage and the exemption from duties,

will inevitably throw the whole fur-trade into the hands of the British. The surrender of the western posts, under such circumstances, can produce no loss to Great Britain, and will certainly be of no advantage to America: It will not add a shilling to the profits of our Indian traffic; nor insure us a moment's suspension of Indian hostilities! But, to prosecute our constitutional enquiry—what right is there, by *treaty*, to regulate our commerce with the Indian tribes? Whenever a treaty of peace and amity has *heretofore* been concluded with the Indians, it has been the constitutional practice of the President, to call on Congress to regulate the commerce with them. Such calls were totally unnecessary, if the same thing might as well and as lawfully be done by *treaty*; and if it could not be done by treaty in the case of the *Indians*, neither could it be done by treaty in the case of a *foreign nation*: For, both are expressed in the *same terms*, and included in the *same member* of the section. "Congress shall have power (says the constitution) to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." What right is there by *treaty* to declare that *no duty* of entry shall ever be levied by either party on *peltries*, &c. (and a similar promise is made in cases that more immediately affect Great Britain) since *Congress* has the sole power to lay and collect taxes, *duties*, &c. to pay the debts, and provide for the common defence, and general welfare of the United States? If we may, *negatively*, say, by *treaty*, that certain duties shall not be laid, may we not *affirmatively* say, by *treaty*, that certain other duties shall be laid? And then what becomes of that part of our constitution, which declares, "that all bills for raising revenue shall originate in the house of representatives?" But let us imagine for a moment, that it is in the power of the President and Senate to regulate our commerce with the Indian tribes; *ought not the regulation to be made with the Indians themselves?* Why suffer Great Britain to negotiate and stipulate for Indians actually residing within the territory of the United States? Is such a concession consistent with the dignity and independence of our government—with the peace and interest of the nation? Let Mr. Randolph's letter to Mr. Hammond, on the conduct of general Simcoe and major Campbell be referred to, as an answer to this question. It is not, at present, within reach to be quoted; but its contents were too important to have already escaped the memory of any reflecting American.

(5.) By the constitution, Congress is empowered "to define and punish piracies and felonies committed on the high seas, and offences against the law of nations."

By the treaty, the definition and punishment of certain offences, not known by any law of the union, is declared and permitted; to wit—1st. For accepting commissions or instructions from any foreign prince or state, to act against Great Britain. 2d. For accepting any foreign commission or letter of marque for arming any privateer, &c. Great Britain may punish an American citizen *as a pirate*. 3d. For not treating British officers *with that respect which is due to the commissions they bear*, and for offering any insult to such officers, the of-

senders shall be punished as *disturbers of the peace and amity between America and Great Britain*. 4th. For making a prize upon the subjects of Great Britain, the people of every other belligerent nation (except France) shall be punished by a *denial of shelter or refuge, in our ports*.

Remarks. To define crimes, and apportion punishments, is the peculiar province of the *legislative authority* of every free government: but it is obvious, from the foregoing recapitulation, that the *executive authority* has likewise encroached upon that province, by the instrumentality of its *treaty-making power*. Can a citizen be surrendered by *treaty* to all the pains and penalties of *piracy*? Then by *treaty*, he might be subjected to all the pains and penalties of *treason*. It is true, that the constitution reserves to itself the *exclusive right* of declaring what shall constitute *treason*; but it is equally true, that it bestows on Congress the *exclusive right* to define and punish *piracy*: and the invasion of *the right to define* in one case, is as unconstitutional as the invasion of *an actual definition* in the other. But what legitimate authority can a *treaty* suggest, in order to justify the restraint upon that right of expatriation, which Congress itself has not ventured to restrain, while legislating on subjects of a similar class? It is not intended to convey the slightest doubt of the power and propriety of controuling our citizens in their conduct towards *foreign nations*, while they are within the reach of *domestic coercion*: but to prohibit an American freeman from going whither he pleases, in quest of fortune and happiness—to restrict him from exercising, *in a foreign country, and in a foreign service*, his genius, talents and industry; to denounce him for seeking honour, emolument or instruction, by enlisting *within the territory, and under the banners* of another nation—to do such things, is to condemn the principle of our own policy, by which we invite all the world to fill up the population of our country: To do such things is, in fact, to prostrate the boasted rights of man. It is hardly worth a pause to ask, What proportion of respect is due to the commission of a British officer? and what degree of punishment the refusal or neglect to pay it, may deserve?

(6.) By the constitution it is declared, that “no tax or duty shall be laid on *articles exported from any state*.”

By the treaty, “it is expressly agreed and declared that the United States will prohibit and restrain the carrying any melasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his majesty’s islands, or from the United States, to any part of the world.”

Remarks. This is an extract, it is true, from the twelfth article of the treaty; but it equally serves to show the probability of attempts to violate the constitution. Besides, the advocates for the treaty are hasty and premature, when they desire to throw the twelfth article entirely out of consideration: for, by that proposition, *though they should save the treaty, they effectually destroy its author*. They are hasty and premature for another reason: the twelfth article is to be *suspended for the declared purpose of negotiating something as a substitute*; and, therefore we must consider its principle, in order to ascer-

tain how far *any modification* of it could be rendered palatable. But, on constitutional ground, when it is declared, that *no duty shall by law be laid on articles exported from any state, is it not absurd, or wicked to suppose, that by treaty the exportation of the articles themselves can be prohibited?* The obvious intention of the constitution is to encourage our export trade;—the immediate effect of the treaty is to obstruct and annihilate it.

(7.) There are many other points in which a collision occurs between the constitution and the treaty, but to which the scope and nature of these strictures will not admit a full attention. It may be cursorily remarked, however, that a *cession of territory*, which will, probably, be the consequence of settling anew the boundaries of the United States, and even the actual cession of the precincts of the western posts, though in favour of individuals, are subjects for serious reflection. If a part of the United States may be ceded—if a whole state may be ceded, what becomes of the guarantee of a republican form of government to every state? The propriety of presenting this consideration to the public mind, will be allowed by those who know, that, in the course of the senatorial debate, the right of ceding by treaty a whole state, nay, any number of the states, *short of a majority, was boldly asserted, and strenuously argued!!!*

(8.) It may not be amiss, likewise, to add, that our government has no more right to alienate powers that are given, than it has to usurp powers that are not given. For instance, an act of Congress could not (and can a treaty?) surrender the right of sequestering the property of a hostile nation—the right of giving commercial preferences to a friendly nation—and the right of suspending a ruinous intercourse with any nation? Great clamours have been raised against the exercise of these rights; and, undoubtedly, they should only be used in the last resort; but they are rights recognised by the law of nations; and they are rights often essential to the duties of self-preservation, and sometimes necessary to the accomplishment of reciprocal justice.

10. Having taken this review of the actual warfare between the constitution and Mr. Jay's diplomatic work, and of the destructive consequences of the claim of the executive, to bind the United States, in all cases whatsoever, by treaty; let us recur to the position with which the present feature was introduced, namely, the duty of preserving the constitution, such as it was made and intended by the people, and we shall find, by a faithful comparison of theory with practice, that the government of the United States may be transformed through the medium of the treaty-making power, from a republic to an oligarchy—from a free government of several departments, legislative, judicial and executive—to the simple aristocratical government of a President and Senate.

11. This fatal effect, however, of converting our government from the system which the people love, to a system which they abhor, from what it was made in theory, to what it was never intended to be made by practice—can only proceed from error or corruption. It

would ill become the writer of these strictures, who so freely, but it is hoped, so fairly, expresses an opinion, to impute to any man or set of men, a sinister and traitorous design against the constitution of our common country. The denunciations fulminated by the *New-York Camillus*, and his small circle of coadjutors, harmlessly expand themselves in the violence of their explosion: like the denunciations of the *Tiara*, they spring from an arrogant claim of infallibility; and like them too, will only excite the derision or the disgust of an enlightened nation. Is it credible, that every citizen of the United States, from Georgia to New-Hampshire, who reprobates Mr. Jay's treaty, must either be an enemy to our government, or a rancorous incendiary? Is it to be presumed that no man can utter a sentence of disapprobation respecting the principles of the treaty, without feeling a sentiment of animosity, respecting the person of the negociator? Are we really such slaves to faction;—so trammelled with party;—so insensible to virtue, truth and patriotism;—that every thought which we conceive, every expression which we use, on this momentous occasion, must be connected with the possible (but it is ardently hoped the distant) event of electing a successor to the present chief magistrate of the union? Yet, such are the base and sordid motives, passionately and wantonly ascribed by *Camillus* and the scanty troop of advocates, who follow him in supporting the treaty, to the great host of the American people, rising (as it were) in mass to condemn it.

If it could be thought a convenient, a reputable, or a necessary task, how successfully might the argument of recrimination be employed! Who, it could be asked, are the persons that support the treaty? What are the motives that actuate them? Is it surprising that the men who advised the treaty, or that the *THE MAN* who composed it, should endeavour, by the force of ingenuity, art, or defamation, to rescue it from general malediction and impending ruin? Was it not to be expected, that a faction, uniformly eager to establish an alliance with Great Britain, at the expence of France, would strenuously attempt to procure the ratification of any instrument, calculated to accomplish that object? Does not consistency require from him, who openly projected in the Federal Convention, and from those, who secretly desire in the execution of public offices, the establishment of an aristocracy, under the infamous title of an energetic scheme of government, that they should approve and countenance every practical application of any medium, by which the barriers that separate our constitutional departments, may be overthrown, and the occasions for interposing the popular sanction of the legislature, may be superceded or avoided? Is it not natural, that British merchants and British agents—is it not necessary, that British debtors and British factors,—should clamorously unite, or tacitly acquiesce, in the applause bestowed upon a compact, which, however detrimental to America, is beneficial to Great Britain—the nation of chief importance to the allegiance and affections of some of those characters, and to the opulence and subsistence of all? Or, if the paltry idea of an electioneering plan must be forced upon our consideration, is it not, at least, as likely, that the party, which aims at

making a President of Mr. Jay, will, on that ground alone, exert itself in "The Defence" of the treaty, as that the party, which is desirous of conferring the same elevated office on Mr. Jefferson, will, for no other reason, attempt to blast the fruits of his competitor's negotiation? Considering, indeed, that *Camillus* himself, by confining his "Defence" to the treaty as advised to be ratified by the senate, virtually abandons the treaty as negotiated and concluded by Mr. Jay:—and also, considering that a part of *Camillus*'s defence of the present treaty arises from the ambiguity that Mr. Jay had left in the former treaty with Great Britain (upon which, however, his character as a negociator was founded) we might be led to suppose, that Mr. Jay's pretensions to the wisdom of a statesman, and to the station of a President, were not deemed, even by his own party, to be any longer tenable; but that *Camillus* still condescends, on the obvious presumption of a subsisting rivalry, to impeach the ministerial character, and to depreciate the official performances, of Mr. Jefferson.

But why should we arbitrarily *abuse*, instead of endeavouring rationally to *convince* each other? We all have the same right, from natural and from social law, to think and to speak: it is true, that we do not all possess the same powers of reason, nor the same charms of eloquence; but when men are on an equality in the possession, as well as in the right of exercising, those endowments, there can be no amicable way of adjusting a difference of opinion, but that which is adopted for adjusting all the other differences of a free people—an appeal to the voice of the majority! Now, let it be allowed (and so far ought it to be allowed, but no farther) that Mr. Jay, who negotiated the treaty; the twenty members of the senate, who assented to a conditional ratification; and Mr. Hamilton, and the New-York chamber of commerce, who have appeared in support of it (an enumeration that comprises, it is believed, all that have hitherto avowed a perfect approbation) are in the possession of as great a proportion of information, integrity and talents, as a like number of citizens, selected for their approved wisdom, virtue and patriotism, from the aggregate of those who have publicly condemned the treaty; and then let it be candidly answered, which scale in the balance must, of right, preponderate? After such a selection, there will still remain the great body of the community in opposition to a ratification; and, as members of that community, thousands of individuals, who honourably served during the late war, in the field and the cabinet, and many of whom at this moment serve with zeal, fidelity and wisdom in the various departments of government. Is it not then the symptom of an arrogant vanity—of a tyrannical disposition—to stigmatise such an opposition to a projected measure, with the name of 'Faction?' The violence offered to Mr. Hamilton's person in New-York, and to Mr. Bingham's house in Philadelphia, have justly excited the indignation of every sincere republican; but even that reprehensible and odious conduct is not to be compared to the enormous guilt of endeavouring to force the opinion of a few individuals upon the people,

as the ultimate test of political truth; and to cast an *odium* upon the late conventions, in which (according to the language of the constitution) "the people were peaceably assembled, to petition the government for the redress (or rather the prevention) of a grievance."

But let the pardon of the reader be granted for *this digression*; and we will return to a delineation of the feature that lies before us.

12. Declining, then, either to create, or to follow, a bad example, let us ascribe the deviation from the principles of our constitution to an *erroneous construction*, rather than to a *wilful perversion*; and let us exert our skill in averting the evil that threatens, rather than indulge our resentment in convicting those who labour to produce it.

Our government, therefore, being a *government of departments*, it is (as we have already observed) inconsistent with *the duty of self-preservation*; or, in other words, it must proceed from an error in *construction*; that one department shall assume and exercise all, or any, of the powers, of all, or any, of the other departments.—

"The departments of government (to adopt the elegant figure used by an excellent judge, in a late admirable charge to a Philadelphia jury) are planets that revolve, each in its appropriate orbit, round the constitution, as the sun of our political system." Thus, if the legislative, executive, or judicial departments shall encroach, one upon the orbit of the other, the destruction of the order, use, and beauty of the political system, must as inevitably ensue, as the destruction of the order, use, and beauty of the planetary system would follow, from a subversion of the essential principles of attraction, repulsion and gravity.

13. It was necessary, however, that the power of making treaties with foreign nations, should be vested in one of the departments of the government: but the power of making treaties is not, in its nature, paramount to every other power; nor does the exercise of that power naturally demand an exclusive jurisdiction. A nation may carry on its *external commerce* without the aid of *the treaty-making power*; but it cannot manage its *domestic concerns* without the aid of *the legislative power*: the legislative power is, consequently, of superior importance and rank to the treaty-making power. Again: *The legislative power exercised conformably to the constitution*, must be direct, universal, and conclusive in its operation and force upon the people; but *the treaty-making power* is scarcely in any instance independent of legislative aid to effectuate its efforts, and to render its compacts obligatory on the nation. A memorable occurrence in the English history will serve to illustrate both of these positions: It is the fate of *the commercial part of the famous treaty of Utrecht*, concluded between France and England in the year 1712. "The peace (says Russel in his History of Modern Europe, vol. 4. p. 457) was generally disliked by the people, and all impartial men reprobated the treaty of commerce with France, as soon as the terms were known. Exception was particularly taken against the 8th and 9th articles, importing "That Great Britain and France should mutually

enjoy all the privileges in trading with each other, which either granted to the most favoured nation; that all prohibitions should be removed, and no higher duties imposed on the French commodities, than on those of any other people." The ruinous tendency of these articles was perceived by the whole trading part of the kingdom. It was accordingly urged, when a bill was brought into the house of commons for confirming them, that the trade with Portugal, the most beneficial of any, would be lost, should the duties on French and Portuguese wines be made equal, &c. &c. These and similar arguments induced the more moderate tories to join the whigs, *and the bill was rejected by a majority of nine votes.* In relating the same transaction, Smollet's history of England, vol. 2. p. 242, 246, contains some passages too remarkable to be omitted on the present occasion. "Against the 8th and 9th articles, (says the historian) the Portuguese minister presented a memorial, declaring, that should the duties on French wines be lowered to the same level with those that were laid on the wines of Portugal, his master would renew the prohibition of the woolen manufactures, and other products of Great Britain. Indeed, all the trading part of the nation exclaimed against the treaty of commerce, which seems to have been concluded in a hurry, before the ministers fully understood the nature of the subject. This precipitation was owing to the fears that their endeavours after peace would miscarry, from the intrigues of the whig faction, and the obstinate opposition of the confederates." "Another bill (continues the same writer, in a subsequent page) being brought into the house of commons, for rendering the treaty of commerce effectual, *such a number of petitions were delivered against it,* and so many solid arguments advanced by the merchants, who were examined on the subject, that even a great number of tory members were convinced of the bad consequence it would produce to trade, and voted against the minister on this occasion."

Perhaps there cannot, in the annals of all the nations of the earth, be found two cases more parallel than the one which is thus recorded in the English history, and the one which at present agitates the American nation.—1. All impartial men reprobated both treaties, as soon as the terms were known. 2. The admission of the opposite contracting party to an unqualified participation in trade, with the most favoured nation, is, in both cases, a principal source of complaint. 3. The removal of all prohibitions, and the surrender of the right to impose higher duties on the commodities of the opposite contracting party, than on those of any other people, are, in both cases, condemned. 4. The good and the intelligent, of all parties, have united their influence, in both cases, to prevent a confirmation of articles of so ruinous a tendency. 5. The whole nation, in both cases, have exclaimed against the treaty. 6. Both treaties were concluded in a hurry, before the ministers fully understood the nature of the subject. 7. Innumerable petitions (and who will NOW deny the propriety of exercising the American right to petition?) were delivered against both treaties. 8. And the Portuguese minister

declared, in effect, of the treaty of Utrecht (*mutatis mutandis*) what the minister of France will, probably declare of the treaty of London (but what America surrenders the right of saying at any time to Great Britain) "If you ratify your alliance with the British, you must surrender your alliance with France." If such a wonderful similarity of circumstances concur in the negotiation, terms, and reception of these memorable instruments, let us hope that the guardian angel of American liberty and prosperity, has, also, doomed them finally to experience a *merited similarity of fate!*

14. But having thus shown, that, *even in Great Britain*, the treaty-making prerogative is *neither paramount nor exclusive* (though the *generality* of judge Blackstone's expressions on the subject, would, perhaps, lead to that preposterous conclusion) we might be satisfied to presume, on general principles, that so high a claim of jurisdiction could not be maintained, at least, on the part of our president and senate. Yet, let us endeavour, by the infallible test of the constitution, to put the matter, if possible, beyond doubt and controversy; and, having established that each department of the government should be confined to its proper orbit, let us endeavour to ascertain, what that orbit is, in relation to the *treaty-making power*.

(1.) The power of the president and senate to make treaties, is given, (as we have already stated) in *general and unrestricted terms*.

But the powers given to Congress (except in an instance to be hereafter noticed) are *definite in their terms, and appropriated in their objects*.

Let us ask, then, by what rule of construction a power *primarily and specifically* given to one body, can be assumed and exercised by another, to which, in a *subsequent clause*, a mere *general* authority is given?

Upon the common law principles of construction, the *specific powers* would clearly, in such a case, be deemed a reservation and exception out of the *general grant*. But even according to a rule furnished by the constitution itself, the same result will be produced. Thus, the twelfth ratified amendment declares, "that the powers not delegated to the United States by the constitution, are reserved to the States respectively, or to the people." Now, if the general power granted for the purpose of making treaties, can set at nought the jurisdiction specifically given to Congress for the purpose of making laws, may it not, with equal propriety and effect, overleap the boundary thus interposed between popular rights and constituted powers? In the one case, the reservation is expressly declared—in the other, it is necessarily implied.

(2. But if the delegation of a *general power* does, *ipso facto*, convey a right to embrace, in the exercise of that power, every authority not incompatible with its objects, the consequence will be, that *Congress may enter into treaties as well as the president and senate*.

For, Congress is vested with a jurisdiction "to make all laws, which shall be necessary and proper for carrying into execution their

own powers;" and what laws are, in that respect, necessary and proper, they must, from the nature of the thing, be the judge.

Suppose, therefore, that Congress was desirous of forming an alliance, offensive and defensive, with France, but could not obtain the constitutional number of two-thirds of the senate for accomplishing the measure by treaty,—an act of Congress, in order to regulate commerce with that nation, would afford as effectual a mode (according to the new doctrine) since the act, on the pretext of an equivalent for commercial advantages, might legislate us into the coveted alliance. The temptation and facility of proceeding in this way is obvious;—the passing of a law requiring but a majority of the senate; whereas the ratification of a treaty requires the concurrence of two-thirds of the members of that body.

(3.) It is not, however, necessary to mingle and confuse the departments of our government, contrary to the first principles of a free republic; nor to make a part of our political system equal to the whole, contrary to the soundest axioms of demonstrative philosophy, in order to give a just, efficient and salutary effect to the treaty-making power of the president and senate. For although,

In the first place, the treaty-making power cannot bind the nation by a decision upon any of the subjects, which the constitution expressly devolves upon the legislative power:

Yet, in the second place, the treaty-making power may negotiate conditionally, respecting the subjects that constitutionally belong to the decision of the legislative power;

And, in the third place, every other subject, proper for the national compact of a republic, may be negotiated and absolutely concluded by the treaty-making power.

(4.) That such a distinction was intended by the framers of our present excellent constitution, the reasons that have been glanced at, must, it is thought, sufficiently prove to every ingenuous mind: But let one argument more be adduced.

By the ninth article of the old confederation, it was declared, "That the United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war."

By the existing constitution of the United States, it is provided, "That Congress shall have power to declare war, grant letters of marque and reprisal," &c.

Now, it is evident, that by omitting to deposit with Congress the power of making peace, in addition to the power of declaring war, the framers of our present government, had in full view the division of its department, and the corresponding distribution of its powers.

Congress, under the confederation was a single body, and therefore, necessarily possessed of all the little legislative, executive, and judicial authority, which the states had been pleased to delegate to the union.

The government of the United States, on the contrary, is a compound system, of which the Congress is only the legislative department; and, therefore, the executive and judicial functions are elsewhere to be sought for and exercised.

Hence it is, that although the power of *declaring war* is (as it ought to be) *left with Congress*, the power of *making peace* is (as it ought to be) *transferred to the executive*; being a natural appendage of the general power of *making treaties*.

This deduction serves likewise to demonstrate, that the framers of the constitution, did not intend to leave the powers that are *specifically* given to Congress, at the mercy of the power that is *generally* given to the president and senate. By expressing a positive jurisdiction in favour of the former, it excludes a claim of jurisdiction in favour of the latter.

(5.) Nor is it in the *power of making treaties only*, that the constitution has abridged the *executive department* of its customary attributes, in order to augment the sources of *legislative jurisdiction*.

In *Great Britain* (for instance) the *executive* possesses the power of making peace; of granting letters of marque and reprisal; of regulating weights and measures; of coining money, regulating the value thereof, and of foreign coins; of erecting courts of judicature; of conferring the rights of denizenship on aliens, &c. &c.

In the *United States* the power for all those purposes is absolutely vested in the *legislature*.

15. On reviewing the various positions that have been taken in the course of these strictures, a desire is felt to exhibit the corroborative opinions of men who have been justly valued by the public: It will be useful to the reader, as well as pleasing to the writer, to indulge the disposition in a few instances, and in a brief manner.

(1.) It has been said, that *the power of regulating commerce belonged to Congress*.

The report of Mr. Mason (a member of the federal convention) on that subject, was delivered in the convention of Virginia as follows: "With respect to commerce and navigation, I will give you, to the best of my information, the history of that affair. This business was discussed [in the convention] at Philadelphia for four months; during which time the subject of commerce and navigation was often under consideration; and, I assert, that eight out of twelve, for more than three months, voted for requiring two-thirds of the members present in each house to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority as it stands. If I am right, there was a great majority for two-thirds of the states in this business, till a compromise took place between the northern and southern states; the northern states agreeing to the temporary importation of slaves; and the southern states conceding, in return, that navigation and commercial laws should be on the footing in which they now stand."

(2.) It has been said, that *the treaty-making power could not cede a part of the union, nor surrender a citizen to be punished as a pirate*.

The opinion of Mr. Randolph (a member of the federal convention, and now secretary of state) delivered in the same convention, contains the following passage: "I conceive, that neither the life,

nor the property of any citizen, nor the particular right of any state, can be effected by a treaty."

Mr. Madison, also, justifying and recommending the adoption of the constitution to his fellow citizens, says, with respect to the *treaty-making power*—"I am persuaded, that when this power comes to be thoroughly and candidly viewed, it will be found right and proper. Does it follow, because this power is given to Congress, that it is absolute and unlimited?—I do not conceive that power is given to the president and senate to dismember the empire, or to alienate any great, essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation."

(3.) It has been said, *the right of suspending a commercial intercourse with any nation, and the right of sequestering an enemy's property, &c.* were rights essential to an independent government, and recognised by the law of nations.

Vattel contains the following, among many other passages on those subjects :

"Every state has a right to prohibit the entrance of foreign merchandise, and the people who are interested have no right to complain of it, as if they had been refused an office of humanity." B. 1. c. 8. §. 90.

"It depends on the will of any nation to carry on commerce with another, or to let it alone." *Ibid.* §. 92.

"The goods even of the individuals in their totality ought to be considered as the goods of the nation, in regard to other states. From an immediate consequence of this principle, if one nation has a right to any part of the goods of another, it has a right indifferently to the goods of the citizens of that part, till the discharge of the obligation." *Ibid.* §. 81, 82.

"It is not always necessary to have recourse to arms, in order to punish a nation: the offended may take from it, by way of punishment, the privileges it enjoys in his dominions; seize, if he has an opportunity, on some of the things that belong to it, and detain them till it has given him a just satisfaction." B. 2. c. 18. §. 340.

"When a sovereign is not satisfied with the manner in which his subjects are treated by the laws and customs of another nation, he is at liberty to declare, that he will treat the subjects of that nation in the same manner that his are treated." *Ibid.* §. 341.

(4.) It has been said that the constitution ought to be preserved *such as the people have made it*; that, of course, the departments of government ought to be kept separate and distinct, *each revolving in its proper orbit*, and that no other judicial tribunal could be erected by a law of the legislative power, much less by a treaty of the executive power, than what the constitution prescribes, or expressly permits.

On this interesting subject we fortunately possess the opinions of the judges of the supreme court, and of the judges of some of the district courts, in the case of the act of Congress (already more than

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once alluded to) *which they have unanimously adjudged to be unconstitutional and void.*

Extract from the opinion of *judges IREDELL and SITGREAVES.*

“*First*: That the legislative, executive and judicial departments are each formed in a separate and independent manner; and that the ultimate basis of each is the constitution only; within the limits of which each department can alone justify any act of authority.

“*Secondly*: That the legislature, among other important powers, unquestionably possesses that of establishing courts, in such a manner as to their wisdom shall appear best, limited by the terms of the constitution only; and to whatever extent that power may be exercised, or however severe the duty they may think proper to require, the judges, when appointed in virtue of any such establishment, owe implicit and unreserved obedience to it.

“*Thirdly*: That at the same time such courts cannot be warranted, as we conceive, by virtue of that part of the constitution delegating *judicial power*, for the exercise of which any act of the legislature is provided, in exercising (even under the authority of another act) any power not in its nature judicial, or if judicial, *not provided for on the terms the constitution requires.*

“*Fourthly*: That whatever doubts may be suggested, whether the power in question is properly of a judicial nature, yet inasmuch as the decision of the court is not made final, but may be, at least, suspended in its operation by the secretary at war, if he shall have cause to suspect imposition or mistake, this subjects the decision of the court to a mode of revision, which we consider to be unwarranted by the constitution: For, though Congress may certainly establish, in instances not yet provided for, courts of appellate jurisdiction; yet, such courts must consist of judges appointed in the manner the constitution requires, and holding their offices by no other tenure than that of their good behaviour; by which tenure the office of secretary at war is not held. And, we beg leave to add, with all due deference, that no decision of any court of the United States can, under any circumstances, in our opinion, agreeably to the constitution, be liable to a reversion, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested, but the important one relative to impeachments.”

Extract from the opinion of *judges WILSON, BLAIR, and PETERS.*

“The people of the United States have vested in Congress all *legislative* powers, granted in the constitution.

“They have vested in one supreme court, and in such inferior courts as the Congress shall establish, the *judicial* power of the United States.

“It is worthy of remark, that, in Congress, the *whole* legislative power of the United States is not vested: an important part of that power was exercised by the people themselves, when they ‘ordained and established the constitution.’

"This constitution is the 'supreme law of the land.' This supreme law, 'all judicial officers of the United States are bound, by oath or affirmation to support.'

"It is a principle important to freedom, that in government, the *judicial* should be distinct from, and independent of, the legislative department. To this important principle, the people of the United States, in forming their constitution, have manifested the highest regard.

"They have placed their *judicial* power, not in Congress, but in 'courts.' They have ordained, that 'the judges' of those courts shall hold their offices during good behaviour; and that, 'during their continuance in office, their salaries shall not be diminished.'

"Congress have lately passed an act 'to regulate (among other things) the claims to invalid pensions.'

"Upon due consideration, we have been unanimously of opinion, that, under this act, the circuit court, held for the Pennsylvania district, could not proceed:

"*First*, Because the business directed by this act, is not of a judicial nature. It forms no part of the power vested by the constitution in the courts of the United States; the circuit court must, consequently, have proceeded without constitutional authority.

"*Secondly*, Because, if, upon that business, the court had proceeded; *its judgments* (for its opinions are its judgments) *might, under the same act, have been revised and controuled by the legislature, and by an officer in the executive department.* Such revision and controul, we deemed radically inconsistent with the independence of that judicial power, which is vested in the courts; and, consequently, with that important principle, which is so strictly observed by the constitution of the United States."

Extract from the opinion of *chief justice JAY*, and *judges CUSHING* and *DUANE*.

"The court were unanimously of opinion,

"*First*, That by the constitution of the United States, the government thereof is divided into *three* distinct and independent branches; and, *that it is the duty of each to abstain from, and oppose, encroachments on either.*

"*Secondly*, That neither the *legislative* nor the *executive* branches, can constitutionally assign to the *judicial* any duties, but such as are properly judicial, and to be performed in a judicial manner.

"*Thirdly*, That the duties assigned to the circuit court by the act in question, are not of that description; and that the act itself does not appear to contemplate them as such; inasmuch as it subjects the decision of these courts, made pursuant to those duties, first to the consideration and suspension of the secretary at war, and then to the revision of the legislature; *whereas, by the constitution, neither the secretary at war, nor any other executive officer, nor even the legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.*

SUCH, upon the whole, are "*THE FEATURES OF MR. JAY'S TREATY.*" It was not intended to protract this sketch of them to so great a length; and yet, more circumstances are recollected, that might have been inserted, than could, upon a fair reconsideration, be retrenched. If it shall, in any degree serve the purposes of truth, by leading, through the medium of a candid investigation, to a fair, honourable, and patriotic decision, the design with which it was written will be completely accomplished, *whether RATIFICATION OR REJECTION is the result.*

But, before the subject is closed, let the citizens of the union be warned from too credulous an indulgence of *their prejudices and their fears.* The discordant cry of party is loud; and the phantoms of war assail the imagination: yet, let us not be deluded by stratagem, nor vanquished by terror. The question is not a question between party and party, but between nation and nation;—it is not a question of war or peace, between military powers; but a question of policy and interest between commercial rivals. The subject is too momentous, to be treated as the foot-ball of contending factions;—it appeals from the passions to the judgment; from the selfishness to the patriotism of every citizen!

That *the British treaty, or a British war, is a necessary alternative,* will be more fully controverted, if the writer's present intention of delineating "*FEATURES OF THE DEFENCE,*" shall be carried into effect. But, in the mean time, let a few self-evident propositions contribute to relieve the public mind, from the weight of that apprehension.

1. The disposition of Great Britain, manifested by the order of the 6th of November, 1793, by the speech of Lord Dorchester to the Indians, and by the repeated invasions made, under General Simcoe's authority, upon our territory, is naturally hostile to the United States.

2. Even if the United States could, by any means, soothe and convert that disposition into amity and peace, *the projected treaty is too high a price to pay for such a change.*

3. The refusal to enter into the projected treaty with Great Britain, is not a just cause of war; and if a pretence, only, is wanting, it may be found in the toasts at our festivals, as well as in the acts of our government.

4. But the ratification of the treaty will assuredly give umbrage to another nation—to an ancient ally.

5. If war is inevitable either with Great Britain, or with France, it would be more politic for the state, more congenial to the sentiments of the people, to engage the former, than the latter, power.

6. In case of a war with Great Britain, we have assurance, that France will aid us with all the energy of her triumphant arms.

7. In case of a war with France, we ought not to count upon the affections, and we cannot rely upon the power, of Great Britain, to befriend us.

[FROM THE PHILADELPHIA GAZETTE.]

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*View of the Commerce of the United States,
as it stands at present, and as it is fixed
by Mr. Jay's Treaty.*

=

1. *Actual State.*

AMERICAN ships from Europe enjoy a protecting duty of 10 per cent. on the amount of duties on goods, wares, and merchandises, imported into the United States in foreign bottoms from Europe, and of 30 to 50 per cent. on teas imported in foreign bottoms from Asia or Europe, paid by foreign bottoms, more than is paid on such goods imported in our own vessels. Foreign bottoms pay also 44 cents a ton on every voyage, more than is paid by American shipping; all which had been allowed by the federal government, to encourage American ship-builders, mariners, mechanics, merchants, and farmers.

1. *State by Treaty.*

By treaty, America cedes to Great Britain, the right of laying duties on our ships in Europe, the West Indies, and Asia, to countervail these, and engages not to encrease her duties on tonnage on this side, so as to check the exercise of this right: in consequence British ships may be put, at the discretion of the British government, on exactly the same footing, as American ships in the carrying trade of Europe and Asia.

2. *Actual State.*

American ships, of any size, now go freely to all the British West Indies, sell their cargoes, and bring returns as it suits them.

2. *State by Treaty.*

By treaty American ships are to be reduced to *seventy tons*, in order to be admitted in the British West Indies.

3. *Actual State.*

American ships may now freely load melasses, sugar, coffee, cocoa, or cotton, to any part of the world from the United States.

3. *State by Treaty.*

By treaty American ships are to be totally prohibited this commerce, which is to be carried on under any flag but theirs.

4. *Actual State.*

American citizens can now go supercargoes to India, settle and reside, and do their business there.

4. *State by Treaty.*

By treaty no American citizen can settle or reside in these ports, or go into the interior country, without special licence from the local government, who may, under colour of this, impose what obstacles they please to the commerce.

5. *Actual State.*

America now enjoys the right of regulating commerce, so as to encourage one nation and discourage another, in proportion to benefits received, or injuries felt respectively.

5. *State by Treaty.*

All this abandoned treaty so far as respects Great Britain; no duties can be laid on British goods but what must apply to all other nations from whom we import goods—no embargoes on exports to British ports, but what must apply to all nations alike.

6. *Actual State.*

American ships now freely navigate to the British dominions in India, and from thence proceed with cargoes to any part of the world.

6. *State by Treaty.*

By treaty American ships are admitted as usual into the British ports of India, but prohibited carrying any return cargoes except to the United States; prohibited also from the coasting trade in the British ports of India, from which they were not, that I know of, before excluded.

7. *Actual State.*

Timber for ship-building, tar, or rozin, copper in sheets, sails, hemp, cordage, and generally whatever may serve directly to the equipment of vessels, not contraband by former treaties of the United States.

7. *State by Treaty.*

All these articles made contraband by this treaty.

8. *Actual State.*

American ships carrying provisions, by America claimed as having a free right of passage to the ports of their destination.

8. *State by Treaty.*

This claim now apparently waved; such American ships, when taken, to be allowed indemnity of freight, demurrage, and a reasonable mercantile profit, the amount whereof not ascertained.

9. *Actual State.*

American ports open to prizes made on Britain by France; and America possessed of the liberty to grant similar douceurs to other nations, as she sees fit in future compacts with them.

9. *State by Treaty.*

American ports now opened to prizes taken by Britain from any nation except France, but shut to prizes taken from Britain by Spain, or any other power not favoured in this way, by treaties already made; of course discouraging to our future negotiations with all powers, France and Britain excepted.

10. *Actual State.*

American ships allowed at present freely to enter British ports in Europe, the West Indies and Asia, but shut out from the sea-ports of Nova-Scotia and Canada.

10. *State by Treaty.*

American ships allowed to go into these ports, but under new restrictions of size, in the West Indies, and of latitude of trade in the East Indies; the ports of Halifax, Quebec, &c. still shut to America.

11. *Actual State.*

American ships thus partially allowed entrance into British ports.

11. *State by Treaty.*

British ships allowed universal entrance into all our ports.

12. *Actual State.*

American ships now sail, though not under naval protection, under guarantee of all the British effects possessed here, which might be made answerable for our floating property, if unjustly seized on by Great Britain in case of a war, so much apprehended by the chamber of commerce of New-York.

12. *State by Treaty.*

By treaty, American ships deprived of this guarantee; sequestrations or confiscations being declared impolitic and unjust, when applied to stocks, or banks, or debts; though nothing said about them when applied to ships or cargoes.

13. *Actual State.*

British debts now recoverable in the federal courts of the United States, but reposing on the solvency of the debtors only.

13. *State by Treaty.*

By treaty a new court of commissioners opened on this subject, with immense power and guarantee of the United States, who must meet, indeed, at Philadelphia, but may adjourn where they please. Nothing said of debts due to Americans in England, if, by legal impediments, prevented from recovery there.

14. *Actual State.*

America sends Mr. Jay to recover redress for spoliations on our commerce actually sustained.

14. *State by Treaty.*

By treaty a court of commissioners opened, who are to sit in London without power of adjournment, as in the case of the commission for debts. Americans must, therefore, transport themselves and claims to London, and employ counsel there, to recover what the commissioners shall think fit to allow them: admirable compensation indeed!

15. *Actual State.*

American ships much plagued by British privateers.

15. *State by Treaty.*

By treaty the privateersmen are to give 15,00l. to 3000l. sterling security for their good behaviour.

16. *Actual State.*

American citizens may now expatriate and serve in foreign countries.

16. *State by Treaty.*

By treaty they are declared pirates, if serving against Great Britain; but no provision made to guard American seaman from being forced to serve in British ships.

17. *Actual State.*

America possesses claims to a large amount on account of negroes carried off, and the Western Posts detained, in violation of the treaty of 1783.

17. *State by Treaty.*

These claims all waved by the treaty, without reference to the merits of these pretensions.

The casting up of the above, is submitted to the Chamber of Commerce of New-York.

Errors, outstandings, and omissions excepted.

Philadelphia, July 27, 1795.

Resolutions of the citizens of Boston, at a meeting legally convened by the Select-men, July 13, 1795, respecting the Treaty lately concluded between Lord Grenville and Mr. Jay.

RESOLVED, as the sense of the inhabitants of this town, That the aforesaid instrument, if ratified, will be highly injurious to the commercial interests of the United States, derogatory to their national honour and independence, and may be dangerous to the peace and happiness of their citizens.

The reasons which have induced this opinion are as follow, viz.

1. Because this compact professes to have no reference to the merits of the complaints and pretensions of the contracting parties; but in reality the complaints and pretensions of Great Britain are fully provided for, while a part only of those of the United States have been brought into consideration.

2. Because, in the stipulation which surrenders our posts on the western frontier, no provision is made to indemnify the United States:

for the commercial and other losses they have sustained, and the heavy expenses to which they have been subjected in consequence of being kept out of possession, for twelve years, in direct violation of the treaty of peace.

3. Because no indemnification is to be made to the citizens of the United States, for property taken from them at the close of the war, the restitution of which is provided for in the same treaty.

4. Because the capture of vessels and property of the citizens of the United States, made under the authority of the government of Great Britain, is a national concern, and claims arising from such captures ought not to have been submitted to the decision of their admiralty courts, as the United States are thereby precluded from having a voice in the final determination of such cases.

And because the indemnification proposed to be made, is to be sought by a process, tedious and expensive, in which justice may be delayed to an unreasonable time; and eventually lost to many of the sufferers, from their inability to pursue it; and because this mode of indemnification bears no proportion to the summary method adopted for the satisfaction of British claims.

5. Because this compact admits British subjects to an equal participation with our own citizens, of the interior traffic of the United States with the neighbouring Indians, through our whole territorial dominions; while the advantages ostensibly reciprocated to our citizens, are limited both in their nature and extent.

6. Because the alien duty upon merchandise imported into the United States by British subjects, in their own bottoms, is, if not wholly suspended, at least contracted, not to be increased.

7. Because the commerce we have hitherto enjoyed in India, in common with other nations, is so restricted, that, in future, it will be of little or no substantial benefit to our citizens.

8. Because in every stipulation respecting our intercourse with the colonial possessions of Great Britain, the whole commerce of the United States, in such intercourse, is *colonized* in return.

9. Because the clause by which the British government reserves to itself the right of imposing on American vessels, entering British ports in Europe, a duty which shall countervail the difference of the duty payable on the importation of European and Asiatic goods into the United States in British or American bottoms, places it in the power of that government to enable British subjects to become the importers of Asiatic and European goods into the United States, to the exclusion of our own citizens.

10. Because, although the terms of said treaty purport to be reciprocal in many instances, yet, from the local situation, and existing circumstances of the United States, and the pacific system of policy they have adopted, the reciprocity is merely nominal and defective.

11. Because it prevents the United States from imposing any further restrictions on the British trade *alone*.

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And, because it is stipulated that neither the debts due from individuals of one nation to individuals of the other, nor shares nor monies which they may have in the public funds, or in any public or private banks, shall ever in any event of war or national differences, be sequestered or confiscated.—It is far from being impossible that the exercise of this right may in the opinion of the national legislature contribute to preserve the peace of our country, and protect the rights and property of the citizens from violation; we therefore deem it highly impolitic that the public faith should be pledged that it shall never be exercised under any circumstances whatever.

12. Because it concedes a right to the British government to search and detain our vessels in time of war, under frivolous and vexatious pretences.

13. Because it agrees, that ship timber, tar, hemp, sails and copper, shall be considered contraband of war, which articles are expressly stipulated to be free by the treaties already subsisting between the United States and all other nations, with whom they are in compact.

14. Because it surrenders all or most of the benefits of a commercial nature, which we had a right to expect from our neutrality in the present war.

15. Because it precludes the hope of receiving any advantage from the modern law of nations, referred to in the President's proclamation of neutrality; adopted by most of the nations of Europe, in the last war, and which we then acceded to and have secured in our treaties with all other nations.

16. Because it not only surrenders the right of carrying the property of any nation at war with Great Britain, in our vessels, freely; but abandons all pretensions even to the freight.

17. Because it permits the British nation to convert provisions, destined to other nations at war with them, to their own use, on payment of what they may deem reasonable profit—a measure, not only injurious to the interest of the American merchant; but which will prevent our citizens from carrying those supplies to other countries, which, by the laws of nature and nations, they have a right to do, without molestation.

18. Because it limits the power of Congress, delegated to them by the constitution, "to regulate our commerce with foreign nations," by prescribing conditions, and creating impediments to the exercise of that "power."

19. Because it exposes the United States and their commerce to similar embarrassments from other commercial nations, all of whom will probably regulate our trade by this partial standard.

And lastly—

Because, in the opinion of the inhabitants of this town, the nature and extent of the exports of the United States are such, that in all their stipulations with foreign nations, they have it in their power to secure a perfect reciprocity of intercourse, not only with the home dominions of such nations; but with all their colonial dependencies.

It is further resolved—

That a copy of the foregoing proceedings, attested by the town-clerk; be immediately transmitted to the President of the United States, that they may be respectfully submitted to his consideration. And we earnestly hope, and confidently rely, that his prudence, fortitude and wisdom, which have more than once been eminently instrumental in the salvation of his country, will be equally conspicuous on the present occasion; and that the reasons we have assigned will have their influence to induce him to withhold his signature from the ratification of this alarming instrument.

On motion of Mr. Austin, a vote of thanks was passed to Stephens Thomson Mason, one of the senators for Virginia, for his patriotism, in publishing the treaty, which had offered the town an opportunity of using their exertions in endeavouring to prevent the ratification of an instrument so evidently pernicious to the interests of our nation at large.

President's Reply.

Ezekiel Price, Thomas Walley, William Bordman, Ebenezer Seaver, Thomas Crafts, Thomas Edwards, William Lettle, William Scollay, and Jesse Putnam, Esq's. Selectmen of the town of Boston.

Gentlemen,

IN every act of my administration, I have sought the happiness of my fellow citizens. My system, for the attainment of this object, has uniformly been, to overlook all personal, local, and partial considerations; to contemplate the United States as one great whole; to confide, that sudden impressions, when erroneous, would yield to candid reflection; and to consult only the substantial and permanent interests of our country.

Nor have I departed from this line of conduct, on the occasion which has produced the resolutions contained in your letter of the 13th instant.

Without a predilection for my own judgment, I have weighed with attention, every argument which has, at any time, been brought into view. But the constitution is the guide which I never can abandon. It has assigned to the President the power of making treaties, with the advice and consent of the Senate. It was doubtless supposed that these two branches of government would combine, without passion, and with the best means of information, those facts and principles upon which the success of our foreign relations will always depend; that they ought not to substitute, for their own conviction, the opinions of others; or to seek truth through any channel but that of a temperate and well informed investigation.

Under this persuasion, I have resolved on the manner of executing the duty before me. To the high responsibility attached to it, I freely submit: and you, gentlemen, are at liberty to make these sentiments known as the grounds of my procedure. While I feel the most lively gratitude for the many instances of approbation from my country, I can no otherwise deserve it, than by obeying the dictates of my conscience.

With due respect,

I am, gentlemen,

Your obedient,

Go. WASHINGTON,

United States, 28th July, 1795.

Address of the Citizens of Portsmouth, New-Hampshire, agreed upon at a meeting held July 17, 1795.

TO GEORGE WASHINGTON, President of the United States of America.

Sir,

CONVINCED of your inviolable attachment to the interest and happiness of the states over which you preside, and your readiness on all occasions to attend to the just complaints of the people—WE, the citizens of Portsmouth, constitutionally assembled in public town meeting, to signify our opinions relative to the treaty between Great Britain and the United States of America, consented to by a majority of the Senate; and recommended for your ratification, having taken the same into our most serious consideration, beg leave to express our most hearty disapprobation thereof—for the following general reasons, viz.

1. Because that part of the treaty of 1783, securing the payment of debts due to British subjects, is rigorously enforced; while an important article in the treaty, requiring compensation for negroes and other property unjustly removed, is placed wholly out of view.
2. Because the 9th article confers a privilege on British subjects, which, though expressed in terms reciprocal, yet from the different circumstances of the two nations, not only wants an equivalent, but is a direct invasion of the rights of individual states.
3. Because the bonds required of commanders of privateers, are wholly inadequate to the purposes for which such provision was made.
4. Because the regulations of trade, commerce and navigation, between the two parties, contained in the 3d, 13th, 15th and 17th articles, hold out the most decided advantages to British subjects,

and must in their operation prove destructive to American commerce and navigation.

5. Because by the 18th article, many articles of export are admitted as contraband of war, which, by our treaties with France, Holland and Sweden, are declared free; by which means a disposition to aid the British in the destruction of the natives of those nations is fairly implied.

6. Because all the essential advantages resulting to the United States from a ratification of the treaty are such as they have a right to demand, either by virtue of the treaty of 1783, or from the principles of common justice, while many important privileges are allowed the British, without a counter part.

Thus, sir, we have stated a few of the many objections that might be opposed to the treaty; we forbear entering into a more particular detail, as it would probably be a repetition of those, which we presume must flow in to you from every quarter, as the guardian and protector of our rights and liberties, and who alone in the present instance can avert the many evils that threaten our ruin.

We, therefore, most fervently request, that the treaty between Great Britain and the United States, may not receive your ratification until it undergo such alterations as shall render it conducive to the interest, honor, and lasting peace of our country.

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*Resolutions of the Citizens of New-York,
agreed upon at a meeting held on Monday
the 20th of July, 1795.*

RESOLVED, as the sense of this meeting, That the treaty lately negotiated between this country and Great Britain, in the particulars herein after mentioned, is injurious to the agriculture, manufactures, and commerce of the United States, derogatory from their national honour, and dangerous to their welfare, peace and prosperity.

1. In terminating the differences between the two countries, without reference to the merits of their respective complaints and pretensions, the vague and ill founded claims of Great Britain are placed upon the same footing as the numerous, important, and just demands of the United States: and while the former, unsupported as they were, are amply provided for, many of the latter are either entirely overlooked, or placed upon a footing, from which no adequate redress or compensation can reasonably be expected.

2. As his Britannic majesty is bound by the treaty of peace to withdraw his garrisons from the United States with all convenient

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speed, it was unjust, after twelve years delay, to allow above eighteen months longer to complete an evacuation which might be carried into effect in a few weeks.

3. As no enumeration is made of the posts and places from which the British troops are to be withdrawn, but generally from the boundary lines assigned by the treaty of peace; and as it appears by the same instrument that these boundary lines are, in part, at least, to be adjusted hereafter, it is highly probable if such adjustment does not take place by June, 1796, that it will be made an excuse for detaining the posts yet longer. Besides, by placing at so great a distance the contemplated evacuation, it is also much to be feared, that an immediate peace in Europe will induce Great Britain to disregard this stipulation altogether.

4. All settlers and traders within the precincts or jurisdictions of these posts, may remain there, or remove with their effects; they cannot, however, be compelled to become citizens of, or to take the oath of allegiance to the United States; but they may do so if they think proper, and they shall make and declare their election within one year after the evacuation. And all persons who continue there after the expiration of a year without having declared their intention of remaining subjects of his Britannic Majesty, shall be considered as having elected to become citizens of the United States. Hence it appears, that all the settlers, if they arrive but the day before the evacuation, will be entitled to become American citizens, contrary to the act now in force respecting naturalization, and contrary to the constitution of the United States, under which that act was passed; or if they prefer to continue under their present allegiance, we may have a British colony in the heart of our country.

5. Although his Britannic Majesty agrees to surrender the posts within our boundary lines, no provision is made for the heavy losses and expences which have been incurred by the United States in consequence of their past detention. Among the former, may be included a long deprivation of an extensive and valuable territory, and of a lucrative branch of trade. Among the latter, the burdens which have been imposed upon our citizens to support a ruinous and expensive Indian war—to say nothing of the lives which this detention has cost the United States of America.

6. By the treaty of Peace, Great Britain was to cause no destruction, nor to carry away any negroes, or other American property. In direct violation of this promise, several thousand negroes were carried off long after the treaty was known. Many of those negroes were registered with a view to future compensation. The claim, on this account, which amounted to at least two millions of dollars, although hitherto a matter of extreme solicitude with America, has not only been abandoned and consigned to oblivion, but Great Britain is thereby justified for her inexecution of the treaty of peace, and an indelible stain is fixed upon our national faith; nor is any provision made for leaving in those garrisons, the American artillery, agreeable to the treaty of peace.

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7. Many of our seamen have, during the present war, been impressed into the English service, and compelled to engage on board of ships of war or privateers, against a nation connected with us by a treaty of alliance. Although this grievance was universally known and reprobated, the aggression is passed over in silence, nor is even care taken to guard against the repetition of so atrocious an outrage.

8. While the subjects of Great Britain are admitted into, and have the use of *all* the rivers, ports, and places within the United States, our citizens are excluded from a reciprocal use of those within the British territories in North America, by reason of which inequality, it is probable, the whole of the fur-trade will continue in the hands of British traders.

9. No duty is ever to be laid by either party on peltries brought by land or inland navigation. From this article Great Britain alone will derive an advantage; for, as the clause which regulates the interior traffic and inland navigation of this country is constructed, and taking into consideration the nature and extent of the limitations on the side of America, it may be expected that considerable quantities of this article will be carried by British traders through the United States, while little, if any, will be carried by our citizens through the British territory.

10. As it appears from the correspondence between Mr. Jefferson and Mr. Hammond, that no lawful impediments exist in any state, to the recovery of British debts contracted before the peace; it was not only improper, but a reflection on our public faith, to make any provision, contrary to the ordinary way of judicial proceeding, for ascertaining the compensation due to this description of creditors. Moreover, if this clause is carried into effect, the burden of paying these debts will be shared very unequally by the United States. Those of them, whose citizens have paid their British creditors, will be bound to contribute to the payment equally with those whose citizens are delinquent, if any such there be; whereas, by pursuing the common legal remedy, the debtor alone would be subject to the burden. Nor is the executive conceived to be competent to pledge the United States to pay the sum awarded by the commissioners who are to liquidate those claims;—the constitution having expressly declared, that no money shall be drawn from the treasury, but in consequence of appropriations made by law, by which it is presumed must be intended an *act* of the legislature, not a *treaty* of commerce.

11. The claims of American citizens for losses sustained by reason of illegal captures, are to be taken into consideration at too great a distance of time, and are placed upon a footing too precarious to expect any compensation. It appears evidently to have been the policy of Great Britain to procrastinate the settlement of all her differences with America, until she was at peace with France; and it has excited general regret, that she has been so successful in this part of her negotiation. It was expected, that the American envoy was charged to demand satisfaction from the British government, among other

things, particularly for their wanton and unjust depredations on our commerce. These spoliations being made in virtue of orders issued by the king in council, and being manifestly illegal and unjust, restitution became a national concern. It was well known, that, by the ordinary course of proceeding in the admiralty, compensation could not be obtained for national injuries—Yet, instead of insisting upon a summary compensation from the British government, in the same mode which had been adopted for satisfying the British creditors, the American claimant must first undergo a tedious and expensive process, in order to ascertain a thing already known, that the ordinary course of justice is incompetent to afford him redress.

12. The treaty pledges the United States to the payment of losses sustained by reason of certain captures within the limits and jurisdiction of the United States, and brought into the ports of the same, or made by vessels originally armed in our ports.

The sum which may be claimed by Great Britain on this account, cannot fail to be very considerable: But it may well be doubted, whether the United States are not hereby pledged beyond the obligation which the laws of nations impose upon a neutral country.

13. By permitting British subjects to hold lands which they have already purchased within the United States, a right is assumed by the executive, of depriving the several states of the forfeitures which may have already accrued to them by the alienism of such purchasers: and even of divesting American citizens of the land which they may have purchased, in consequence of such forfeitures. The policy, also, of permitting aliens to hold real property, may be doubted: nor is there any real reciprocity in this permission, none, or very few American citizens having bought lands on so precarious a tenure in England.

14. The same want of reciprocity may be discovered in that clause of the treaty which interdicts the confiscation or sequestering of debts due to individuals, or monies held in the public funds, and in banks: However impolitic or unjust it may be, in ordinary cases, to exercise this power, yet, as it is strictly permitted by the laws of nations, and may sometimes be exerted for the prevention of a war, by deterring a nation from further aggression, or to bring an enemy to reasonable terms of accommodation, and has been actually exercised by Great Britain in her present contest, it is impolitic, in the extreme, to pledge the public faith never to exercise it upon any occasion, or under any circumstance whatsoever, especially to a nation who can give us no equivalent for consenting to this restriction, and which, of all others, might be the most sensibly affected by the use of it.

15. Our commerce to India is much circumscribed by the treaty. We are excluded altogether from the coasting trade, and laid under other unusual and new restrictions. It is true, that this commerce has hitherto been carried on only by permission—But it is presumed, that the advantage which Great Britain has experienced during twelve years, will induce her to permit its continuance without our unnecessarily consenting to these restraints: And if we are excluded altogether

ther from the British settlements in India, other ports, equally advantageous, are open to us.

16. By the constitution, Congress are to regulate our commerce with foreign nations. This treaty, if ratified, will not only infringe this power, but very greatly shackle our government, in their future regulations of trade.

It must always have been a matter of much solicitude with Great Britain, to prevent us from passing such discriminating acts as circumstances might render proper—And America, situated as she is, should not lightly part with such an invaluable prerogative.

17. As a neutral and commercial people, and likely, with common prudence, to continue at peace with all the world, the United States should never voluntarily consent to any article prohibiting free vessels from making free goods. This is the case with the present treaty—by this concession we not only depart from a principle adopted by several maritime powers, and which Congress, under this consideration, frequently recognized and always pursued, in their intercourse with other nations; but we put it out of our power to receive any advantage from the modern law of nations, referred to in the President's proclamation of neutrality, and are even precluded from the benefits of the contrary stipulations which have been carefully inserted in our treaties with other nations.

18. In ascertaining what articles shall be deemed contraband, several are comprehended which were never so deemed, and are expressly declared not to be so, in our treaties with other nations, particularly ship-timber, tar, hemp, sails, and copper. Indeed, it is difficult to say what will not be deemed contraband, as, after a very long enumeration, it is added, that generally, whatever may serve directly to the equipment of vessels, unwrought iron and fir-planks only excepted, shall be considered in that light. It may be observed here, that Great Britain, in her treaty with France, has declared these very articles NOT to be contraband.

19. Vessels, laden with provisions, may be seized under the frivolous pretext of the difficulty of agreeing on the precise cases in which they may be regarded as contraband. It is true, that a reasonable mercantile profit is to be allowed; but independent of the difficulty of ascertaining what such a profit is, of which the British must judge, all the profits contemplated on the return cargo, will be lost; and our citizens, to the great injury of agriculture, will be discouraged from the exportation of grain and other provisions, which, in time of war, must be an object of the first magnitude.

20. Great Britain being actually at war, derives an immediate benefit from all those articles which refer to that condition, while it is problematical, whether the United States, even when at war, can at all be benefited by these stipulations. Some equivalent might, therefore, reasonably have been expected for the constant advantages which result to Great Britain from those parts of the treaty, which contemplate a war between either party and some other power.

21. The treaty is principally calculated to promote the interests of Great Britain, pending her present conflict with France, to increase her resources, and enable her to prosecute the war with greater vigour and success. The citizens of America are thus exposed to the imputation of the basest ingratitude, if not breach of faith, towards a generous and gallant ally, to whom they are largely indebted for their freedom and independence, and to whose victories is to be ascribed the peace which they now enjoy.

22. The whole treaty may be regarded as peculiarly hostile to the French republic, and unless those who are at the head of her affairs conduct themselves with uncommon moderation, a war with France, can hardly fail to be one of the consequences of a ratification.

23. The restraint upon our citizens not to accept commissions in the army or navy of foreign powers is impolitic, as it deprives them of a mean of acquiring military knowledge, and that in a way which has never been esteemed illegal or disreputable. It is also unprecedented; for nothing is more common than for the citizens of one country to serve in the army or navy of another, for the sake of honour, instruction or reward. The United States, in particular, should encourage such of their youth as are ambitious of military glory, to a service of this kind. In time of war, it is not easy to calculate the advantages which might be derived from it.

24. However proper it may be to discourage neutral citizens from engaging on board of the privateers, it may entirely be questioned, whether the right of defining and punishing piracy does not belong exclusively to the legislature of the United States. Although a similar provision is found in our treaties with other nations, it will be recollected, that in Congress at that time, and not in the executive, was vested the right of making treaties.

25. This treaty would be dangerous as a precedent: for other nations, with whom we may wish to make commercial compacts, will expect us to submit to similar embarrassments, and to have our trade regulated by this partial standard.

26. There is good reason to believe, that the treaty is disagreeable to a very great majority of the people of the United States; and that even those who do not publicly remonstrate against its ratification, from an opinion that it is the proper province of the executive to determine on it, sincerely wish it may not take place.

27. The disadvantages already enumerated are the more striking, because, from the nature and extent of their exports, the United States have it in their power, in all their commercial arrangements with foreign nations, to secure a perfect reciprocity, not only with their European, but also with their foreign, possessions, as has indeed been offered to them on the part of the French republic.

28. Besides the objections already stated, it must be remarked, that the whole treaty abounds with sentences whose meaning is equivocal, and that too much room is left for doubt, construction and future discussions; whereas every ambiguity in an instrument of this

kind, with so powerful a nation, ought to have been studiously avoided.

Resolved further, that a copy of the preceding resolutions be signed by the chairman, and transmitted by express to the President of the United States, who is hereby informed, that the citizens of New-York, assembled upon this occasion, respectfully hope, that he will please to take the same into his most serious consideration—they assure him that they rely with great confidence on his known patriotism, wisdom, and independence, in the exercise of the prerogative vested in him, and that nothing but the importance of the occasion should have induced them to obtrude their sentiments on him. Influenced by no other motive than a zeal for their country's good, they ardently hope that the reasons herein assigned, with those which may be offered by their fellow citizens of other states, added to such as his own good sense will not fail to suggest, will prevail upon him to withhold his assent from an instrument which has spread a general alarm throughout the United States, as invading the constitution and legislative authority of the country; as abandoning their important and well founded claims against the British government; as imposing unjust and impolitic restraints on their commerce; as injurious to agriculture; as conceding, without an equivalent, important advantages to Great Britain; as hostile and ungrateful to France; as committing our peace with that great republic; as unequal in every respect to America; as hazarding her internal peace and prosperity; and as derogatory from her sovereignty and independence.

By order of the Meeting,

W. S. SMITH, Chairman.

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*Memorial of the Citizens of Philadelphia, the
Northern Liberties, and the District of
Southwark, agreed upon at a numerous
meeting, held in the State-house Yard, on
Saturday, July 25, 1795.*

To GEORGE WASHINGTON, President of the United
States.

The Memorial of the Citizens of Philadelphia, the Northern Liberties, and the District of Southwark, in the state of Pennsylvania,

RESPECTFULLY SHEWETH,

THAT your memorialists, sincerely and affectionately attached to you, from a sense of the important services which you have rendered to the United States, and a conviction of the purity of the

motives that will forever regulate your public administration; do, on an occasion in which they feel themselves deeply interested, address you as a Friend and Patriot: as a Friend, who will never take offence at what is well intended; and as a Patriot, who will never reject what may be converted to the good of your country.

That your memorialists entertain a proper respect for your constitutional authority; and, whatever may be the issue of the present momentous question, they will faithfully acquiesce in the regular exercise of the delegated powers of the government; but they trust, that in the formation of a compact, which is to operate upon them, and upon their posterity, in their most important internal, as well as external relations, which, in effect, admits another government to controul the legislative functions of the union; and which, if found upon experience, to be detrimental, can only be repealed by soliciting the assent, or provoking the hostilities, of a foreign power; you will not deem it improper or officious in them, thus anxiously, but respectfully, to present a solemn testimonial of their public opinion, feelings and interest.

That, under these preliminary acknowledgments of the duty and of the design of your memorialists, the following objections to a ratification of the treaty lately concluded between Lord Grenville and Mr. Jay, are submitted with implicit confidence, to your consideration.

The treaty is objected to,
1. Because it does not provide for a fair and effectual settlement of the differences that previously subsisted between the United States and Great Britain—inasmuch as it postpones the surrender, and affords no compensation for the detention, of the western posts—inasmuch as it cedes, without any equivalent, an indefinite extent of territory to the settlers under British titles, within the precincts and jurisdiction of those posts—inasmuch as it waves a just claim for the value of the negroes who were carried off at the close of the war, in violation of a positive compact—and inasmuch as it refers all the hopes of indemnity, for the recent spoliations committed on the commerce of the United States, to an equivocal, expensive, tedious, and uncertain process.

2. Because by the treaty, the federal government accedes to restraints upon the American commerce and navigation, internal as well as external, that embrace no principle of real reciprocity, and are inconsistent with the rights, and destructive to the interests, of an independent nation—inasmuch as it unreasonably fetters the intercourse with the West Indies, with India, and with the American lakes, by means of the navigable rivers belonging to the British—inasmuch as, in many instances, it circumscribes the navigation of the United States to a particular voyage—and, inasmuch as some of our staple commodities (exempted by the treaties with France, Holland, Prussia, and Sweden) it makes liable to confiscation, as contraband; and others (exempted by the law of nations) it makes liable to fet-

zure, upon payment of an arbitrary price, as articles useful to the enemies of Great Britain.

3. Because the treaty is destructive to the domestic independence and prosperity of the United States—inasmuch as it admits aliens, professing a foreign allegiance, to the permanent and transmissible rights of property, peculiarly belonging to a citizen—and inasmuch as it enables Great Britain to draw an invidious and dangerous line of circumvallation round the territory of the union, by her fleets on the Atlantic, and by her settlements from Nova Scotia to the mouth of the Mississippi.

4. Because the treaty surrenders certain inherent powers of an independent government; which are essential, in the circumstances of the United States, to their safety and defence; and which might, on great emergencies, be successfully employed to enforce the neglected claims of justice, without making the last, dreadful appeal to arms—inasmuch as the right of sequestration; the right of regulating commerce, in favour of a friendly, and against a rival, power; and the right of suspending a commercial intercourse, with an inimical nation, are voluntarily abandoned.

5. Because the treaty is an infraction of the rights of friendship, gratitude, and alliance, which the republic of France may justly claim from the United States; and deprives the United States of the most powerful means to secure the good will and good offices of other nations—inasmuch as it alters, during a war, the relative situation of the different nations, advantageously to Great Britain, and prejudicially to the French Republic—inasmuch as it is in manifest collision with several articles of the American treaty with France—and, inasmuch as it grants to Great Britain certain high, dangerous, and exclusive privileges.

And your memorialists, having thus, upon general ground, concisely, but explicitly, avowed their wishes and opinions; and forbearing a minute specification of the many other objections that occur—conclude with an assurance, that by refusing to ratify the projected treaty, you will, according to their best information and judgment, at once evince an exalted attachment to the principles of the constitution of the United States, and an undiminished zeal to advance the prosperity and happiness of your constituents.

Signed by order of the General Meeting at Philadelphia, the 25th of July, 1795.

W. SHIPPEN, jun. Chairman.

THE Committee appointed by a general meeting of the Citizens of Philadelphia, the Northern Liberties, and the District of Southwark, to sign and transmit to the President of the United States, the Memorial expressive of the Sentiments of the Meeting in relation to the Treaty negotiated between Mr. Jay and Lord Grenville, have

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received, by the hand of Dr. Wm. Shippen, jun. the following Answer, which they think it their duty to publish for the information of their constituents.

Philadelphia, August 14, 1795.

Thomas M ^c Kean,	Alexander J. Dallas,
Charles Pettit,	John Swanwick,
Moses Levy,	John Hunn,
William Coats,	Abraham Coats,
John Barker,	Stephen Girard,
Fred ^k . A. Muhlenberg,	William Shippen, jun.
Thomas Lee Shippen,	Blair M ^c Clenachan.

United States, 12th August, 1795.

SIR, I HAVE received your letter of the 26th of July, covering the Memorial of a Meeting in Philadelphia. As the Answer* which I have given on a similar occasion to the Select-men of Boston, is applicable to this Memorial, I think it proper to transmit a Copy thereof to you.

With due respect,

I am, Sir,

Your obedient,

(Signed) Go. WASHINGTON.

Dr. William Shippen, jun.

Report of the Charleston Committee.

CHARLESTON, July 19, 1795.

Report of the Committee chosen by ballot of the Citizens of Charleston, S. Carolina, in pursuance of a Resolution of a General Meeting of the Citizens in St. Michael's Church, on Thursday, the 16th of July, 1795.

THE committee to whom was referred, by their fellow citizens, the consideration of the impending treaty of amity, commerce, and navigation, between his Britannic Majesty and the United States of America, report—

That they have attentively considered the said treaty, and are of opinion, that it has not that reciprocity which ought to be the basis of all contracts—that it contains no provisions in favour of the United States, in any manner proportionate to the various concessions made to Great Britain; and restricts Congress in the exercise of its constitutional power of regulating trade, and making such discriminations in favour of other foreign nations, as may be most beneficial.

* See page 158.

From many well founded objections, your Committee beg leave to select and submit the following:

The first article, though usual in treaties, would be particularly mischievous in this, inasmuch as it permits the unconditional return, to our country, of all persons who were proscribed during the late war, though their return is repugnant to our laws, and to the feelings of our injured fellow citizens, and though the state legislatures have already proceeded as far in re-admitting such persons, as they judged consistent with good faith, or sound policy.

The second article sanctions the continuance of an injury, which, in violation of the treaty of peace, has already existed eleven years: it either establishes a British colony within our limits, with peculiar privileges, or, in case the inhabitants of such colony chuse to become citizens of the United States, it gives the privileges of citizens of these states to a number of men, who have been their most bitter and irreconcilable enemies; who, in conjunction with the savages, have lately waged war against us, and who, from their local situation in the vicinity of the Indian tribes, conveniently may, and from their disposition (as far as we can judge from their past conduct) would be inclined to join with them, in acting against us, on any favourable emergency.

The third article gives to the British, what to them, with their capital, will be nearly equivalent to a monopoly of the trade with the Indians, and with our western territories, and opens a door for smuggling on an extensive scale, to the great injury of our revenue.

By the sixth article, the United States undertake to make good such losses on debts, to British creditors, as have been occasioned by legal impediments, to their recovery, created by any of the states, in violation (as is alleged) of the treaty of peace; although the first infraction of that treaty, was made on the part of Great Britain, by carrying away from these states many thousands of negroes, and a considerable quantity of valuable property, whereby individuals were deprived of the means of discharging their debts; although the United States have incurred an immense expence in maintaining an army for the defence of their northern and western territory; an expence actually occasioned in consequence of the detention of the western posts; and although no compensation is stipulated to be made to the citizens, whose negroes, and other property, have been illegally carried off; their right of recovery being passed over in silence. Thus the United States are compelled to make ample reparation, for the only infringement of the treaty, which is charged on any of their citizens, whilst neither the union, nor the citizens have even a promise of compensation, for the many injuries sustained by violations of the said treaty, on the part of Great Britain.

This article, moreover, erects a tribunal new and unknown to our constitution, inasmuch as it transfers the right of deciding on the claims of British creditors, from the courts and juries of America, to commissioners; a majority of whom may be British subjects, and by their decisions, tax the revenue of these states at pleasure.

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The seventh article makes restitution for the extensive spoliations lately committed on our commerce, remote, expensive, and uncertain; though justice, and the circumstances of our injured citizens demanded that it should have been immediate and complete; while, on the other hand, full compensation, on certain fixed principles, is stipulated to be made by the United States, for all property which has been taken by privateers, equipped in our ports, or which has been captured within our limits.

The twelfth article gives us no other privilege than that of carrying in American vessels (not exceeding seventy tons burthen) such articles of the growth, manufacture, or production of these states, as are not, and shall not be prohibited by Great Britain, from being carried to her West India islands, and of bringing from thence, in such American vessels, such produce of those islands, as may be carried from thence to the United States in British vessels: In return for this privilege (which, restricted as it is, is of no value) we are made to surrender the right of exporting in our own vessels, to any part of the world, melasses, sugar, coffee and cocoa, whether the productions of the British islands, or of any other place, whilst the British, and all other Foreign powers, have a right to send those very articles, in their vessels, from our ports. We are precluded from exporting in our own vessels, not only foreign cotton, but the cotton of our own growth, although the privilege of exporting that article, from hence, in their own vessels, is given to the British. It precludes us from supplying our allies, the French, with several articles, which they consider as of prime necessity, and which, in the existing state of things, they cannot (without great risk and difficulty) obtain from their West India islands, but through the medium of neutral powers; more particularly the United States. In fact, it has placed the commodities, above mentioned, on a footing far worse for us than if they were contraband of war; inasmuch as contraband articles are only prohibited from being carried to powers at war: but these articles cannot, under the restrictions of the treaty, be carried by vessels of the United States, to any nation, either in time of war, or of peace.

Although it is recommended, that a suspension of this article should precede the ratification of the treaty; yet, it having been also recommended to the President to proceed, without delay, to further negotiations with his Britannic Majesty, on the subject of trade to his West India islands, and on the terms and conditions mentioned in this article, your committee have, therefore, thought proper to submit these observations on it.

The seventeenth article, makes a formal recognition of the right of Great Britain to search American vessels, for property on board such vessels, suspected to belong to any power, with which she is at war: it authorizes her to carry into her ports, every American vessel, which the officers of her men of war, and privateers, may suspect to have such property on board: and engages to deliver up all such property, though of our friends and allies, which shall be on board:

whereas France, and every nation, with which we have a treaty, have expressly declared, that free ships shall make free goods, and protect property on board of them, to whomsoever it may belong.

By authorising such searches, a general search-warrant is given to British privateers. This article establishes principles as the law of nations, which justify many of the late spoliations committed by British vessels of war, on the commerce of these states; and of course authorise the repetition of such spoliation, which would be extremely detrimental to our commerce. The capture and deteation of American, by British vessels, under the authority of this article, will put American seamen wholly in the power of the British; yet no provision is made to protect and secure them from being impressed into the British service, though daily experience evinces the necessity of requiring a clear and unequivocal stipulation for the protection and security of that valuable class of men.

By the first section of the eighteenth article, all timber, for ship building, tar, rosin, copper in sheets, sails, hemp, cordage, and in general whatever may serve directly for the equipment of vessels (unwrought iron and fir-planks only excepted) are declared to be contraband, and just objects of confiscation—whereas those articles, in all our other treaties, are expressly acknowledged not to be contraband, but free. Thus America concedes to Great Britain, what she has never conceded to any other power.

With respect to the second section of the eighteenth article, an attempt is made to bring even provisions under the head of contraband. This, if effected, in conjunction with the preceding clause, will comprehend, as contraband, almost all the important staples of these states. Such an extension of contraband must prove ruinous to our commerce, especially as Great Britain affects to hold whole countries in a state of blockade.

The twenty-third, twenty-fourth, and twenty-fifth articles, have a tendency to embroil us with the French Republic, and in the existing state of things, to make our sea-port towns scenes of riot and bloodshed. These articles also tend to make a common cause between the United States and Great Britain, to oppress and distress our allies.

Upon the whole, your committee apprehend that great evils would result to these states from this treaty, if ratified; they, therefore, recommend that an address be prepared, and presented to the President of the United States, praying that he will not ratify the said treaty.

The above report was agreed to, and transmitted to the President.

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Norfolk Resolutions.

Resolutions adopted at a Meeting of the Justices of the County, and Aldermen of the Borough, of Norfolk, on Saturday the 11th of July, 1795.

RESOLVED, That Stephens Thomson Mason, is entitled to the thanks of this meeting, and of every good citizen and real friend to the constitution of the United States, for his patriotic and independent conduct in rending the veil of senatorial secrecy, and thereby disclosing to the world the treaty lately concluded on by John Jay, and the ministers of the king of Great Britain, touching the dearest rights and most essential interests of a free people.

Resolved, That it be recommended to THE PEOPLE of the towns of Norfolk and Portsmouth, and of the county of Norfolk, to assemble at the Court-house of said county, on the first Wednesday in August next, to take into consideration the Treaty aforesaid, and the propriety of addressing the President of the United States on that subject.

Resolved, That the above resolutions be published.

CHARLES CONNER, Chairman.

Baltimore Resolutions.

Resolutions of the Citizens of Baltimore, adopted at a numerous meeting, held at the Court-house, on the 27th of July, 1795.

RESOLVED unanimously, That the citizens now assembled, do disapprove of the treaty of amity, commerce, and navigation, lately negotiated with Great Britain, and assented to by the Senate of the United States.

Resolved unanimously, as the sense of this meeting, That an address be presented to the President of the United States, expressive of their disapprobation of said treaty, and requesting that it may not be ratified.

Resolved unanimously, That the thanks of this meeting be presented to the virtuous minority in the Senate, for their opposition to the proposed treaty, and to Stephens Thomson Mason, for the patriotic service rendered his country, by a disclosure of its contents.

New-Jersey Petition.

To GEORGE WASHINGTON, President of the United States.
*The Petition and Remonstrance of the Subscribers, citizens of the State
of New-Jersey,*

RESPECTFULLY SHEW,

THAT your petitioners, sincerely attached to the interests of their country, have read, with attention, the treaty of amity, commerce, and navigation, between his Britannic Majesty and the United States of America, entered into at London, on the 19th day of November last, which, it appears, hath been in part assented to by two-thirds of the Senate—and, upon due consideration (without troubling you with a detail of particular objections) would beg leave most respectfully to suggest, as our opinion, That the said Treaty does not afford to the citizens of these states, such terms as they ought to accept: and that, if finally ratified, it will be a source of many disadvantages to the commerce, agriculture, and national prosperity of the union, and of great discontent and uneasiness in the minds of the citizens thereof. In addition to this opinion (which your petitioners believe to be the prevailing sentiment of the citizens of New Jersey, and, as far as information hath reached us, of the United States at large) a sincere respect and esteem for you, flowing from a recollection of numerous and eminent services, which gratitude hath indelibly engraven on our hearts, renders it a duty incumbent on us to represent the same for your information, lest our silence on the occasion, might be construed into an approbation of the said treaty.

We therefore pray, That, so far as the same may be consistent with that discretion which we conceive is entirely vested in you by the constitution, your sanction may be withheld, until more equitable terms are acceded to on the part of Great Britain.

Trenton Resolutions.

Resolutions adopted at a general Meeting of the Citizens of Trenton, and its Vicinity, convened at the State-house, on the 29th of July, 1795, pursuant to public notice given, "for the purpose of taking into consideration, Measures proper to be pursued upon the subject of the pending Treaty between Great Britain and the United States."

1. **R**ESOLVED (without a dissenting voice) That we entirely and religiously concur with our brethren of Philadelphia, "That it is the constitutional right and patriotic duty of the citizens of the United States, to express, on every important occasion, the public sense of public measures."
2. Resolved (without a dissenting voice) That it is at this time, in a peculiar manner, the bounden duty of every friend to his country

to express the public opinion upon an instrument so extraordinary and so momentous in its nature as the treaty of amity, navigation, and commerce, lately projected between Lord Grenville on the part of Great Britain, and John Jay, envoy extraordinary on the part of the United States; degrading to the national honour, dangerous to the public interest, and destructive of the agricultural and commercial views of the United States.

3. Resolved (without a dissenting voice) That the citizens of Trenton and its vicinity, having heard a full discussion upon the subject of the treaty, do, upon the most cool and dispassionate consideration, disapprove of the said treaty, and hope, by this public expression of their sentiments, to prevent, as far as possible, its ratification by our supreme executive.

4. And whereas the great bulk of the citizens of this state reside in small towns and villages, or on farms, at a distance from each other, and cannot, therefore, without much inconvenience, assemble in town-meetings or otherwise, in any considerable numbers, to express their sentiments on the important subject now under consideration, it was deemed highly proper and necessary, that the said citizens should adopt the mode they have, of doing it by way of petition and remonstrance to the President—Resolved (with only *three* dissenting voices) That the petition and remonstrance* originated in this city on the eighth day of July instant, and since circulated through the state, was and is eligible, respectful, decent and proper, expressive of our sentiments and entitled to our entire approbation, set on foot, no doubt, with the purest intentions, and calculated to produce the most happy consequences: And in order that they may be more generally dispersed than has yet been practicable—It is further resolved (the first impression of the said petitions being run out) That two hundred copies more be immediately printed and distributed under the direction of the chairman of this meeting.

5. Resolved (without a dissenting voice) That the TEN senators, who voted against the ratification of the said treaty, thereby gave a proof of their independence, patriotism and integrity, and are entitled to the future confidence of the citizens of the United States, and in a particular manner to the thanks of this meeting.

6. Resolved (without a dissenting voice) That Stephens Thomson Mason, one of the Senators for the state of Virginia, is entitled to the highest veneration, respect and esteem of his countrymen, for the opportunity he hath afforded them of seeing the projected treaty, and of exercising their constitutional right of expressing their opinion thereon, and of using their every possible endeavour and influence to prevent its ratification,—a thing but too much to be feared, if the *unjustifiable secrecy* intended by a majority of the Senate had been strictly adhered to.

7. Resolved, That James Mott, George Anderson, Joseph Milnor, Joseph Brumly, Richard Throckmorton, Major P. Hunt, Gerthom Craft, Randle Rickey, Capt. Wm. Smith (of Hopewell), Col.

* See p. 174.

Joseph Brearly, Wm. S. Moore, David Snowden, Jeremiah Woolsey, John Potts, and Hill Runyan, be a committee, for the purpose of drawing up and reporting resolutions containing the reasons which influence this meeting to disapprove and condemn the said treaty.

The whole business of the meeting was conducted and concluded with the most perfect harmony, good order, and decorum.

Signed at the request of the meeting.

Attest, Jno. W. VANCELEVE, Sec. M. FURMAN, Chairman.

Flemington Resolutions.

The Citizens of Flemington, New-Jersey, and its Vicinity, having seen the form of a Petition to the President of the United States, praying that his Sanction might be withheld from the Treaty agreed to by John Jay, Esq. on behalf of the United States, with his Britannic Majesty, met on Tuesday evening last, and, after appointing Mr. Joseph Atkinson, Chairman,*

RESOLVED,

THAT they have a high opinion of the ability and integrity of John Jay, Esq. and are convinced that his attachment to his country induced him to contend for the most equitable and advantageous terms that could be obtained.

2. That they entirely approve of the conduct of the two thirds of the Senate with respect to the treaty, having full reliance on their wisdom and patriotism.

3. That the ability, tried virtue and magnanimity of our first magistrate, does not require petitioning to do what is just, wise and political.

4. That the promotion of such petitions, has a tendency to stir up the minds of the people to anarchy, disorder, and confusion.

5. That the said form of Petition be assigned to the element most figurative of the disposition of *self-created society patriots*—which was done, with general huzzas for the executive of the United States.

By order of the Chairman,

LUCIUS W. STOCKMAN, Sec.

Flemington, July 23d, 1795.

To the Citizens of New-York.

FRIENDS AND FELLOW CITIZENS,

WE perceive, with pain, and regret, that you are urged, with much intemperance and heat, to meet to-morrow, not to consider and discuss the treaty lately negotiated with Great Britain, and to express the conviction which shall arise from a fair examination of its merits, but to condemn and oppose it as a thing prejudged.

* See p. 174.

You are told that it is ignominious and disgraceful ; that it *surrenders rights and privileges ruinous to our commerce—that it yields advantages which we ought never to part with but with our lives* ; that it makes sacrifices for which we have no equivalent ; in short, that it settles principles dangerous to the liberties and happiness of the people, and destructive of our freedom and independence.

These are strong charges indeed against the treaty—If they can be made out, it certainly deserves the reprobation of every good citizen ; and no man, faithful to the interests of his country, ought to withhold the expression of his abhorrence of it.

But ought we hastily to believe that such charges can be well founded ? Can we easily be persuaded, that the citizen who negotiated the treaty, and who, on all former occasions, has given decided proof of fidelity and patriotism, could, of a sudden, become so base a betrayer of the rights and interests of his country ? Can we imagine that two-thirds of the representatives of the United States, in their Senate, would have sanctioned so foul a treason ? Can we think our interposition necessary to prevent the ratification of such a treaty by that wise and virtuous man, that long and well tried servant of his country, in whom the executive authority of the United States is deposited ?

No, Fellow citizens ! it is impossible that the frightful picture given of the treaty can be a just one. Such charges are better proofs of the intemperance of those who make them, than of the defects of the treaty.

You cannot but be sensible that the treaty, if such as it is represented, must affect deeply the interests of the mercantile class. You cannot doubt that the merchants are attentive to their interests, and you can hardly suppose that they are ignorant of them.

For our part, we profess to you frankly, that we have not yet been able to discover in the treaty, those hideous features which are alleged to exist ; yet we are disposed to meet the rest of our fellow citizens and to promote with them a fair and rational discussion of the subject. We trust, however, that they respect themselves too much not to make this a necessary preliminary to their pronouncing an opinion—and that they will unite with us in rejecting any propositions which shall be attempted to be imposed upon them without due investigation.

Meeting them on this basis, our ears will be open to truth, and we shall be ready, according to the best of our understandings, to concur in any measures which can be shown to be consistent with the true interests of our country. We doubt not, you will all bring with you the same dispositions, and we earnestly recommend a general attendance upon the occasion, in order that the true sense of the city may appear.

By order of a Meeting of a number of Merchants, at the Tontine Coffee-house, July 17th, 1795.

JAMES WATSON, Chairman.

*Resolutions of the New-York Chamber of
Commerce.*

At a special Meeting of the Corporation of the New-York Chamber of Commerce, held at the Tontine Coffee-house the 21st of July, 1795, —the late Treaty of Amity, Commerce, and Navigation having been previously read, the following Resolutions, with the Preamble thereto, were proposed and adopted, viz.

WHEREAS, the treaty between the United States and Great Britain, lately sanctioned by the Senate, has been made the subject of public discussion, in the warmth of which, misconstructions and misrepresentations have contributed to excite and irritate the public mind.

And, whereas a disposition has appeared, in certain instances, to influence the executive against the ratification of the said treaty, whereby the tranquility and prosperity of our country may be endangered :—therefore,

Resolved, as the opinion of the Corporation, That the said Treaty, collectively considered, contains as many features of reciprocity, as, upon contemplating the relative interests of the respective countries, could reasonably have been expected. And that the precarious privileges of the American trade to Great Britain and her colonies, are, by this treaty, changed into permanent rights.

Resolved, That the provisions in the said treaty, for a quiet surrender of the western posts, and an amicable adjustment of the British debts, a fair compensation for the spoiliations upon our commerce, and for the prevention of future depredations, are wisely arranged for the great purposes of national justice, and to preserve the blessings of peace.

Resolved, That if the Treaty should fail to be ratified, we should apprehend a state of things which might lead to hostilities ; in which event, our navigation (now dispersed in all quarters of the globe) may be intercepted, our under-writers injured, our commerce abridged, our produce reduced to little value, our artizans, mechanics and labourers deprived of employment, our revenue diminished, and the lives of our fellow citizens sacrificed.

Resolved, That although the ratification of this treaty, for the foregoing reasons, appears to us, under all circumstances, expedient ; yet we cheerfully rest it where it is placed by the constitution : in full confidence, that the wisdom and firmness under which our independence has been achieved, and our progress to wealth, power, and respectability promoted beyond a parallel, will, in this instance, determine for the best interests of this country.

Resolved, That the President of this Chamber cause a copy of

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these resolutions to be certified by the Secretary, and transmitted, without delay, to the President of the United States.

By order of the Corporation of the N. York Chamber of Commerce.
C. SANDS, President.

A true Extract from the Minutes.

Attest, Wm. LAIGHT, Sec.

THE Corporation of the Chamber of Commerce of the city of New-York, having almost unanimously, a very full meeting of the Merchants constituting this body, adopted the enclosed resolutions; it becomes my duty, as president of the said Corporation, to transmit them to your Excellency. They are expressive of the sentiments of the Society, over whom I have the honour to preside, and are now respectfully communicated to the Executive of the United States, by

His most obedient,
And very humble servant,

C. SANDS, President.

Go. WASHINGTON, Esq. President of the United States.

New-York, July 22d, 1795.

The President's Answer.

To COMFORT SANDS, Esq. President of the New-York Chamber of Commerce.

SIR,

A LITTLE before my departure from Mount Vernon for Philadelphia, I received your letter of the 22d of last month, covering the Resolutions of the New-York Chamber of Commerce, relative to the Treaty lately negotiated between the United States and Great Britain. My journey, and the urgent business in which I have since been engaged, have prevented an earlier acknowledgment.

While I regret the diversity of opinion which has been manifested on this subject, it is a satisfaction to learn, that the commercial part of my fellow citizens, whose interests are thought to be most directly affected, so generally consider the treaty as calculated, on the whole, to promote important advantages to our country.

With due respect,

I am, Sir,

Your most obedient,

Go. WASHINGTON.

United States, August 20, 1795.

[From the Philadelphia Gazette.]

Sunbury, July 20, 1795.

MR. BROWN,

I OBSERVE in the newspapers, that it seems to be universally taken for granted, that the President has a negative on the proceedings of the Senate, respecting the Treaty with Great Britain. We are informed, that Petitions are framing, to be presented to him, to withhold his assent to the Treaty; and that wagers, to a considerable amount, have been actually laid, that he will accede to it, or reject it, according as the wishes or principles of persons have preponderated on the subject. I confess, sir, I have been a little surpris'd at all this; because I by no means think the position an obvious and undeniable one, that the President has a controuling power, in the *present stage* of the business, on what the Senate have done.

The words of the constitution are, "he (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

From these expressions it is clear, the President can make no treaty, nor appoint an ambassador, without the consent and advice of the Senate. It is, therefore, of great importance to ascertain the *time when this consent and advice* of the Senate is to be given, and the force and meaning of the expressions. In the usual and ordinary method of appointing officers, the moment the Senate consent to the nomination made by the President, and advise him to make the appointment, it is allowed, on all hands, he is constitutionally obliged to appoint such officer. The Senate indeed make use of the words *consent and advice*, in reply to the President's nomination of persons to fill offices. But these words are the technical and constitutional language prescribed to them; and while they deprive *him* of all option as to the appointment, do clearly imply an obligation to appoint *on the part of the President*. In the case of a treaty being laid before the Senate, and their giving their consent, and advising the President to ratify it, I can see no reason why a similar construction should not be adopted. The words are the same in both cases, except that in the appointment of officers, the word *nominate* is necessarily introduced. The treaty, in the *first instance*, is made by the President—and he may therefore be considered as having constitutionally used that *power of making treaties*, with the consent and advice of the Senate, which the constitution has given him. His laying it afterwards before the Senate for their advice and consent, is not merely with a view to consult them or take their opinion. If this were the case, the Senate of the United States would be a collection of mere cyphers. If

the President can, in this manner, put his veto on their "advice and consent" (words which I apprehend are equivalent to an order or command) it is evident, that instead of the Senate having any real power in the making of treaties, they will not have even the shadow of it. The President will be the *sole maker* of all treaties; and should it happen, which is very possible, that the senate unanimously consent to a treaty and advise the ratification of it, still the President may refuse to follow their advice and over-rule the opinion of the whole senate. However clearly and unanimously they may concur in the idea, that the treaty is highly beneficial to their country, yet the opinion of a single man is sufficient to outweigh the united judgment of the whole senate on this most interesting question. This doctrine does not look very republican; and seems to clash with the general principles of the constitution, which has guarded, with extreme caution, against trusting power in the hands of *one*, in opposition to the wishes and opinions of *many*.

Let it be supposed, the President receives a treaty from a foreign minister, and that he cordially disapproves of it. The senate, however, on his laying it before them, think quite differently, and *unanimously* give their consent to it, and advise him to ratify it.

In this case, pray, Mr. Brown, whose opinion is to decide the question? Is the President, by refusing to ratify the treaty, to defeat the wishes of the United States, as expressed by the united voice of the whole national body? I confess, sir, I extremely doubt whether this be the genuine construction of the federal constitution—it would rather seem, the *power* he has of making treaties, with the advice and consent of two-thirds of the senators, should be deemed to extend no further than his making them, in the *first instance*, through the medium or channel of the foreign ministers, and that, when laid before the senate, their opinion is *final* thereon.

This construction will satisfy the words of the constitution, without making a cypher of the President on the one hand, or of the whole senatorial body on the other. The President, according to this idea, will possess the *power of making treaties*, but not to the exclusion of the senate. And the senate, by their "*consent and advice*," will possess the ultimatum on the subject of foreign treaties, which the constitution has vested in them.

What are the forms of making treaties by the executive of the United States, I am not certainly informed; but have understood, he sends abroad the minister, without *previously* communicating to the senate the instructions given to him. A treaty, therefore, made under such circumstances, may, with great propriety, be viewed as one *made* by the President within the words of the constitution. And it would be strange to say, that he should not only have the first concoction of the treaty, but the ultimate power of rejecting it, in opposition to the senate; making them a parcel of non-entities. And on the other hand, even if the instructions for the use of the ambassador, drawn up by the President, are laid before the senate, and approved of by them, I do not see how this could alter the case; because the

President, by such act, has exercised his *power in making the treaty*, and therefore can never afterwards controul the vote of the senate, approving or rejecting such treaty.

In short, Mr. Brown, the construction that will be most agreeable to the scope, spirit, and genius of the constitution, and *at all times hereafter safe* for the United States (for too much cannot be trusted to the present illustrious character who fills the office of the executive) will be, to consider the President's laying a treaty before the senate, in the same light as his nominating a gentleman to an office. In this latter case, their consent and advice is equivalent to a command, and carries with it a *constitutional obligation* to appoint the person nominated. In like manner, their consent to a treaty made by the President, and their advice to him to ratify it, are final, conclusive, and obligatory upon him. In both cases, he is contemplated by the constitution as the agent, the instrument, or prime mover in the business. But it is the senate, *strictly speaking*, who *make* the treaty, and appoint the officer, *through the means* and by the *assistance* of the President; who possesses the *power* indeed of bringing the objects into the view and contemplation of *that* body—and *that is all*.

A FEDERALIST.

British Proclamations.

GEORGE R.

Additional Instructions to the Commanders of all our ships of war, and privateers that have, or may have letters of marque (L.S.) against France. Given at our Court at St. James's, the 6th day of Nov. 1793, in the 34th year of our reign.

THAT they shall stop and detain all ships laden with goods, the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and shall bring the same, with their cargoes, to legal adjudication in our Courts of Admiralty.

By his Majesty's command,

A Copy,
Jno. Ibbertson. }

HENRY DUNDAS.

Instructions to Commanders of our Ships of war and Privateers, that have or may have Letters of Marque against France. Given at our Court at St. James's, the 8th of Jan. 1794.

GEORGE R.

WHEREAS by a former instruction to the Commanders of our ships of war and privateers, dated the 6th day of Nov. 1793—We signified that they should stop and detain all ships laden with goods, the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and should bring the same with their cargoes to legal adjudication. We are pleased to revoke the said instructions, and in lieu thereof, have thought fit to issue these our instructions, to be duly observed by the commanders of all our ships of war and privateers that have or may have letters of marque against France.

1. That they shall bring in for lawful adjudication, all vessels with their cargoes that are laden with goods, the produce of the French West India islands, and coming directly from any part of the said islands to any part of Europe.

2. That they shall bring in for lawful adjudication, all ships with their cargoes that are laden with goods, the produce of the said islands, the property of which goods shall belong to subjects of France, to whatsoever ports they may be bound.

3. That they shall seize all ships, that shall be found attempting to enter any port of the said islands that is, or shall be blockaded by the arms of his Majesty or his allies; and shall send them in with their cargoes for adjudication, according to the terms of the second article of the former instructions bearing date the 8th of June, 1793.

4. That they shall seize all vessels laden wholly or in part with naval or military stores, bound to any port of the said islands, and shall send them into some convenient port belonging to his Majesty, in order that they, together with their cargoes, may be proceeded against according to the rules of the law of nations.

H. DUNDAS.

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Lord Dorchester's Reply to the Indians.

REPLY of his Excellency Lord Dorchester to the Indians of the Seven Villages of Lower Canada, as Deputies of all the Nations who were at the general Council held at the Miami, in the year 1793; except the Chawauous, Miamis, and Loups.

Children,

I HAVE well considered your words, and am now prepared to reply.

Children,

You have informed me that you are deputed by the seven villages of Lower Canada, and by all the nations of the upper country which sent deputies to the general council held at the Miamis, except the Chawauous, Miamis, and Loups.

Children,

You remind me of what passed at the council-fire at Quebec, just before my last departure for England, when I promised to represent their situation and wishes to the King their Father, and expressed my hope that all the grievances they complained of, on the part of the United States, would be soon done away, by a just and lasting peace.

Children,

I remember all very well; I remember that they pointed out to me the line of separation, which they wished for between them and the United States, and with which they would be satisfied and make peace.

Children,

I was in expectation of hearing from the people of the United States what was required by them; I hoped I should have been able to bring you together, and make you friends.

Children,

I have waited long, and listened with great attention; but I have not heard one word from them.

Children,

I flattered myself with the hope that the line, proposed in the year eighty-three to separate us from the United States, which was immediately broken by themselves as soon as the peace was signed, would have been minded, or a new one drawn in an amicable manner; here also I have been disappointed.

Children,

Since my return, I find no appearance of a line remains; and from the manner in which the people of the States push on, and act, and talk, on this side, and from what I learn of their conduct towards the sea, I shall not be surpris'd if we are at war with them in the course of the present year; and if we are, a line must be drawn by the warriors.

Children,

You ask for a passport to go to New-York; a passport is useless in peace; it appears therefore that you expect we shall be at war with the States before you return—you shall have a passport, that, whether peace or war, you shall be received by the king's warriors.

Children,

They have destroyed their right of pre-emption; therefore all their approaches towards us since that time, and all the purchases made by them, *I consider as an infringement on the king's rights*; and when a line is drawn between us, be it peace or war, they must lose all their improvements and houses on our side of it; the people must be gone, who do not obtain leave to become the king's *subjects*; what belongs to the Indians will, of course, be confirmed and secured to them.

Children,

What further can I say to you?—You are our witnesses, that on our part we have acted in the most peaceable manner, *and borne the language of the United States with patience*; and I believe our patience is almost exhausted.

Given under my hand at the castle of St. Lewis, in the city of Quebec, on the tenth day of February, in the year of our Lord, 1794.

DORCHESTER,

By his Excellency's command,
Herman W. Ryland, Secretary.

Resolutions of Mr. Madison,

LAI D before the House of Representatives of the United States on Friday, the 3d of January, 1794.

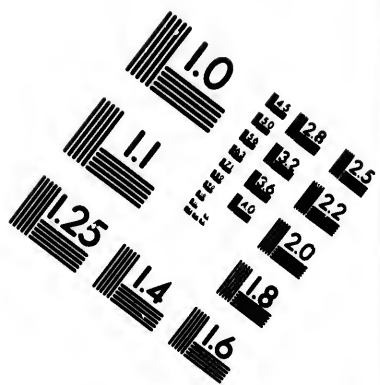
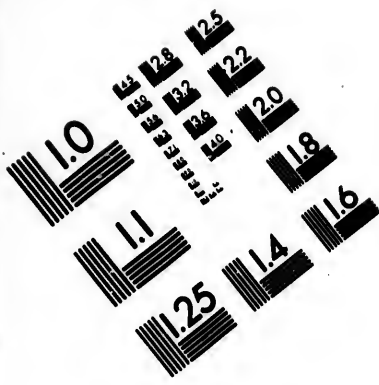
RESOLVED, as the opinion of this committee, That the interest of the United States would be promoted by further restrictions and higher duties, in certain cases, on the manufactures and navigation of foreign nations employed in the commerce of the United States, than those now imposed.

1. Resolved, as the opinion of this committee, That an additional duty ought to be laid on the following articles, manufactured by European nations, having no commercial treaty with the United States.

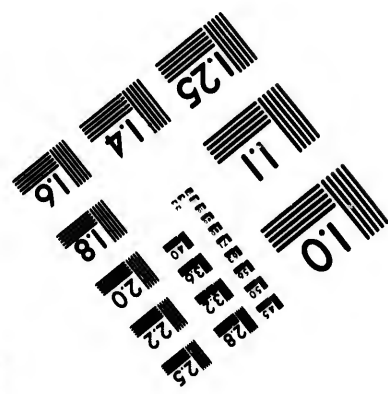
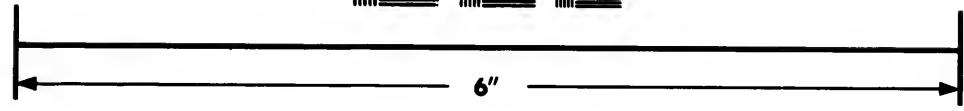
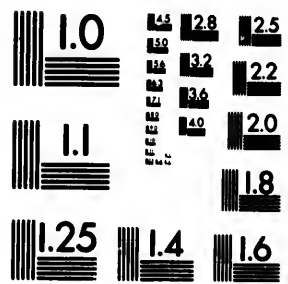
On all articles of which leather is the material of chief value, an additional duty of per centum ad valorem.

On all manufactured iron, steel, tin, pewter, copper, brass, or articles of which either of these metals is the material of chief value; an additional duty of per centum ad valorem.





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On all articles of which cotton is the material of chief value, an additional duty of per centum ad valorem.

On articles of which wool is the material of chief value, where the estimated value on which the duty is payable, is above an additional duty of per centum ad valorem; where such value is below an additional duty of per centum ad valorem.

On all cloths, of which hemp or flax is the material of chief value, and of which the estimate value on which the duty is payable, is below an additional duty of per centum ad valorem.

On all manufactures of which silk is the material of chief value, an additional duty of per centum ad valorem.

2. Resolved, as the opinion of this committee, That an additional duty of per ton ought to be laid on the vessels belonging to nations having no commercial intercourse with the United States.

3. Resolved, as the opinion of this committee, That the duties on vessels belonging to nations having commercial treaties with the United States, ought to be reduced to per ton.

4. Resolved, as the opinion of this committee, That where any nation may refuse to consider as vessels of the United States, any vessels not built within the United States, the foreign built vessels of such nation ought to be subjected to a like refusal, unless built within the United States.

5. Resolved, as the opinion of this committee, That where any nation may refuse to admit the produce or manufactures of the United States, unless in vessels belonging to the United States, or to admit them in vessels of the United States, if last imported from any place within the United States, a like restriction ought, after the day of to be extended to the produce and manufactures of such nation; and that, in the mean time, a duty of per ton, extraordinary ought to be imposed on vessels so importing any such produce or manufacture.

6. Resolved, as the opinion of this committee, That where any nation may refuse to the vessels of the United States a carriage of the produce or manufactures thereof, whilst such produce or manufactures are admitted by it in its own vessels, it would be just to make the restrictions reciprocal; but in as much as such a measure, if suddenly adopted, might be particularly distressing in cases which merit the benevolent attention of the United States, it is expedient for the present, that a tonnage extraordinary only of be imposed on the vessels so employed; and that all distilled spirits imported therein shall be subjected to an additional duty of one part of the existing duty.

7. Resolved, as the opinion of this committee, That provision ought to be made for liquidating and ascertaining the losses sustained by citizens of the United States from the operation of particular regulations of any country, contravening the law of nations, and that such losses be reimbursed in the first instance, out of the additional duties on the manufactures, productions and vessels of the nation establishing such unlawful regulations.

Resolutions of Mr. Dayton,

LAI D before the House of Representatives of the United States,
on the 27th of March, 1794.

RESOLVED, That provision ought to be made by law, for the sequestration of all the debts due from the citizens of the United States to the subjects of the king of Great Britain.

Resolved, That provision ought, in like manner, to be made for securing the payment of all such debts into the Treasury of the United States, there to be held as a pledge for the indemnification of such of the citizens of the said States, as shall have suffered from the ships of war, privateers, or from any persons, acting under the commission or authority of the British king, in contravention of the laws of nations, and in violation of the rights of neutrality.

Resolution of Mr. Clarke,

LAI D before the House of Representatives of the United States,
the 7th of April, 1794.

RESOLVED, That until the government of Great Britain shall cause restitution to be made for all the losses and damages sustained by the citizens of the United States, from armed vessels, or from any person or persons acting under commission or authority of the British king, contrary to the laws of nations, and in violation of the rights of neutrality; and also, until all the posts, now held and detained by the king of Great Britain, within the territories of the United States, shall be surrendered and given up, all commercial intercourse, between the citizens of the United States, and the subjects of the king of Great Britain, so far as the same respects articles of the growth or manufacture of Great Britain or Ireland, shall be prohibited; provided such prohibition shall not extend to vessels, or their cargoes, arriving in any of the ports of the United States, before the day of next.

[From the Aurora.]

*Explanation of the actual situation of Mr.
Jay's Treaty.*

MR. BACHE,

I HAVE lately read with attention the Treaty between Great Britain and the United States, as also the Resolution of the Senate, conditionally consenting to its ratification—What the Senate intended by this resolution is extremely difficult to discover. I hope, however, the following remarks will contribute to place it upon the least exceptionable ground.

The resolution is in these words—

“Resolved, That the Senate do consent to, and advise the President of the United States to ratify the treaty of amity, commerce, and navigation, between his Britannic Majesty and the United States of America, concluded at London the 19th of November, 1794, on condition that there be added to the said treaty, an article whereby it shall be agreed to suspend the operation of so much of the twelfth article, as respects the trade, which his said Majesty thereby consents may be carried on between the United States and his islands in the West Indies, in the manner, and on the terms and conditions therein specified.

“And the Senate recommend to the President to proceed, without delay, to further friendly negotiations with his Majesty, on the subject of the said trade, and of the terms and conditions in question.”

So much of the twelfth article of the treaty as is not proposed to be suspended by the foregoing resolution, is in these words—

“And it is further agreed, That at the expiration of the said term, the two contracting parties will endeavour further to regulate their commerce, in this respect, according to the situation in which his Majesty shall then find himself with respect to the West Indies, and with a view to such arrangements as may best conduce to the mutual advantage and extension of commerce. And the said parties will then also renew their discussions, and endeavour to agree, whether in any and in what cases neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such. But in the mean time their conduct towards each other in these respects, shall be regulated by the articles herein after inserted on those subjects.”

The 28th article of the treaty is in these words—

Art. XXVIII. “It is agreed, that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except

the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition—That whereas the said 12th article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the present war in which his Majesty is engaged, it is agreed, that proper measures shall by concert be taken for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term, as that new arrangements on that head, may by that time be perfected and ready to take place. But if it should unfortunately happen, that his Majesty and the United States should not be able to agree on such new arrangements, in that case all the articles of this treaty, except the first ten, shall then cease and expire together."

If the treaty had been unconditionally consented to by the Senate and ratified by the President, and if no new arrangements in relation to the subjects of the twelfth article, could be agreed on between the parties, before or at the expiration of two years from the termination of the present war, then at that period the whole of the treaty (except the first ten articles) would expire together—Except those ten articles, the whole treaty is made to depend on the operation of the twelfth article, or its substitute. Whenever, therefore, the 12th article ceases to operate, if an agreeable substitute is not ready to take its place, the whole treaty, except the ten first articles, must expire with it. It is obviously immaterial, whether the determination of the twelfth article is occasioned by its regular expiration, two years after the termination of the war, or by the consent of the contracting nations, at an earlier period. In either case, the effect must be the same.

The resolution of the Senate makes the suspension of the material parts of the twelfth article, a condition upon which they will consent to the ratification of the treaty. If this condition is not accepted by the British king, every part of the treaty is without the sanction of the Senate. If it is accepted, then the substantial parts of the 12th article cease to operate, by the mutual consent of the contracting nations; and therefore every part of the treaty, except the first ten articles, must expire with it. The foundation being taken away, the superstructure must fall.

The Senate, aware of this conclusion, add to their resolution a recommendation to the President, to proceed without delay to procure a substitute for the 12th article, by new negotiations with the British king. If such a substitute can be obtained, so as to begin its operation when the suspension of the 12th article takes place, then it may be contrived to give existence to the whole treaty; but without it, the British king's assent to the condition contained in the Senate's resolution must annihilate the whole of the treaty, or at any rate the whole of it except the ten first articles.

Under this view of the Senate's resolution, it may become a question, whether the President can constitutionally complete the

final act of ratification, without again resorting to the Senate for their approbation. If new arrangements are made to supply the place of the 12th article, they must form a part of the present treaty.—They do not now exist, and consequently they cannot be said to have obtained the consent of the Senate.—Without the consent of the Senate, a treaty cannot constitutionally be made.—If no new arrangements are agreed on, and the condition upon which the Senate have consented to the ratification, is assented to, then as the condition itself will destroy all the treaty, except the first ten articles, the discussion of the question, as to the President's constitutional power, becomes unimportant, as to all the treaty, except the ten first articles. The operation of the condition, when assented to, upon the President's power to ratify the ten first articles, is a question I do not now intend to examine, because the proceedings of the Senate have unequivocally shown, amidst all their perplexity, that they did not intend to ratify the ten first articles in the view of a distinct treaty with Great Britain.

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