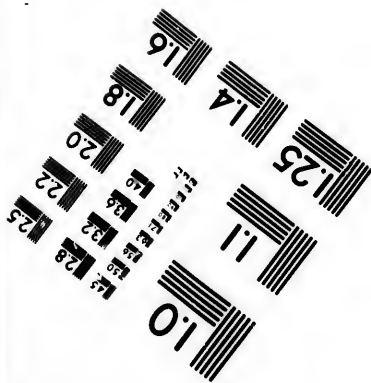
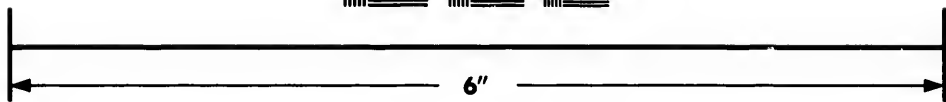
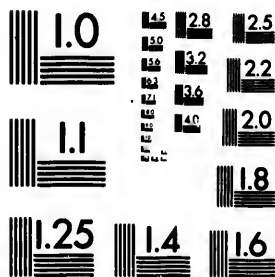


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

0  
16  
18  
20  
22  
25  
28  
32  
36

**CIHM/ICMH  
Microfiche  
Series.**

**CIHM/ICMH  
Collection de  
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

01  
02  
03  
04  
05  
06  
07  
08  
09  
10

**© 1983**

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/  
Couverture de couleur
- Covers damaged/  
Couverture endommagée
- Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée
- Cover title missing/  
Le titre de couverture manque
- Coloured maps/  
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur
- Bound with other material/  
Relié avec d'autres documents
- Tight binding may cause shadows or distortion along interior margin/  
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments:/  
Commentaires supplémentaires:

- Coloured pages/  
Pages de couleur
- Pages damaged/  
Pages endommagées
- Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées
- Pages detached/  
Pages détachées
- Showthrough/  
Transparence
- Quality of print varies/  
Qualité inégale de l'impression
- Includes supplementary material/  
Comprend du matériel supplémentaire
- Only edition available/  
Seule édition disponible
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/  
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

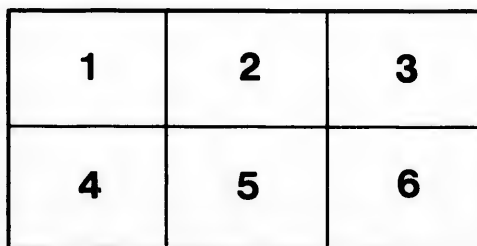
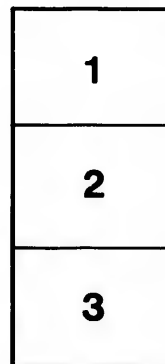
Scott Library,  
York University

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Scott Library,  
York University

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

①

FR

THE  
*DIPLOMACY*  
**Of the United States.**

---

BEING  
**AN ACCOUNT OF**  
**The Foreign Relations of the Country,**  
FROM THE FIRST TREATY WITH FRANCE, IN 1778, TO THE TREATY  
OF GHENT, IN 1814, WITH GREAT BRITAIN.

*Theodore Lyman, Jr.*

**BOSTON :**  
**WELLS AND LILLY,—STATE STREET.**  
.....  
1826.

54

1412

49

1826

h  
l  
s  
f  
l  
v  
"  
a  
th  
o  
st  
  
th  
in  
th  
on

## ADVERTISEMENT.

---

**T**HIS work is intended to give a view of the Foreign Relations, an account of the policy pursued, or, as it is sometimes termed, a diplomatic history of the country, from the first intercourse of the Government with Europe in 1776—7—8, to the end of the year 1814. We have selected that period for the close of the "account," as a general pacification then took place, and those considerations, which, during the wars of the French revolution, gave so much importance to our negotiations abroad, were, in consequence of the state of peace, entirely put at rest.

We have given a condensed exposition of some of the important principles of the Laws of Nations, brought into discussion since the year '92, though the nature of the work has not permitted an extended dissertation on any of those topics.



It is proper to observe that, in preparing this work, great use has necessarily been made of the collection of American state papers, and of the journals of Congress, both of the confederation, and of the present government, together with the documents, debates, &c. to be found in the Parliamentary History of Great Britain, and other works of that description. The valuable collections of the Ebeling and Warden libraries on American subjects, now in the possession of Harvard University, and the excellent collection of American tracts in the Atheneum in this town, may be consulted to advantage on any topic relative to this country.

Boston, April 10th, 1826.

tive  
'89  
For  
rior  
cre  
of t  
nev  
tion  
the  
und  
diff  
cre

TR

C  
assi

is work,  
e collec-  
ournals of  
present  
ates, &c.  
f Great  
n. The  
en libra-  
ssion of  
ction of  
may be  
to this

CONTENTS.

CHAPTER I.

PRELIMINARY REMARKS. CONFEDERATION, &c.

	Page.
Powers of First Congress as to Foreign Relations defective—Adoption of Confederation—Powers of Constitution of '89—Powers of House of Representatives as to Treaties—Foreign business first done by Secret Committees, very laborious—Department for Foreign Affairs established—First Secretary—Salary—Department under the Constitution—One of the Cabinet—Right of President to remove—United States never sent or received an "Ambassador"—Rules for reception—Diplomatic Agents of the Confederation—Expenses of the Diplomatic Corps under the Confederation—Salaries, &c. under the Constitution—Ceremonial of first Minister very difficult to arrange—Somewhat ludicrous—Extract from Secret Journals—Present mode of accrediting, . . . . .	1

CHAPTER II.

TREATIES OF AMITY AND COMMERCE, AND OF ALLIANCE OF 1778, WITH FRANCE.

Confederation little hopes, or means, of obtaining foreign assistance—Deane sent to France in '76 to obtain supplies—

	Page
Remarkable letter of Vergennes—Franklin, Deane, and Jefferson elected Commissioners in '76—Jefferson excused from going—Lee chosen in his place—Not officially received—Alarming situation—France disposed to withdraw all succour—News of Burgoyne's Surrender—Treaties signed—Commissioners presented at Court—Great attention to Franklin—Anecdotes of him—Gerard appointed Minister to America—Sails in d'Estaing's Flag-ship—Presented to Congress—Ceremonial—Franklin elected to Versailles—Returns to America—Succeeded by Jefferson—De la Luzerne succeeds Gerard,	17

### CHAPTER III.

#### CONVENTION OF 1800 WITH FRANCE.

Jefferson elected again to France—De la Luzerne is succeeded by de Moustier—Morris succeeds Jefferson, and Ternan de Moustier—French Revolution embarrassing to Government—Perplexing question whether a Minister should be received from the French Republic—Mr. Genet—Death of the King—Less enthusiasm for the Revolution—Very difficult Negotiation with Genet—His demands examined—Monroe goes to France—Government solicit the recall of Genet—Dismissed—Is succeeded by Fauchet—More temperate—Adet succeeds Fauchet—Outrage on Fauchet—France extremely dissatisfied with state of things—Jay's treaty—Pinkney succeeds Monroe—Not received by the Directory—Ordered to leave France—Extraordinary proceeding—Pinkney, Marshall, and Gerry appointed—Not received, though cards of hospitality sent them—W. Y. Z.—Talleyrand proposes to treat with one Commissioner only—Rejected—Pinkney and Marshall leave France—Gerry remains—Hostilities—Talleyrand brings on, by means of Pichon, another Negotiation—Ellsworth, Murray, and Davie appointed to France—Properly received—First Consul—Convention—Bonaparte desirous of Peace, . . . . .

Page

CHAPTER IV.

CESSION OF LOUISIANA.

Purchase, a good one—Necessary for Western country—  
 French possessions in North America extinguished by trea-  
 ties of '62 and '63—Louisiana secretly ceded to France—  
 Great uneasiness in America—France prepares to take pos-  
 session of it—Prevented by renewal of war—Ceded to United  
 States—Terms—Made a "territory" and then a state—Let-  
 ter of British officer on Louisiana, . . . . . 107

CHAPTER V.

CONTINENTAL SYSTEM.

Livingston Minister in France—Turreau and Serrurier in  
 this country—America very prosperous—Berlin Decree—  
 Great calamity—Beginning of Continental System—All Conti-  
 nent, except Turkey, in the League—America only neutral  
 —Milan Decree—Canton, in China, only port not blockaded  
 —Embargo—Bayonne and Rambouillet Decrees—Cause of  
 War against France—Repeal of French Decrees—England  
 refused to acknowledge the validity of the act—Antedated  
 Decree—French Spoliations—No indemnity—Angry corres-  
 pondence with France, . . . . . 118

CHAPTER VI.

TREATY OF 1782 WITH THE NETHERLANDS.

Second power to make a Treaty with United States—War  
 between United Provinces and England—Causes—Lee, fail-  
 ing at Berlin, enters secretly into a correspondence with the  
 Regency of Amsterdam—not suspected by Sir Joseph Yorke  
 —Lee agrees, at Aix La Chapelle, on a Treaty with Neuf-

l Jef-  
 from  
 ved—  
 ccour  
 Com-  
 lin—  
 ica—  
 —Ce-  
 erica  
 erard,

17

is suc-  
 d Ter-  
 o Go-  
 should  
 Death  
 y diffi-  
 Mon-  
 Genet  
 rate—  
 ce ex-  
 Pink-  
 —Or-  
 kney,  
 cards  
 ses to  
 ey and  
 alley-  
 ion—  
 proper-  
 sious

52

ville—Secret discovered by capture of Laurens—Amsterdam richest city in Europe—Laurens chosen to Holland—Subsequently Adams—States General very dilatory in recognizing Independence—Three classes of Treaties—Remarks on National Law—Neutral rights badly defined—Mr. Adams concludes a Treaty, and makes Loans—Van Berckel appointed Minister to United States—Holland fell in '94—Changes in Government—Great Trade with this country—King Louis well disposed—Compelled to abdicate—Confiscation of American property, . . . . . 137

## CHAPTER VII.

### TREATY OF '83 WITH SWEDEN.

Sweden, only power that voluntarily offered its friendship to Congress of confederation—No applications specially made to Northern Powers in early part of war—M. de Creutz offered in '82 to make a treaty—Treaty of Paris of '83—Provisions similar to that of Netherlands—No Minister till 1813—M. de Kantzow—Jonathan Russell of Massachusetts—Demand for property confiscated at Stralsund—Relations friendly with Sweden, . . . . . 152

## CHAPTER VIII.

### TREATY OF 1783 WITH GREAT BRITAIN.

Lord North attempts a Peace—America early conquered every thing she sought—Members of Parliament see Franklin privately—Ministry, as well as Opposition, against acknowledgment of Independence—Lord Chatham speaks against it—Mediation of European courts—Unsuccessful—Austria and Russia not in favour of Independence—General Conway's resolution—Decides the question of War—New Ministry—Oswald and Grenville sent to Paris—Not officially—Failed—Shelburne's Administration—Oswald instructed to acknow-

Page

Page.

ledge the Independence—Adams, Franklin, Jay, Laurens, and Jefferson authorized to treat—Meet at Paris—Difficulty as to loyalties—Make a compromise through violation of instructions—Conclude a Treaty—Boundaries—Fisheries—Agreed to Treaty without consulting France—Violation of Instructions—Explained—France and Spain desirous of Fisheries and Western Country—Treaty honourable and favourable to America—Unpopular in England—Ministry in minority on first division—Necessary sacrifice, . . . . . 156

CHAPTER IX.

TREATY OF 1794 WITH GREAT BRITAIN.

Confederation no power over Commerce—Commercial conventions with France, Holland, Prussia, and Sweden—No trade—Trade to England only important one—Depended on an annual act of Parliament—Policy at variance with Europe—Mr. Adams chosen to St. James—First Envoy—Well received—England refused to make a treaty—Account of violations of treaty of '83—Debts—Interest—Confederacy dissolved—Hammond, first envoy to this country—Morris—Pinkney—Origin of oppressive acts by belligerents—War between France and England—Provisions contraband—Rules of neutrality—Danger of a war—Executive appoints Mr. Jay to London—Decides question of neutrality—Concludes a treaty—Unpopular—Eventually favourable to United States, . . . 190

CHAPTER X.

TREATY OF GHENT OF 1814 WITH GREAT BRITAIN.

Little settled by Jay's treaty—Mr. King, Minister to England—Made no treaty—Succeeded by Mr. Monroe—Proposes a convention to Lord Hawksbury—Rule of '56—Account of it—Injurious to American commerce—Special mission of Messrs. Monroe and Pinkney—Convention with Lords Hol-

land and Auckland—Most favourable ever made—President rejects it without consulting Senate—Impressment—Account of it—Opinions of Foster, Mansfield, and Chatham—Convention with Lord St. Vincent—Chesapeake—England offered reparation—Refused to consider the affair in connexion with other topics in discussion—Mr. Rose—Mission ineffectual—Orders in Council—Great sensation—Erskine arrangement—Unsuccessful—Erskine withdrawn—Mr. Jackson—His correspondence with Government—Dismissed—England expresses no mark of displeasure—Antedated decree—England refuses to repeal orders—Declaration of 1812—War—Remarks on neutrality—Mediation of Russia—Not successful—Peace of Ghent—No disputed point settled—Peace—Policy of America—War of 1812, good effect on national character—Mr. Adams, Minister to England—Mr. Bagot to this country, . . . 224

## CHAPTER XI.

### TREATIES OF 1785 AND 1799 WITH PRUSSIA.

Fourth power in Europe to conclude a Treaty—Lee appointed in '77 to Berlin and Vienna—Not received by either court—His full powers stolen at Berlin—Hessians made to pay same toll as cattle—Prince Henry—Treaty of '85—Peculiar provisions—Private war abolished—Treaty of '99, . . . 224

## CHAPTER XII.

### TREATY OF 1795 WITH SPAIN.

Spain powerful at time of Revolution—Family Compact—Great American possessions—Franklin appointed Minister in '77 to Madrid—Important letter—Spain avoids the coalition—Strives to reconcile France and England—Fails—Declares war against England in '79—Jay sent to Spain—Officially received—Makes no Treaty—Important instructions—Gardoqui, Spanish Chargé—Treats respecting boundaries—Nothing

Page.

Page.

dore--South and North divide on the navigation of the Mississippi--South in minority--Short and Carmichael, commissioners to Spain--Remarks on Mississippi--Spain, having entered the coalition of '93, unwilling to treat--Indians--Acts of hostility in Kentucky--Short--Viar--Jaudenes--Prince of Peace--Treaty of Basle--Godoy--Pinkney sent to Madrid--Treaty of San Lorenzo el Real with Prince of Peace--Right of deposit at New-Orleans suspended--Eastern and Western boundaries of Louisiana--France opposes claims of United States--Government take possession of West Florida--Folch--Kemper--Spoliations--Settled by transfer of East Florida--Humphreys--Yrujo--Bowdoin--Intercourse renewed in 1814--Erving, . . . . . 294

CHAPTER XIII.

RELATIONS WITH RUSSIA.

Not originally applied to for aid by Congress of '77--Little known at that time in Europe--Relations friendly--Armed neutrality--Dana sent to Russia in '80--Instructed to propose America as a member of the armed neutrality--Not received by the Empress--Russia not disposed to acknowledge Independence--Anecdote of Franklin and Count du Nord--Neutrality awakens great anxiety--Congress, at return of peace, took earliest steps to prevent a connexion with "Neutrality"--Instructions to ministers in Europe not to agree to support neutrality by force of arms--Adams, Minister to Russia--Pahlen to this country--Daschkoff--No treaty or commercial convention, though great trade, . . . . . 352

CHAPTER XIV.

RELATIONS WITH DENMARK.

No diplomatic intercourse--Erving sent to Denmark in 1811--Account of spoliations--French and Danish privateers



	Page.
—Captures—Convoy cases—New aggression on neutral rights—Remarks on that subject—None of the condemnations of 1809, 1810, revised—Convoy cases not restored—Erving leaves Copenhagen, . . . . .	361

## CHAPTER XV.

### RELATIONS WITH PORTUGAL.

Trade in Mediterranean, exposed to Barbary cruisers, first led to diplomatic intercourse—Vessels taken by Algerines as early as '85—Before revolution protected by British passes—Number of captives in '93—Humphreys sent to Lisbon in '91—Freire to this country—Legation suspended in 1801—Smith in '97—No commercial or other treaty with Portugal,	369
Conclusion, . . . . .	373
Appendix, No. 1,—List and dates of Treaties, &c. . . . .	375
Appendix, No. 2,—Statement, exhibiting the amount paid to each Envoy Extraordinary and Minister Plenipotentiary and Chargé d'Affaires, from the United States to the respective Foreign Courts, for outfit, return, salary, and contingent expenses, commencing on the 1st January, 1801, and ending on the 31st December, 1821, . . . . .	380

W  
gre  
den  
cou  
as  
is v  
thi  
phi  
pro  
ann

## TREATIES, &amp;c.

361

## CHAPTER I.

## PRELIMINARY REMARKS. CONFEDERATION, &amp;c.

*Powers of First Congress as to Foreign Relations defective—Adoption of Confederation—Powers of Constitution of '89—Powers of House of Representatives as to Treaties—Foreign business first done by Secret Committees, very laborious—Department for Foreign Affairs established—First Secretary—Salary—Department under the Constitution—One of the Cabinet—Right of President to remove—United States never sent or received an "Ambassador"—Rules for reception—Diplomatic Agents of the Confederation—Expenses of the Diplomatic Corps under the Confederation—Salaries &c. under the Constitution—Ceremonial of first Minister very difficult to arrange—Somewhat ludicrous—Extract from Secret Journals—Present mode of accrediting.*

WE propose, in this chapter, briefly to recite the power of Congress under the confederation of '78, and of the government under the constitution of '89, in regard to the relations of the country with foreign states, together with such circumstances, as properly belong to the management of foreign affairs. It is well known, that the first assembly of delegates from the thirteen colonies, or parts of colonies, was held in Philadelphia, in September, '74. The meeting was convened on the proposition of the Province of Massachusetts Bay; and it was annually renewed by a vote of the Congress itself till the

year 1778, when the different colonies or provinces, having instructed their delegates to sign the articles of "Confederation and perpetual Union," agreed on by Congress in the preceding November, an organized government, usually known by the name of the *Confederation*, was established. Before this period, the delegates to the Congress acted by the special instructions of the Province Legislatures, or of the committees of the people by whom they were chosen. These instructions were of various import. Some delegates, indeed, were not furnished with any powers whatever. Their discretion was unlimited. But in general the representatives of the colonies were authorized to consult for the public good and general welfare, either by securing the liberties of the provinces, or by establishing a just and safe commercial arrangement with the mother country. A Congress, thus composed, was not invested with constitutional authority. Even, if the instructions of the delegates had been binding on their respective legislatures, the different legislatures would not have been bound in an equal degree; for some delegates were without instructions, and to those who were furnished with them a great variety of powers were given. The colonies, or provinces, were not parties to any instrument; they did not jointly agree to support any one measure; much less the great system of measures by which the revolution war was conducted. But the exigency of the case, the danger of the country, the necessity of preservation, supplied the deficiencies of form. The Congress of '74 did not appear to believe, that a war would take place—they did not expect a separation from the mother country—they took no direct immediate measures to resist, by force, the unjust pretensions of the British government. This Congress remained in session six weeks with closed doors. They adopted a non-importation, non-exportation, and non-consumption agreement—they prepared a petition to the king—and an address to the people of Great Britain;—public documents, which will always be admired, as long as good writing, manly sense, and just practical notions. both of civil and

political liberty, merit applause. The Congress of '75 entered upon the *war*, and, from the time General Washington was appointed to command the continental forces to the confederation in '78, they levied men, borrowed money, sent ministers, concluded treaties, and performed most of the acts of a sovereign government. In '78, the confederation\* was adopted by the thirteen colonies, under the title of the "United States of America." This is the date of a constitutional government in this country. Whether as parties to this instrument, or to the act of Union of '89, the states severally and mutually pledged their faith, in as solemn a manner as could be done, to abide by the determination of the United States in Congress assembled on all questions that, by the confederation or the constitution, were subjected to their deliberation and control. This was a regular contract, obligatory in an equal manner, and to a defined extent. We shall only mention the provisions of the first "Union" that relate to the subject of this work.

"The United States, in Congress assembled, shall have the sole and exclusive right and power—Of determining on peace and war, except in the cases mentioned in the sixth article—Of sending and re-

\* The idea of a confederacy was not altogether new. A scheme of this sort was discussed in a meeting of delegates at Albany in 1754, though for a very different purpose. The king in council rejected the application. In July, '75, a year before the Declaration of Independence, Congress took the matter of a confederacy and union into consideration, the inconvenience and even fatal danger of their actual condition being abundantly apparent. The first sketch was proposed by Dr. Franklin, a member from Pennsylvania. This did not differ materially from the articles afterwards agreed on, though America could, by no means, at that period, be considered as separated from England. An amended copy of this scheme was afterwards reported by a committee in July, '76. This is said to be in the handwriting of Mr. Dickinson, the well known author of the Farmers' Letters. It is very evident, that Congress did not think it important to adopt articles of perpetual union till a reconciliation with Great Britain became utterly hopeless. The articles were extremely discussed. They were finally accepted in November. 1777.

ceiving ambassadors—Entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imports and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever”—“To borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money, so borrowed or emitted”—“The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy—unless nine states assent to the same.”

Each state had one vote; but no state could have more than seven delegates in the Congress.

Peace having been made, the nation was speedily convinced that the confederation was altogether inadequate in all matters of trade, for all purposes of revenue and commerce, and of intercourse of every description with foreign states. The present constitution was adopted, and went into operation on the 4th of March, 1789. Under this constitution, Congress has power to “lay and collect taxes”—“to borrow money on the credit of the United States”—“to regulate commerce:” but the “President has 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,” &c. This is the mode in which the constitution directs that foreign intercourse shall now be maintained. Treaties are the supreme law of the land. All courts must take notice of them.

The judiciary cannot declare a treaty to have been violated and therefore void. This power belongs solely to Congress. But it is not settled, whether the courts have not power to declare an article of a treaty unconstitutional.

“ In the year 1796, after the treaty with Great Britain was ratified by the President and Senate, and was proclaimed by the President, it became a question how far, under the constitution, a treaty was binding on Congress as a legislative body. In the discussion of this question, in the House of Representatives, it was contended on the one hand, that a treaty was a contract between two nations, which, when made by the President by and with the advice and consent of the Senate, was binding on the nation, and that a refusal by the House of Representatives to carry it into effect, was breaking the treaty and violating the faith of the nation. On the other hand it was contended, that a treaty which required an appropriation of money, or any act of Congress to carry it into effect, was not, in that respect, obligatory till Congress had agreed to carry it into effect, and they were at full liberty to make or withhold such appropriation or act, without being chargeable with violating the treaty, or breaking the full faith of the nation. Accordingly the House of Representatives passed a resolution calling on President Washington to lay before them the instructions to the Minister, (Mr. Jay), who had negotiated the treaty with Great Britain, and the correspondence and documents, except so far as on account of the pending negotiation, they were improper to disclose. The President declined a compliance with the request, stating, among other reasons, that a treaty duly made by the President and Senate, became the law of the land and was obligatory; that the assent of the House of Representatives was not necessary to the validity of a treaty, and therefore the papers requested could not come under the cognizance of the House of Representatives, except for the purpose of impeachment, which was not stated to be their object. The House of Representatives thereupon passed resolutions, disclaiming the power to interfere in making treaties, but asserting their right whenever stipulations were made on subjects committed to Congress by the constitution, to deliberate on the expediency of carrying them into effect; and in legislating on several treaties then before them. they struck out the words “ that provi-

sion ought to be made by law," and substituted words which declared merely the expediency of passing the necessary laws. In the session 1815, 16, the question as to the effect of a treaty arose again in Congress, and was elaborately discussed in both branches. A commercial treaty had been made at London, in the month of July preceding, between the United States and Great Britain, by which it was agreed to abolish the discriminating duties on British vessels and cargoes, then existing under the acts of Congress; and a bill was passed in the House of Representatives particularly enacting the same stipulations as the treaty contained. But it was rejected in Senate, that body having passed a bill of their own, which simply declared that so much of any act of Congress, as was contrary to the treaty, should be deemed and taken to be of no force or effect. This bill was amended, in the House, by striking out the words "and declared," and substituting the original bill which the Senate had rejected; these amendments were, however, rejected in the Senate, and the difference between the two houses, terminated in the appointment of committees of conference, by whose recommendation the above mentioned amendments of the House were relinquished, and the bill passed as proposed by the Senate in a declaratory shape, with some modifications not affecting the principles in dispute."\*

---

DEPARTMENT OF FOREIGN AFFAIRS.

THE Congress, or Government, during the confederation, consisted of but one branch or house. The number of the delegates was usually between fifty and sixty.† It was a legislative body, and its business, both foreign and domestic, in the outset, was done altogether by committees. They had originally no executive officers. The powers of the government were not then distributed in the beautiful manner we have

\* Sergeant.—Constitutional law.

† Fifty-six signed the Declaration of Independence.

since seen them, under the present constitution. But they were all assembled or concentrated in one body or single department. This circumstance, connected with the state of the nation, must have made the office of delegate, during the revolution war, exceedingly laborious and responsible.

The first committee to undertake the foreign business of the country was instituted in November '75. It was a secret committee and called the committee of "foreign correspondence." Subsequently, it was called the committee of foreign affairs, and was provided with a secretary. This committee did a great deal of work. They had the management of all the foreign correspondence, then voluminous, and of all negotiations, particularly those that led to the treaties with France and Holland. But the evils and great inconveniences of this mode of conducting the delicate, complicated, and very difficult transactions, in which the United States were engaged with other nations, a description of business daily accumulating in amount, were soon felt and will readily be perceived. The committee was abolished in January, '81, and an office called the "Department of Foreign Affairs" established in its place. The necessity of this change is well explained in the preamble to the report made on the occasion.

"The extent and rising power of these United States, entitle them to a place among the great potentates of Europe, while our political and commercial interests point out the propriety of cultivating with them a friendly correspondence and connexion. That to render such an intercourse advantageous, the necessity of a competent knowledge of the interests, views, relation, and systems, of those potentates is obvious. That a knowledge in its nature so comprehensive is only to be acquired by a constant attention to the state of Europe, and an unremitting application to the means of acquiring well grounded information. That Congress are, moreover, called upon to maintain with our ministers at foreign courts a regular correspondence, and to keep them fully informed of every circum-



stance and event, which regards the public honour, interest, and safety. Whereupon, Resolved, that an office be forthwith established for the department of foreign affairs, to be kept always in the place where Congress shall reside. That there shall be a Secretary for the dispatch of the business of the said office, to be styled "Secretary for Foreign Affairs." That it shall be the duty of the said Secretary to keep and preserve all the books and papers belonging to the department of foreign affairs, to receive and report the applications of all foreigners, to correspond with the ministers of the United States at foreign courts, and with the ministers of foreign powers, and other persons for the purpose of obtaining the most extensive and useful information relative to foreign affairs to be laid before Congress when required, also to transmit such communications as Congress shall direct, to the ministers of these United States and others at foreign courts and in foreign countries; the Secretary shall have liberty to attend Congress, that he may be better informed of the affairs of the United States, and have an opportunity of explaining his reports respecting his department."

In the following year the style of this officer was altered. He was called "Secretary to the United States of America for the department of foreign affairs," and he was allowed 4000 dollars exclusive of the expenses of his office. Mr. Robert R. Livingston of New York was the first Secretary of State. He was chosen in August '81, but having resigned in June '83, Mr. Jay, at that time in Europe, was chosen to succeed him. Mr. Jay remained in office till the adoption of the constitution. This office was not expressly recognized by the confederation; no provision having been made in that instrument for establishment by name of this or any other department, but it was enacted by a resolution, as the present department of state has been subsequently created by a law of Congress. The institution of these departments was authorized by the 9th article of the confederation—"the power to appoint such civil officers as may be necessary for managing the general affairs of the United States." This office was the foundation of the present department of State, established by law in '89, no provision having been made for it in

the constitution, (except the general one under article 1. sec. 8. provision 17.) It was then called the "Department of Foreign Affairs," and the officer, the "Secretary for the Department of Foreign Affairs." These terms were respectively changed to "Department of State," and "Secretary of State." The duties of this officer have not materially varied in consequence of the change of government. The Secretary of State now forms one of the Cabinet, and in the whole conduct of that department, receives his instructions from the President. No arrangement having been made by Congress for the appointment of this officer, the President exercises the right, conferred on him in other cases, of making a nomination in the usual form to the Senate. He has also under a construction of the constitution (now admitted,) the right of removing this officer, or the head of any other department at his pleasure. The law of '89 is considered as having settled this very important point. The bill did not pass without a very able and earnest opposition, but as the clause giving the power of removal to the President, was stricken out, the appearance even of conferring this right upon him by the Legislature was removed, and it could be regarded as a quality only incident under construction to the right of nomination, as it regards all superior officers of the United States "whose appointments" were "not otherwise provided for." The salary of the Secretary of State is now 6000 dollars. Of late years various matters have been referred to the examination, or the management of this officer, that do not in strictness belong to the Department of Foreign Affairs; for the duties of this department are not so specific, or easily defined, as those of either of the others. This circumstance has produced a great accumulation of business, and it is probable the government will find it necessary to create a fifth department, for the purpose of relieving the Secretary of State of all those affairs that do not properly belong to the Army, Navy, or Treasury. This might well be called the department of domestic affairs, or home department, perhaps a more significant and convenient name.

We observe, in the late message of the President, a department of this description has been recommended.

#### DIPLOMATIC CORPS.

The United States have never sent or received an "ambassador,"\* in the usual diplomatic sense of that term. Indeed the form of our government appears entirely to forbid it, while we confine ourselves to the European meaning of the rank. An ambassador has a representative character. He represents the person and dignity of his sovereign. "The pre-eminence of ambassadors manifests itself chiefly in the particular ceremonial of their reception in the country where they are appointed to reside. They are entitled to speak at the audiences they obtain, with *heads covered*,—to keep a canopy or throne in their dwellings," &c. An ambassador is, of course, often employed to manage the affairs of his nation like any other public minister, but his representative character of the honour and dignity of his sovereign, constitutes in his particular case, a minister of the first rank. This latter quality an American minister cannot well possess, for he represents nothing but the nation. The government it is true, has a right to require that ministers shall be received from them of the rank of ambassadors, but the distinction will obviously depend upon something different from the representation of the person of the sovereign. The English, we believe, are not much in the habit of employing *ambassadors*; most of their ministers being envoys, with full powers. But there are certain courts in Europe to which it seems to be

\* The Congress of '83 introduced a slight difference in the ceremonial of receiving an *ambassador*. He was allowed to sit covered in their presence and the President rose not only when he was introduced, but also when he read his answer. Ministers did not enjoy these privileges.

a sort of etiquette to send an *ambassador*. The sovereigns of the House of Bourbon, (France, Spain, and the two Sicilies,) are usually represented at their respective courts by a minister of this rank.

Difficulties have often arisen from the claims of ministers on the score of precedence. We find in the *Recueil des Pièces officielles*, (Tom. 8. No. 17.) an arrangement signed by the eight powers,\* parties to the treaties of 1814—1815 on this subject. As it is quite short and is now probably adopted in most of the European courts, we take this opportunity of translating it; the provisions appear just; they are at least very convenient.

“ART. 1. Diplomatic agents are divided into three classes. 1. Ambassadors, Legates, or Nuncios. 2. Envoys, Ministers and other agents accredited by the Sovereigns. 3. *Chargés d’Affaires*, accredited by the Department of Foreign Relations.

“ART. 2. Ambassadors, Legates or Nuncios, are alone invested with a representative character.

“ART. 3. Diplomatic agents sent on a mission extraordinary, are not entitled, on this account, to a superior rank.

“ART. 4. Diplomatic agents of the respective classes take rank according to the date of the official notice of their arrival. The representatives of the Pope are not affected by this article.

“ART. 5. Each State shall determine upon an uniform mode of receiving diplomatic agents of the different classes.

“ART. 6. Neither relationship nor family or political alliances between courts confer rank upon their agents.

“ART. 7. The order in which the signatures of Ministers shall be placed in acts or treaties between several powers, that allow of the alternat, shall be determined by lot.”

During the confederation, the public officers of the United States abroad were called, either *Chargés d’Affaires*, Commissioners, or Ministers Plenipotentiary. We are not aware that the confederation ever received or employed an Envoy Extra-

\* Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden.

ordinary. At present the government has established by its practice three classes, viz. Chargé d’Affaires; Minister Plenipotentiary and Envoy Extraordinary. The Corps Diplomatic of this country in Europe now consists either of Chargés d’Affaires or Envoys Extraordinary with full powers.

The salaries of public ministers varied very much under the confederation. They had at first no fixed compensation. But in October ’79 a salary of £2500 was established for the ministers in France, and of £1000 for the Secretaries, in full for services and expenses. This rate continued till ’84, when Congress resolved that the salary of a minister should not exceed 9000 dollars. It does not appear that any outfit was allowed. The confederation generally paid their ministers better than is now done; for the expense of living in Europe, particularly on the continent, has increased at least one half the last forty years. We have still remaining a report of the Secretary of Foreign Affairs on the expenses of his department in 1782. It is in some respects an amusing document, though, as it regards the expense of the ministers, obviously quite loose and hasty.

“Dr. Franklin has a part of Mr. Chaumont’s house at Passy, he keeps a chariot and pair, and three or four servants, and gives a dinner occasionally to the Americans and others. His whole expense as far as I can learn, is very much within his income. Mr. Adams lives in lodgings; keeps a chariot and pair, and two men servants. He has hitherto retained a private secretary, who will, in the absence of Mr. Dana, it is presumed, be paid by Congress. I have lately heard that Mr. Adams was about to take a house. Mr. Dana’s salary, even if he should assume a public character in a country where the relative value of money is so high, that if I am well informed, an elegant house may be hired for fifteen guineas a year, is very ample. Of Mr. Jay’s manner of living, I have been able to give no account, but I should conclude from the price of the necessaries of life in that part of Spain in which he lives, from the port the Court and the people about it maintain, and above all, from its sitting in different parts of the

Kir  
exp  
con  
bef  
two  
Phi  
the  
che  
exp  
But  
trav  
Con  
allow

“  
of co  
“

“  
“

“

“

“

“

“

“

“

“

“

“

“

“

“

“

“

By

fixed

year’s

Kingdom, that to live in the same style with Dr. Franklin, his expenses must amount to nearly the double of theirs. But as every conjecture of this kind must be very uncertain, all I can do is to lay before Congress the relative expense, as far as I can learn it, between the different places at which the ministers reside, taking Philadelphia for a common standard. Paris, if wine, clothing, and the wages of servants are included, is about twenty per cent. cheaper than Philadelphia; Amsterdam, ten; and at Madrid, the expenses of a family are somewhat higher than at this place. But from the unsettled state of those who follow the court, their travelling equipage and charges must greatly enhance this expense. Congress will make their own deductions from these facts, after allowing for their inaccuracy.

“ Annual expense of the Department of Foreign Affairs, exclusive of contingencies :—

“ Secretary of the United States for the Department of Foreign Affairs - - - - -	\$4000
“ 1st Under Secretary, Lewis R. Morris, - - - - -	800
“ 2d Under Secretary, Peter S. Du Ponceau - - - - -	700
“ Clerk, the Rev. Mr. Tetard - - - - -	500
	<hr/>
	\$6000

“ Dr. Franklin - - - - £2500 at 4s. 6d. - - -	11,111. $\frac{10}{90}$
“ Mr. Jay - - - - - 2500 “ “ - - -	11,111. $\frac{10}{90}$
“ Mr. Adams - - - - - 2500 “ “ - - -	11,111. $\frac{10}{90}$
“ Mr. Laurens - - - - - 1500 “ “ - - -	6,666. $\frac{60}{90}$
“ Mr. Carmichael - - - - - 1000 “ “ - - -	4,444. $\frac{40}{90}$
“ Mr. Dana - - - - - 1000 “ “ - - -	4,444. $\frac{40}{90}$
“ Mr. Dumas - - - - - 200 Louis d’ors. - - -	920.
	<hr/>
	57,308. $\frac{80}{90}$

“ Private Secretary to Dr. Franklin.

“ Private Secretary to Mr. Adams.

By the law of May 1810, the salaries of ministers were fixed at \$9000, and of chargés, at \$4,500, exclusive of one year’s salary in the shape of outfit.

## CEREMONIAL OF RECEPTION.

In receiving the first Foreign Minister in '78, various difficulties presented themselves to the consideration of Congress. The etiquette practised in the courts of Europe was probably known, or at the least, it could easily have been ascertained. But this ceremonial could in no way be made to apply to the actual condition of the American Congress. It was not a regal government with a monarch, nor a confederated republic with an executive to represent it. The single House of Delegates was the whole government. The foreign minister was addressed to the Congress, and by that body he alone could be accredited. This part of the affair was very plain and easily understood, but the details of the reception were seemingly difficult to arrange. Congress itself was the sovereign independent body, to whom the minister was to be presented—it was the nation: but every member of it was a delegate from a sovereign and independent state and possessing equal dignity and authority with every other member. Still it could only be approached as a body. Neither was Congress furnished with officers to perform the minor parts of the ceremonial of introduction. Their own members who composed the nation, and each of whom represented a sort of nation, were obliged to be the actors or assistants in the scene.

Mr. Gerard was the first foreign minister received by Congress. He arrived in this country in the summer of 1778, and was a Minister Plenipotentiary. The form of his presentation obviously caused some embarrassment. The subject was regularly referred, like any other matter, to a committee, (Richard Henry Lee, Samuel Adams, Gouverneur Morris,) and the report of this committee was discussed *five days* by Congress. The debates have not been preserved. The busi-

ness was finally arranged with uncommon care and minuteness,—not perhaps in very good taste, nor with much simplicity; but the reader will be satisfied by the extracts we are about to quote from the order of the ceremony, that Congress had not neglected the rights or pretensions of either party.

“Resolved, that the ceremonial for a Minister Plenipotentiary or Envoy shall be as follows. When a Minister Plenipotentiary or Envoy, shall arrive within any of the United States, he shall receive, at all places, where there are guards, sentries, and the like, such military honours as are paid to a general officer of the second rank in the armies of the United States. When he shall arrive at the place in which Congress shall be, he shall wait upon the President, and deliver his credentials, or a copy thereof. Two members of Congress shall then be deputed to wait upon him, when and where he shall receive audience of the Congress. At the time he is to receive his audience, the two members shall again wait upon him in a coach belonging to the States, and the person first named of the two, shall return with the Minister Plenipotentiary or envoy in the coach, giving the Minister the right hand, and placing himself on the left with the other member on the first seat. When the Minister Plenipotentiary or Envoy is arrived at the door of the Congress Hall, he shall be introduced to his chair by the two members who shall stand at his left hand.”

“When the Minister is introduced to his chair by the two members, he shall sit down. His Secretary shall then deliver to the President the letter of his Sovereign, which shall be read and translated by the Secretary of Congress. Then the Minister shall be announced, at which time the President, the House, and the Minister shall rise together. The Minister shall then bow to the President and the House, and they to him. The Minister and the President shall then bow to each other, and be seated, after which the House shall sit down. The Minister shall deliver his speech standing. The President and the House shall sit while the Minister is delivering his speech. The House shall rise and the President shall deliver the answer standing. The Minister shall stand while the President delivers his answer. Having spoken, and being answered, the Minister and President shall bow to each other, at which time the House shall bow, and then the Minister shall be conducted home in the manner in which he was brought to the



House." "Those who shall wait upon the Minister, shall inform him, that if, in any audience, he shall choose to speak on matters of business, it will be necessary, previously, to deliver in writing to the President what he intends to say at the audience, and if he shall not incline thereto, it will, from the constitution of Congress, be impracticable for him to receive an immediate answer. The style of address to Congress shall be, 'Gentlemen of the Congress.' All speeches, or communications, in writing, may, if the public Ministers choose it, be in the language of their respective countries. And all replies or answers shall be in the language of the United States. After the audience, the members of Congress shall be first visited by the Minister Plenipotentiary or Envoy."

No one can much applaud this arrangement; and in '83 this ceremonial was very wisely abolished, and a simple form substituted. Even in a government like our own, some slight degree of etiquette or ceremony is occasionally necessary. It is proper and extremely convenient on such occasions, that every one should know what he has to do, for whatever is done by public functionaries before the public, should be done decently, and with dignity. This mode of receiving foreign ministers in the bosom of the assembly, was adopted by the National Convention in France; but they threw into the ceremony all the enthusiasm and exaltation that belonged to the times and the people. Under the present constitution, the form of receiving and accrediting public ministers, is exceedingly simple. The individual is presented by the Secretary of State to the President in his House, (without any other ceremony than takes place on the occasion of a common visit,) when his credentials are examined. The constitution directs the President to "receive ambassadors and other public ministers." This government does not make the distinction, which, we believe, is maintained by the European states in relation to agents of the rank of *Chargé d' Affaires* and under. Those individuals are accredited only by the Secretary, or Minister of Foreign Affairs or Relations; whereas all public officers, above the rank of *Chargé*, are accredited by the sovereign in person.

## CHAPTER II.

## TREATIES OF AMITY AND COMMERCE, AND OF ALLIANCE OF 1778, WITH FRANCE.

*Confederation little hopes, or means, of obtaining foreign assistance—Deane sent to France in '76 to obtain supplies—Remarkable letter of Vergennes—Franklin, Deane, and Jefferson elected Commissioners in '76—Jefferson excused from going—Lee chosen in his place—Not officially received—Alarming situation—France disposed to withdraw all succour—News of Burgoyne's Surrender—Treaties signed—Commissioners presented at Court—Great attention to Franklin—Anecdotes of him—Gerard appointed Minister to America—Sails in d'Estaing's Flag Ship—Presented to Congress—Ceremonial—Franklin elected to Versailles—Returns to America—Succeeded by Jefferson—De la Luzerne succeeds Gerard.*

**T**HE means of intercourse, possessed by the confederation with foreign nations, were exceedingly limited ; of the States in Europe, most able to assist them, they had known but little except as enemies. They had, in various wars, taken an active part with the mother country against France, and had powerfully, and very cheerfully, contributed to the conquest of the French possessions in North America. Indeed, one of the principal motives of the Convention at Albany, held in 1754, and consisting of commissioners from eight of the colonies, was to agree on a scheme of mutual protection against the encroachments of the French and Indians, at that time

always allies. Their trade had also been constantly subject to the severities and restrictions of the colonial system ; and at the period of the Revolution was confined to Great Britain, the West Indies, Africa and Europe, south of Cape Finisterre. It is not, therefore, to be expected that they could look abroad with much confidence, or hope of relief. The principal European states possessed colonies. America laboured, on that account, under the peculiar disadvantage of seeking aid and encouragement from governments, whose policy it would always be, to resist the principles the confederation asserted. Revolutions were at that time, not so common as they have since become. The act of the Americans was, with the exception of two very slight affairs of the Pretender in Great Britain, the only instance of rebellion, that had occurred among civilized nations in that century. The governments of Europe appeared, moreover, at this crisis, to be strong and prosperous. Monarchy was never, in appearance, more firmly established, or colonies of all descriptions, in more complete subjection.

It is not likely that the American colonies, in the outset, expected assistance from abroad. The Revolution war, though events had been setting with a silent, but most unerring course, to that extremity since '66, was little anticipated in '74, the year of the first meeting of the Delegates in Philadelphia. This war finally broke out in a very unexpected manner, and spread with a rapidity equally astonishing. It is the first illustration, we have in history, of the effects of strong excitement on a people well educated and perfectly free. No one was then aware, till the moment of action, of the deep and universal sympathy, awakened throughout America, by the operation of a free press, and a free spirit of inquiry. The great mass of the people was certainly deceived as to the state of the public mind. They knew what their neighbours thought, but they probably had little conception, that men living hundreds of miles apart from them, on the opposite frontiers of the continent, thought as they did, and were quite as prepared to act. There were a few persons, endowed with

a prophetic spirit, who doubtless foresaw the separation; but whether the Delegates themselves to the first Congress anticipated that event, whether they considered the Convention as an act of self-defence only, whether the Petition presented to the King in September '75, even after the commencement of hostilities, was done, under the expectation that harmony would be restored, it is most certain they took no steps to form foreign alliances before the Declaration of Independence. We do not mean to be understood as saying that America had not received, as early as 1776, much foreign assistance. It was obtained, both from individuals in France, and from the French government. Private merchants, in several of the seaports, sent, secretly, cargoes of military stores to this country, under the expectation of getting a great profit; precisely as we have seen, in our times, adventures of similar description dispatched to the South American states. To this period, we trace the claim, since become exceedingly intricate, of Caron Beaumarchais. Silas Deane, of Connecticut was, also, sent privately to France, where he arrived in June '76, to obtain supplies for Congress, and to ascertain the dispositions of the government. No doubt can now remain of the part the French secretly took in the affairs of the Americans, even before the Declaration of their Independence. A letter of M. de Vergennes has been preserved in the Archives du Corps Legislatif, addressed to the King. This letter is dated May 2d, 1776, and affords all the proof necessary of the doings and dispositions of the French court. Never having seen a translation of it, we shall quote the whole:—

“ Sir, I have the honour of laying at the feet of your Majesty the writing, authorizing me to furnish a million of livres for the service of the English colonies. I add also, the plan of an answer I propose to make to the Sieur Beaumarchais. I solicit your approbation to the two propositions. The answer to Mr. de Beaumarchais will not be written in my hand, nor even that of either the clerks or secretaries of my office. I shall employ for that purpose my son, whose hand-writing cannot be known. He is only fifteen

years old, but I can answer in the most positive manner for his discretion. As it is important that this operation should not be suspected, or at least imputed to the government, I entreat your Majesty to allow me to direct the return of the Sieur Montaudoin to Paris. The apparent pretext for that proceeding will be, to obtain from him an account of his correspondence with the Americans, though, in reality, it will be for the purpose of employing him to transmit to them such funds as your Majesty chooses to appropriate to their benefit, directing him, at the same time, to take all necessary precaution, as if, indeed, the Sieur Montaudoin, made the advance on their own account. On this head, I take the liberty of requesting the orders of your Majesty. Having obtained them, I shall write to the Marquis de Grinaldi,\* inform him in detail of our proceedings, and request his co-operation, to the same extent."†

The Declaration of Independence rendered a return to the connexion with the mother country utterly impracticable. The confederation hesitated till that period, to increase the difficulties of a restoration of peace, by entering into engagements with other nations, even if governments could be found, who would assume the responsibility of becoming their allies while they were colonies. Still, just before this time, America had received no certain intelligence of the intentions of France, for we find in the month of May '76, that the assembling a large fleet by the French in the West Indies, excited great alarm, and measures were immediately adopted by Congress, in order to ascertain whether it was their design to act against the United States. But in the autumn of this year the disposition of some of the European powers, particularly France, having been fully disclosed, the attention of Congress was first turned to the consideration of treaties to be proposed to foreign states. And in September, a plan of one was agreed on.‡ The terms do not differ materially from

\* Minister and Secretary of State of Despatches in Spain.

† Flassan, vol. vii.

‡ Foreign Relations. (Secret Journal.) vol. ii. p. 27.

the  
of S  
Dea  
elec  
of F  
acce  
was  
with  
an A  
“  
sach  
sey,  
South  
send  
subje  
peopl  
ye, th  
Benja  
State  
State,  
State  
appoin  
depute  
Arthur  
the sa  
case of  
of the  
with hi  
person  
of and  
and uni  
navigat  
tian Ma  
other th  
promisi  
ers shal  
phia, th  
thousan

the provisions of the treaty afterwards made. On the 26th of September '76, Benjamin Franklin of Pennsylvania, Silas Deane of Connecticut, and Thomas Jefferson of Virginia, were elected, in a ballot of Congress, Commissioners to the Court of France. Mr. Jefferson, having been excused from going, on account of the state of his family, Mr. Arthur Lee of Virginia was appointed on a subsequent day. They were furnished with a letter of credence, which, as it was the first given by an American Congress, we shall insert at length.

“ The Delegates of the United States, of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to all who shall see these presents, send Greeting;—Whereas a trade, upon equal terms, between the subjects of his most christian Majesty, the King of France and the people of these States, will be beneficial to both nations;—Know ye, therefore, that we, confiding in the prudence and integrity of Benjamin Franklin, one of the Delegates in Congress, from the State of Pennsylvania, and President of the Convention of the said State, &c., Silas Deane, now in France, late a Delegate from the State of Connecticut; and Arthur Lee, barrister at law, have appointed and deputed, and by these presents do appoint and depute them, the said Benjamin Franklin, Silas Deane, and Arthur Lee, our Commissioners, giving and granting to them, the said Franklin, Deane, and Lee, or any two of them, and in case of the death, absence, or disability of any two, or any one of them, full power to communicate, treat, agree, and conclude with his most christian Majesty, the King of France, or with such person or persons, as shall by him be for that purpose authorized, of and upon a true and sincere friendship, and a firm, inviolable and universal peace for the defence, protection, and safety of the navigation and mutual commerce of the subjects of his most christian Majesty, and the people of the United States, and to do all other things, which may conduce to those desirable ends, and promising in good faith to ratify whatsoever our said Commissioners shall transact in the premises. Done in Congress, in Philadelphia, the thirtieth day of September, in the year of our Lord one thousand seven hundred and seventy-six.”

Mr. Lee and Mr. Deane were in Europe at the time of their appointment. In December '76, Dr. Franklin, the third Commissioner, arrived in France. He was received with uncommon attention; known already as a philosopher, the cause he represented was undoubtedly popular in that country. Indeed, the subject of liberty itself was, already, popular. It might have been only a fashion, as so many other things have been in France—it might have arisen from the metaphysical, or rather philosophical discussions, in which the French were then so much engaged, without at all apprehending the practical effects of them. Or, perhaps, we may, with most truth, call the cause of the colonies popular, because it was one that was likely to do vast mischief to England. The novelty of the undertaking itself, produced an enthusiasm in France; a war was commenced on a new continent;—the scene of action and of interest was transferred from the old world. This had, already, happened in the former French wars, when Quebec and their other possessions fell. But, then, the European had only left his customary battle-grounds to meet on a new continent with the same armies, the same animosity, and the same ambition. Europe was a party to those wars. To this she was a spectator. America was viewed with that deep interest and sympathy with which the weak are regarded in all contests, and these, who were not inspired with the holy spirit of emancipation, doubtless wished well to a cause, that was fought at such fearful odds.

But the government manifested an evident reluctance to form an open alliance at this time. It naturally and prudently sought for delay. The Commissioners were not publicly received; for the fate and condition of the Americans were in an unconfirmed state;—and it might well be doubted, whether they could long resist the mother country, of whose power France, herself, had very recently had melancholy experience. But assistance continued to be secretly furnished;—privateers were allowed to equip and bring their prizes into French

ports, commissions were issued by the American envoys ; and the cause of the Revolution still continued exceedingly popular with the people. Franklin, in one of his letters, in May, 1777, has these remarks :

“ All Europe is on our side of the question, as far as applause and good wishes can carry them. Those, who live under arbitrary power, do nevertheless approve of liberty, and wish for it ; they almost despair of recovering it in Europe ; they read the translations of our separate colony institutions with rapture, and there are such numbers every where, who talk of removing to America with their families and fortunes as soon as peace and our independence shall be established, that it is generally believed, we shall have a prodigious addition of strength, wealth, and arts from the emigrations of Europe, and it is thought that to lessen or prevent such emigrations, the tyrannies established there must relax and allow more liberty to their people. Hence it is a common observation here, that our cause is the cause of all mankind, and that we are fighting for their liberty in defending our own.”

But he could obtain no recognition of the independence, nor public declaration of assistance from the French court. Franklin, who knew the world, was obliged for the moment to console himself with the barren but polite phrase of the French Minister, that while he was in Paris, he should have “ *toute la sûreté et tous les agrémens que nous y faisons éprouver aux étrangers.*” At one time, M. de Vergennes gave the American Commissioners hopes that they should be received as Ministers Plenipotentiary, though he exacted from them, as a preliminary step, that an authentic copy of the Declaration of Independence should be procured, *which they had omitted to bring.* Dr. Franklin had now been at the court more than six months ; he was, as he said himself, “ treated with great civility and respect by all orders of people, and it afforded him great satisfaction to find that he was of some use to his country.” A French writer of that period, speaking of Franklin, says, that he was an “ old man of a superb appearance, of a



simple air and great affability, full of courage and confidence in his fellow-citizens and in the future.\*

In the middle of the summer of '77, affairs took a very unfavourable turn. News of the deplorable campaigns in the Jerseys had just then arrived in France;—the business appeared to be at an end;—the British believed it themselves, and Dr. Franklin's friends wrote to him from England, that neither France nor Spain would afford the Americans any more than a kind of "paralytic" aid:—just sufficient to prolong their existence a few months. The English were, all along, well satisfied that France aided the Americans, nor were they ignorant of the manner in which privateers and their prizes were treated. These acts had been the subject of frequent remonstrances from Lord Stormont, the English Minister at Paris. Hitherto they had either been evaded or neglected, but upon the present very discouraging appearance of American affairs, those representations were renewed in a more decided and categorical manner. An immediate rupture was apprehended, for an order was secretly dispatched to recall the French fishermen from the Banks of Newfoundland. America appeared at this time but a feeble ally. It was even in some respects difficult in Europe to ascertain, whether the majority of the people were in favour of the Revolution; for it

\* We have met, in La Harpe's Correspondence with an anecdote, relating to America, that does not appear to have been much circulated. It took place at the time of the celebrated last visit of Voltaire to Paris. It does not belong to the precise year of which we are now treating, but our apology for extracting it, is its application to the subject. "Nothing appears more worthy of being mentioned than Voltaire's interview with Franklin. M. de Voltaire spoke to him in English; his niece, Mme. Denis, who was present with some other friends, observed, they should be glad to hear what was said, and begged him to speak French. 'I beg your pardon,' replied Voltaire, 'I have for a moment yielded to the vanity of speaking the same language as Dr. Franklin.' Franklin presented his grandson to the philosopher, and craved his blessing for him. Voltaire extended his arms over him, and said to him, 'My child, God and Liberty! Recollect those two words.'"

had always been said, and was for a long time believed, that its partizans were a bold, unprincipled faction, who could have no permanent support either from their numbers or respectability. The situation of the country in the winter of '76 and '77, certainly gave great countenance to this opinion. The authority of Congress seemed to be reduced to a shadow—troops deserted by states—officers were discontented, if not disaffected, and neither levies nor supplies could be obtained. Philadelphia was in possession of the English—Congress had been compelled to retire to Baltimore, and General Burgoyne's expedition from Canada had commenced with alarming success. The country was surrounded;—Howe was at Philadelphia; Clinton at New-York, and Burgoyne in the North.

Very extraordinary measures were immediately adopted to remove the suspicions of the British Minister and to satisfy his complaints. Several American privateers were detained; and Mr. Hodge,\* an American merchant, concerned in fitting out these vessels, and in sending military stores to America, with the captain of one of them (the *Amphitrite*) in which part of the stores had been sent, was thrown into the Bastille. Caron Beaumarchais, since known in such a variety of ways to the public, was alarmed for his own safety. Though avowedly employed by the Government, he believed he should be made a victim to pacify the English Minister. He said to Dr. Franklin, on this occasion, "My Government will cut my throat as if I were a sheep." M. de Vergennes, also, addressed a letter to Lord Stormont in July '77, from which the following extracts are made :

"His Christian Majesty, in the faithful observance of the treaties, that exist with his Britannic Majesty, will permit no act in his own dominions that can derogate from them. Properly affected by the complaints you have been instructed to make in relation to the

\* Some account will be found of this person in a statement respecting the commercial proceedings of the American Commissioners in France, made to Congress by Arthur Lee. Philad. 1780. Printed by F. Bailey, &c.

three American privateers, the Reprisal, Lexington, and Dolphin, directed to leave our ports, and notwithstanding the orders of this government, already returned to them, his Majesty, so far from approving this conduct, has commanded that these privateers should be held in sequestration in the ports where they may now happen to be, till they can furnish satisfactory security that they will return in a straight course to their own country, and will no longer infest the European seas. As to the prizes these privateers or others may have made, orders have been sent that they should not be sold in our ports, and they have been directed to depart, as soon as the wind and other circumstances will permit. Care will be taken that no other commerce is allowed to the Americans than the laws of nations and treaties authorize."\*

The French thus appeared determined to abandon the cause of the Americans; and the supplies and the countenance of the court were withdrawn. Dr. Franklin, dining about this time in a party of French gentlemen at Paris, one of them observed to him, that his country at that moment presented a sublime spectacle,—“Yes,” said the doctor, “but the spectators do not pay.”

The French court could never have submitted to this course with the least good will. They were disappointed in not securing the trade of the Americans in exchange for an acknowledgment of their independence, and in not depriving England of one of the principal sources of her wealth and power; they appeared about to lose a most favourable opportunity of revenging on that country the disgraces and disasters, that preceded the peace of '63;—of restoring the maritime equilibrium, and of enriching their own commerce by the losses of their great rival. France, without perhaps thinking very profoundly upon the independence of the colonies, or the effects which would result from that act, considered the occasion as one by which she might profit. She had assisted America very actively and importantly for two years under the very beard of the British Minister, and had given every

\* Flassan. vol. vii.

intimation possible that she intended to arm in favour of the Revolution. England submitted patiently, and during the greater part of the time silently, to this indignity, for she had then a heavy war upon her hands. It would be time enough to turn upon France when the colonies were subdued, an event every campaign was expected to bring about. The results of the last, as they were then known in Europe, led the French Minister to apprehend that period to be fast arriving. It is perfectly just to remark, that at the moment when aid and countenance were most important to the Americans, the French *Government* resorted to decisive means to prove the strict neutrality of its conduct.

This was a most discouraging juncture for the American Commissioners, though Franklin had full confidence in the resolution of his countrymen. He was, also, well acquainted with the real dispositions of the French court, and he saw they had proceeded to such a length that it would be difficult to withdraw with safety. The cause was still very popular with the French people, particularly in the maritime towns. The commercial advantages the independence of the colonies would produce, were exceedingly magnified. These towns were at that time in a very flourishing state, principally on account of the West India trade. The little commerce they already had with the United States, encouraged them to a great degree, and the profit with which their commercial operations had been attended, opened to them a most promising prospect. "When would the government arm in favour of the Americans? We heard but this cry in France. The nation deceived the Ministry and itself, by exaggerating the commercial advantages that would result from the independence of the American colonies. The fashion of the day propagated the declaration of the Rights of Man. No title appeared more desirable than that of an inhabitant of Boston."\*

\* *Lacretelle*, vol. v.

In December '77, despatches arrived to the Commissioners, containing an account of the surrender of General Burgoyne, and his army. This news decided the French government. Caron Beaumarchais, in a state of great despair and agony, was at Passy, the country seat of Dr. Franklin, a few miles from Paris, when this intelligence was brought. He was so overcome by it that he immediately set off for the capitol, and in his haste his carriage was upset and his arm dislocated. On the 6th of December '77, Mr. Gerard on the part of the French government, gave formal notice to the American Commissioners, that, after a long and mature deliberation upon their propositions, his christian Majesty had resolved to recognize the independence of, and to enter into treaties of commerce and alliance with, the "United States of America." These two treaties were signed on the 6th of February '78, by Benjamin Franklin, Silas Deane, and Arthur Lee for America, and Conrad Alexander Gerard for France. We publish the treaties entire, being the first treaties made by the United States, and as it respects the commercial one, the model of most treaties since made with the states on the continent of Europe. We abstain from making any general remarks on these instruments, as the whole are extracted. But in the commercial treaty, though no reciprocity of duties was established, the barbarous droit d'aubaine was abolished as it regarded Americans, contrabands, specifically enumerated, were confined to munitions of war; a trade with an enemy's possessions was admitted, and the great neutral principle, "Free ships, free goods," was recognized. The commerce of each party was put on the footing of the most favoured nations; *gentis amicissimae*. Other remarks on this treaty will be found in the next chapter. The treaty of alliance, besides containing a guarantee of possession to a certain extent, declared that arms should not be laid down till

the independence of America was secured.\* Thus did France acquire the signal honour of having been the first power in the old world to recognize the independence of a youthful nation in the new.†

\* TREATY OF AMITY AND COMMERCE.

"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 burthensome 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,

Conrad

† We extract from a French writer of eminence, a brief account of M. de Vergennes:—"M. de Vergennes died with calmness at the age of 68, in February, '87. This minister did not pride himself on making a great figure in politics. He possessed good sense, wisdom, and moderation, particularly what is called a *good method*, the fruit of fifty years' experience. To temporize was the principal resource of this minister. He showed a want of address in seizing the opportunity of the American Revolution to humiliate England. The American war exhausted the finances of the kingdom, and disturbed the ancient system of subordination."

Writers on French diplomacy considered the mode, in which this war was declared, a political error. They rejected a direct alliance with the United States, and recommended that

Conrad 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 of 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. 1. 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 hereinafter mentioned shall be perpetual between the most christian king, his heirs, and successors, and the said United States.

“ART. 2. 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.

“ART. 3. 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.

France should have proceeded to hostilities on the ground of its own particular wrongs, more especially the insults offered by the English to French vessels, and oppressive maritime

“ART. 4. 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 dominion 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.

“ART. 5. 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.

“ART. 6. 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,



jurisdiction unjustly exercised by that power on the French coasts. It is obvious that this distinction exists only in form. If France took the opportunity to attack England, while she

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.

“ART. 7. In like manner, the said United States, and their ships of war, sailing under their authority, shall protect and defend, conformable 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.

“ART. 8. The most christian king will employ his good offices and interposition with the king or emperor of Morocco or Fez, the regencies of Algier, 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 said 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.

“ART. 9. The subjects, inhabitants, merchants, commanders of ships, masters, and mariners, of the states, provinces, and dominions of each party 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

was engaged in suppressing an insurrection in her colonies, the real effect would be in the eyes of the world, that France was disposed to assist those colonies. It mattered very little,

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.

“ART. 10. 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.

“ART. 11. The subjects and inhabitants of the said United States, or any one 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 favour 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

whether she formally recognized their independence, when she made herself a party to the very war that led to its establishment. It would be more correct to remark, that the first

of them, shall be at liberty to enact such laws, relative to that matter, as to them shall seem proper

“ART. 12. 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 showing that her goods are not of the number of those which have been prohibited as contraband.

“ART. 13. If by the exhibiting of the abovesaid 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 chest, 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.

oper  
cute  
d Es

But i  
board  
ing t  
vesse

“ A  
found  
any s  
the w  
be con  
except  
ship b  
if so  
that th  
they b  
as is a  
before  
knowl  
well ar  
ing the  
band, i  
any po  
agree,  
tion of  
world  
article.

“ An  
security  
suffer r  
party, a  
ty, and  
tants, sh  
and if t  
moreov  
and the  
tion of t

operations of the French, though skillfully planned, were executed in an awkward way. The fleet commanded by Mr. d'Estaing arrived too late on the coast. The English had

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.

“ART. 14. 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.

“ART. 15. 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 forbid 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.

time to escape from the Delaware, and, though altogether inferior, they made such demonstrations off Sandy Hook as effectually deterred the French admiral. It has, also, been

“ART. 16. 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.

“ART. 17. 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 or 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 such 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 show: 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.

“ART. 18. If any ship belonging to either of the parties, their people, or subjects, shall, within the coasts or dominions of the other, stick 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.

“ART. 19. 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

said  
his  
the  
  
and  
road  
and  
prot  
prov  
need  
ships  
detai  
but n  
any l  
“ A  
it is  
nation  
to the  
and t  
be tak  
by eir  
shall  
“ A  
or tak  
or shi  
of the  
Unite  
the in  
the sa  
ject, o  
for or  
ship o  
christi  
from a  
and if  
letters  
“ AR  
belong

said by a French writer, that Mr. de Choiseul prepared during his administration, the American Revolution; that he foresaw the mischief a separation would do England, and even at that

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 conveniency 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 hindrance.

“ART. 20. 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.

“ART. 21. 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.

“ART. 22. It shall not be lawful for any foreign privateers, not belonging to subjects of the most christian king, nor citizens of the

time laid the foundation of it. A variety of circumstances presents abundant proof that this remark is altogether incorrect. It would have been nearer the truth to have said that during

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.

“ART. 23. 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 in 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 other 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 enemies.

his administration, the spirit was created, (and waited but for the administration of Mr. Turgot to be matured,) which prepared the French nation to enter with such a sincere and

“ART. 21. 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 fusees, and other things belonging to them, cannon-ball, gun-powder, match, pikes, swords, lances, spears, halberds, mortars, petards, granades, 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 which 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 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, sail cloths, anchors and any parts 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 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



deep sensibility into the American Revolution. The government, at that early period, to repeat the word of an author already quoted, was itself "dissertateur." To the magnifi-

places being only excepted, as are at that time besieged, blocked up, or invested.

"ART. 25. 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 master or 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 abovementioned, 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 advisable to express in the said certificates, the person to whom the goods on board belong, he may freely do so.

"ART. 26. 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.

"ART. 27. 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 ship of war of the other, or by any privateers, the said ships of war or privateers, for the avoiding

cence or licentiousness of the preceding reigns, had succeeded a most philosophical spirit of inquiry. As early as '75 the nation was entirely occupied with discussions on the unlimited

of any disorder, shall remain out of cannon-shot, and may send their boats aboard the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, towhom 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 showed 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.

"ART. 28. 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 farther 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 are 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.

"ART. 29. 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.

"ART. 30. 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

freedom of commerce, the suppression of "corvées" and taxes on consumption; the liberty of conscience, and of the press; the recal of the Protestants; the suppression of monas-

which free ports the said subjects of the United States shall enjoy the use, agreeable to the regulations which relate to them.

"ART. 31. 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 thereto 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.]"

#### TREATY OF ALLIANCE.

"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

eries ; the abolition of torture ; a civil code ; and a new system of public instruction. Those, who will be at the pains of reading the Memoirs and Correspondence of the eminent

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 :

“ ART. 1. 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.

“ ART. 2. 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.

“ ART. 3. 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.

“ ART. 4. The contracting parties agree, that in case either of them should form any particular enterprise 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.

“ ART. 5. 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

persons, who figured in those times, now before the public in a voluminous form, will obtain in a pleasing way, a lively idea of the manner in which the educated classes of the

case of success, shall be confederated with, or dependant upon the said United States.

“ART. 6. 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.

“ART. 7. If his most christian Majesty shall think proper to attack any of the islands situated in the Gulf of Mexico, or near that gulf, 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.

“ART. 8. 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.

“ART. 9. 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.

“ART. 10. The most christian king and the United States agree to invite or admit other powers who may have received injuries from England, to make 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.

“ART. 11. The two parties guarantee mutually from the present time, and forever, 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 gua-

French nation were occupied, during the memorable years that preceded the American Revolution.

The treaty was kept secret till the month of March in order that the French government might have time to recall its fishermen; withdraw its commerce; give notice to its colonies; and put its navy in a proper condition to proceed to sea. In April, the Count d'Estaing sailed with a large squadron from Toulon for the American coast. Either the preparations for war were so openly made, that each party was only waiting for the first direct aggression, or the French

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

"ART. 12. 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.

"ART. 13. 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.

"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.]"

government feared the effects the British commissioners, appointed under Lord North's conciliatory bills, then about to embark for America, would produce in that country. At any rate, the French minister at St. James', the Marquis de Noailles, was directed to notify to that court the signature of the treaties, though the ratifications had not been exchanged. This notification will be found in Flassan.

Franklin and his colleagues soon after went to court in a public manner.

"They were presented by Count de Vergennes to the king, who received them graciously; they were afterwards presented to the Queen, to his present majesty, Louis 13,\* then Count de Provence, and to all the members of the Royal family, then at Versailles. They were afterwards introduced to the Count de Maurepas, first minister, &c., and these introductions being over, Dr. Franklin and his colleagues, with Dr. Bancroft and the editor of these memoirs, dined with the Count of Vergennes, and in the evening went by particular invitation to 'Jeu de la Reine,' where they found the royal family seated at play round a large table; a considerable heap of louis d'ors lay before each of the players, and from the number of these, which, from time to time, were *shovelled* by the losers to the winners, the gaming appeared to be high. On this occasion, Dr. Franklin was honoured by the particular notice of the Queen, who courteously desired him to stand near to her, and as often as the game did not require her immediate attention, she took occasion to speak to him in very obliging terms. Dr. Franklin was presented to the King in the gallery of Versailles, by the Count de Vergennes, Minister for Foreign Affairs. His age, his venerable appearance, the simplicity of his dress on such an occasion; every thing that was either singular or respectable in the life of this American, contributed to augment the public attention. Clapping of hands, and a variety of other demonstrations of joy, announced that warmth of affection, of which the French are more susceptible than any other people, and of which their politeness and civility augments the charm to him who is the object of it.

\* Written in 1815.

“ His majesty addressed him as follows :—

“ You may assure the United States of America of my friendship. I beg leave also to observe that I am exceedingly satisfied in particular with your own conduct during your residence in my kingdom.” When the new ambassador after this audience, crossed the court in order to repair to the office of the minister of Foreign Affairs, the multitude waited for him in the passage, and hailed him with their acclamations.”\*

Mr. Gerard was appointed by his christian Majesty Minister Plenipotentiary to the United States in the beginning of '78. He sailed in April, on board the *Languedoc*, Count D'Estaing's flag-ship, together with Mr. Silas Deane, who had received letters of recall. Mr. Gerard embarked secretly. He arrived safely in America, and on the 14th of July '78, a committee of Congress was appointed to arrange the time and manner of receiving the Minister. The very uncommon circumstance of the occasion must be our apology for extracting at length an account of the ceremonial of reception, and of the address made by the President.

“ In pursuance of the ceremonial established by Congress, the Hon. Richard Henry Lee, Esq., one of the delegates from Virginia, and the Hon. Samuel Adams, Esq., one of the delegates from Massachusetts Bay, in a coach-and-six provided by Congress, waited upon the

\* We have, perhaps, already too much multiplied extracts in the text, but we beg to introduce one more from a very entertaining writer on the French court. “ Franklin appeared at court in the dress of an American cultivator. His strait unpowdered hair, his round hat, his brown cloth coat, formed a contrast with the laced and embroidered coats, and the powdered and perfumed heads of the courtiers of Versailles. This novelty turned the enthusiastic heads of the French women. Elegant entertainments were given to Dr. Franklin, who to the reputation of a Philosopher, added the patriotic virtues which had invested him with the noble character of an Apostle of Liberty. I was present at one of these entertainments, when the most beautiful woman out of three hundred, was selected to place a crown of laurels upon the white head of the American philosopher. and two kisses upon his cheeks.”



the Minister at his house. In a few minutes, the Minister and the two delegates entered the coach, Mr. Lee placing himself at the Minister's left hand on the back seat, Mr. Adams occupying the front seat, the Minister's chariot, being behind, received his Secretary. The carriages being arrived at the State House in this city, the two Members of Congress, placing themselves at the Minister's left hand, a little before one o'clock, introduced him to his chair in the Congress chamber, the President and Congress sitting.—The Minister being seated, he gave his credentials into the hands of his Secretary, who advanced and delivered them to the President. The Secretary of Congress then read and translated them, which being done, Mr. Lee announced the Minister to the President and Congress; at this time the President, the Congress, and the Minister rose together; he bowed to the President and the Congress; they bowed to him; whereupon, the whole seated themselves. In a moment the Minister rose and made a speech to Congress, they sitting. The speech being finished, the Minister sat down and giving a copy of his speech to his Secretary, he presented it to the President. The President and the Congress then rose, and the President pronounced their answer to the speech, the Minister standing. The answer being ended, the whole were again seated, and the President, giving a copy of the answer to the Secretary of Congress, he presented it to the Minister. The President, the Congress, and Minister then again rose together: the Minister bowed to the President, who returned the salute, and then to the Congress, who also bowed in return; and the Minister having bowed to the President, and received his bow, he withdrew, and was attended home in the same manner in which he had been conducted to the audience. Within the bar of the house the Congress formed a semicircle on each side of the President and the Minister: The President sitting at one extremity of the circle at a table upon a platform elevated two steps—the Minister sitting at the opposite extremity of the circle in an arm-chair upon the same level with the Congress. The door of the Congress chamber being thrown open below the bar, about 200 gentlemen were admitted to the audience, among whom were the Vice President of the Supreme Executive Council of Pennsylvania, the Supreme Executive Council, the Speaker and Members of the

House of Assembly, several foreigners of distinction, and officers of the army. The audience being over, the Congress and the Minister at a proper hour repaired to an entertainment given by Congress to the Minister, at which were present by invitation several foreigners of distinction and gentlemen of public character. The entertainment was conducted with a decorum suited to the occasion, and gave perfect satisfaction to the whole company.

“ IN CONGRESS, Aug. 6, 1778.

“ According to order, the honourable the *Sieur Gerard* being introduced to an audience by the two members for that purpose appointed, and being seated in his chair, his Secretary delivered to the President a letter from his Most Christian Majesty, which was read in the words following :

“ Very dear great friends and allies—

“ The treaties, which we have signed with you in consequence of the proposals your Commissioners made to us in your behalf are a certain assurance of our affection for the United States in general and for each of them in particular, as well as of the interest we take and constantly shall take in their happiness and prosperity. It is to convince you more particularly of this, that we have nominated the *Sieur Gerard*, Secretary of our Council of State, to reside among you in the quality of our Minister Plenipotentiary. He is better acquainted with our sentiments towards you and the more capable of testifying the same to you, as he was entrusted on our part to negotiate with your Commissioners, and signed with them the treaties which cement our union. We pray you to give full credit to all he shall communicate to you from us, more especially when he shall assure you of our affection and constant friendship for you. We pray God, very dear great friends and allies, to have you in his holy keeping. Your good friend and ally.

(Signed)

“ LOUIS.

“ Versailles, March 28, 1778.

(Undersigned)

“ GRAVIER DE VERGENNES.

(Directed)—“ To our very dear great friends, the President and Members of the General Congress of North America.”

Omitting the speech of M. Gerard, the following was the answer of the President on the occasion.

“ Sir—The treaties between his Most Christian Majesty and the United States of America, so fully demonstrate his wisdom and magnanimity as to command the reverence of all nations. The virtuous citizens of America, in particular, can never forget his beneficent attention to their violated rights, nor cease to acknowledge the hand of a gracious Providence in raising them up so powerful and illustrious a friend. It is the hope and opinion of Congress, that the confidence his Majesty reposes in the firmness of these States will receive additional strength from every day's experience. This assembly are convinced, sir, that if it had rested solely with the Most Christian King, not only the independence of these States would have been universally acknowledged, but their tranquillity fully established. We lament that lust of domination which gave birth to the present war, and hath prolonged and extended the miseries of mankind. We ardently wish to sheathe the sword and spare the further effusion of blood; but we are determined by every means in our power to fulfil those eventual engagements, which have acquired positive and permanent force from the hostile designs and measures of the common enemy. Congress have reason to believe that the assistance so wisely and generously sent, will bring Great Britain to a sense of justice and moderation, promote the common interests of France and America, and secure peace and tranquillity on the most firm and honourable foundation. Neither can it be doubted that those who administer the powers of government within the several States of this Union, will cement that connection with the subjects of France, the beneficial effects of which have already been so sensibly felt. Sir, from the experience we have had of your exertions to promote the true interests of our country, as well as your own, it is with the highest satisfaction Congress receives as the first Minister from his Most Christian Majesty, a gentleman whose past conduct affords a happy presage that he will merit the confidence of this body, the friendship of its members, and the esteem of the citizens of America.”

Dr. Franklin having been elected Minister Plenipotentiary to the court of France, his letter of credence was agreed to by

Co  
fir  
thi  
au  
ce  
La  
ce  
'84  
thi  
ind  
go  
mo  
All  
Eng  
dep  
thes  
kn  
hav  
ofte  
trig  
sequ  
nam  
prie  
ed i  
phy,  
No r  
ploy  
have  
dress  
whic  
In  
tent  
Mr. J  
busin  
empl  
peac

Congress on the 21st October '78. Dr. Franklin was the first Minister Plenipotentiary to a foreign court, appointed by this country. In September '79, Mons. Gerard had a private audience of Congress in order to take leave. He was succeeded by the Chevalier de La Luzerne. The Chevalier de La Luzerne took leave of Congress in April '84, and was succeeded by M. de Marbois as Charge d' Affaires. In January '84, Dr. Franklin obtained permission of Congress to return to this country, after having made repeated applications for this indulgence. Dr. Franklin had the uncommon honour and good fortune of taking a principal part in forming the two most important treaties made by America;—the Treaty of Alliance and Commerce with France, and the first treaty with England, in which the mother country acknowledged the independence of these United States. His name stands on both these instruments. His long residence in France, it is well known, was very agreeable to the French court, though we have never been able to ascertain the grounds of a remark, often made, that this arrangement was effected by the intrigues of M. de Vergennes, who found Dr. Franklin more obsequious than either of his colleagues. Dr. Franklin was named Envoy at the court of Versailles with uncommon propriety. He was the oldest Commissioner in Europe, advanced in life, and on account of his great celebrity in philosophy, he undoubtedly possessed very considerable influence. No man did more in Europe for this country. He was employed to much more advantage abroad, than he could have been at home, for he possessed talents, manners, and address, exceedingly suitable to his station and the affairs in which he was engaged.

In March '85, Mr. Jefferson was chosen Minister Plenipotentiary to succeed Dr. Franklin at the court of Versailles. Mr. Jefferson had been engaged in a great deal of important business at home; but before this period, he had not been employed abroad, though elected to the commission for the peace with England.

## CHAPTER III.

## CONVENTION OF 1800 WITH FRANCE.

*Jefferson elected again to France—De la Luzerne is succeeded by de Moustier—Morris succeeds Jefferson and Ternan de Moustier—French Revolution embarrassing to Government—Perplexing question whether a Minister should be received from the French Republic—Mr. Genet—Death of the King—Less enthusiasm for the Revolution—Very difficult Negotiation with Genet—His demands examined—Munroe goes to France—Government solicit the recal of Genet—Dismissed—Is succeeded by Fauchet—More temperate—Adet succeeds Fauchet—Outrage on Fauchet—France extremely dissatisfied with state of things—Jay's treaty—Pinckney succeeds Munroe—Not received by the Directory—Ordered to leave France—Extraordinary proceeding—Pinckney, Marshall, and Gerry appointed—Not received, though cards of hospitality sent them—W. Y. Z.—Talleyrand proposes to treat with one Commissioner only—Rejected—Pinckney and Marshall leave France—Gerry remains—Hostilities—Talleyrand brings on, by means of Pichon, another Negotiation—Ellsworth, Murray, and Davie appointed to France—Properly received—First Consul—Convention—Bonaparte desirous of Peace.*

**I**N October '87, Mr. Jefferson was again elected minister to France for three years.

M. de La Luzerne, having obtained from his court permission to return, the Count de Moustier was appointed by His

Christian Majesty to succeed him. The latter gentleman arrived in America in '88, and had the usual audience with Congress in February of the same year. M. de Moustier\* was the last envoy sent by Louis XVI. to this country, and the first French minister recognized by the Federal Government. He remained till 1790. Gouverneur Morris of New-Jersey succeeded Mr. Jefferson in the early part of the year '92, and Colonel Ternan†, the Count de Moustier, both as Ministers Plenipotentiary.

The Federal Government, just after its organization, was embarrassed by a very difficult and perplexing negotiation. America had scarcely achieved its own independence when a revolution began in France. A very strong and universal sympathy was immediately awakened in the people of the United States. The great æras of that revolution were celebrated in this country by civic feasts, where the red cap of liberty was passed from head to head,—the well-known airs of *Ca ira*, *Les Marseillais* and *La Carmagnole* were sung in the theatres, streets, and on public occasions—the tri-coloured cockade was worn by most of the citizens—the “taking of the Bastille,” the “declaration of the rights of man,” and “the citizen,” the “abolition of feudal rights” and of “honorary distinctions,” the “confederation of the French,”—were commemorated with the roasting of oxen, and other tokens of joy. In the language of the day, the American people were disposed to “fraternize” with the French nation. At the moment of the greatest exaltation and most heated state of the public mind, a war broke out between France and England; and though actual hostilities were first committed by the French, the conduct of Great Britain was viewed with deep sensibility and almost general indignation in America.

\* M. de Moustier was still living in 1820, near Versailles. He has been conspicuous for his attachment to the royal family. In 1792 he left France, and did not return till 1814.

† We find this name in the *Moniteur* (A. 1. No. 66) written, Ternant.

In the course of this business there arose a question of unusual delicacy and difficulty : not only whether a minister should be received at all from the French Republic, but whether he should be received unconditionally. It was the first time these questions had been submitted to the consideration of the administration, and they were now presented under circumstances of peculiar embarrassment. The government was, itself, hardly established, before it was under the necessity of deciding upon the claims of a new state, erected from the ruins of one of the most powerful nations of Europe. No one doubted but that the ancient government of the Bourbons was for the moment overthrown in France—the king was in the Temple, a state prisoner, the noblesse and clergy had emigrated, the army was disorganized and succeeded by the national guard, the Austrians and Prussians had either been expelled, or had retired beyond the Rhine, and the National Convention, having met in September 1792, decreed the abolition of royalty and the foundation of the Republic. It was quite obvious, that the progress of the Revolution had been regular and systematic. The crimes and bloody deeds of that period do not admit of defence, but they were susceptible, at the time, of an explanation. No great and sudden changes in a highly civilized condition of society take place without violence ; and when every sort of government, every description of police or authority was obliterated, atrocities could not excite much astonishment in a city of the size of Paris, already too well known in history by one of the bloodiest transactions of which we have any record. The death of the King, whatever feelings of horror and indignation it might awaken, was considered by many as a political event ; even indeed by those eminent men, whose proceedings in the Old Jewry have only been rescued, by the eloquence of Mr. Burke, from that common and vast grave, into which the numberless writings and dissertations on the French Revolution have fallen. It was one more sacrifice, as Louis often said himself. to the Revolution. Every step, bloody as

they certainly were, the French people seemed to gain something on the score of liberty. Through the different stages of the States General, the union of the three orders, the National Constituent Assembly, the Legislative Assembly, and the National Convention, when the Republic was decreed, the freedom of the citizen was apparently making a conquest over the oppressions and abuses of the ancient monarchy. It seems, therefore, just to remark, that if the Republic was not established, at least the monarchy was overthrown. There was, also, a strong feeling of confidence in America that the Revolution would succeed; not only, because it was the general and most ardent hope and wish of the people, but the complete success of their own undertaking naturally led them to believe, that the efforts of a nation in the same cause would be attended with results equally fortunate.

We find that the Cabinet determined with an unanimous voice to receive the French Minister, but a difference of opinion appears to have existed, as it respects the conditions with which this act should be accompanied. Louis XVI. had personally been a constant and great friend and benefactor to America. His portrait and that of the queen, a present to the Congress of the Confederation, for a long time hung in a conspicuous place in the hall of that assembly. The first celebrated treaty of alliance and commerce had been concluded and signed in his name, and by his ministers, and the Republic, whose representative now presented himself to the notice of the people and the administration, was founded in the blood and on the wrecks of the Bourbon family. At the same time, the royal government was, still, nominally in existence. It was recognized by all the principal powers of Europe; and was exercised by a regency at Coblenz on the Rhine, in the name of Louis XVI., while he lived, and at his death, the Dauphin, his son, then a prisoner in the Temple, was immediately proclaimed by the title of Louis XVII. A civil war, limited in extent, though remarkably destructive of life, also raged with uncommon fury in the Bocage or La Vendée.



This was the situation of things. The Republic was in possession of the authority and of the territory belonging to the French nation; and the probability was slight, indeed, that the royal government could be restored. It was, therefore, by no means a departure from the laws of nations to receive the French Minister; and this the President resolved to do, without any qualifying or explanatory act. Louis XIV., by acknowledging the Pretender, gave great offence to the English Government; and it was alleged to be one of the principal causes of the war that England declared at the time against France. The subject of recognizing new governments has been a vast deal discussed, but no precise rules have been laid down for the regulation of states in this particular. Writers place, perhaps, more stress upon the circumstance of actual possession than any other. Foreign nations have obviously no right to interfere in the domestic concerns of other countries; but when one party is obviously in possession of the power and territory, the neutral state is fully warranted in acknowledging it. And if the first party should be finally overthrown and expelled, the successful one would not have just cause of complaint against the neutral. The reason of this rule is apparent. It is highly desirable that the intercourse of civilized nations should be maintained, and the impropriety, nay, the impossibility of the case precludes a close investigation into the domestic affairs of foreign states.

Mr. Genet, appointed by the Executive Council Minister to the United States, in January, 1793, arrived in this country, in April of the same year, in the *Ambuscade* frigate. He landed in Charleston, South Carolina, and was received with marks of respect, attention and enthusiasm. While at Charleston, Mr. Genet authorized different persons to fit and arm vessels, to enlist men in that port,—and gave commissions to cruise, and commit hostilities upon nations, with whom the United States were at peace, the port of Charleston being particularly convenient for the purpose of molesting the English West India trade. Captures, made by those vessels, were

soon brought in ; and the French Consuls begun, at once, under the authority of the Minister, to try, condemn, and authorize their sale. Mr. Genet was not at this time *accredited as a foreign Minister by the Government of this country*. He did not arrive at the seat of government, Philadelphia, till the middle of May. His progress through the country, from Charleston, was attended with every circumstance that could manifest the very deep interest the people took in the French Revolution, and the satisfaction with which a representative from that republic was received in the United States. The Minister must have been well satisfied, that the nation were exceedingly desirous of a union with France ; and were quite prepared to enter, with that country, into a war against the monarchies of Europe. These sentiments soon became deeply impressed upon the mind of Mr. Genet,—a man, obviously, of a sanguine temperament, heated and excited by the passions and politics of the times.

It is quite in course, here to mention a circumstance, that first appears to have allayed the fever heat of the public pulse ; to have awakened the earliest feelings of distrust in the political success of the French. We allude to the death of the King, which happened about this period, and whose willingness to engage in our Revolution was undoubtedly remembered with gratitude. The Americans, at first, beheld the French revolution with a feeling of delight and admiration, unmingled with that intense anxiety, and often extreme despondency, with which they watched the progress of their own. But, left entirely free to examine and deliberate, in a short time, the atrocities that accompanied it, and that seemed to accumulate, as the abuses against which they were levelled disappeared, produced a slow, but unfailling re-action in the public mind. This act of the National Convention, without doubt, weakened their party in America. The sacrifice, even if thought necessary in a political view, was, nevertheless, a violation of justice, and the rights of the citizen ; for, if Louis was no longer

a king, he was still a man, a citizen, according to the laws of the French Republic. These circumstances made a suitable impression upon the American people, always accustomed to the forms of an equal, though undeviating justice. From the 10th of August, 2d of September, and the period of the King's execution, the revolution decidedly lost friends in America. This sentiment pervaded the breasts of men whose devotion, even to the French Republic, was beyond suspicion. The celebrated Thomas Paine, it is known, voted against the death of Louis; though, as Marat artfully insinuated, being a Quaker, he was in conscience opposed to capital punishments. "France," said Thomas Paine, in the convention on the question of "*Sursis*," "has now but a single ally, the United States. The person, to whom the present discussion relates, is regarded by that people as their best friend. His execution, I assure you, will diffuse among them a general grief. I propose to you to conduct Louis to the territory of the United States. After a residence of two years, Mr. Capet will find himself a citizen of America. Miserable in this country, to which his absence will be a benefit, he will be furnished the means of becoming happy in another."

In April 1793, the celebrated Proclamation of neutrality was issued.\* The historian of the first President makes the following remarks in relation to that subject:—

"This measure derives importance from the consideration that it was the commencement of that system to which the American

\* "Whereas it appears, that a war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands on the one part, and France on the other; and the duty and interest of the U. States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent powers; I have, therefore, thought fit, by these presents, to declare the disposition of the U. States to observe the conduct aforesaid towards these powers respectively; and to exhort and warn the citizens of the U. States, carefully to avoid all acts and proceedings, whatsoever, which may in any manner tend to controvert such dispositions. And I do hereby, also, make known, that whosoever of the citizens of the U.

Government afterwards inflexibly adhered, and to which much of the national prosperity is to be ascribed. It is not less important in another view. Being at variance with the prejudices, the feelings, and the passions of a large portion of the Society, and being predicated on no previous proceedings of the legislature, it presented the first occasion which was thought a fit one for openly assailing a character around which the affections of the people had thrown an armour, theretofore deemed sacred, and for directly criminating the conduct of the President himself. It was only by opposing passions to passions, by bringing the feelings in favour of France in conflict with those in favour of the chief magistrate, that the enemies of the administration could hope to obtain the victory."

The Cabinet declared, also, by this instrument, the construction it intended to put on the \* 11th article of the treaty of alliance with France. This article imposed, among other things, upon the United States the obligation of protecting the Islands belonging to the French in the West Indies, several of which fell, about this time, into the hands of the British. A step of this kind would have led to an immediate declaration of war on the part of Great Britain. This article

States shall render himself liable to punishment or forfeiture under the laws of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them, those articles which are deemed *contraband by the modern usage of nations*, will not receive the protection of the U. States against such punishment or forfeiture; and farther, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all persons who shall, within the cognizance of the Courts of the U. States, violate the laws of nations with respect to the powers at war, or any of them."

Done, &c.

GEORGE WASHINGTON.

By the President,

TH. JEFFERSON.

\* See Treaty in 2d Chapter.

was considered to be applicable to a defensive war only, and that good faith did not require that America should take any part in the war, till the present French government was obviously and firmly established. The last ground was, perhaps, a just and sound one, but in receiving Mr. Genet, the administration had furnished the only proof in its power, that it considered the French Republic placed in a secure situation. Whatever government America recognized as existing in France, had a right to require the fulfilment of the guarantee. Some doubt might reasonably prevail as to the other ground assumed by the Cabinet, not only from the phraseology of the article, but from the extreme difficulty of ascertaining, in all cases, the true character of a defensive or offensive war. The act of the war itself, the mode of conducting it may be altogether offensive, and yet the immediate cause, defensive. Nations may be driven to hostilities by the oppressive conduct of others. Few manifestos of war are published, that do not present to the world abundant reasons for a resort to arms. The article is, therefore, incomplete, because it does not admit of an immediate and general application. The party called upon to execute it, is at liberty to construe it, and is at all times the judge, whether assistance is justly required. When this article was prepared, it appeared highly favourable to the United States. France was, by far, the strongest power, and there was little probability, indeed, that it could soon need the assistance of America. But, at best, the construction of the government is an implied one, for the language of the article, itself, is plain and on the surface very free from ambiguity.

We shall now give a brief sketch of the proceedings of Mr. Genet with this government. He came to this country authorized to conclude an alliance both defensive and offensive. We cannot do better than give his own words. It is not only a specimen of the language, but of the sentiments and feelings of the times.

Single against innumerable hordes of tyrants and slaves, who menace her rising liberty, the French nation would have a right to reclaim the obligations imposed on the United States by the treaties she has contracted with them, and which she has cemented with her blood; but strong in the greatness of her means and of the power of her principles, not less redoubtable to her enemies than the victorious arm which she opposes to their rage, she comes in the very time when the emissaries of our common enemies are making useless efforts to neutralize the gratitude—to damp the zeal—to weaken or cloud the view of your fellow citizens—she comes, I say, that generous nation—that faithful friend, to labour still to increase the prosperity, and add to the happiness, which she is pleased to see them enjoy.—The obstacles raised with intentions hostile to liberty by the perfidious ministers of despotism—the obstacles, whose object was to stop the rapid progress of the commerce of the Americans, and the extension of their principles, exist no more. The French republic, seeing in them but brothers, has charged me to propose to your government, to establish in a true family compact, that is, in a national compact, the liberal and fraternal basis on which she wishes to see raised the commercial and political system of two people, all whose interests are confounded.”

It was with the feeling and sentiments disclosed in this letter, spread very wide through the community, that the government had to contend. The struggle was a most difficult one; for, with the American people, these feelings were not only pure and sincere, but they were permanent. They were feelings, with which the country was inspired at the time of its own revolution; and they entered, as a principal element, into the form of the government, and the organization of society. They appeared at this moment, it is true, inflamed and aggravated by sympathy for the French, and by indignation at the efforts of the European governments, directed against the republic; but it was not a frenzy of the hour, like the scene exhibited in France. America manifested its true legitimate disposition, partaking of the influence of the times.

We shall examine those parts of Mr. Genet's claims, only, that involve principles of the public laws of nations, or that illustrate the system adopted by this country.\* This inquiry is not entirely without its advantages. It has been the aim of the government, since that period, to follow the policy then promulgated; and the principal duties, incumbent on neutral nations, may be ascertained, by an examination of the demands of the French minister. Not intending to mention the instances of violation of public law that occurred, we shall confine ourselves to the general principles for which Mr. Genet contended. He asserted "a right of arming in our ports, of enlisting our citizens, and of exercising consular jurisdiction;" and denied to the government the right, either of "restraining him, or punishing them." This is the language, and the substance, of the demand.† The question was, not of a vessel arming in her own defence, as no cases of that description had been reported; on the contrary, the orders of the government were directed against vessels that were manned, armed and equipped in our ports, for the purpose of committing hostilities on the subjects of a state with whom this country was at peace. The proclamation of April 22d, did not allow this practice. That instrument enjoined upon the citizen to observe a friendly conduct towards all belligerent powers, "according to public law, and the special treaties existing between them and this country." A preparation of hostilities is the reverse of this deportment. The treaty with France, of '78 did not allow it; for it permitted only (17th art.) the armed vessels of either party to enter with their prizes, and to depart freely from the ports of the other. No possible construction of that article can, in any way, justify the manning and equipping of vessels, to commit hostilities; neither do the

\* Letter of Mr. Jefferson, of August, 1793.

† See his note of May 25, 1793, to the Secretary of State.

laws of nations,\* or treaties with other states, at all, authorize this proceeding. These treaties are a part of the law of the land, and it is incumbent on the proper law tribunal to enforce their provisions. The citizens can, therefore, have no

\* Vattel, vol. ii. p. 332. Here we are to consider the obligations and rights flowing from neutrality. In order rightly to understand this question, we must avoid confounding what may lawfully be done, by a nation that is free from all engagements, with what she may do, if she expects to be treated as perfectly neutral in a war. As long as a neutral nation wishes securely to enjoy the advantages of her neutrality, she must, in all things, shew a strict impartiality towards the belligerent powers; for, should she favour one of the parties, to the prejudice of the other, she cannot complain of being treated by him as an adherent and confederate of his enemy. Her neutrality would be a fraudulent neutrality, of which no nation will consent to be the dupe. But the present question is, to determine what may lawfully be done; not what prudence may dictate, according to circumstances. Let us, therefore, examine, in what consists that impartiality which a neutral nation ought to observe.

It solely relates to war, and includes two articles. 1. To give no assistance where there is no obligation to give it; nor voluntarily to furnish troops, arms, ammunition, or any thing of direct use in war. I do not say, "to give assistance equally," but, "to give no assistance;" for it would be absurd, that a state, at one and the same time, assist two nations, at war with each other; and besides, it would be impossible to do it with equality. 2. In whatever does not relate to war, a neutral and impartial nation must not refuse, to one of the parties, on account of his present quarrel, what she grants to the other. This does not deprive her of the liberty to make the advantage of the state still serve as her rule of conduct, in her negotiations, her friendly connexions, and her commerce. When this reason induces her to give preferences, in things which are ever at the free disposal of the possessor, she only makes use of her right, and is not chargeable with partiality.

I have said, that a neutral state ought to give no assistance to either of the parties, when "under no obligation to give it." This restriction is necessary. We have already seen, that when a sovereign furnishes the moderate succour due in virtue of a former defensive alliance, he does not become an associate in the war; (§ 101) he may, therefore, fulfil his engagement, and yet observe a strict neutrality. When a war breaks out between two nations, all other states, that are not bound



right to violate the provisions of those treaties. If the citizens themselves were not possessed of the privilege of committing acts of hostility, or offence, against those states with whom the nation was at peace, we are not aware of any provision of national law, or, in the particular case now under consideration, of any provision of the treaty of '78, that can confer this right or power upon an alien. Again, the arming and equipping of vessels, is, obviously, an act of sovereignty; an act that cannot justly be exercised in the United States, without the permission of the government.\* As to the treaty, these are the words of the 22d article, the only one, *with the exception already mentioned*, that relates to this matter:—"It shall not be lawful for any foreign privateers, not belonging to subjects of his Most Christian Majesty, nor citizens of the said United States, who have commissions from any 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." This article denies the privilege of arming, to privateers of any nation, at war either with France or America, in the ports of the other party. The only ground upon which France claimed the privilege, under this article, was, therefore, that of implication. The article not expressly excluding French vessels, at a time when France was at war with England, Spain and Holland, all on friendly terms with the United States, Mr. Genet insisted with great vehemence upon the use of the right. But this is not the usual mode of construing treaties, or any diplomatic instrument. Nations possess and enjoy only what is secured to them by stipulation. The two parties, in this case, agreed to exclude foreign privateers; they are silent as to their own vessels.

by treaties, are free to remain neuter; and if either of the belligerent powers attempted to force them to a junction with him, he would do them an injury, inasmuch as he would be guilty of an infringement on their independency, in a very essential point.

\* Vattel, 1. 3. 15.

"It was of value to each party, to exclude its enemies from arming in the ports of the other, and could in no case embarrass them. They, therefore, stipulated so far mutually. But each might be embarrassed by permitting the other to arm in its ports. They, therefore, would not stipulate to permit that. Let us go back to the state of things in France, when this treaty was made; and we shall find several cases, wherein France could not have permitted us to arm in her ports. Suppose a war between these states and Spain. We know that, by the treaties between France and Spain, the former could not permit the enemies of the latter to arm in her ports. It was honest in her, therefore, not to deceive us by such a stipulation. Suppose a war between these states and Great Britain. By the treaties between France and Great Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not, then, have meant, in this article, to give us such a right. She has manifested the same sense of it again, in her subsequent treaty with England, made eight years after the date of ours; stipulating, in the 16th article of it, as in our 22d, that foreign privateers, *not being subjects of either crown*, should not arm against either in the ports of the other. If this had amounted to an affirmative stipulation, that the subjects of the other crown might arm in her ports, *against us*, it would have been in direct contradiction to her 22d article with us."

It has already been said that Mr. Genet, on his first arrival in Charleston in April '93, issued commissions to privateers, and authorized the enlisting of men, both Americans and Frenchmen, for the service of the Republic of France. An investigation of this business was undertaken in the autumn of the same year by the Legislature of South Carolina. Satisfactory evidence was produced, that several citizens had received commissions to enlist men within the United States, for the purposes of hostility against the enemies of France. The Governor issued a proclamation in December '93, forbidding these practices, and the law officers of the state were directed by the Legislature to institute prosecutions against certain persons, named in the report of the Committee of Investigation. Before this took place, however, two citizens of

the United States, Gideon Henfield and John Singletary, had been arrested on board a French privateer and conducted to prison. Mr. Genet demanded their release in the following words :—

“ I have this moment been informed that two officers in the service of the Republic of France, citizens Gideon Henfield and John Singletary, have been arrested on board the privateer of the French Republic, the Citizen Genet, and conducted to prison. The crime laid to their charge, the crime which my mind cannot conceive, and which my pen almost refuses to state, is the serving of France, and defending with her children the common and glorious cause of liberty.

“ Being ignorant of any positive law or treaty, which deprives Americans of this privilege, and authorizes officers of police arbitrarily to take mariners in the service of France, from on board their vessels, I call upon your intervention, Sir, and that of the President of the United States, in order to obtain the immediate releasement of the above mentioned officers, who have acquired, by the sentiments animating them, and by the act of their engagement, anterior to every act to the contrary, the right of French citizens, if they have lost that of American citizens.”

These two cases include the whole principle involved in the important discussion of the right of a citizen to commit an act of hostility, under his own or foreign colours, upon a state with which his own country is at peace. On this subject we shall quote the opinions of the Attorney General and an extract from a letter of the Secretary of State.

“ 1st. It may well be doubted how far the minister of France has a right to interfere. Henfield is a citizen of the United States, and it is unusual, at least, that a foreign power should interfere in a question, whether, as a citizen, a man has been guilty of a crime? Nor can any authority be derived from Henfield being under the protection of the French Republic, because, being still a citizen, he is amenable to the laws which operate on citizens, and the very act, by which he is said to have been taken under such protection, is a violation of the sovereignty of the United States. If he be innocent, he will be safe in the hands of his countrymen: if guilty, the

respect due by one nation to the decrees of another, demands that they be acquiesced in.

"2d. But Henfield is punishable, because treaties are the supreme law of the land, and by treaties with three of the powers at war with France, it is stipulated that there shall be a peace between their subjects and the citizens of the United States.

"3d. He is indictable at the common law, because his conduct comes within the description of disturbing the peace of the United States.—If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens; but this is not true, either on the general principles of society, or by our constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true, and no citizen has a right to go to war of his own authority, and for what he does without right, he ought to be punished. Indeed, nothing can be more obviously absurd than to say, that all the citizens may be at war, and yet the nation at peace. It has been pretended, indeed, that the engagement of a citizen in an enterprize of this nature was a divestment of the character of a citizen, and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration and other acts, manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent, by giving it the force of a dissolution of the obligations of the criminal to his country."

By the direction of Mr. Genet, some of the French consuls established admiralty courts in this country, and exercised admiralty jurisdiction over vessels taken by French cruizers. This assumed right deprived our own courts in all cases of jurisdiction over vessels brought into our waters, or claimed in our waters as prizes of one of the belligerents. It could not.

therefore, be permitted to our own tribunals to ascertain, under any circumstance, whether prizes, claimed as such, were lawful prizes or not. Mr. Jefferson concluded a convention at Versailles in November 1788, with Mr. de Montmorin, one of the Secretaries of State, defining the powers, privileges, and duties of consuls. This convention was to remain in force twelve years; but it contains no stipulation, whatever, allowing consuls to exercise admiralty jurisdiction. Neither does the Treaty of '78 cede any such power or jurisdiction to the French consulates. The courts of the United States cannot pretend to exercise a jurisdiction over vessels taken on the high seas, for it is matter of common usage, that the decision of all such questions shall be referred to the courts of the sovereign of the captor. This right is, moreover, confirmed by the 17th article of the Treaty of '78. The United States have never pretended to enquire into the validity of it. But as they have, in no public act or instrument, whatever, divested their own courts of the cognizance of all offences committed within their own waters, the French consulates obviously usurped power that belonged to other tribunals. It is not only the right, but, also, the duty, of the United States, to protect the vessels of neutrals within their own jurisdiction. Indeed, this provision is inserted in most of their treaties, particularly with France itself. Nations differ as to the distance to which this right extends, but in no case is the distance claimed (except in the doctrine of close seas) so great, as to make the rule unreasonable. A reasonable distance, therefore, under all the circumstances of the case, is the extent of jurisdiction to which this right is applied. If our courts have not this jurisdiction, it is quite evident, that neutrals may be taken in our harbours, from our wharves, and condemned as legal prizes in our own cities, by the agents of a foreign government. Various violations of our sovereignty were at this time committed by French cruizers, and equally of our jurisdiction by French consulates. The government, however, conducted itself with steadiness and firmness: and the vessels.

thus illegally taken and condemned, wherever they could be reached, were restored.

The language of Mr. Genet was also unbecoming and exceptionable. The following passages, extracted from a letter of Mr. Jefferson, the Secretary of State, are especially obnoxious to censure. We have thought it necessary to mention them, as the recall of Mr. Genet was solicited by this government. The reader will be satisfied, we believe, that it was not done without abundant reason.

“The philosophical principles proclaimed by the President.

“This refusal tends to accomplish the infernal system of the king of England, and of the other kings, his accomplices, to destroy by famine French freemen and freedom.

“In vain the desire to preserve peace leads you to sacrifice the interests of France to this interest of the moment, in vain the thirst of riches preponderates against honour in the political balance of America; all this management, all these condescensions, all this humiliation, end in nothing. Our enemies laugh at it, and the French, too confident, are punished for having believed, that the American nation had a flag, that it had some respect for its laws, some conviction of its force, and that it had some sentiment of its dignity. It is not possible for me to paint to you all my sensibility at this scandal, which tends to the diminution of your commerce, to the oppression of ours, and to the debasement and vilification of republics.

“If our fellow-citizens have been deceived, if you are not in a condition to maintain the sovereignty of your people, speak! we have guaranteed it, when we were slaves. We know how to render it respectable, being free.”

The pretensions of the French minister, coupled with the mode in which they were asserted, not only to the government but even to the people, made it at last absolutely necessary that an application for his recall should be transmitted. The American minister at Versailles was, accordingly, directed, in the month of August '93, to request that a successor might be appointed to the envoy in this country. Mr. Genet was recalled with an expression of the disapprobation of his

government. About the same time, the recall of Gouverneur Morris was, also, solicited. To this the American government acceded. He was replaced by Mr. Monroe, and Mr. Fauchet succeeded Mr. Genet. It is proper, however, to say that in consequence of intelligence having been received that Mr. Genet was fitting out two expeditions in the territory of the United States against Spain, the government determined to suspend his functions within — days, unless one or the other house of Congress should not think it advisable. Congress obviously had nothing to do with this business.\*

We may be permitted in this place to make a remark or two on the conduct of Mr. Genet. The circumstances of the times, and the fact that his recall was the first exercise of that sort of power by the government, give more than usual importance to his case. Mr. Genet did the cause of the Revolution a serious injury in America. His intemperate language, his extraordinary communications, irritated the government, and alarmed the grave thinking part of the nation. No negotiations could be held with him, and though his appearance here awakened a vast popular feeling in his favour, as the presence of any other minister from the "Republic" would have done, we have no doubt but that his public conduct very soon produced a serious re-action, fatal indeed to the expectations of the National Convention. Never was one nation more disposed to unite with another, than was America with France. Mr. Genet's violence, and deplorable ignorance of the indispensable diplomatic forms, raised a great party against him, who, to say the least, would, under other circumstances, have been neutral. They came forward to

\* Mr. Genet (sometimes written in the *Moniteur Genest*;) was appointed, early in the Revolution, a *Chargé* to St. Petersburg; but the Empress refused to receive or acknowledge him. He then went to Holland, and was subsequently appointed to the United States. Sometime in the year '93, he appears to have been denounced at the society of "Jacobins" in Paris, for having embroiled (*bronilla*) his government "with Washington."

maintain the dignity of the government, whose duties were interrupted and even dictated by a foreign functionary—to preserve the country from a war, into which they were about to be involved without the consent and almost the knowledge of their own rulers. This state of things, also, brought out with zeal, activity and firmness all those men, who had been concerned in establishing the Federal Constitution. The work, so recently completed, was in great jeopardy. Part of the danger arose from the steps taken by the French envoy; and it was unavoidable, but that a part of their opposition should be directed against him and his cause. A large portion of this party became opposed to the Revolution, because they were alarmed for the constitution. In truth, the re-action, caused by Mr. Genet's intemperance and violence, was one of the circumstances that enabled the government to support in a tolerably efficient manner, its system of neutrality. If he had conducted himself with the discretion and propriety of his successor, Mr. Fauchet, it is in some degree doubtful whether, with all the advantages derived from the personal character of the President and the talents of the Cabinet,\* the administration would not have been compelled to recede.

Mr. Fauchet arrived in this country in February '94. The consuls having assumed admiralty powers, and having in other respects interfered with the exercise of the laws, the exequatures of several were withdrawn. One of the most striking violations of the laws of the country was the case of M. Duplaine, Vice Consul of France at Boston. He assisted a party of armed men from the frigate *La Concorde*, then lying in Boston harbour, to rescue a schooner, called the *Greyhound*, taken by a French privateer, from the hands of an officer of the United States' Court, in August '93.†

\* Mr. Adams was then Vice President, and Mr. Jefferson and Mr. Hamilton were both in the Cabinet. The country has never seen a more powerful administration.

† George Washington, President of the United States of America, to all whom it may concern:—The Sieur Antoine Charbonnet Duplaine,



Mr. Fauchet, instructed to renew the applications made by Mr. Genet, for an alliance, or a guarantee of the islands in the West India seas, or for aid in money, munitions, and naval stores,—was principally engaged, during the short time he remained in this country, in remonstrating against the decisions of our courts, in relation to prizes taken by French privateers, or in soliciting the interposition of the executive. That part of the constitution which separates the executive from the judicial authority, was little understood by the ministers sent to America by the European states, during the

heretofore having produced to me his commission as Vice Consul for the Republic of France within the States of New-Hampshire, Massachusetts, and Rhode-Island, and having thereon received from me an exequatur, bearing date the 5th day of June, 1793, recognizing him as such, and declaring him free to exercise and enjoy such functions, powers and privileges as are allowed to Vice Consuls of the French Republic by the laws, treaties, and conventions in that case made and provided; and the said Sieur Duplaine having, under colour of his said office, committed sundry encroachments and infractions on the laws of the land, and particularly having caused a vessel to be rescued with an armed force, out of the custody of an officer of justice, who had arrested the same by process from his court; and it being, therefore, no longer fit nor consistent with the respect and obedience due to the laws, that the said Sieur Duplaine should be permitted to continue in the exercise and enjoyment of the said functions, privileges, and powers, these are, therefore, to declare, that I do no longer recognize the said Antoine Charbonnet Duplaine, as Vice Consul of the Republic of France in any part of these United States, nor permit him to exercise or enjoy any of the functions, powers, or privileges allowed to the Vice Consuls of that nation; and that I do, hereby, wholly revoke and annul the said exequatur, heretofore given, and do declare the same to be absolutely null and void from this day forward. In testimony whereof, I have caused these letters to be made patent, and the seal of the United States of America to be hereunto affixed.

Given under my hand, this                    day of                    in the year of our Lord 1793, and of the independence of the United States of America the eighteenth.

GEORGE WASHINGTON.

By the President:

TH: JEFFERSON.

first years of the government. It seems to have been a general belief, that the executive was authorized to interpose, and set aside or direct the decisions of the courts. Mr. Fauchet made great complaints of the violation of our neutrality by British cruisers; and, in some instances, his complaints were well founded. British vessels did, undoubtedly, equip in our ports, and anchor, with their prizes, in our waters, particularly in Lynnhaven bay, and other parts of the Chesapeake. Foreigners, and our own citizens in some cases, armed vessels privately, for illegal purposes. But the reproaches uttered at this time against the government, and particularly the courts of law, are entirely groundless. Many intricate questions came before those tribunals; questions new to them, and embarrassed by the confusion often arising from the mixture of state and national sovereignty, and entering very deeply into a vast and obscure range of neutral and belligerent rights. Some of those cases were not divested of all appearance of fraud and collusion. The just duties of a neutral nation were occasionally overlooked, in the temptations that an evasion of the laws offered; but the decisions of the courts were delivered with firmness, intelligence and impartiality. We can now judge of them, without any of the excitement or predilections of that day. Every principle of public law, then touched upon, has been confirmed by the whole practice of the government, to the present hour. The administration, acting with vigour and independence, proclaimed, at an early period, the system by which its conduct would be regulated. It was steady and faithful to its purposes and doctrines; and, if its neutrality was sometimes violated, it is only to be attributed to the impossibility of executing, with a feeble naval force, its laws, on so extensive a coast, whose deep and spacious bays, or inlets, afforded shelter to the vessels of the belligerents. The numerous and precise instructions issued to its officers, its frequent communications with the state executives, bear witness to the solicitude with which it was animated to render a full measure of justice, according either to

treaties or public law, to the different parties engaged in the disastrous war of that period. The nation was young, and unconfirmed; it had achieved a great exploit in the separation from the mother country—so great indeed, that the necessity of further efforts, and even denials, was not at once apparent; the second union was just effected,—but the creation of this government was, at first, rather known and felt in the intemperate reproaches and accusations of the two vast parties, that then mutilated and preyed upon it, than by any well defined and acknowledged power and authority it possessed, either abroad, or within itself. The state authorities had existed from the foundation of the country; they were the governments, in reality, declared free by the act of July, '76, and acknowledged sovereign and independent by the peace of '83;—they still continued, perhaps, more jealous of their rights, from the institution of another power in the midst of them. There was no navy, no military force; and the government had most difficult laws to execute, in most difficult times. It could not prevent every violation of them; but it displayed, on all occasions, a fixed resolution to maintain the faith of treaties, the principles of public law, and the dignity of the people.

The correspondence of Mr. Fauchet with the government, though not free from some peculiarities in diplomatic intercourse, bears the impression of a more subdued, measured character, than that of his predecessor. It does not appear, that he undertook any justification of the acts or language of Mr. Genet; nor are we aware that any explanations were offered by him, concerning the painful step, the administration were compelled to take, in relation to that individual.\* He

\* A great outrage was committed on the person of Mr. Fauchet, when about to leave this country. He had embarked on board a small vessel at New-York, for the purpose of going to New Port. This vessel, on her arrival in New Port harbour, was entered by an armed party from the Africa, a British man of war, then lying there; and a forcible search made, for Mr. Fauchet, and his papers. But, either

was succeeded by Mr. Adet, who arrived in this country in the summer of '95. Mr. Adet was intrusted, by the committee of public safety, with a letter addressed to Congress; he also brought with him the colours of the French Republic; which he was instructed to present to the United States, as a return for those offered to the National Convention by Mr. Munroe. The circumstance of his having brought a dispatch addressed to Congress, instead of the executive, the proper body, under the constitution, was a cause of offence and reproach with many. The letters, that Mr. Fauchet had presented, under similar circumstances, to congress, had been referred, by a resolution of each house, to the executive, with a request that they might be answered. These proceedings were known to the committee of public safety, and the answers had been received. A second minister, appearing with a letter addressed

having received intelligence that the jurisdiction of the country would be violated in his own person, or not choosing to trust himself so near a British armed vessel, he had taken the precaution to land at a small port in the sound, with all his papers. No explanation having been made of this affair, either by the British Vice Consul, (who knowingly transmitted an insulting letter from the British captain to the governor of Rhode Island) or by Captain Howe, the commander of the Africa, the exequatur of the consul was withdrawn, and the vessel ordered to leave the waters of the United States.

Mr. Fauchet, on his return to France, published, in 1797, a pamphlet, with this title, "*Coup d'œil sur l'état actuel de nos rapports politiques avec les Etats Unis,*" &c. It is, of course, a vindication of the measures of his own government, but written with moderation. He admits that Mr. Genet was indiscreet, and that the consuls exceeded the limits of consular power. He attributes the prepossessions of Washington against the French, to the death of the King, the persecution of his friend General La Fayette, and to the supposed confidential conferences of a Mr. Talon, an agent of Louis XVII., sent secretly to obtain aid for the royal government. We believe that very little was ever heard of Mr. Talon; but, according to Mr. Fauchet, he has the merit of suggesting to the president the celebrated questions respecting neutrality, on which he requested the opinion of his cabinet. Mr. Fauchet, believed to be still living, was employed in many honourable stations by the imperial government.

to the legislative department, it was considered, not only as an expression of censure on the President, but as renewing an attempt, formerly practised, to produce jealousies between the branches of government ; and as in the nature of an appeal from the decisions of an administration, with which the National Convention were far from being satisfied. We do not regard it altogether in this light. The French government paid little attention to forms ; great changes had taken place, very suddenly, in that country ; and their own business, at home, was transacted in a very singular and confused manner. Their construction of government, it was easy enough to understand. It consisted of a legislature, called the National Convention, a body of a single branch ; and a sort of executive, called the Committee of Public Safety. But it was not easy to comprehend the exact and respective authority and power of these two bodies. They were nowhere well defined ; and the style of conducting public affairs, at that time, in France, did not admit either of much precision or regularity. The spirit of the age was against forms. The revolution itself had been principally directed against the artificial arrangements of society, and it had done little else than destroy them. Mr. Munroe, the American minister, was, of course, addressed to the Committee of Public Safety ; but he was received in a full and public meeting of the National Convention, and the credentials of his office were delivered to the president of that body. We cannot, therefore, be surprised, if the French were neglectful of forms abroad, when they were thus indifferent to them at home. The American government was, moreover, a machine somewhat difficult to be comprehended, at the first blush by a foreigner. The nice division of power into three parts, must have confounded a Frenchman, in those days, when the heated and ardent state of the public mind would, in his own country, have resolved them, with greater rapidity, into one.

Although Mr. Adet did not abandon the original grounds of complaint—of violation of neutrality, and of predilection

sl  
pr  
G  
m  
of  
re  
ce  
an  
by  
co  
left  
dis  
opi  
of  
was  
adm  
ly,  
the  
dign  
men  
Fren  
Mr.  
exist  
in '9  
word  
“ p  
nutes  
tion  
addre  
tion f  
them  
friend  
unfur  
eye ;  
the s  
there

shown to Great Britain, by this country,—his attention was principally occupied with the treaty, just then concluded with Great Britain, by Mr. Jay. The government had the uncommon courtesy to put into the hands of his predecessor a copy of this instrument, obviously not for the purpose of soliciting remarks on it, but to present him with exact information concerning the state of the relations of America, with England; and as a very forcible illustration of the extreme anxiety felt by the administration to maintain the utmost cordiality and confidence with France. Mr. Fauchet having immediately left the country, it fell to the duty of Mr. Adet to go into a discussion of those principles of Mr. Jay's treaty, that, in his opinion, affected the rights secured to his nation by the treaty of '78. We have already said, that the National Convention was exceedingly mortified, in failing to induce the American administration, either to furnish them aid and supplies secretly, or to enter into an open alliance. But the provisions of the treaty of November, '94, awakened a deep feeling of indignation, and, eventually, of resentment. To that instrument may, immediately, be traced the unjust acts of the French government, that followed upon the ill success attending Mr. Adet's negotiation; and the partial state of hostility, that existed between France and the United States, a few months, in '99. We shall give Mr. Adet's complaints in his own words.

“ Let the annals of the French revolution be opened, let the minutes of that august sitting be seen, in which the National Convention received the minister of the United States into its bosom; the addresses were not studied, they sprung from hearts full of affection for an allied people, they breathed the feelings which dictated them, and the American minister found himself in the midst of his friends. What joy did not the American flag inspire, when it waved, unfurled, in the French senate? Tender tears trickled from each eye; every one looked at it with amazement. There, said they, is the symbol of the independence of our American brethren—behold there the pledge of their liberty! may victory always attend it—

may it lead to glory none but a free and happy people. These words, which escaped from a thousand mouths, were the expression of the sentiments of a whole nation. Was not an American, to each Frenchman, another Frenchman? he was more—he was a friend, and that sacred name, amidst civil dissensions, was equally respected by all. What, then, was done by the government? It put in question, whether it should execute the treaties to receive the agents of the rebel and proscribed princes. It made an insidious proclamation of neutrality; by its chicaneries, it abandoned French privateers to its courts of justice. It eluded all the advances made by the republic, for renewing the treaties of commerce, upon a more favourable footing to both nations. It excused itself, on the most frivolous pretexts,—whilst it anticipated Great Britain, by soliciting a treaty, in which, prostituting its neutrality, it sacrificed France to her enemies,—or, rather, looked upon her as obliterated from the map of the world; it forgot the services she had rendered it, and threw aside the duty of gratitude, as if ingratitude was a governmental duty.

“Alas! time has not yet demolished the fortifications with which the English roughened this country, nor those the Americans raised for their defence; their half rounded summits still appear in every quarter, amidst plains, on the tops of mountains. The traveller need not search for the ditch which served to encompass them; it is still open under his feet. Scattered ruins of houses laid waste, which the fire had partly respected, in order to leave monuments of British fury, are still to be found. Alas! the soldiers, who fell under the sword of the Britons, are not yet reduced to dust; the labourer, in turning up his field, still draws from the bosom of the earth their whitened bones; while the ploughman, with tears of tenderness and gratitude, still recollects, that his fields, now covered with rich harvests, have been moistened with French blood. It was at this moment, their government made a treaty of amity with their ancient tyrant, the implacable enemy of their ancient ally. O! Americans, covered with noble scars! O! you, who have so often flown to death and to victory, with French soldiers! you, who know those generous sentiments which distinguish the true warrior! whose hearts have always vibrated with those of your companions in arms! consult them to-day, to know what

the  
sou  
get  
find  
A  
sam  
ed i  
the  
envo  
of t  
with  
pres  
firm  
stran  
gove  
nece  
Fran  
of its  
comm  
lied p  
the F  
confi  
they  
was a  
of the  
since  
to rep  
West

\* W  
lish th  
will pe  
subsid  
govern  
be fou  
The D  
day, is

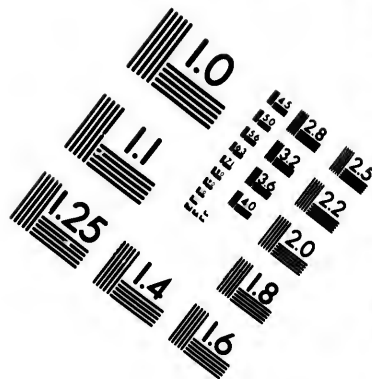
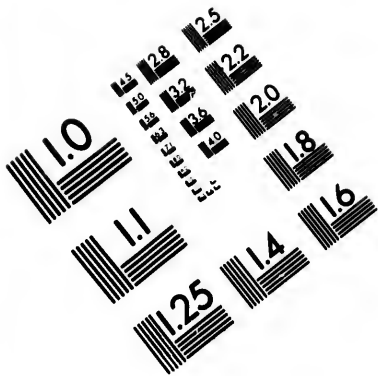
they experience ; recollect, at the same time, that, if magnanimous souls with liveliness resent an affront, they also know how to forget one. Let your government return to itself; and you will still find, in Frenchmen, faithful friends, and generous allies."\*

Much of the correspondence of Mr. Adet is liable to the same objections, already made to that of Mr. Genet. It contained insinuations respecting the government, and appeals to the people entirely unjustifiable and misplaced in a foreign envoy. But an apology was found for it in the peculiar state of the times. The Directory were exceedingly dissatisfied with the treaty made with England. It precluded, for the present, the hope of an alliance with this country, and confirmed the system of neutrality adopted in '93. The remonstrances of the French ministers having had no effect on the government, the treaty having been duly ratified, and the necessary appropriations made to carry it into operation, France determined to show at once not only a serious mark of its displeasure, but to strike an unexpected blow upon our commerce. In July '96 they decreed that "all neutral or allied powers shall without delay be notified, that the Flag of the French Republic will treat neutral vessels either as to confiscation, as to searches or capture, in the same manner as they shall suffer the English to treat them." This decree was a manifest violation of the treaty of '78. The commerce of the country had already suffered vastly from the French since the commencement of the war; but it is not necessary to repeat here all the decrees, issued either in France or the West Indies, previous to the time Mr. Munroe left this coun-

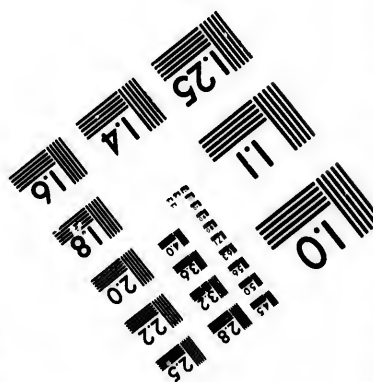
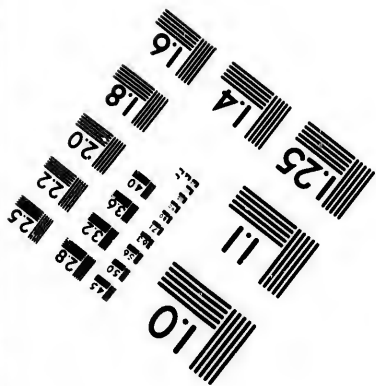
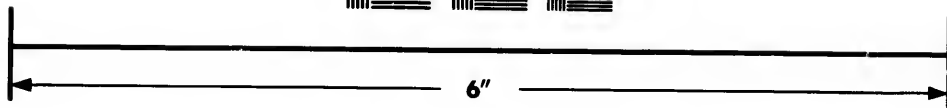
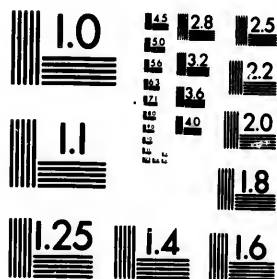
\* We do not profess to be accountable for this translation. We publish the letter as we find it in the public papers of the year. The reader will perceive, that the warmth of the revolutionary style had not at all subsided. In all the correspondence and state papers of the American government, during the revolution of this country, there is scarcely to be found a figure of speech, much less an inflammatory expression. The Declaration of Independence, written in the meridian heat of the day, is a model of simplicity and gravity.







**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

15 28 25  
16 32 22  
18 20  
18

10  
10  
10

try in '94. The 16th article of the Treaty was alternately violated and respected in the course of the year '93 no less than five times.\*

Charles Cotesworth Pinckney, of South Carolina, was appointed Minister Plenipotentiary to France in 1796. He arrived in that country in December of the same year. Mr. Pinckney was known to be attached to the system of the ad-

- \* 1793. May 9. National Convention decreed that neutral vessels, laden with provisions, bound to an enemy's port, should be brought in.
- May 23. This decree repealed as it respected American vessels.
- May 28. Again enforced on certain conditions.
- July 1. Again repealed as on the 23d of May.
- July 27. Decree of May 9 again enforced.
- 1794. Nov. 18. Merchandize in neutral vessels, belonging to the enemy, liable to seizure, till French merchandise, similarly situated, shall be exempted.
- 1795. Jan. 3. Decree of November repealed.
- 1797. March 2. Enemy's property on board neutral vessels again liable to capture.
- 1798. Jan. 18. The cargo determined the character of the vessel. Vessels at sea, having merchandise from British ports, declared good prize. Vessels, having entered a British port, excluded from the French.
- 1799. Oct. 29. Every person, a native of a neutral state, or one in amity with France, holding a commission from the enemies of France, or serving on board their vessels, declared a pirate.

This is a very brief summary of the decrees promulgated by the French government from 1793 to 1799.

\*The French ministry complained very much of the purchase of horses by the English for the West Indies. Horses are contraband of war. But the laws of nations do not forbid the purchase of contrabands and their exportation from a neutral country. The only penalty attending the practice is their liability to capture. A great part of the trade was in contrabands. France had all the advantage of this traffic as well as the other belligerents. Horses were sent to the French as well as the British West India Islands.

ministration; and it was desirable that their sentiments and wishes should be represented at this period with all the force and in the fullest relief possible. Mr. Munroe, who had been minister during the years '94, 5 and 6, received, on the same occasion, a letter of recall. At the time of his appointment, he was in opposition to the administration, and, being in the Senate of the United States from Virginia, had taken a part in resisting some of the principal measures of the Cabinet, particularly the nomination of Gouverneur Morris to France, and of Mr. Jay to London. The appointment was very unexpected to him, but the manner in which he conducted the negotiations of the country abroad, was not satisfactory to President Washington. At his return in '97, Mr. Munroe published an account of his mission, to which we take this opportunity to refer the reader.\* Mr. Pinckney was not received by the Directory. Very soon after his arrival in Paris, after, indeed, he had been presented in a private manner to the

\*A view of the conduct of the Executive in the foreign affairs of the United States as connected with the mission to the French Republic in the years 1794, 5, 6, by James Munroe, Minister Plenipotentiary, &c.

Mr. Munroe was received and accredited in the bosom of the National Convention. The President was directed to give him the fraternal embrace, in token of the friendship that existed between France and America. "The Minister entered the hall amidst the cries of 'Vive la Republique;' and the President having announced, that Mr. Munroe spoke only the English language, one of the secretaries of the Convention was ordered to read a translation of the discourse the Minister had prepared."—*Moniteur*. The address of Mr. Munroe is plain, sensible, and appropriate to the occasion. But the answer of the President was rhetorical in the extreme, and concluded with this expression—"Why should I delay to confirm this friendship by the fraternal embrace I am directed to give you in the name of the French people. Come and receive it in the name of the American people, and may this scene destroy the last hope of the impious band of tyrants." "The Minister was conducted to the President, who gave the kiss and embrace in the midst of universal acclamations of joy, delight, and admiration."—*Moniteur* year 2, No. 329.

Minister of Foreign Affairs, notice was officially sent to Mr. Munroe, that the "Directory will not acknowledge nor receive another Minister Plenipotentiary from the United States till after the redress of the grievances demanded of the American government, and which the French Republic has a right to expect from it." The American minister was, also, informed by Mr. Giraudet, chief secretary in the Department of Foreign Affairs, that the minister at the head of that department could have no direct official communication, as the Directory had determined not to acknowledge him. He informed Mr. Pinckney at the same time, that there was a law which forbid foreigners remaining in Paris without the permission of the Directory; and, as it was their intention not to grant this indulgence to Mr. Pinckney, the law would operate in his case. He would be under the necessity of quitting the territories of the Republic as well as Paris, though the time had not yet been designated by the Directory. Mr. Giraudet intimated, that a communication would probably be made to him on this head by the minister of Police, as this business fell into the department of that officer. This affair was conducted in an unaccountable manner. It could not be regarded with much complacency by the American envoy. The minister of foreign affairs was well acquainted with the capacity in which Mr. Pinckney came to France; nor could the Directory be ignorant of the public character with which he was invested, for his arrival had been officially notified to Mr. de la Croix. He had waited upon that gentleman by appointment with his predecessor Mr. Munroe, who had received his letters of recall, and on that occasion presented an official copy of his letters of credence to the minister, who promised to lay them before the Directory. Two days after this audience, Mr. de la Croix wrote to Mr. Munroe, and informed him, that he had laid before the Directory a copy both of the letters of recall and credence. The public character of Mr. Pinckney was, therefore, properly and fully known to the executive government of France. In this view of the subject he was entitled

to the protection of the laws of nations, and whether he was received or not by the Directory, could not at all alter his official character. The Directory were not obliged to acknowledge him, or any other minister from the United States, but, when it was once ascertained that Mr. Pinckney was a public envoy of a foreign country, and not a simple stranger or traveller in France, he was far, indeed, from being a fit subject for the minister of police. That officer could have thrown him into prison, and his letters of credence, as a diplomatic envoy, would have availed him nothing, for the minister of police had nothing to do with papers of that description. The Directory could have ordered (as they afterwards did) Mr. Pinckney to quit the territories of France. That is a municipal authority every government is fully competent to exercise. But, whether France was at war or at peace with the United States, they could not, without a gross violation of the laws of nations, have refused to the minister letters of safe conduct and passports, both to protect him in their country, and to enable him to leave it in safety. Public ministers or agents form a distinct class from common travellers or strangers. They are protected by a different description of law. Their persons are inviolate, and they can be punished only by their own governments. The necessity and advantages of intercourse among civilized nations have created this order of men in society, an exception to all the general rules that govern states.

Mr. Pinckney remained in Paris till the middle of February. He was not molested by the government, though he had no communications with them. Being in expectation of receiving instructions, he believed it to be his duty to remain at his post till he should be furnished with a formal order from the Directory to leave France. This proceeding shortly took place. In the beginning of February, accounts of the vast and unexpected success of General Bonaparte in Italy arrived in Paris; and the next day official notice was sent to Mr. Pinckney to quit the French territories.—“The Executive

Directory has charged me to make known to you, that, not having obtained special permission to reside at Paris, you are amenable to the law which obliges foreigners to quit the territory of the Republic. I had the honour of informing you, near two months ago, by the principal secretary of my department, of the intentions of the government in this respect. I cannot dispense with notifying them to you to day.\*

Receive, Sir, &c.

CH. DE LA CROIX."

Mr. Pinckney left Paris with his family on the 5th, and arrived in Amsterdam on the 17th, of February. The history of this affair is unusual in diplomacy. The Directory contended originally that they had not received official notice of the arrival of the American minister—they referred him to the police as a *private individual*. The envoy, with great propriety and dignity, rejected this proposition. Subsequently, he was ordered by a special decree of the Directory to leave the French territory as a *public agent* of the United States, because the same course was not pursued in regard to other Americans. Other citizens of that country, and there were at that time a great number in France, were suffered to remain in Paris. The conduct of the government in regard to Mr. Pinckney was not founded on any reprehensible behaviour of the minister. He had done nothing obnoxious to censure; for every sort of official communication had been referred to him. He could not, therefore, be dismissed, nor his recall solicited, the usual modes of proceeding, where the demeanour of a foreign envoy is offensive. Mr. Pinckney remained two months in Paris. He was subject at all times to be removed by a Gens d'arme from his lodgings, and thrown into a prison; and it was only another act of inconsistency, that this disposition was not made of him. The Directory

\*The Directory had previously (in May '97) instructed Mr. Adet to return to France, and to cease all communication with the American government. France had no minister in this country till after the Convention of 1800.



refused to receive him. He was then ordered to leave France. This last measure does not admit of an explanation. They refused to receive him, because they could not consent to hold farther intercourse with the United States, till their alleged wrongs were redressed. This may or may not have been a sufficient and reasonable pretext according to the nature of those wrongs. But the American government, never having admitted that the complaints were well founded, could of course, not acknowledge the validity of the reason. Mr. Pinckney was entrusted with a special mission, and the instructions, expressed in his letter of credence, were purposely made conciliatory and flattering to the French government—"to maintain that good understanding, which, from the commencement of the alliance, had subsisted between the two nations, and to efface unfavourable impressions, banish suspicions and restore that cordiality which was at once the evidence and pledge of a friendly union." We shall close the narrative of Mr. Pinckney's treatment in France with the following just remark of the President of the United States.

"As it is often necessary, that nations should treat for the mutual advantage of their affairs, and especially to accommodate and terminate differences, and as they can treat only by ministers, the right of embassy is well known and established by the law and usages of nations. The refusal on the part of France to receive our minister, is then the denial of a right, but the refusal to receive him until we have acceded to their demands, without discussion and without investigation, is to treat us neither as allies, nor as friends, nor as a sovereign state."

At this period all diplomatic intercourse was suspended between the two governments. America, sincerely desirous of a restoration of the former state of harmony and friendship with France, was not insensible to the indignity offered it in the person of its minister; but it viewed that conduct as the result of passion or misunderstanding. The administration determined to persevere in its endeavours to remove the erroneous impressions under which the Directory laboured. In

June '97 a commission was issued under the seal of the United States, to Charles C. Pinckney, John Marshall of Virginia, and Elbridge Gerry of Massachusetts, "for the purpose of terminating all differences between the United States of America and the French republic, and of restoring and confirming perfect harmony and good understanding, and re-establishing a commercial and friendly intercourse between them." The commissioners arrived in Paris in the beginning of October '97; they immediately requested a meeting with the Minister of Foreign Affairs. On this occasion they were distinctly informed, that for the present they could not have a public audience with the Directory, though cards of hospitality were sent to them without delay, in a style suitable to their public character; an attention, that had been omitted in the case of Mr. Pinckney. No persons were appointed officially to treat with them, but a direct intercourse of a singular nature immediately took place by means of certain individuals, who appear in the public correspondence under the initials of W. X. Y. Z.\* It does not much signify whether

\* Y was said to be a monsieur Bellamy. Hauteval, an interpreter, asserted, in a letter written to Talleyrand, that he was represented by Z. The French account of this affair will be found in the *Moniteur* No. 261. for the year 6. They style the correspondence on the part of the American envoys, an "instance of deplorable ignorance and credulity." The initials, W. X. Y. Z. were employed by the American Executive to represent, in the communication to Congress, the individuals, who had the conversations with, and made the offers to the envoys, as their names were disclosed to the executive confidentially. A lady, understood to be Madame de Villette, the celebrated Belle et Bonne of Voltaire, was also concerned in this transaction. These agents were not furnished with any documents or certificates of their official character from the French government. And the government asserts that the envoys were certainly deceived, that it was an artifice of some foreigners, (for one of the commissioners said that, with the exception of Hauteval, the persons were all foreigners,) to get money, and, as to the lady, an intimation is given that that part of the affair was not much to the credit of the Americans. Hauteval, in his

the  
Di  
ne  
a p  
and  
cal  
It  
the  
finis  
valt  
Pres  
ed.\*  
grea  
unde  
in A  
the c  
mine  
who  
The  
in the  
tory.  
held  
six w  
Nove  
the fo  
"C

letter  
the M  
asked  
that A  
assiste  
their i  
well k  
Talley  
they h  
\* M  
the wh

this was a private intrigue of Talleyrand, or an attempt of the Directory to obtain a loan of money. The substance of the negotiation, conducted in this private manner, was, to demand a present of 222,000 dollars for the pockets of the Directory, and a loan for the government of 32,000,000 florins, in what was called Dutch inscriptions, at that time at 50 per cent discount. It was proposed that these inscriptions should be taken at their par value, under the expectation that when the war was finished, the credit of the Dutch would be good, and the full value of the debt paid. They also required, that parts of the President's message of May '97 should be softened or explained.\* The details of this singular proceeding will be found at great length in the correspondence of the commissioners under all their signatures; it was immediately published both in America and Europe. This intercourse was continued till the end of October, at which time the commissioners determined not to receive any more propositions from individuals, who bore no acknowledged authority to treat with them. The terms, also, they never could have accepted, for nothing in their instructions allowed them to offer a loan to the Directory. No official communication of any kind having been held with them since their arrival in Paris, although nearly six weeks had elapsed, they addressed a letter on the 11th of November to the Minister of Foreign Relations, from which the following is an extract:

“ Citizen Minister—The undersigned, envoys extraordinary and ministers

letter published on this occasion, (he was translator in the office of the Minister of Foreign Relations,) states that Talleyrand openly asked Mr. Gerry for a loan of 15 or 16,000,000 florins on the ground that America was bound to assist France inasmuch as France had assisted America. The proposition was declined by the envoy, as their instructions did not allow them to offer loans. It is, however, well known, that the names of these persons were communicated to Talleyrand at his desire, twice repeated, and no one ever heard that they had been punished.

\* Mr. Talleyrand and the French government afterwards disowned the whole of this affair.

ministers plenipotentiary of the United States of America to the French republic, had the honour of announcing to you officially, on the sixth of October, their arrival at Paris, and of presenting to you on the eighth a copy of their letters of credence. Your declaration at that time, that a report on American affairs was then preparing, and would in a few days be laid before the Directory, whose decision thereon should without delay be made known, has hitherto imposed silence on them. For this communication they have waited with that anxious solicitude, which so interesting an event would not fail to excite, and with that respect which is due to the government of France. They have not yet received it, and so much time has been permitted to elapse, so critical is the situation of many of their countrymen, and so embarrassing is that of the undersigned, both as it respects themselves, and the government they represent, that they can no longer dispense with the duty of soliciting your attention to their mission."

No answer was given to this letter ; but attempts were repeatedly made to engage the envoys in private and unofficial negotiations. They were promptly and decidedly declined. The disposition of the French government still continued very unfavourable. The envoys remained in Paris, as private citizens, under the protection of a law extended to the natives of all countries with whom France was at peace. The government had not acknowledged them in any shape, and though copies of their full powers, and letters of credence, had been taken by the Minister of Foreign Affairs, they had never been accredited,—a situation in every way awkward, embarrassing, and mortifying. Four months were passed in this manner. They had been of no service to their country, and it was doubtful, whether a position so exceedingly degrading would be viewed with complacency by their own government. But the mortifications to which they submitted, ought not to be mentioned, hereafter, to their discredit ; for they endured them from the most patriotic and praise-worthy motives. They were well aware that peace was most important to the American people and government—not only peace, but a solid and sincere friendship with France.

The Directory, the government during that period in France was not impressed with a single feature of solidity or permanency, and there was nothing in its structure that promised to be more lasting than the forms which had preceded it. They were all governments created for the exigencies of the moment, and they gave way as soon as the times required greater concentration of power. This had been the progress of the revolution. The Directory, with its council of 500, built out of the ruins of the National Convention, soon sunk before the more arbitrary and despotic form of the consular government. The 18th Brumaire, as it is now termed in history, overthrew the Directory, dispersed the remnants of all the other political institutions which had existed in France since the abolition of royalty, and created the first permanent government with which foreign nations could treat in safety and with confidence. The 18th Fructidor produced the Directory. But the 18th Brumaire introduced the consular fasces, and with them, as in old Rome, the imperial eagle. This last epoch made the fifth constitution in France since the year '91. The confusion and irregularity which prevailed, afforded the most convincing proof that the French government possessed neither power at home nor consideration abroad. Their diplomatic relations were interrupted. Few of the old governments of Europe had acknowledged the Directory, and those who had done it, had been compelled to that step by the vast successes of the French armies. The revolution was truly in nearly as rapid a progress in '98 and '99 as in '89 and '90. The rulers for the moment, and foreign governments, were fully sensible of this juncture of affairs. The first were, therefore, less indifferent to the means by which they obtained wealth or power. They were not moved by feelings of respect for other states, nor inspired with notions of great and permanent policy. They considered, very justly, their own condition extremely precarious, for the dismal experience of their predecessors, full of warnings, was very fresh before

their eyes. In the beginning of the revolution the most violent men prevailed; towards the end the most corrupt. Rulers, who do not hope that their power, much less their system, will be prolonged, cannot be expected to enter deeply into the intricacies of foreign negotiations. The perpetual danger and vacillations of such a government destroy all interest that men would naturally take in its success. A course of conduct, exceedingly reprehensible, and requiring immediate explanation in other cases, would be passed over without attention in a country, where their most important domestic affairs were conducted in a confused and irregular manner, and where changes and revolutions were constantly dreaded. Nor can the foreign agent expect that the usual diplomatic forms will be observed towards him, when the persons at the head of affairs betray an absence of all the essential attributes of sovereignty. We do not make these remarks as a justification of the French Government, for they were never at the trouble of, even, acknowledging the American ministers. But they will, in some sort, account for the great degree of patience and resolution with which the envoys endured the neglect of the Directory. They were, besides, entrusted with a special mission. It was, therefore, their duty to remain till they were satisfied of the impossibility of accomplishing the objects for which they had been sent. We find them still at Paris in the beginning of the next year, so far, indeed, from having passed through the first steps of a negotiation, that the determination of not even receiving them, appeared more deeply fixed every day in the mind of the Directory.

Having done every thing that the great principles of the administration at home, and the special objects of their mission required from them in its fullest latitude, they resolved, towards the end of January '98, to address a final letter to the Minister of Foreign Relations. This letter is a very long one. It examined, in an able manner, the whole unfortunate con-

troversy that existed between the two governments, and concluded with these expressions :—

“ Three citizens of the United States have been deputed, as envoys extraordinary and ministers plenipotentiary to the French republic. Their instructions authorize and direct them to review the existing treaties between the two nations, and to remove by all proper means the inequalities, which have grown out of the stipulations of those treaties, in consequence of the refusal of England to adopt the principles they contain. Bringing with them the temper of their government and country, searching only for the means of effecting the objects of their mission, they have permitted no personal considerations to influence their conduct, but have waited under circumstances, beyond measure embarrassing and unpleasant, with that respect the American government has so uniformly paid to that of France, for permission to lay before you, citizen minister, these important communications with which they have been charged. Perceiving no probability of being allowed to enter in the usual forms on those discussions, which might tend to restore harmony between the two republics, they have deemed it most advisable, even under the circumstances of informality which attend the measure, to address your government through you, this candid review of the conduct, and this true representation of the sentiments, and wishes, of the government of the United States. They pray that it may be received in the temper with which it is written, and considered as an additional effort, growing out of a disposition, common to the government and people of America, to cultivate and restore, if it be possible, harmony between the two republics. If, citizen minister, there remains a hope that these desirable objects can be effected by any means, which the United States have authorized, the undersigned will still solicit, and will still respectfully attend the development of those means. If, on the contrary, no such hope remains, they have only to pray, that their return to their own country may be facilitated, and they will leave France with the deep-felt regret, that neither the real and sincere friendship which the government of the United States has so uniformly and unequivocally displayed for this great republic, nor its continued efforts to demonstrate the purity of its conduct and intentions, can protect its citizens, or preserve them from

the calamities which they have sought, by a just and upright conduct, to avert."

To this communication, Mr. de Talleyrand made an elaborate and detailed answer on the 18th of March following. He informed the commissioners he had laid their letter before the Directory, and it was by their instruction, that he at that time replied to it. In the course of the letter, he addressed them by the title of the *commissioners* and *envoys extraordinary* of the United States. We shall not recapitulate the facts or arguments of this communication, as they are but a repetition of the remarks and sentiments of the French ministers in America. But in this letter is disclosed, for the first time, an arrangement, which, we believe, is altogether novel in diplomacy. Mr. Talleyrand declares very plainly, that the Directory prefer to treat with one only of the envoys, as the opinions of the others preclude that mutual confidence, indispensable to negotiation. America, certainly, entrusted to these three commissioners, men upon whose abilities and integrity she relied, the power, *jointly* or *severally*, to conclude a treaty with France. But she never intended to concede to a foreign government the right and privilege of selecting such of the envoys, as might be thought most proper for the purpose of conducting the negotiation. Nor can it be considered, under any circumstances, very decorous to allude to the political sentiments of foreign ministers. Employed for the purpose of representing the views of a government, their own private opinions cannot well be brought into notice; for, as ministers at a foreign court, they, in reality, possess no private character. They are the representatives of a nation, and to complain of the political sentiments of these men, is, in other words, to complain of the political sentiments of the nation itself. We shall now quote the expressions of Mr. de Talleyrand. The reader will observe, that they are not characterized by much regard, either for the American government, or its envoys:—

su  
a d  
pri  
tion  
the  
bee  
is p  
Fre  
wel  
It is  
the  
with  
voy  
whi  
Dire  
opin  
the  
disp  
A  
miss  
it wa  
ed to  
"P  
it use  
end c  
their  
to qu  
the h  
resur  
Fren  
T  
short  
Mars  
Mr. I  
ter, v  
extra



"It is finally wished to seize the first favourable occasion to consummate an intimate union with a power, (England) towards which a devotion and partiality is professed, which has long been the principle of the conduct of the Federal government. The intentions, which the undersigned here attributes to the government of the United States, are so little disguised, that nothing seems to have been neglected at Philadelphia to manifest them to every eye. It is probably with this view that it was thought proper to send to the French republic, persons whose opinions and connections are too well known to hope from them dispositions sincerely conciliatory. It is, therefore, only in order to smooth the way to discussion, that the undersigned has entered into the preceding explanations. It is with the same view, that he declares to the commissioners and envoys extraordinary, that notwithstanding the kind of prejudice, which has been entertained with respect to them, the Executive Directory is disposed to treat with that one of the three, whose opinions, presumed to be more impartial, promise, in the course of the explanations, more of that reciprocal confidence, which is indispensable."

A very proper and dignified reply, signed by all the commissioners, was made to this extraordinary intimation; though it was, on April 3, '98, followed by a communication, addressed to Mr. Gerry alone. It was in these words:—

"I suppose, Sir, that Messrs. Pinckney and Marshall have thought it useful and proper, in consequence of the intimations given in the end of my note of the 23th Ventôse last, and the obstacle which their known opinions have interposed to the desired reconciliation, to quit the territory of the republic. On this supposition, I have the honour to point out to you the 5th or the 7th of this decade to resume our reciprocal communications upon the interests of the French republic and the United States of America."

The necessary passports and letters of safe conduct were shortly after sent to Mr. Marshall and Mr. Pinckney. Mr. Marshall embarked without delay for the United States; but Mr. Pinckney, on account of the alarming illness of his daughter, was permitted to remain a few months. This special and extraordinary mission here properly terminated. Although a

joint or several power was bestowed on the commissioners, the interpretation they had put on their instructions forbade them to act separately. The object of the Directory could not be mistaken in omitting to send passports to Mr. Gerry. It was to detach him from his colleagues, and to induce him to enter into a separate negotiation. Whatever may be thought of the propriety of Mr. Gerry's remaining in France after the departure of the other members of the commission, or of his neglecting peremptorily to demand his passports, it appears that he did not take that step for the purpose of entering into a negotiation, nor did he conceive that, separate from his colleagues, he was invested with any power to treat. We have his own words in support of this opinion, in answer to the letter of Mr. Talleyrand of April 3d, written the next day:—

“ You have proposed, citizen minister, the 5th or 7th of this decade for me to resume (*reprendre*) our reciprocal communications upon the interests of the French republic and of the United States. The reciprocal communications, which we have had, were such only as I have alluded to in the beginning of this letter, unless your proposition, accompanied with an injunction of secrecy for me to treat separately, is considered in this light. To resume this subject will be unavailing, because the measure, for the reasons which I then urged, is utterly impracticable. I can only then confer informally and unaccredited on any subject respecting our mission and communicate to the government of the United States the result of such conferences, being in my individual capacity unauthorized to give them an official stamp.”

Mr. Gerry stated to the American government, that he did not leave Paris with his colleague, because the Minister of Foreign Relations had assured him, that event would be followed by an immediate declaration of war on the part of France. We are not aware that the certain occurrence of that state of things altered at all his position. The Commission had agreed that no one of the members could treat; nor any two withdraw while a possibility of negotiation re-

ma  
the  
not  
mi  
tim  
wa  
in o  
of  
bee  
circ  
We  
of t  
ticu  
of r  
pass  
he c  
been  
pute  
it up  
Pinc  
miss  
ment  
rial  
some  
Mr.  
“ I  
my r  
posed  
reco  
part  
any g  
meas  
exec  
make  
lics ?  
ment

mained. When Messrs. Pinckney and Marshall received their passports, Mr. Gerry informed the minister that he could not renew any discussions officially, for he was no longer a minister. And in a private letter to the President about this time, he complains very much of the situation in which he was placed, of having "brought himself into a predicament in order to support his (Mr. Adams') administration." Neither of the three ministers had ever been accredited. Two had been ordered to leave France, and the third declared, that the circumstance reduced him to the situation of a private person. We are at a loss, therefore, to conceive how the departure of the third envoy could have led to a declaration of war, particularly as Mr. Gerry did shortly after, on receiving the letter of recall of March 23, addressed to all the envoys, demand his passport and in the course of the summer, as soon, indeed, as he could get away, did actually leave France. If war had been declared, none of the blame of it could have been imputed to either of the envoys. France would have declared it upon her own responsibility, and after her treatment of Mr. Pinckney during his embassy in '96, and again, of the commissioners in '97 and 98, it seems unmeaning in her government to make this event depend upon a step entirely immaterial in every point of view. Mr. Gerry, himself, has made some just remarks on this subject in his letter of July 1st to Mr. Talleyrand :—

"It is inconceivable to me, that, *being without powers to negotiate*, my return to the United States, after such long notice can be supposed in any degree to close the door to subsequent steps for a reconciliation. The door has always been, and still is open on the part of the government of the United States. It is impossible for any government to exceed it, in the moderation and justice of its measures towards France, or in its perseverance and patience to execute them; but it having failed in two attempts, will not France make one effort to obtain a reconciliation between the two republics? Consider the disagreeable predicament in which the government of the United States has been involuntarily placed, and it is

conceived you cannot fail to see the propriety and policy of this measure."

A proposition on the fourth of February had been made, that Mr. Gerry should treat separately. This was declined. The envoy remained at Paris as an unofficial person, waiting to receive the instructions of his government. He appears, to have been persuaded that the Directory in reality were desirous of peace, and that in informal communications he should be able to arrange the outline of a treaty. This had originally been a part of one of the plans proposed to Talleyrand by the commission, but it was not at the time acceptable to the minister. In the beginning of May, Mr. Gerry received the letter of the Secretary of State of March 23d, addressed to the commissioners, directing them to apply for passports, unless certain conditions, specified in the letter, were complied with by the French government. Shortly after, he demanded his passport, but, notwithstanding repeated applications, both verbal and written, he did not succeed in leaving Paris till the latter part of July.

We know not how to explain the conduct of the Directory, unless, indeed, it entertained the expectation that the American people would assist it in demolishing the administration; an error very likely to arise where the freedom of the press is so unlimited, and where the popular voice is so constantly and forcibly expressed. Foreign nations have considered administrations at the last gasp, the union even in jeopardy, and one portion of the people claiming their aid as allies, when, in truth, it was only an exceedingly violent state of party feeling, vastly heightened by mutual recrimination. Parties have contended in this country with a warmth, often to be deplored, but these contentions have never had for their object the life of the confederacy. They turned entirely on the course of policy pursued by the administration of the day; and, as this policy was unavoidably much controlled by the measures of the two great belligerents, one of the parties was necessarily the advocates of the acts of a foreign government.

This circumstance certainly deceived France at the time of which we are now speaking, and at a subsequent period, Great Britain. Those governments mistook the parties that, at different epochs, vindicated their measures, as their allies in this country; though, in truth, they were but opponents of each other. The Directory, it is quite evident, calculated with confidence, not only upon a party in America, but upon an alliance with the American people. The reception of Mr. Genet and the representations of the French ministers would very easily have produced that expectation and belief. The enticing principles of their revolution gained as many victories as the brilliant valour of their armies. They found allies in all the countries they marched to conquer. And if there was a popular party (literally speaking,) in Italy, in Germany, in the Low Countries, we cannot be surprized that the Directory should expect to find one in America. Most undoubtedly they would not have been disappointed in this expectation, if the American people had not always been accustomed to liberty, to a representative government, practicably very free, and latterly to popular institutions, carried to an extreme limit. It has often been remarked that the aristocracy of England, (the great number of men of rank and property united with vigorous minds and a careful education,) saved that country from the propagation of the revolutionary principles of France. The democracy of America had the same effect here. The first sensation produced by the revolution was a very alarming one, but the country soon recovered from the intoxication of the times. Nothing was offered the people which they did not possess, and this was perfectly obvious because the meaning and value of liberty were well understood. The imaginations of the citizens were not tainted or inflamed; for they had got to that state where freedom and independence were not an affair either of romance or sentiment, but of daily use and practical application. The nation was, therefore, soon unavoidably thrown into the situ-

ation of a spectator of the struggles of other countries for freedom.\*

The Directory were in the habit of ordering foreign ministers to quit the French territories, and of violating in their persons the necessary and well established usages of nations. Most of the governments of the continent of Europe found it necessary to submit to these indignities ; for they feared their own people quite as much as the French armies. Reasoning from the same causes the Directory applied the same system to the United States. They commenced it with Mr. Pinckney. He was ordered to leave France. On ordinary occasions, this measure would have provoked a war or would have required explanations. Neither step was taken by America. The government viewed with a proper degree of indignation this outrage upon its dignity, but it was neither dismayed nor irritated. It desired peace, and very justly attributed the violence of the Directory to the peculiar juncture of affairs in France rather than to any settled animosity in the French people. Without delay, another special and extraordinary mission was appointed and sent to Paris. This mission was, also, ordered to leave the French territories. Thus in twelve months the Directory had twice suspended, in an intemperate and unusual manner, all diplomatic intercourse between France and the United States. Even if the prospect of peace had not been hopeless, enough had been done by America to accomplish that most desirable object. The government resolved then upon war, it is true, rather of a defensive than an offensive kind. They adopted various war measures, which we shall not recite, as they do not belong to this work. The

\* It cannot with truth be said, that the object of the Directory prevailed in this business. The administration was demolished, but we believe the French war had little to do with that event. Peace was made before the second canvass for the election of President, and the change of politics is to be attributed altogether to domestic causes. Parties were at that time settling themselves, and the crisis just then took place.

treaty of '78 was declared no longer obligatory on the United States, though it may be well doubted whether one government has power to dissolve a contract of this description. This state of things lasted nearly a year, and several naval actions took place between the vessels of the two nations.

The Directory were not at all desirous of proceeding to the extremity of war. They did not believe the United States would have the firmness and resolution to break through the system of peace and neutrality they had prescribed for themselves. They had never been in a state of hostility with any European nation, and it is remarkable, that the earliest friend of this country should have been its first enemy. But as soon as France had ascertained that America would not renew its endeavours at negotiation; on the contrary, that the country had adopted decided and positive measures, an indirect attempt was immediately made, by the Minister of Foreign Relations, to pacify the American government. Mr. Murray was, at this time, minister at the Hague. Mr. Pichon, secretary of the French Legation, either by the direction of Mr. Talleyrand, or in the natural course of society, held several political conversations with that gentleman on the state of the two countries. He submitted, to Mr. Murray's perusal, letters he had received from the minister. These letters, obviously written for the purpose of being shown, were intended to remove the impression, the American government very justly had,—that the Directory were not solicitous to conciliate their good opinions. In a letter of Aug. 28, '98, he says,

“What, therefore, is the cause of the misunderstanding, which, if France did not manifest herself more wise, would henceforth induce a violent rupture between the two republics? Neither incompatible interests, nor projects of aggrandizement, divide them. After all, distrust, alone, has done the whole. France, in fine, has a double motive, as a nation, and as a republic, not to expose to any hazard the present existence of the United States. Therefore, it never thought of making war against them, nor exciting civil commotions among them; and every contrary supposition, is an in-

sult to common sense." And, in a subsequent one, "You were right to assert, that, whatever plenipotentiary the government of the United States might send to France, in order to terminate the existing differences between the two countries, would be, undoubtedly received with the respect due to the representative of a free, independent and powerful nation."

This declaration was of the greatest importance. If made in sincerity, it removed the only impediment to a renewal of the negotiation. Mr. Murray transmitted an account of these conversations, and a copy of the letters, to his government. The President, without delay, (March, 1799,) appointed, with the consent of the Senate, a second commission to proceed to France. It consisted, originally, of Oliver Ellsworth, of Connecticut, Patrick Henry, of Virginia, and William Vans Murray, then at the Hague. Mr. Henry declined, on account of ill health. As this is the only diplomatic office, to which this celebrated man was ever nominated, under the constitution, we shall insert the whole of the letter written by him, on the occasion :—

"SIR—Your favour, of the 25th ult., did not reach me till two days ago. I have been confined, for several weeks, by a severe indisposition, and am still so sick, as to be scarcely able to write this. My advanced age, and increasing debility, compel me to abandon every idea of serving my country, where the scene of operation is far distant, and her interests call for incessant and long continued exertion. Conscious as I am of my inability to discharge the duties of envoy, &c. to France, to which, by the commission you send me, I am called, I herewith return it. I cannot, however, forbear expressing, on this occasion, the high sense I entertain of the honour done me, by the President and Senate, in the appointment: and I beg of you, sir, to present me to them, in terms of the most dutiful regard; assuring them, that this mark of their confidence in me, at a crisis so eventful, is a very agreeable and flattering proof of their consideration towards me; and that nothing short of absolute necessity, could induce me to withhold my little aid from an administration, whose abilities, patriotism, and virtue, deserve the gratitude and reverence of all their fellow citizens."

Mr.  
cee  
him  
Eur  
rect  
Sec  
cciv  
they  
ter l  
equa  
with  
to th  
requ  
"  
Mr. C  
Envo  
State  
ences  
that I  
to an  
ed its  
mit to  
assur  
the o  
shall  
law o  
thoriz  
Th  
nomin  
posee  
Fran  
dispo  
whic  
tende  
belie  
ed.



Mr. Davie of North-Carolina was subsequently appointed. Mr. Murray was directed to give notice of this pacific proceeding to the Minister of Foreign Relations, and to assure him that Messrs. Ellsworth and Davie would "not embark for Europe until they shall have received from the Executive Directory direct and unequivocal assurances, signified by their Secretary of Foreign Relations, that the envoys shall be received in character to an audience of the Directory, and that they shall enjoy all the prerogatives, attached to that character by the law of nations; and that a minister or ministers of equal powers shall be appointed and commissioned to treat with them." This appears to have been very welcome news to the Directory. They did not delay to give the assurance required.

"The Executive Directory being informed of the nomination of Mr. Oliver Ellsworth, of Mr. Patrick Henry, and of yourself, as Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French republic, to discuss and terminate all differences which subsist between the two countries, sees with pleasure that its perseverance in pacific sentiments has kept open the way to an approaching reconciliation. It has a long time ago manifested its intentions with respect to this subject. Be pleased to transmit to your colleagues, and accept yourself the frank and explicit assurance that it will receive the envoys of the United States in the official character with which they are invested, and that they shall enjoy all the prerogatives, which are attached to it by the law of nations, and that one or more ministers shall be duly authorized to treat with them."

The commissioners accordingly sailed for France. The nomination of this second commission was exceedingly opposed by a portion of the citizens. They considered that France had grievously insulted this country, and they were not disposed to renew, by their own gratuitous act, negotiations, which had formerly not only been unsuccessful, but were attended with many irritating and provoking circumstances. A belief was, also, entertained that the Bourbons would be restored. The coalition, then formed for that purpose, or rather for

the overthrow of the revolution government, had commenced with appearances of ultimate success, particularly in Italy, where Suwarrow had gained great victories; and it was not regarded as a judicious measure to send an extraordinary mission to a government apparently on the edge of destruction.

But none of these predictions or expectations were accomplished. The last coalition of that century was more certainly and fatally annihilated than any other had been; and France not only appeared, but was in reality, more formidable than at any previous period of the revolution. In the mean time, a great change had taken place in the government of that country, the last the world was destined to see before the restoration of the Bourbons in 1814. The Directory was overthrown in November '99, and the consular government established. This was, in reality, the commencement of the reign of Napoleon Bonaparte.

The envoys were received by the French government with suitable respect, and three commissioners immediately appointed to treat with them. A convention was signed on the 30th September, 1800; it was ratified, with an exception, by the United States, February 18th, 1801, and the ratification accepted by the First Consul July 31, 1801.\* This excep-

\* This convention consists of 27 articles. It was signed for America by Messrs. Ellsworth, Davie, and Murray, and for France by Joseph Bonaparte, C. P. C. Fleurieu, and Roederer. By the 3d article, the captured public ships were restored; and by the 4th, all captured property, not finally condemned. No change, as it respects commerce, the right of devise, donation, &c. the time for settling accounts and withdrawing effects in the event of a war, was made in the treaty of '78. By the 9th article, individual debts, and all moneys in public stocks or in banks were exempted from confiscation in time of war. Commercial agents to be (10th art.) reciprocally appointed. Commerce, on the footing of the most favoured nations—free trade with the ports of an enemy—specification of contrabands—free ships, free goods—goods on board an enemy's ship after a knowledge of the war, and right of search; with the further condition that the "neutral shall in no case be obliged to go on board the examining vessel," were

tion consisted in expunging the 2d article, and inserting the following :—“ It is agreed that the present convention shall be in force for the term of eight years from the time of the ex-

arranged as in the treaty of '78. Neither party was allowed to interfere in the fisheries of the other, and the ratifications were agreed to be exchanged within six months. The other provisions of this treaty, for the most part formal, were substantially a repetition of the first treaty. Those that are new, or that introduce important modifications, we shall extract. They are three only ; they relate to blockades—convoy—and the treatment of the master, &c. of a vessel taken.

“ And whereas it frequently happens, that vessels sail for a port or place belonging to an 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 any part of her cargo, if not contraband, be confiscated, unless, after notice of such blockade or investment, she shall again attempt to enter ; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either, that may have entered into such port or place before the same was actually besieged, blockaded or invested by the other, be restrained from quitting such place with her cargo, nor if found therein after the reduction and surrender of such place, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

“ Art. 19. It is expressly agreed by the contracting parties, that the stipulations above mentioned, relative to the conduct to be observed on the sea by the cruisers of the belligerent party towards the ships of the neutral party, shall be applied only to ships sailing without convoy ; and when the said ships shall be convoyed, it being the intention of the parties to observe all the regard due to the protection of the flag displayed by public ships, it shall not be lawful to visit them : but the verbal declaration of the commander of the convoy, that the ships he convoys belong to the nation whose flag he carries, and that they have no contraband goods on board, shall be considered by the respective cruisers as fully sufficient : the two parties reciprocally engaging not to admit under the protection of their convoys, ships which shall carry contraband goods destined to an enemy.

“ Art. 21. And that proper care may be taken of the vessel and cargo, and embezzlement prevented, it is agreed, that it shall not be lawful to remove the master, commander, or supercargo of any captured

change of the ratifications." The expunging of this section removed one of the greatest embarrassments to which the government was ever exposed,—we mean the mutual guarantee of the treaty of '78. In July '98, the government, justly indignant at the proceedings of France, abrogated the treaty of '78. We need not remark that the United States could not divest itself of obligations, termed in the civil law *symalagmatic*; for that instrument was a contract, which could be dissolved only by the consent of both parties, or by the act of war. Neither of these modes had been applied to the treaty of '78. Hostile measures had been adopted by the Executive of the United States, but they were measures only of defence. Under the constitution, the President cannot declare a war. The French commissioners were, therefore, right in requiring that the treaty of '78 should be renewed, or modified, or abrogated by mutual consent. It could not be expected they should acknowledge the validity of the act of the American Congress of July '98. On the other hand, the American commissioners could not depart from their instructions, or refuse obedience to the law we have just mentioned. They, therefore, considered the treaty no longer in existence. This circumstance gave rise to another difficulty. The parties could not agree upon the amount of indemnity, demanded by the United States for property, illegally taken, because the French plenipotentiaries could only consent to regulate this amount by the stipulations of the treaty of '78. In the 2d

ship from on board thereof, either during the time the ship may be at sea after her capture, or pending the proceedings against her, or her cargo, or any thing relative thereto. And in all cases where a vessel of the citizens of either party shall be captured, or seized, and held for adjudication, her officers, passengers, and crew, shall be hospitably treated. They shall not be imprisoned or deprived of any part of their wearing apparel, nor of the possession and use of their money, not exceeding for the captain, supercargo, and mate, five hundred dollars each, and for the sailors and passengers, one hundred dollars each."

arti  
quo  
of '  
pres  
the  
ed.  
spee  
posit  
choc  
adop  
The  
barr  
We  
the F  
It is  
the g  
never  
coupl  
tion:  
nounc  
said a  
for inc  
tee.  
mann  
mand  
cruise  
ed by  
by the  
delay  
from a  
States  
This  
United  
Napole  
peace

article, the question of indemnities was referred to a subsequent negotiation; and though the provisions of the treaties of '78 were modified by the convention, no opinion was expressed upon the claim of right. We have, already, said that the United States required that this article should be expunged. The article, in itself, was perfectly harmless as it respected the American government; for it did not contain a positive stipulation of any kind; but the government did not choose any doubt should remain of the firm resolution it had adopted, of never consenting to the renewal of the treaty of '78. The first opportunity was taken of getting rid of a most embarrassing obligation, it was never in a condition to fulfil. We can, in this manner, account for the readiness with which the First Consul accepted the modification of the President. It is not a common proceeding in diplomacy; but, in reality, the guarantee had become altogether illusory. France could never expect to derive any benefit from it. The First Consul coupled his acceptance of the modification with this condition: "provided that by this retrenchment the two states renounce the respective pretensions which are the object of the said article;" that is, the Americans renounced their claims for indemnities, and the French the fulfilment of the guarantee. The French government gave public notice in this manner, that they would hereafter pay no attention to the demands of Americans for property, illegally taken by their cruisers previous to the treaty. The treaty was finally ratified by the United States, February 18, 1801, and by France, by the Corps Legislatif, in December of the same year. This delay in the ratification by France was supposed to proceed from a wish to observe the effect produced in the United States by the additional clause.

This convention was in every respect favourable to the United States. The time was very auspicious for negotiation. Napoleon, at his first accession to the consulate, sought for peace with all the world. France truly needed it. She was

exhausted by the bloody wars of Germany, Italy, and the low countries, and by the internal commotions of the Vendéans and Chouans. He proposed peace to England and to the enemies of France on the continent. But America was the only country with whom a treaty was at that time concluded.

P

T

sia

pr

An

ex

ter

po

yo

wi

tra

arr

int

en

gh

the

to

## CHAPTER IV.

### CESSION OF LOUISIANA.

*Purchase, a good one—Necessary for Western country—French possessions in North America extinguished by treaties of '62 and '63.—Louisiana secretly ceded to France—Great uneasiness in America—France prepares to take possession of it—Prevented by renewal of war—Ceded to United States—Terms—Made a "territory" and then a state—Letter of British officer on Louisiana.*

**T**HE next treaty made with France was one, by which Louisiana was ceded to the United States. Time has already proved this measure to have been judicious on the part of the American government, and the purchase in every respect exceeding cheap. The United States had at the time a vast territory of fruitful soil, greatly beyond the wants of the population; and separate from the novelty of the sight of a youthful government, like America, entering into treaties with the ancient European states for the cession of extensive tracts of country, it did not appear, at first blush, a discreet arrangement to bring such a vast quantity of excellent land into the market. But without a permanent and unmolested entrance to the Gulph of Mexico, the soil, west of the Alleghany, was despoiled of one half its value. The boundary of the Mississippi to the west, and the free navigation of that river to its mouth; were, at the time of this treaty, indispensable to

the proper independence and the full enjoyment of the great water communications of the western country.

The period of the discovery of the Mississippi, and the persons by whom the discovery was made, have been matters of controversy. But we shall not enter into that subject. The country, now called Louisiana, originally belonged to France, but by a secret compact, concluded between France and Spain in '62, and by the treaties of '63 between France, Spain, and England, the French dominion was extinguished on all the continent of North America. And by the treaty between this country and England in '83, the Mississippi was made the western boundary of the United States from its source to the 31st degree of north latitude, and thence on the same parallel to the St. Mary's. We shall have occasion to speak more particularly of this boundary of the United States in treating of our foreign relations with Spain. A right of deposit at New Orleans for the produce of the west was secured by the treaty of '95 with Spain; but this treaty was not carried into effect for three years. Great obstacles were thrown in the way of the navigation of the Mississippi, and a serious attempt was made to bring about a separation of the western country. Towards the close of the administration of Mr. Adams, measures even were adopted to take forcible possession of New Orleans, but the difficulties with Spain in that direction having been overcome for that time, the scheme was abandoned. Nevertheless, great uneasiness still existed in the west; Spain had the control of the Mississippi, and it was impossible that an extreme anxiety should not always be felt concerning the navigation of that river. These fears were greatly augmented when the article of the secret treaty of St. Ildefonso, ceding Louisiana to France, was known in the United States. This treaty was in reality, concluded in October 1800, but it was not promulgated till the beginning of 1802. The article of cession is in these words:—

“ His catholic majesty engages to retrocede to the French republic, six months after the full and entire execution of the condi-

tion  
the  
sam  
had  
trea  
E  
inte  
and  
the  
ing  
Wes  
alar  
to fu  
and  
allia  
men  
Loui  
First  
prep  
treat  
fici  
Fran  
made  
ation  
occu  
the F  
begin  
and  
neig  
vast  
solid  
of th  
do i  
excl  
trous  
of E



tions and stipulations above recited, relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it already has in the hands of Spain, and that it had when France possessed it, and such as it should be, after the treaties passed subsequently between Spain and other powers."

Every thing was to be apprehended from the activity and intelligence of the French in a country of such vast richness and resources. Speedily, we should have seen them closing the navigation of the Mississippi to the Americans, and securing the whole commerce of the Gulph of Mexico and the West Indies. These considerations awakened great and just alarm in the United States. It appeared necessary to resort to force to prevent the entrance of the French into Louisiana, and a disposition gradually developed itself to enter into an alliance with England. It is not probable that the government would ever have allowed France to take possession of Louisiana, although it was undoubtedly the intention of the First Consul to effect that object. An armament was, indeed, prepared in the French ports, and the secret article of the treaty of St. Ildefonso was immediately produced on the ratification of the treaty of Amiens of 1802. On the part of France, it was a magnificent operation. Peace having been made with England, no impediment existed to the transportation of troops and every description of stores. With the occupation of Louisiana, the conquest of St. Domingo, where the French, though in the outset altogether triumphant, were beginning to experience cruel reverses, would have followed; and ultimately the principal control of the commerce of the neighbouring seas. Louisiana originally formed part of the vast French dominions in North America, and traces of the solidity of their works, and of the enterprize and intelligence of that nation, now remain in that country, as, indeed, they do in most of those regions, from which they have been excluded by the Americans or the British. Before the disastrous peace of '63, France surpassed all the civilized people of Europe in the extent and value of her commerce, colonies

and foreign possessions, and in her spirit of enterprize. But at that period began the downfall of one of the most enlightened and polished nations known in history.

It was, undoubtedly, in the plan of the French government to recover their ancient possessions in America, and to approach the Canadas by the valleys of the great rivers of the west, as they had undertaken to reconquer their settlements in the east by Egypt and the Red Sea. The danger, that threatened the western country at this period, cannot be disguised. The First Consul held at his command the combined fleets of France and Spain, and for a few months in the fourteen years of his extraordinary reign, he was without an enemy on the ocean. The United States were on the eve of a war with Spain, in consequence of that government having abrogated the right of warehouse at New Orleans. A French army, arriving in the Mississippi, would have landed not only on a neutral soil, but among its allies, inflamed with an unusual degree of animosity against the Americans, and eagerly seeking an opportunity, not only to revenge themselves, but to recover what they had lost. Undoubtedly, France would have made an effort to regain all the territory west, at least, of the Ohio. The strength of the nation and the experience of the last war with Great Britain have now taught us to consider, as vastly chimerical, projects to land on our coasts. But in 1802, Louisiana was a foreign country; its population was principally foreign, the western states were furnished with scanty means of defence or resistance, compared with their present situation, the successes of the French armies had acquired for them a formidable reputation, and none of those events had then taken place, which have since inspired the Americans with so much confidence in defending their native soil. We consider the situation of the country as exceedingly critical. England, dissatisfied with the hollow peace of Amiens, and preparing for another war with France, was striving to force us into an alliance with her, and a considerable portion of the people saw no safety, except in that

step. Events had truly taken a singular turn. A few years before, the government had, with the utmost difficulty escaped an alliance with France and a war with England; so true it is, that the United States, immediately on the declaration of their independence, became subject to the caprices, influence, and vicissitudes of European politics.

But, as in '94, the government again had recourse to negotiation. America was neither prepared for war, nor even prepared to expect it. In the midst of the general repose of Europe, the treaty of St. Ildefonso was boldly disclosed. "Peace, commerce, and honest friendship with all nations, entangling alliances with none," had been declared by Mr. Jefferson, in his inaugural address of March 1801, to be one of the fundamental maxims of the state. From the foundation of the government in '89, the administration had once been compelled in the extremity of indignity to depart from this policy, but this had not been done till negotiation had become worse than hopeless. On the other hand, France saw that she was again threatened with another war by her ancient and indefatigable rival, and she was not without apprehension that the United States would become a party to the fresh coalition forming against her. Troops could no longer be transported in safety to Louisiana. The cruelties of her armies in St. Domingo had been dreadfully revenged; and it had become necessary to abandon that island to its fate. She needed money to provide for the attacks with which she was either menacing England or Austria. No better arrangement, therefore, remained than to cede Louisiana to the United States. This was the last attempt of any European nation to take permanent possession of any part of the continent of North America. From that time, France was occupied with her European wars, and though this government has been vexed and embarrassed by tedious and unsatisfactory negotiations with her, they have all emanated from commercial relations and difficulties.

The cession of Louisiana removed an active and dangerous neighbour; it removed, also, a fruitful source of trouble and war. It secured the geographical position of the United States, and left no part of the country without an ample outlet for its products. America became master of the mouth of the Mississippi, and thus established the safety of the vast commerce of the territory west of the Alleghanies and of the great rivers of the interior. An European writer on diplomacy makes the following remark on this convention:—"The news of the transfer of Louisiana was like a thunder stroke for the cabinet of Madrid, who then perceived the enormous fault it had committed in sacrificing the safety of Mexico. Florida, enclosed on both sides by the United States, was separated in the middle from the Spanish dominions, and would fall on the first occasion into the hands of its neighbours."\*

The convention, by which this cession was made, was negotiated April 30, 1803, at Paris, by Robert R. Livingston and James Munroe† on the part of the United States, and Barbé Marbois, formerly a Chargé in this country, on the part of France. Three conventions were signed the same day; the first to effect the cession, the second to regulate the price, and the third to secure the assumption by the United States of the debts due by the French government for illegal captures and condemnations.‡ The ratifications were exchanged in Octo-

\* This observation was made in 1804. The whole prediction is now accomplished.

† Mr. Livingston was the resident minister at Paris; but Mr. Munroe had been sent by the Executive on a special mission.

‡ Convention 1.—"ART. 1. Whereas, by article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9, (1st October, 1800,) between the first consul of the French republic and his catholic majesty, it was agreed as follows:—"His catholic majesty promises and engages on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness

ber 1803, and the surrender of the province was made in the usual form, on the 20th of December in the same year to the

the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states. *And whereas*, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory: The first consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the abovementioned treaty, concluded with his catholic majesty.

“ART. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

“ART. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

“ART. 4. A commissary to be sent from France to receive the province of Louisiana from the Spanish officers, and to pass it over to the United States.

“ART. 5.

American commissioners, William C. C. Claiborne and James Wilkinson. The province was erected, by an act of Congress

“ART. 6. The United States to execute the treaties of Spain with the Indians, &c.

“ART. 7. The vessels of France and Spain, laden with the productions of their respective countries, and entering ports of Louisiana, entitled to the same privileges for twelve years, as vessels of the United States, from France or Spain, entering the same ports. No other nation entitled to the same privileges during the said period of twelve years.

“ART. 8. After the expiration of the twelve years, the vessels of France to be upon the footing of those of the most favoured nations.”

---

Convention 2.—“ART. 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

“ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half yearly in London, Amsterdam, or Paris, amounting by the half year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place: the principal of the said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

into a territorial government, and William C. C. Claiborne was appointed by the President the Governor and Intendant General. In 1811, Louisiana was admitted into the Union.\*

“ART. 3. It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs  $\frac{3.333}{1.0000}$ , or five livres eight sous tournois.

Convention

\* We have found in a “Collection of Reports on Navigation and Trade,” (London 1807), a letter of a British officer, written in '94 concerning Louisiana. As it illustrates the importance of this province, (with which the English appear to have been well acquainted,) we shall make a few extracts from the letter:—

“*A Letter from an Officer of Rank in the Army, to one of his Majesty's Ministers of State respecting Louisiana.*

“C— Street, May 21, 1794.

“What I allude to, sir, is this; *that on a peace and general arrangement of the present extensive troubles*, the cession of the island of New Orleans, with all, or a part of, West Florida, and as much of the territory bordering on the Mississippi as should be judged necessary, might be obtained by this country from the court of Spain; in which event the above-mentioned advantages would consequently follow.

“In the present state of that country, all the West India islands could be plentifully supplied from the Mississippi with every species of lumber, at cheaper price.”

“That country would also, in a little time, be able to supply the West Indies with abundance of many articles of provisions.”

“When it is considered, that from the furthest distance up the Missouri river, whither our Indian traders from Canada at present resort, to the mouth of the Mississippi, (an extent of above three thousand miles,) there is an unfathomable and uninterrupted channel; and that both the banks are of a fertility surpassing the most exaggerated accounts of those of the Nile, and capable of yielding every production of both hemispheres; and when we further reflect on the many great rivers which discharge themselves into the Mississippi, particularly the Ohio, which is of itself navigable above twelve hundred miles, with several others falling into it, little less in appearance than the Ohio itself; and the neighbouring soil and climate offering every induce-

Convention 3.—“ART. 1. The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, ninth year of the French republic, (30th September 1800,) shall be paid according to the following regulations, with interest at six per cent. to commence from the periods when the accounts and vouchers were presented to the French government.

“ART. 2. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision.

“ART. 3. The principal and interest of the said debts shall be discharged by the United States, by orders drawn by their minister plenipotentiary on their treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the commissioners of France to those of the United States.

“ART. 4. It is expressly agreed, that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention of the 8th Vendemiaire, ninth year, (30th September, 1800.)

“ART. 5.

ment to come and settle there, with no channel, as I have already observed, to export the produce by, except the Mississippi;—I say, sir, when all those circumstances are considered, there can hardly be a calculation formed of the *shipping* that will be necessary, in some short time hence, for the transport of the immense productions that will be sent down that river.”

“Should the Americans thus once firmly possess themselves of that colony, it will be very difficult to dislodge them; and from the time they establish a footing in any port in the Gulph of Florida, the intercourse between the European nations and the West Indies *will be very insecure* indeed.”



"ART. 5. Specification as to what cases the articles relating to the payment of debts due to citizens of the United States are to apply.

"ART. 6. Ministers plenipotentiary of the United States to appoint three commissioners, to act provisionally.

"ART. 7. The three commissioners to examine the claims prepared for verification, and to certify those which ought to be admitted.

"ART. 8. And to examine those claims not prepared for liquidation, and to certify such as ought to be liquidated.

"ART. 9. Debts, when admitted, to be discharged at the treasury of the United States with interest. The commercial agent of the United States at Paris, or some other agent, to be nominated by the minister of the United States at Paris, to assist in the examination of claims."

"ART. 12. Claims for debts contracted by the French government since 30th September, 1800, may be pursued, and the payment demanded, as if this convention had not been made."

## CHAPTER V.

### CONTINENTAL SYSTEM.

*Livingston Minister in France—Turreau and Serrurier in this country—America very prosperous—Berlin Decree—Great calamity—Beginning of Continental System—All Continent, except Turkey, in the League—America only neutral—Milan Decree—Canton, in China, only port not blockaded—Embargo—Bayonne and Rambouillet Decrees—Cause of War against France—Repeal of French Decrees—England refused to acknowledge the validity of the act—Antedated Decree—French Spoliations—No indemnity—Angry correspondence with France.*

**N**OTWITHSTANDING the vexations to which the American trade was exposed, in the West India seas, during the years 1804 and 5, the country was in a condition of great and increasing prosperity, and of perfect security, while Europe was bleeding at every pore.\* But the eagerness and success, with which

\* James A. Bayard, of Delaware, was appointed Minister Plenipotentiary to France, in February, 1801. In June of the same year, Robert R. Livingston, of New-York, was appointed to the same court, with the same rank. The generals Turreau and Serrurier were the ministers of France, in this country, from 1804 to the war with England. Mr. Turreau published, in 1815, in Paris, a pamphlet, with this title, "Aperçu, sur la situation politique des Etats Unis d'Amérique." It is a very unfavourable account of the political institutions of this

Ame  
extra  
tion,  
itself  
empir  
a nat  
cree,  
diate

" In  
peror

" A  
" 2.

Conse  
Englis  
from t

" 3.

rank o  
or thos

" 4.

belong

" 5.

good p

indemn

cruiser

" 6.

or hav

admitte

" 7.

forego

fiscate

country

accept

this co

having

tember

howeve

of Lou

ston, in

America drove her commerce, was soon disturbed, by a most extraordinary system of maritime legislation. The devastation, which had hitherto preyed upon the continent, extended itself to the ocean; and the ports of one of the most extensive empires in the world, were declared in rigorous blockade, by a nation, that had not a single armed vessel afloat. The decree, to which we allude, is a short one; it was issued immediately after the fatal and decisive victory of Jena.

“Imperial Camp, Berlin, November 21, 1806. Napoleon, Emperor of the French, and King of Italy, considering, &c. decrees:—

“Article 1. The British Islands are in a state of blockade.

“2. All commerce and correspondence with them is prohibited. Consequently, all letters, or packets, written in England, or to an Englishman, written in the English language, shall not be dispatched from the post-offices, and shall be seized.

“3. Every individual, a subject of Great Britain, of whatever rank or condition, who is found in countries, occupied by our troops, or those of our allies, shall be made prisoner of war.

“4. Every ware-house, all merchandize, or property, whatever, belonging to an Englishman, are declared good prize.

“5. One half of the proceeds of merchandize, declared to be good prize, and forfeited, as in the preceding articles, shall go to indemnify merchants, who have suffered losses by the English cruisers.

“6. No vessel, coming directly from England, or her colonies, or having been there since the publication of this decree, shall be admitted into any port.

“7. Every vessel, that, by a false declaration, contravenes the foregoing disposition, shall be seized, and the ship and cargo confiscated, as English property.

country, which, he thinks, cannot be permanent. Mr. Bayard did not accept the appointment. The French government had no minister in this country; but L. A. Pichon, (the individual already mentioned as having been at the Hague) was the Chargé, from March, 1801, to September, 1804, the period of the arrival of General Turreau, who had, however, been appointed in the preceding December, after the treaty of Louisiana. John Armstrong, of New-York, succeeded Mr. Livingston, in 1804.

“ 9. Communications of this decree shall be made to the Kings of Spain, Naples, Holland, Etruria, and to our other allies ; whose subjects, as well ours, are victims of the injuries and barbarity of the English maritime code.”

It is obviously matter of historical curiosity, whether this decree was retaliatory, or the beginning of that system, by which the commerce of neutrals was, in the end, so much harassed ; though, in reality, it signifies very little, indeed, that the French Emperor had been provoked to it, by the unjust acts of other nations. At the same time, it does not appear, that any instruction, or order in council, issued by Great Britain, antecedent to the Berlin decree, though all violating the laws of nations, had been invested with the wide, unsparing reach of this measure. The order of Mr. Fox, of April and May, at the period the Prussians took possession of Hanover, included a great extent of coast ; still, it had not the theatrical air of the Berlin decree,—for it was local or limited in its operation ; and the British navy was, in some degree, competent to the task of maintaining a partial blockade, along a line of six hundred miles. If the true origin of the commercial restrictions of the French revolution wars, is to be found in the first coalition of '92, the Berlin decree was still a full departure from the system, as it respects neutrals ; for the United States had never acknowledged the principles, in relation to blockades, contended for by England. But in no case before, had a whole empire, distributed over the four continents of the earth, been made subject to the application of a principle, which, in the original strictness and purity of maritime law, was intended to be confined to a single haven or harbour. The result of this state of things was, that every portion of the habitable globe, with which nations traded, was in a state of blockade, with the exception of the port of Canton, in China.

The mind is impressed with a singular sensation, in beholding a great conqueror, just reposing from one of his most signal victories, in the capital of the sovereign, whose army he had rather destroyed than defeated, issuing decrees, that em-

braced, in their desolating effects, almost every sea of the civilized world. The power of Napoleon Bonaparte was scarcely bounded by any river on the continent of Europe. In gaining his great victories, in adding state after state to his dominions, in placing brother after brother upon the thrones of the old nations, whose dynasties he had thrown down, he seems to have been fulfilling his proper part,—to have been accomplishing the destinies of which, under Heaven, he was the humble instrument. Wherever he marched, he carried a force with him sufficient to effect his purposes. This was the legitimate exercise of the vast power, with which he was intrusted, by Providence, for objects which it is not yet altogether in the reach of man to comprehend. But, when he extended his ambition to the ocean,—when he undertook to overwhelm whole countries, by maritime decrees, we perceive that he has left the orbit, in which it was his destiny to move; and we feel, that the unity of his theatrical character is destroyed. The only weapon he could there use, was menace; he descended to an element, upon which his countrymen had, latterly, always failed—upon which he had, himself, always appeared in dread of an enemy—upon which he was never seen, except as a fugitive. There was one field, upon which he was always an inferior; and, to enter upon it, he left another, upon which he had never been conquered. In another point of view, it was the first act of a vast and magnificent project, to exclude the trade and navigation of Great Britain from the ports and rivers of the whole continent of Europe,—and to overwhelm her naval greatness, and infinite extent of commerce, by an irresistible accumulation of power and resources on the land. Perhaps, this idea was not original with Napoleon; for we have already seen a limited attempt of the same description, made by the Directory in '96. But the scheme failed then. The Berlin decree was the beginning of what has since been emphatically called, the "Continental System." Napoleon had not been able to approach his enemy on the ocean; he had lost St. Domingo, and

the principal islands in the West India seas ; he had been compelled to abandon his project of invading England ; and, as a final blow, the battle of Trafalgar had destroyed his own navy, and the flower of that of Spain. He undertook, then, to subdue the ancient, deadly rival of his country, by subduing the continent. The price of the victories of Austerlitz, Jena, Friedland, and Eylau, was to be far greater, either than the glory of the French arms, or the conquest of the most powerful states of the old world. It was to be attended with the downfall of the commerce of the English, and the ruin and bankruptcy of that rich nation. Again the scheme failed. There is a limit to power, even at the very moment when it appears to have transcended all the bounds that human efforts can set to it. There is a principle, always at work, to preserve some sort of balance in the world. These projects of universal dominion have never entirely succeeded ; and, we presume, never will, while nations retain any portion of civilization.

France has produced all the great conquerors of modern times ; no country, indeed, is better situated for conquests. But none of the conquerors of that remarkable people, have appeared under more favourable auspices, to acquire a universal dominion, than Napoleon. He returned from Egypt, at a time when the revolution was just brought to a close. He appeared then before the world, and with vast applause. Those who were in France, at the time the question was publicly proposed, whether Napoleon should be consul for life—or, as it was placarded on the walls of all the great cities, “Bonaparte sera-t-il consul à vie”—have often described the unbounded enthusiasm that prevailed in his favour. In six years, he attained to a height of power, that speedily threatened a universal empire. He then began the continental system. He became the head of it ; and a refusal, on the part of any government, to adopt it, was tantamount to a declaration of war. Prussia, Russia, Austria, Denmark, the states of the new confederation of the Rhine, the kingdom of Italy,

Naples, Holland, and Spain, formally became members of the league. French troops took possession of the Pontificate, of Etruria, and of Portugal, where it was, of course, enforced. There did not remain a state on the European continent, with the exception of the Ottoman Porte, that did not enter into this system. Napoleon had, undoubtedly, made preparations to compel a compliance from Turkey,—but he became occupied and embarrassed with his Spanish war. Thus, at one time, was this system generally, and, to all appearance, firmly established.

To speak with precision, America was the only neutral in the civilized world at this period; and no evils have ever fallen on her so heavily, as the measures of the two great belligerents, commencing with the Berlin decree of November 1806. This measure awakened, in the outset, little attention; and it does not appear, at first, to have been thought of serious importance even in England. It was considered in the United States as a municipal regulation. There were captures made under the decree shortly after it was announced, but no actual condemnation took place till the case of the *Horizon* in November 1807—nearly a year after the promulgation. The American minister at Paris, Mr. Armstrong, regarded this act as municipal, till October 1807; and he assured his government, there was no ground for uneasiness or apprehension. The decree had the appearance of being issued in a moment of great triumph and conquest; and the expressions, upon a careful and attentive perusal and examination, do not indicate any precise or definite object, though, in general terms, the British Islands were declared to be in a state of blockade, and all commerce and correspondence with them were forbidden. But the decision in the case of the *Horizon* was very alarming. The delay of a year to put the decree into operation had justly satisfied America, that the vessels of this country were not included in the provisions of it. They relied for their protection on the acknowledged principles of public law, on the rights of neutral commerce, urged by France since the year '80, with as much vehemence and steadiness as by

any other government whatever, and especially on the 12th and 14th articles of the convention of Paris of 1800. We can only account for the delay in enforcing this decree from an expectation entertained by France, that the United States would join her in the continental system against England. All the difficulties, observed Mr. Champagny, in Nov. 1807, "which have given rise to your reclamations, would be removed with ease, if the government of the United States, after complaining in vain of the injustice and violations of England, took with the whole continent the part of guaranteeing itself therefrom. England has introduced into the maritime war an entire disregard for the rights of nations; it is only in forcing her to a peace, that it is possible to recover them. On this point the interest of all nations is the same. All have their honour and independence to defend." But the terms, on which it was proposed to America to enter into this league, or armed neutrality, were not such as inspired confidence or discovered consistency. They asserted, in an extreme degree, the same principles of blockade against which America had constantly protested; principles that the report of the French minister of November 1806, declared to be, "monstrous and indefensible." In January and November of the next year, (1807) England issued retaliatory orders in Council.\* These were followed by the Milan decree of December 1807.† England and

\* See Chapter—Treaty of Ghent.

† "Royal Palace at Milan, December 17, 1807. Napoleon, &c.

"1. Every ship, to whatever nation it may belong, that shall have submitted to be searched by an English ship, or to a voyage to England, or shall have paid any tax whatsoever to the English government, is thereby, and for that alone, declared to be *denationalized*, to have forfeited the protection of its king, and to have become English property.

"2. Whether the ships thus denationalized by the arbitrary measures of the English government, enter into our ports, or those of our allies, or whether they fall into the hands of our ships of war, or of our privateers, they are declared to be good and lawful prize.

Fran  
betw  
it d  
min  
dive  
to a  
ted  
and  
had  
over  
all t  
from  
Stat  
part  
this  
A ge  
in D  
perin  
of ho  
prec  
temp  
gove  
from  
of it

" 3  
by la  
natur  
those  
troop  
coun  
trary  
or ou  
" 4  
of th  
gisla  
to al  
vern



France divided, by their several decrees, the civilized world between them—one held the land—the other the sea. And it did not lay in the quiet, well expressed remonstrance of a minister, in the cold, studied language of diplomacy, either to divert the belligerents from the great course of their policy, or to avert from the successful, unoffending commerce of the United States, the vast mischiefs of this accumulation of decrees and orders. The principal evils and devastation of the war had hitherto been confined to the land; but Napoleon having overthrown, on the plains of Germany, or of northern Prussia, all the coalitions England had been able to rally against him, from that time the contest took a new turn. And the United States, hitherto so prosperous, were now called to bear their part in the calamities Europe had so abundantly suffered. At this crisis, America withdrew her commerce from the ocean. A general embargo, without limitation as to time, was passed in December 1807. This was a great sacrifice; but the experiment was worth making, if it could prevent the necessity of hostilities. It was considered to be strictly a measure of precaution, and by no means intended to preclude any attempt, whatever, at negotiation. But this act of the American government certainly produced no effect on France. So far from leading to any conciliatory proposition, the first accounts of it in that country were succeeded by a very extraordinary

“3. The British Islands are declared to be in a state of blockade, both by land and sea. Every ship of whatever nation, or whatsoever the nature of its cargo may be, that sails from the ports of England, or those of the English colonies, and of the countries occupied by English troops, and proceeding to England, or to the English colonies, or to countries occupied by English troops, is good and lawful prize, as contrary to the present decree, and may be captured by our ships of war or our privateers, and adjudged to the captor.

“4. These measures, which are resorted to only in just retaliation of the barbarous system adopted by England, which assimilates its legislation to that of Algiers, shall cease to have any effect with respect to all nations, who shall have the firmness to compel the English government to respect their flag.”

edict. It goes by the name of the decree of Bayonne of April 1808. It directed all vessels then in the ports of France, or that should thereafter come in, to be seized. The pretence of this decree was, that as no American vessels could at that time be navigating the ocean without violating the embargo, they must, in every instance, be British property; though in truth many vessels were innocently in French ports, or did so arrive there, having left the United States on distant voyages; and at the time the embargo was laid, others were at sea, engaged in their usual commerce. As the law imposed no obligation on them to return, their absence was in no respect criminal. The embargo was a municipal regulation of the United States; and it was competent alone to that country to execute it. Some vessels left our ports during the continuance of that measure. This act was an offence against their own government; but it was none against a foreign one; it did not disfranchise or denationalize them. The embargo naturally belonged to the system of forbearance and neutrality, commenced under the first administration, after the adoption of the constitution. But we had fallen upon far different times; such assaults upon the rights of nations had never before been witnessed; nor had the world ever seen such a weight and concentration of power employed to enforce those aggressions.

The temper and disposition manifested at this time by the French Emperor were unfavourable and alarming. Mr. Madison, Secretary of State, in a letter of July 1808 to General Armstrong, remarks:—

“If France does not wish to throw the United States into a war against her, for which it is impossible to find a rational or plausible inducement, she ought not to hesitate a moment in revoking, at least, so much of her decrees, as violate the rights of the sea, and furnish to her adversary the pretext for his retaliating measures. It would seem as if the imperial cabinet had never paid sufficient attention to the smallness of the sacrifice, which a repeal of that portion of its system would involve, if an act of justice is to be called a sacrifice.”

The United States were, however, determined not to expose themselves to the alternative of a war. The whole policy of the government seems to have been to induce one of the belligerents to repeal their illegal decrees, both to furnish an argument in their representations to the other, and to enable them, in case of an extremity no longer to be avoided, to meet only one enemy in Europe.

The most unjustifiable assault, exercised by France, on the neutrality and moderation of the United States, was in the case of the Rambouillet decree of March 23, 1810.\* As in the case of the Bayonne decree of April 1808, the French government sought a pretext for this act in the proceedings of our own. The non-intercourse act of March 1809, was alleged to be the measure, which led to so sweeping a retaliation. But there was as little foundation or pretence for this proceeding in the one instance as in the other. The non-intercourse law was an act regulating the trade of this country with France and England. It was a law any nation had a right to adopt; for it did not favor either belligerent, and a notice of nearly three months was given of its existence. Very few vessels were condemned under this law; none, we believe, belonging to France. But it is quite clear, that if France believed herself wronged by it, she should have demanded redress of this government; or, if she had undertaken to indemnify herself, the amount of the indemnity should, in some degree, have been proportioned to the injury. The whole American commerce, that had innocently, and in the fair course of trade, entered the ports of that country, should not have been indiscriminately and hastily swept off. Again,

\* "All vessels, that sailed under the flag of the United States, or such as were owned in whole or in part by any citizen thereof, which from the 20th of March 1809, had entered, or should thereafter enter, the ports of the French Empire, or those of their colonies, or of the countries occupied by the French, were directed to be seized and sold, and the proceeds of the sales were deposited in the *caisse d'amortissement*."

the Rambouillet decree could scarcely be said to be in retaliation of the non-intercourse of March 1809; for that law, when communicated to the French government, was not complained of, and the Rambouillet was not issued for twelve months after.

We have now finished the account of the French decrees till the repeal of the Berlin and Milan in August 1810. The American government carried its love of peace too far, in not declaring war against France, after the promulgation of the Rambouillet decree. There are few public transactions, in the history of this country to be compared to the violence and injustice of that act, and the decree of Bayonne. It was the deliberate proceeding of the French government; and by the influence of France its operation was extended to Spain, Holland and Italy. Those decrees were not issued in the spirit of retaliation. The French government did not allege the same pretext for their promulgation as for those of Berlin and Milan. But in a time of profound peace, in defiance of a solemn convention, and of every principle of good faith, the whole American commerce in the ports of France, Spain, Italy and Holland, was seized and sold for the benefit of the imperial government.\*

We now arrive at a period in the history of our connexion with France, remarkable for having ultimately led to the war of 1812 with Great Britain. This was the declaration of M. de Champagny, which we shall presently recite, announcing

\* "Was the capture and condemnation of a ship driven on the shores of France by stress of weather and the perils of the sea, nothing? Was the seizure and sequestration of many cargoes brought to France in ships violating no law, and admitted to regular entry at the imperial custom houses, nothing? Was the violation of our maritime rights, consecrated as they have been by the solemn forms of a public treaty, nothing? In a word, was it nothing, that our ships were burnt on the high seas, without other offence than that of belonging to the United States, or other apology than was to be found in the enhanced safety of the perpetrator."—*Letter of General Armstrong to the French Minister.*

the re  
1810,  
the F  
out d  
Berlin  
1st da  
not se  
words  
clare  
ked, a  
have  
decla  
and re  
have v  
to the  
respect  
ry cas  
the fo  
acts o  
which  
tish g  
from t  
suffici  
howev  
been p  
the de  
tory, a  
in Eu  
revoc  
took p  
these  
denn

\* "T  
has th  
of Bas

the repeal of the Berlin and Milan decrees. The act of May 1810, regulating foreign intercourse, having been notified to the French government, an official communication was without delay made to Mr. Armstrong, informing him that the Berlin and Milan decrees would cease to have effect after the 1st day of November 1810, though a copy of the decree was not sent with the document. The notification was in these words: "In this new state of things, I am authorized to declare to you, that the decrees of Berlin and Milan are revoked, and that after the 1st of November, they will cease to have effect, it being understood, that in consequence of this declaration, the English shall revoke their Orders in Council, and renounce their new principles of blockade, which they have wished to establish, or that the United States, conformably to the act you have just communicated, shall cause their rights to be respected by the English." This mode of revocation in ordinary cases would, perhaps, have attracted no attention. It is the form usually adopted in the diplomatic notifications of the acts of a government; especially it is the uniform manner in which blockades are notified to foreign ministers by the British government. But a vast importance was attached to it from the circumstance, that England refused to receive it as sufficient evidence of the repeal. No formal decree was, however, actually passed at this time, at least, none has ever been published. But the American government considered the declaration of M. de Champagny sufficient and satisfactory, and it possessed the authority of all its diplomatic agents in Europe, that no American vessel was condemned after the revocation for a violation of these decrees, though captures took place and other outrages were committed. Some of these vessels were burnt on the high seas,\* and others condemned, on pretence that their cargoes were British property.

\* "The undersigned, Minister Plenipotentiary of the United States, has the honour to transmit, here enclosed, to his excellency the Duke of Bassano, Minister of Foreign Relations, copies of the protests of

On the 2d of November 1810, the President issued a proclamation, announcing the fact of the repeal, and restoring the intercourse with French public armed vessels. The Bayonne and Rambouillet decrees expired with the Berlin and Milan. Not any other of our difficulties, however, with France were removed. No offer was made towards an indemnity for American property unjustly seized, and sold, nor any progress made in renewing the convention of 1800, which had expired in 1808.\*

Thomas Holden, master of the American brig Dolly, of New-York, and Stephen Bayard, master of the American ship Telegraph of New-York, by which his excellency will learn that these vessels have been met with at sea by his imperial and royal majesty's ships, the Medusa, captain Raoul, and the Nymph, captain Plasson, who, after having plundered them of a part of their cargoes, destroyed the remainder by burning the ships. *It is a painful task for the undersigned to be obliged so frequently to call the attention of his excellency to such lawless depredations.* It appears to him that in the whole catalogue of outrages on the part of the cruisers of the belligerents, of which the United States have such great and just reason to complain, there are none more vexatious and reprehensible than this. Upon what ground can such spoliation be justified? Will it be alleged, that the destruction of these vessels was necessary, in order to prevent their carrying information to the enemy, and thereby endanger the safety of these frigates upon a trackless ocean? This would be a poor defence. After boarding these peaceful traders, they might easily have led their course south, when they intended to go north. They could even have maintained their assumed character of British ships, under which, it seems, they began the commission of these flagrant acts, and thus have prevented all information of cruising in those latitudes. But it appears that plunder, and not safety, was the object, for which they have thus disgraced the imperial flag. *For his excellency will probably have learnt from Brest, where the frigates entered, that the twenty boxes of spices and other articles, taken from the Telegraph, were smuggled on shore, and, it is said, were sold for the benefit of the equipage of the Medusa.*—Letter of Mr. Barlow to the French Minister.

\* On the subject of these decrees, acts of the French cruisers on the ocean, and spoliation by that government in general, we beg to refer the reader to the correspondence of Mr. Gallatin, while resident mi-

The French declaration of November 1810, was attended with many embarrassing circumstances; captures were still made under the decrees, and the trials, being much delayed and ultimately referred to the tribunals at Paris, great expenses awaited the recovery of the property. These captures continually threw doubts on the actual situation of the decrees, and afforded pretexts to England to maintain her orders. The United States were, accordingly, dissatisfied with this equivocal conduct in France. Even many of the official acts of the French government at this period combined to prove that the decrees were not repealed. The emperor declared, himself, that he should not abandon his continental system; and, in the celebrated report of the Duke of Bassano, concerning neutral rights, no notice was taken of the repeal, or the modification of the decrees, or of their ceasing to apply to the United States. It was far, indeed, from being an act of courtesy and frank conduct in the French government, to withhold the promulgation of a formal instrument, announcing the revocation, as it respects this country. On this subject, we shall quote part of a dispatch of November 1811, from Mr. Munroe to the minister at Paris :—

“It is not sufficient, on the final decision of a cause brought before the French tribunal, that it should appear, that the French decrees are repealed. An active prohibitory policy should be adopted to prevent seizures on the principles of those decrees. All that is expected, is, that France will act in conformity to her own principles. If that is done, neutral nations would then have an important object before them, and one belligerent, at least, prove that it contended for principle rather than for power, that it sought the aid

nister at Paris, with the French ministers, Messrs. de Richelieu, de Pasquier, de Montmorency, de Villele, and M. de Chateaubriand, from 1816 to 1823. This correspondence was published in February, 1824, by order of the House of Representatives. We also refer to two articles in the *North American Review*, Nos. 24, 25, (new series), on the claims on the European governments in general.

aid of neutral nations in support of that principle, and did not make it a pretext to enlist them on its side to demolish its enemies. The abuses that are practised by French privateers in the Baltic, the Channel, Mediterranean, and wherever else they cruise, have, of late more especially, reached an enormous height. In the Baltic, they have been the more odious, from the circumstance, that it was expected that they had been completely suppressed there. Till of late, these abuses were imputed to the privateers of Denmark, which induced the President to send a special mission to the Danish government, which it was understood was producing the desired effect. But it is now represented, that the same evil is produced by a collusion between the privateers of Denmark and those of France. Hence it assumes a worse character. To seizures equally unlawful, is added, by carrying the causes to Paris, still more oppressive delays."—"What advantages does France derive from these abuses? Vessels trading from the United States can never afford cause of suspicion on any principle, nor ought they to be subject to seizure. Can the few French privateers, which occasionally appear at sea, make any general impression on the commerce of Great Britain? They seldom touch a British vessel. Legitimate and honourable warfare is not their object. The unarmed vessels of the United States are their only prey."

General Armstrong having obtained leave to return home, Joel Barlow, of Connecticut, was appointed Minister Plenipotentiary to St. Cloud, and arrived in Paris in September 1811. Mr. Barlow died in Poland, in October 1812, having gone there on an invitation from the Duke of Bassano, for the purpose of completing a treaty with France, on the principle of complete reciprocity. We have no means of ascertaining whether he could have accomplished this object. It is, at any rate, certain that Mr. Barlow made no progress in the negotiation the year he was in France. A serious discussion of the business was postponed month after month, it is probable, partly, in consequence of the vast mass and variety of affairs, pressing upon the emperor and his ministers, preparatory to the expedition to Russia, though the government appeared to

have  
full in  
cums  
Barlo  
April  
" P  
the F  
lation  
gress  
sions  
mercl  
enter  
said h  
secre  
adher  
and o  
decre  
first d  
avenu  
Th  
low i  
verm  
decre  
natio  
cree  
Whe  
ted,  
this  
ed a  
his r  
had  
lic a  
ty, c  
con  
plan  
acc



have determined not to conclude a treaty with France, till full indemnity was made for past spoliations. The only circumstance of much importance, that occurred during Mr. Barlow's residence in Paris, was the celebrated decree of April 28, 1811. This decree was in these words:—

“Palace of St. Cloud, April 28, 1811. Napoleon, Emperor of the French, &c. &c. On the report of our Minister of Foreign Relations. Seeing by a law passed on the 2d March, 1811, the Congress of the United States has ordered the execution of the provisions of the act of non-intercourse, which prohibits the vessels and merchandise of Great Britain, her colonies and dependencies, from entering into the ports of the United States;—considering that the said law is an act of resistance to the arbitrary pretensions consecrated by the British Orders in Council, and a formal refusal to adhere to a system, invading the independence of neutral powers, and of their flag, we have decreed, and do decree as follows: The decrees of Berlin and Milan are definitively, and, to date from the first day of November last, considered as not having existed (*non avenus*) in regard to American vessels.”

The first intelligence of it was communicated to Mr. Barlow in the beginning of May 1812, and received by the government in July of the same year. No communication of the decree was made by the French minister, nor was any explanation of this business ever given. A knowledge of the decree was withheld from this country for more than a year. Whether this was the actual date, or whether it was antedated, cannot now be ascertained, nor the motives that led to this uncommon proceeding, Mr. Barlow never having obtained any explanation of it. Mr. Crawford, of Georgia, who, as his successor, arrived in France in August of the next year, had no means, on account of the great pressure of other public affairs, and the subsequent downfall of the imperial dynasty, of bringing on any discussions, whatever, relating to the concerns of the two governments. It is not likely that any explanation was or could have been given. We shall close this account of the relations of the United States with France

with an extract of another letter of Mr. Munroe, of July 1812, to the minister, at Paris :—

“It appears that the same oppressive restraints on our commerce were still in force, that the system of license was persevered in, that indemnity had not been made for spoliations, nor any pledge given to inspire confidence that any would be made. More recent wrongs, on the contrary, and of a very outrageous character, have been added to those, with which you were acquainted, when you left the United States. By documents, forwarded to you in my letter of the 21st March, you were informed of the waste of our commerce, made by a squadron from Nantz, in January last, which burnt many of our vessels trading to the peninsula. It is hoped that the government of France, regarding with a prudent foresight the probable course of events, will have some sensibility to its interest, if it has none to the claims of justice on the part of this country. On the French decree of the 23th April 1811, I shall forbear to make many observations which have already occurred, until all the circumstances connected with it are better understood.”

The American government was at no time insensible to the wrongs done it by France. It abstained, with uncommon forbearance, from actual hostilities, but it never could have doubted that it had just cause of war with that country. The affair of the Berlin and Milan decrees, was far from being satisfactory to the United States. Those formal proofs of the act were not furnished, which, in the peculiar circumstances of the case, as the repeal itself was made conditional on an act either of the English or the American government, it was the duty of a friendly state to have produced. We have no means of ascertaining why a decree was withheld. It could not have been, because the government did not choose to implicate its good faith. That was done as much by the declaration of the Duke of Cadore, as could have been done by any other official instrument. France could not have foreseen, that England would refuse to acknowledge the authenticity of the declaration, or the sincerity of the practice. As to the

“antedated decree,” a copy of it was furnished Mr. Barlow before the declaration of war against Great Britain was made in this country. If this decree had been known in time, it would probably have prevented hostilities. This could not have, therefore, been the motive of France, in producing, at that very late hour, a copy of so important a document. On the other hand, if France anticipated the war, if war was considered no longer to be avoided, what purpose did it answer to produce the decree in the actual state of hostilities, or on the eve of a declaration. The entire correspondence of the American government with France, from 1806 to the fall of the imperial dynasty in 1814, was of an angry nature. It was a series of complaints, remonstrances, and threats of retaliation. Every year appeared to augment the dissatisfaction felt by this country,—every year increased the claims for indemnity,—every year diminished the prospect of an alliance. The American minister at Paris, as our quotations abundantly prove, was directed to urge these complaints with more zeal and vigour. And his instructions forbade him from entering on a treaty, till those representations were satisfied.

We finish the account of the relations of America with France, with the downfall of Napoleon Bonaparte in 1814. Although no treaty was concluded during the period of which we have attempted to present a brief sketch in this chapter, the circumstances of the times were too important to have justified us in passing over it in entire silence. A convention has since been made with that country; but claims for spoliations still remain unsatisfied. We had intended to present a brief history, and a discussion of the principle of these claims; but the report of the Secretary of State on this subject, ordered by a vote of the House of Representatives, of April 20th, 1824, not having yet appeared, we are under the necessity of omitting it.\*

\* In addition to these treaties and conventions with France, a contract was made by Dr. Franklin with M. de Vergennes, in July, '82, to

regulate the mode of payment, and the rate of interest of the 18,000,000 livres, loaned by his Christian Majesty to the confederation, together with the loan (10,000,000) in Holland. In November '88, a convention was made by Mr. Jefferson, with M. de Montmorin, to define the duties, powers, and privileges of consuls. We have not thought it necessary to take any notice of this instrument, as our consuls in Europe, (and, also, French consuls in this country,) are only commercial agents; they are not invested, like the consuls on the Barbary coast, with diplomatic functions. In '83, America again contracted a loan of 6,000,000 livres with the French government.

S

T  
pc  
Tno  
of  
sig  
Or  
So

## CHAPTER VI.

## TREATY OF 1782 WITH THE NETHERLANDS.

*Second power to make a Treaty with United States—War between United Provinces and England—Causes—Lee, sailing at Berlin, enters secretly into a correspondence with the Regency of Amsterdam—not suspected by Sir Joseph Yorke—Lee agrees, at Aix La Chapelle, on a Treaty with Neufville—Secret discovered by capture of Laurens—Amsterdam richest City in Europe—Laurens chosen to Holland—Subsequently Adams—States General very dilatory in recognizing Independence—Three classes of Treaties—Remarks on National Law—Neutral Rights badly defined—Mr. Adams concludes a Treaty, and makes Loans—Van Berckel appointed Minister to United States—Holland fell in '94—Changes in Government—Great Trade with this Country—King Louis well disposed—Compelled to abdicate—Confiscation of American Property.*

**T**HE government of the United Netherlands,\* was the second power in Europe, that made a treaty with the United States. The treaty was not actually signed, till the year 1782, to-

\* The reader will observe, that this kingdom, as now constituted, did not exist, until the year 1814; it is one of the creations of the treaties of Paris, and of Vienna. The treaty of Paris, of May of that year, assigned to Holland, placed under the government of the House of Orange Nassau, an addition of territory. To this dominion, the Allied Sovereigns, at the time they were in London, in the summer of 1814,

wards the close of the revolution ; but with the exception of France, America derived more aid from Holland, in the shape of military stores, and money, and by obtaining protection for her vessels in the Dutch West Indies, than from any other state in Europe.

The connexion of Holland with America,—the severity with which England exercised her great power on the ocean, in relation to convoys, contrabands, and the privileges of the neutral flag, in the beginning of the contest with the colonies,—produced a feeling of extreme irritation and jealousy ; and ultimately led, in 1780, to a declaration of hostilities, on the part of the latter government. An English writer has explained, in a full and able manner, the cause of this war, an event, in which the United States were, at the time, greatly interested. We cannot do better than extract a portion of his remarks ; though a proper allowance should be made, for the warmth with which the author vindicates the acts of his government, and the principles of English maritime law :—

“ At the commencement of hostilities between Great Britain and her colonies, Holland, in conformity with the conduct of other European powers, forbad the export of ammunition and stores for one year ; but, when the success of the colonists, and the declaration of independence, afforded flattering hopes of acquiring a portion of that commerce, which the English had hitherto monopolized, Holland began to grasp at the advantage, and encouraged an illicit trade with America. Every motive, arising from long and beneficial

annexed Belgium.—(Schoell, vol. x. p. 534.) The limits of this kingdom were afterwards defined, in the 2d article of the treaty of Vienna, of May, 1815.—(Recueil des Pieces Officelles, &c. vol. viii. p. 309.) In the time of the American Revolution, Belgium, (*la Belgique*), a modern French name, (*Belgica Gallia*), for what was called, in English geography, the Netherlands, or the Low Countries, was divided into French, Dutch and Austrian Flanders, and did not exist as a separate government. The treaty of 1782 was made with that part of the present kingdom of the Netherlands, called, in the treaty of Paris of 1814, Holland. It is well known, in history, by the title of the States General, or Seven United Provinces of Holland.

cial alliance, similarity in religion, and political interests, combined to deter Holland from a mode of conduct, repugnant from the interests of Great Britain; but a faction, in the French interest, and inimical to the Stadtholder, influenced all the proceedings of government. The open encouragement, afforded to American privateers, in the Dutch West India islands, occasioned a long correspondence, which terminated in the delivery of a spirited memorial by Sir Joseph Yorke, the British ambassador at the Hague. The States General returned an humble and complying answer, denying an intention to recognize the independence of America, and consenting to the recall of Van Graaf; but they complained of the harsh terms in the memorial,—and, as a mark of indignation, ordered Count Walderen, their envoy extraordinary in London, not to correspond, on the occasion, with Sir Joseph Yorke, or Lord Suffolk, the secretary of state, but to deliver his memorial to the King in person.”——“Sir Joseph Yorke had resided in Holland 27 years, was thoroughly acquainted with the state and temper of parties, and knew the preponderance of French interest, and the fatal supineness of the Stadtholder. He vindicated, in an able memorial, the conduct of Great Britain; and, while he displayed the moderation of the King, in not plunging Holland into a war, by demanding the succours, stipulated in the treaties of 1678 and 1716, proposed to discuss the grievances in a conference,—prefacing the offer with an assurance, that the prevention of contraband trade should, in the mean time, be subject to no interpretation, unwarranted by the rules of equity, and the practice of perfect generosity. This proposal occasioned violent exertions among the French party. The Duke de Vauguyon, ambassador from the court of Versailles, endeavoured to pique the pride and interest of the Dutch, by demanding a clear and explicit determination, to accept or renounce the advantages of commerce, proffered by a decree of the French Council of State, allowing the traffic in naval stores, during the war. The proposition was not, however, accepted; and the French Court repealed the permission given to Holland, of trading with them duty free,—*admitting, to the exclusive enjoyment of this privilege, Amsterdam alone,* ‘in consideration of the patriotic exertions made by that city, to persuade the republic to procure, from the court of London, the security of that unlimited com-

merce, which belonged to the Dutch flag.' "—" 'The arts and influence of France were, however, more effectual than the remonstrances of England; and, when Spain was added to the hostile combination, the striking partiality of Holland, towards the enemies of Great Britain, rendered more decisive explanations indispensable. Sir Joseph Yorke, therefore, in pursuance of instructions from England, demanded from the States General the succours, stipulated in the several treaties, of which the *casus fœderis* was fully explained in the separate article of 1716.' "—" 'At this juncture, a fresh cause of dispute arose, in consequence of the reception afforded to Paul Jones and his prizes, in the harbours of the republic. Sir Joseph Yorke demanded the detention of the ships and crews; as Paul Jones, though a pretended American, was a native of Scotland, a pirate, rebel, and state criminal. The States General refused compliance, alleging their constant maxim, not to decide on the legality of captures by the vessels of any other country.' "—" 'The state of sullen dissatisfaction, which occasioned the abolition of the ancient connexion between Great Britain and Holland, resolved itself into active hostility; the mystery, which had covered the views and conduct of the Dutch, was dispelled by accident; and the court of Great Britain was impelled to a firm and decisive mode of conduct, as well in resentment of past treachery, as with a view to counteract the effects of the neutral league. The Vestal frigate, commanded by Captain Keppel, took, near the Banks of Newfoundland, a Congress packet. The papers were thrown overboard, but, by the intrepidity of an English sailor, recovered with little damage. They fully proved the perfidy of the Dutch; who, before the existence of any dispute, entered into a formal treaty of amity and commerce with the revolted colonies, fully recognizing their independence, and containing many stipulations, highly injurious to England, and beneficial to her enemies, both in Europe and America. Disagreements on some of the arrangements, had occasioned delays in its completion; but Henry Laurens, late President of the Congress, who was one of the passengers in the captured vessel, was authorized to negotiate definitively, and entertained no doubt of success.' "—" 'This remonstrance also failing, a royal manifesto was issued, declaring hostilities against Holland.' "



We shall have occasion to remark, under the head of Prussia, that William Lee, of Virginia, was sent by Congress to Berlin, as commissioner, as early as '77; but we have not been able to ascertain, that any person had been directed to proceed to Holland; for the ancient alliances, and friendly treaties, between the provinces and Great Britain, made it extremely unlikely that any assistance could be obtained in that quarter. As the greater part of the Dutch commerce was obliged to pass through the English channel, and as the Dutch navy was in a state of decay, Holland was necessarily under the control, to a great degree, of the English fleets. Mr. Lee was not officially received at Berlin, and met with no success there, in his application for military stores; but he soon entered into a correspondence with the regency of Amsterdam. This intercourse took place as early as August, '78; but it does not appear, that it was ever suspected by the British minister, Sir Joseph Yorke.\* Though his letters to the States General abound with complaints and remonstrances, upon almost all topics, touching the neutral character of the Dutch, there is not the most distant allusion to any secret correspondence between any one of the provinces and the American government. He certainly was not aware, that the confederacy had an agent at Amsterdam, or its neighbourhood. The correspondence, however, was confined to the government of one of the principal towns of the United Provinces, well known to have great influence over the whole Dutch confederacy; and there is no reason to suppose, that it was known to the States General. On the 4th of September, '78, Mr. Lee agreed with M. de Neufville, a respectable merchant of Amsterdam, acting by the authority of Francis Van Berckel, pensionary of the city, on the plan of a treaty of commerce and amity between the two countries. These gentlemen met at Aix la Chapelle, for the purpose of secrecy; and, in that

\* Afterwards Lord Dover.

place, the treaty was drawn up and signed.\* We shall not extract any portion of it, as it does not differ materially from the treaty subsequently concluded with the provinces, though not so full and definite in some provisions. Mr. Lee was not furnished with power, from his government, even to open a negotiation, and the regency of Amsterdam acted, in the business, only by their own authority. The instrument, it is obvious, was not binding upon either party. Indeed, it may well be matter of doubt, whether the proceeding was much more than the private act of Mr. Van Berckel and his friends; for Amsterdam was, at that time, the centre of the factions and parties, that distracted and divided the "republic." It appears, however, that, when the documents, accompanying this transaction, were communicated by the States General to the Pensionary and magistrates of that city, the affair was justified by them. And, it is probable, the arrangement would never have been known, but for the unlucky accident, by which Mr. Laurens' papers fell into the hands of the enemy. We shall observe, in this place, that the States General, in November, '80, disavowed, on the requisition of Sir Joseph Yorke, the conduct of the Pensionary, as having taken place without their knowledge; but they refused to punish him, or any other person, concerned in the transaction. Their High Mightinesses took that matter, as they expressed it, *ad referendum*; the nature of an "*ad referendum*," in the Dutch government, can easily be guessed.†

When this secret proceeding became known to the American Congress, they were at once satisfied of the feelings of, at

\* See Parliamentary His. vol. xxi. app. 98, for this treaty.

† The States General ordered Jones to leave the Texel, after he had been supplied with what seemed to be required by humanity. The English would not allow the Dutch to carry to its enemy ship timber, though it was not specified among the contrabands, by the treaty of 1674. The English contended, that wood was included in those clauses of the subsequent treaties, which forbid the Dutch to assist the enemies of Great Britain with any article required in war.

least, a portion of the people of Holland. In those days, Amsterdam was, probably, the richest city in Europe; money was there, usually at a low rate of interest; and not only many foreign merchants, but even governments, were in the habit of opening loans in that celebrated mart. Money could be procured on more favourable terms, from the circumstance, that Amsterdam was just showing the first symptoms of its decline.\* Great capitals had been accumulated; but its trade having fallen off, while the well known habits of industry, prudence and frugality of its merchants remained, there was a redundancy of money in the home market. Amsterdam, with the other cities of Holland and the Low Countries, was then beginning to feel the fatal influence of that power and competition, which has since deprived them of their colonies and carrying trade. The two epochs, to which we may assign the origin of this commercial superiority, are the treaties of 1763, and of 1783 between America and England.

Congress made no preparations to open a direct communication with the Low Countries, before October '79. Mr. Laurens, of South Carolina, was, in that month, chosen, both to make a treaty of amity and commerce, and to negotiate a loan, not to exceed 10,000,000 dollars in amount, at a rate of interest, not to exceed 6 per cent. We have already said, that Mr. Laurens was taken, the next year, going to Holland. † Mr. Adams, who had previously gone to Europe, in the capacity of a commissioner for a general peace, was directed to proceed to Holland, on the business assigned to Mr. Laurens. He arrived in Holland, in the beginning of '81.

Notwithstanding the "republic" was at this time at war with England, and a party to the armed neutrality, the provinces do not appear to have participated in the eagerness of Amsterdam to recognize the independence of the United

\* Macpherson's Annals of Commerce, vol. iii.

† He was not liberated till '82, when he was exchanged for Lord Cornwallis.

States. The States General were exceedingly dilatory in all business. The forms of their government rendered dispatch impossible. Nothing can proceed rapidly, where each member of a diet or assembly, not only holds in his own vote an absolute negative, but, before he is permitted even to give that vote, he is obliged to report the whole matter under consideration to a separate legislative body, who take as much time as they think proper to examine, discuss, and deliberate, before they send instructions to their delegate at the States General. There were seven such distinct sovereign legislatures. Mr. Adams did not succeed till the autumn of '82 in obtaining from all the provinces their consent to the ratification of a treaty.\* Guelderland was the last state that recognized the

\* This treaty of amity and commerce was concluded on the 8th of October 1782 by Mr. Adams for America, and George Van Randwyck and seven others, deputies and plenipotentiaries, for the United Netherlands. The treaty, consisting of 29 articles, places commerce on the footing of the most favoured nation. The 4th article, respecting liberty of conscience is, we believe, peculiar to the treaties made by the U. States with the protestant nations of the continent of Europe; a similar provision will be found in the treaties with Sweden and Prussia;—we extract the whole of the article.

“Art. 4. There shall be an entire and perfect liberty of conscience allowed to the subjects and inhabitants of each party, and to their families, and no one shall be molested in regard to his worship, provided he submits, as to the public demonstration of it, to the laws of the country. There shall be given, moreover, liberty, when any subjects or inhabitants of either party shall die in the territory of the other, to bury them in the usual burying places, or in decent and convenient grounds to be appointed for that purpose, as occasion shall require; and the dead bodies of those who are buried, shall not in any wise be molested. And the two contracting parties shall provide, each one in his jurisdiction, that their respective subjects and inhabitants may henceforward obtain the requisite certificates of deaths, in which they shall be interested.

“Art. 6. Citizens of each party may dispose of their effects, by will or otherwise, in the dominions of the other.

“Art. 9. Citizens of either party allowed to manage their own business, in the dominions of the other. &c.

independence, though others were quite early in declaring their sentiments. We shall not speak, in detail, of the treaty made on this occasion, as the leading provisions of it, touching the exercise of the right of search, contrabands and the privileges of the neutral flag do not differ from the original

"Art. 10. A free trade was allowed to enemy's ports—a vessel, met at sea and delivering contrabands, was allowed to pass.

"Art. 11. Free ships free goods; and goods in an enemy's vessel as in treaty of '78.

"Art. 16. In case of shipwreck, relief shall be afforded, and goods restored, if claimed within a year and a day, on payment of reasonable charges, &c.

"Art. 18. In case of war, nine months allowed to citizens of either party, residing in the dominions of the other, to sell and transport their effects.

"Art. 19. Citizens of neither party shall take commissions, or letters of marque, from a prince or state with whom the other is at war."

The contrabands (art. 24) did not vary from those of the treaty of '78; by the same article, blockade (omitted in treaty with France) was thus defined—"and those places only shall be held as blockaded, which are surrounded nearly by some of the belligerent powers." This is the first treaty made by America, in which a definition of a blockade is attempted. The right of search (art. 26) as in treaty of '78.

"Art. 27. Commanders, &c. of public and private vessels of the United States, may engage American seamen in ports of the United Netherlands, and the same for Holland."

The form of a passport, a certificate, and of a sea-letter was annexed to the treaty. On the same day, a convention was agreed on relative to prizes and re-captures.

"Art. 1. Re-captured vessels not having been twenty-four hours in possession of an enemy of either party, to be restored, on payment of one third salvage to the privateersmen.

"Art. 2. Re-captured vessels, more than twenty-four hours in possession of an enemy, to be entire prizes to privateersmen.

"Art. 3. Vessels of either party re-captured by public vessels of the other, to be restored, on payment of a thirtieth part, if 24 hours in possession of an enemy; if longer, a tenth part.

"Art. 5. Vessels of war and privateers, to be admitted, with their prizes, into the ports of both nations, if not inconsistent with the 22d article of the treaty of commerce."

draft prepared by Congress for all the commercial treaties. Indeed, we may remark in this place, that the *commercial* treaties, made by the United States with the powers of Europe, with the exception of England, contain the same general principles. The only additions on the score of neutral rights, made to the treaty of '78 with France, related to a definition of blockades, immunity of vessels under convoy, and an improved modification in the right of search. Some peculiar provisions, as will be seen under their proper head, were inserted in the treaty with Prussia; but, with this exception, we have had till 1815 but two classes of treaties—those with England, in which none of the neutral rights are recognized; and those with the continent, in which all the principal neutral doctrines are secured by stipulation. Till the year just mentioned, no material change was made on the subject of commerce—it rested on the almost universal modern arrangement, and in the old diplomatic phrase, of "*gentis amicissime.*" But latterly (beginning with England in 1815) another description of commercial treaties has been introduced—the basis is, reciprocity of duties and tonnage charges on importations, of the growth, produce and manufacture of the respective countries. These conventions have been extended to Prussia, Sweden, the Netherlands, some of the Hanseatic towns, and partially to France. This constitutes a new æra in the diplomacy of this country, and in the commercial history of the world.

All that part of public law, called conventional, is laid down, as it appears to us, by writers on the subject, with great strictness and precision, more so than the history of diplomacy will, altogether, justify. The acts and practices of nations can alone serve as a guide in this business; and if we except the article of contrabands, the rights and duties of neutrals are very obscurely defined in the treaties of the last century and a half; till, indeed, we reach the period of the first armed neutrality and American revolution war. From that date more uniformity of principles exists, as it respects

treaties, concluded by one class of states. And, strictly speaking, there has been no great neutral power in the world before America. Before that time there is an uncommon variety of principles. Even in treaties of very exact language, a legitimate blockade is defined in a vague manner. It is made an affair of construction, and there will always be an extreme difficulty in settling construction between nations. We know not how the principle of "free ships, free goods" was excluded from the code. We have not looked very accurately into the collections; but we have no doubt, that three-fourths of the commercial treaties, since the treaty of Westphalia in 1668, expressly recognize this doctrine; and though it is found, we believe, in every treaty made by this country, except those with England, the American government, at an early period of its history, declared it was not one of the established principles of the commercial laws of nations.\* We have no disposition to undervalue the labour of writers on public law. On the contrary, they have rendered great services to mankind; for it is, obviously, of infinite importance, that nations should possess a code to regulate their conduct in regard to each other. We cannot reduce public or national law to the precision of municipal. This is not necessary. But we may fairly suppose, that a code so infinitely improved during the last century, is susceptible, still, of far greater perfection. The rights of belligerents are very accurately defined; so, that in truth, war, and the relations of nations in war, are now regulated by very precise laws. This has been done by the progress of civilization; and no one will deny that it has been highly beneficial. There is another part of this code still in a confused and very unsatisfactory condition. We mean that part which relates to the rights and duties of neutrals. There have been constant difficulties on the subject of blockades, contrabands, and the right of search; but none of them are at all new; they occurred with great severity in the application in the beginning of the last century. In the wars that have

\* See Mr. Jefferson's letter of July 24, 1793.

just ended, in which this country finally took a part, and which were, in some respects, maritime, not a single principle, beneficial to the neutral, has been secured. In all the treaties made in the celebrated years of 1814, 1815, treaties, that appear to guarantee the repose of the world for centuries, we find no allusion to the neutral. And it is, truly, a most discouraging circumstance, how completely all armed neutralities have been dissolved, and how entirely the obligation different states (this country among others) have entered into, to establish a convention for the protection of the neutral, have been forgotten on the return of peace. Still, the neutral should not be in despair. The great improvements, taking place in society and in the intercourse of nations, will probably in time reach that portion of the code which relates to him.

The war with England, and the movements in the British House of Commons in the beginning of the summer of '82, finally induced the provinces, not only to make a treaty, but Mr. Adams was enabled, under those favourable auspices to negotiate a loan with certain merchants of Amsterdam, at first (in September 1782) for \* 5,000,000 guilders at 5 per cent. redeemable in ten years;—2,000,000 at 4 per cent. in '85; and, again, 1,000,000 in 1787 at 5 per cent. The price of these loans was, probably higher than was paid by other nations; but America did not enter into the market of Amsterdam with all the advantages of a well established government. When the first loan was contracted in September '82, very little doubt could exist but that America would be able ultimately to maintain her independence against the claims of the mother country. But this was not sufficient for the European money lender. It was necessary to satisfy him, that the confederacy of '74, whose pledge was his only security, would remain united, would not separate into thirteen independent governments, neither willing nor able to execute

\* In November 1781, the French king borrowed, for the United States, of the States General, 5,000,000 florins, at 4 per cent.



their engagements. The debts, contracted by the United States in Europe, during the revolution, were all honourably paid; but the adoption of the constitution of '89, and the establishment of a treasury department, contributed in no small degree to this happy result. The pecuniary embarrassments under which the confederacy laboured, both as it respects the foreign and domestic debt, constituted, in reality, one of the principal arguments in favour of the present union of the States; and the Dutch as well as French creditor is much indebted to that change in the concerns of the country for the speedy and exact payment of his demands.

As the United Provinces were the second state to acknowledge the independence of this country, so they were the second to send a minister plenipotentiary to the Congress at Philadelphia. This was done with great promptitude. The person appointed was P. T. Van Berckel. He arrived in America in the autumn of '83, and in October of the same year was admitted in the form prescribed to a public audience. He addressed a speech to Congress on the occasion in the French language. A greater interest than common is justly attached to his sentiments, as there is some slight resemblance in the history of the Dutch and American revolutions.

The treaty, made in '82, having no limitation, continued in force, till the creation of the kingdom of the Netherlands and the consolidation of the Dutch and Belgic provinces in 1814 and 15.\* Separate from the vast and very lucrative trade carried on with the Dutch East and West Indies, and colo-

\* In 1792, William Short of Virginia, was appointed minister resident to the Hague, and in May 1794, John Quincy Adams, of Massachusetts. William Vans Murray, of Maryland, was appointed minister resident in March 1797, and was the last minister to the Netherlands, till the renewal of intercourse by the appointment of William Eustis, of Massachusetts, envoy extraordinary and minister plenipotentiary, in December 1814. The executive, in June 1801, suspended the legations at the Hague and at Lisbon. M. Van Polaner succeeded M. Van Berckel as minister resident, after the appointment of Mr. Adams.

nies on the American continent ; this country has had from 1794 (with the exception of '99, when Holland was invaded by an English and Russian army, and during nearly the whole year her ports declared to be in vigorous blockade,) a very great direct commerce till 1808 and 9. But the diplomatic relations have been subject to uncommon vicissitudes, and have been interrupted the greater part of the time. Holland fell the same year with Austrian Flanders, and the country on the left bank of the Rhine. This was the important result of the brilliant campaign of '94. From that period we trace the original Dutch confederacy through the successive changes of a national assembly, a Batavian republic, an aristocratic legislature, an elective monarchy, an hereditary monarchy, a department in 1810 of the imperial government, and lastly, to its union in 1814 and 15, with Belgium. The United States have not followed step by step these revolutions in its government ; but a friendly intercourse has always been maintained and till the abdication of Louis in July 1810, many openings were found for trade, notwithstanding the severity with which the continental system was attempted to be enforced. The special application of that system to Holland, however in 1809 and the following years, has subsequently given rise to the same controversy on the subject of illegal seizures, the American government has had with Spain and Naples. American property to a great amount was most unjustly seized ; and ultimately confiscated. That, which was not liable to the operation of the Berlin and Milan decrees, was sequestered under the 10th article of the treaty of Paris of March 1810.\* It is in these words, and it is as unprincipled an act as can be conceived. "Every description of merchandize that has arrived in the ports of Holland in American vessels since the 1st January 1809, or which shall hereafter so arrive, shall be put under sequestration, and shall belong to France, to be disposed of according to circumstances and the political

\* Martens, vol. xii. p. 307.

relations of that country with the United States." This treaty, the Dutch admiral Verhuel was obliged to sign with M. de Champagny. It was the preliminary step to the abdication of Louis, an event, indeed, that followed a few months after, but the king of Holland, in consenting to the sacrifices required by this instrument, doubtless hoped to preserve the independence of a people to whom he was evidently attached, and over whom very much against his inclination, he had been appointed to reign. Louis in his own hand made observations on the different provisions of this treaty. They have been preserved, and have since been published in a manner, that leaves no doubt of their authenticity. In regard to the 10th article just quoted, he remarks, "I expect from the justice of the Emperor that he will express his intentions in a different way as it respects this property. I think it should be treated as property under similar circumstances has been in Spain and Naples, and that the same date should be assigned for the application of the article."\* This arrangement would have placed the property in *depôt* subject to future examination and decision. It has, at least, the semblance of fairness. The proposition was free from the licentious, unsparing injustice of the original article. The independence and upright intentions of Louis in this affair, deserve to be mentioned with applause, a compliment equally due to his undeviating good treatment of American commerce. But, in reality, we believe this would have been but a milder and less expeditious mode of transferring this American property to the imperial treasury. It amounts to little more than changing the phrase. The history of the claims of this country on the Dutch government does not differ in principle from that on Spain or Naples.

\* In a letter of December 1809, Napoleon says to Louis, "You have received in the ports of Holland every American vessel, rejected from my harbours, that presented itself to you." Documents sur la Hollande, vol. iii.

## CHAPTER VII.

### TREATY OF '83 WITH SWEDEN.

*Sweden, only power that voluntarily offered its friendship to Congress of confederation—No applications specially made to Northern Powers in early part of war—M. de Creutz offered in '82 to make a treaty—Treaty of Paris of '83—Provisions similar to that of Netherlands—No minister till 1813—M. de Kantzow—Jonathan Russell of Massachusetts—Demand for property confiscated at Stralsund—Relations friendly with Sweden.*

SWEDEN is the only power in Europe that voluntarily offered its friendship to the United States. Without being solicited, proposals were made for a treaty before the independence of the colonies was even recognized by Great Britain. A general authority was given to the commissioners abroad, Franklin, Adams, Jay, and Laurens to conclude treaties of amity and commerce, but in the early part of the revolution war Congress did not direct applications specially to be made to any of the northern powers. And most of the other courts, to whom agents were sent, either refused to receive them, or contrived, under some pretext or other, to avoid all appearance of giving aid or countenance to the American confederacy. This caution or indifference cannot be matter of censure or surprise. Few European courts probably thought, at the commencement of the revolution, that the colonies could

prevail; few choose to take the risk of involving themselves in a maritime war with England. Weakness and subjection were then naturally associated with the name of colonies.

The conduct of Sweden was marked with great frankness, and with a very friendly character. The United States could not expect much aid from that country, or suppose that her example could have a great deal of influence on other nations. But it was highly gratifying that a state renowned as Sweden always has been, for the bravery and love of independence of her people, should manifest so great a sympathy in the arduous struggles for liberty of a distant country. The proposal for a treaty was entirely unsought for on the part of America. The only account we possess of the transaction, is in one of the letters of Dr. Franklin. The Swedish minister at Paris, the Count de Creutz, called on him towards the end of June 1782, by the direction of his sovereign, Gustavus III., to enquire, if he was furnished with the necessary powers to conclude a treaty with Sweden. In the course of the conversation he remarked, "that it was a pleasure to him to think, and *he hoped it would be remembered*, that Sweden was the first power in Europe, which had voluntarily offered its friendship to the United States without being solicited." Dr. Franklin communicated the application of the Swedish envoy to Congress, and instructions were shortly after sent him to agree on a treaty. The treaty was concluded at Paris on the 3d April 1783, by Dr. Franklin with the Count Gustavus Philip de Creutz. Its provisions resemble those of the others made with the powers of Europe at that time.\*

This is the only treaty made with that country till 1818, but the most friendly relations have, however, been always maintained. The direct commerce to Sweden has been quite

\* The original treaty, consisting of 27 articles, to which five separate articles were added the same day, was limited to fifteen years. For its provisions and details we refer particularly to the treaty made with the Netherlands, treated of in the last chapter. We spare the reader a repetition of the articles.

inconsiderable, though during the commercial restrictions in Europe, a large amount of property was cleared for Swedish ports. The trade with the Swedish West India Islands has been greater than in ordinary times, but this has been nominally increased by employing Swedish neutral ports for the purpose of intercourse with the British West Indies. This country had no minister at the Court of Stockholm till 1814, although Sweden was represented in the United States during a short time in 1813 by M. de Kantzow, a minister plenipotentiary, who was soon withdrawn; and the intercourse has been kept up by *Chargés d'Affaires*. In the beginning of 1814, Jonathan Russell, of Massachusetts, was appointed minister to the Court of Sweden; and in the autumn of 1816 he became engaged in a correspondence with the Swedish minister, Count d'Engerstron,\* concerning a sequestration of some American property. The French being in possession of Stralsund, in Pomerania in 1810, placed this property at the disposition of Sweden, for whose benefit it was ultimately sold for about, we believe, 151,000 rix dollars currency of that country. Mr. Russell claimed an indemnity, to which this country was obviously entitled, but his demands were evaded or resisted in the same way that so many others have been by the European governments since the changes of 1814 and 1815.

During the commercial restrictions in our country, and in Europe, a great amount of property was shipped for Swedish ports, and many of our vessels sought protection there. When the passages leading into the Baltic were vexed to such a degree by French and Danish privateers, this property and the rights of these neutrals were respected. Though the Swedish territory runs along the Sound, we are not aware that any instance exists of illegal or oppressive conduct towards American vessels. From her comparatively remote situation, Sweden was less under the control of France during

\* We give the spelling of this name of the despatch. It is given in Schoell differently, d'Engstroem.

the restrictions on commerce than, perhaps, any other power on the continent. She was at war with that country from 1805 to 1810, when she was compelled to accede to the continental system, though on account of the nature of her western coast, it was, never, in reality enforced. But in the beginning of 1812, French troops occupied Swedish Pomerania, and shortly after, Sweden joined the coalition of England and Russia against Napoleon; so that, in fact, the commerce of the United States with Sweden was scarcely at all interrupted except by the acts of our own government, during the eight years that preceded the downfall of the French Emperor.

## CHAPTER VIII.

## TREATY OF 1783 WITH GREAT BRITAIN.

*Lord North attempts a Peace—America early conquered every thing she sought—Members of Parliament see Franklin privately—Ministry, as well as opposition against acknowledgment of Independence—Lord Chatham speaks against it—Mediation of European courts—Unsuccessful—Austria and Russia not in favour of Independence—General Conway's resolution—Decides the question of War—New Ministry—Oswald and Grenville sent to Paris—Not officially—Failed—Shelburne's Administration—Oswald instructed to acknowledge the Independence—Adams, Franklin, Jay, Laurens, and Jefferson authorized to treat—Meet at Paris—Difficulty as to loyalists—Make a compromise through violation of instructions—Conclude a Treaty—Boundaries—Fisheries—Agreed to Treaty without consulting France—Violation of Instructions—Explained—France and Spain desirous of Fisheries and Western Country—Treaty honourable and favourable to America—Unpopular in England—Ministry in minority on first division—Necessary sacrifice.*

THE war, that led to the independence of the American colonies, began in 1775. The fatal celebrity, of having commenced hostilities, belongs to the administration, of which Lord North was first lord of the treasury, though the origin of the dispute may be traced to an earlier period in English history. For nearly four years, this administration had successfully withstood the accumulated disasters of the war abroad :



and at home, they had resisted with equal good fortune all the efforts of an opposition, as powerful by its talents, as any that had appeared since the days of Sir Robert Walpole. From November '74, to February '78, we find the ministry engaged in more than fifty angry, protracted debates, on topics directly connected with America; for no subject had, till that time, attracted so much of the attention of the British Parliament, or of the civilized world. But there is little variety in the progress, and none in the result of these different propositions. When we have read the debate on the memorable provisional act of Lord Chatham in the Lords, or the still more celebrated resolutions of Mr. Burke for conciliation with America, in the House of Commons, both made in the early part of the contest, we have little to learn either of the manner, in which motions were treated, or of the fate to which they were consigned. Thus matters stood till the beginning of the year '78. At that time a very unfavourable change took place in American affairs, and in the tone of the British ministry;—Burgoyne had surrendered; and an alliance was formed with France. One other act, the capture of Cornwallis, completed, as far as England was concerned, the revolution. The administration at this period made a decided effort for peace, and, in that point of view, an account of the business properly belongs to this work. In the month of February of the same year, Lord North, as unexpectedly to his friends as his enemies, suddenly developed a plan, entirely matured, of abandoning the principles upon which he had heretofore conducted the affairs of the colonies in North America. In introducing what were called his "conciliatory propositions" into the House of Commons, he declared it to be the intention of government to send a commission to America, to treat with the Congress, to grant pardons and immunities, to restore to the colonies their ancient charters, to exempt them from taxation, and not to require them to renounce their independence, till the treaty had been ratified by the king and parliament.—A writer of the day observes:—

“A dull melancholy silence succeeded to the speech made by Lord North on this occasion. It had been heard with profound attention, but without a single mark of approbation to any part from any description of men, or any particular man in the house. Astonishment, dejection and fear overclouded the whole assembly. Although the minister had declared that the sentiments he expressed that day, had been those which he always entertained, it is certain that few or none had understood him in that manner; and he had been represented to the nation at large as the person in it the most tenacious of those parliamentary rights, which he now proposed to resign, and the most remote from the submissions which he now proposed to make.”

Mr. Fox, who followed Lord North in the debate, congratulated the public on the conversion of the minister, and his own party on having gained so powerful an auxiliary. These terms, in fact, contained all the stipulations the first Congress, assembled in Philadelphia in '74, proposed to accomplish. America had, in reality, conquered at this early day every thing for which she originally took up arms. The declaration of Congress, of July 4th, '76, constituted no part of the original requisitions or grievances of this country, for the war, in the outset, was certainly not undertaken for independence.

It appears, also, that propositions were made about this time to Dr. Franklin, the American commissioner, by Mr. William Pultney, a member of parliament, who saw him at Paris, under the assumed name of Williams. The terms did not differ from those with which Lord North proposed to invest the commissioners. Another member of parliament, a Mr. Chapman, had a conversation with Dr. Franklin on the same subject. This gentleman was at great pains to collect information touching a peace; and he made such proposals, in relation to independence and commercial privileges, as were then fashionable in England. The American commissioners in Europe, at that period, had no power to treat with Great Britain; but Dr. Franklin informed Mr. Pultney, that.

in his opinion, America would not make a peace in which her independence was not formally recognized.

England was anxious to separate the colonies from France, and to re-establish her dominion over them. But there were few people in that country in '78, disposed entirely to resign the control of her ancient possessions. The ministry had resolved never to acknowledge the celebrated act of the American Congress of July '76. From every other opinion and resolution they had been gradually driven by the goadings of the opposition, and calamities of every description in the course of the war. Peace the Americans could have had at any moment after '78 ;—every grievance would have been redressed ;—the mother country required no other condition from the colonies, than that they should subject themselves to the navigation act, or should enter into such commercial arrangements, as would have given to the trade of Great Britain superior advantages to that of other nations. The power of parliament was decreed absolute and unlimited, but the government was willing to consign, in a treaty, limitations and exceptions to it in favour of America. But the declaration of independence added a new feature to the war ; it compressed the dispute within very narrow limits, and reduced it to a very simple proposition. The intricate questions of taxation and representation, of internal and external taxation, of regulating commerce and of raising revenue, of admitting the prerogative of the crown, but denying the supremacy of parliament, questions somewhat metaphysical and not always perfectly distinct in their application, were absorbed by the vast stipulation of independence. This was the only basis on which America, at the period when the commission was appointed, would treat for peace. But the mother country was not yet prepared for that concession, nor did the ministry exist, that would have had the courage to have submitted to that act of humiliation. Lord Chatham, himself, declared in debate, in December '77, that he was an avowed enemy to American independence. He contended for a whig connexion between

the two countries, "founded in a constitutional dependence and subordination." This sentiment was generally entertained even by many of the leading members of the opposition. It was an opinion, to which Lord Chatham as often alluded in his later speeches on the American question, as he had done to the supremacy of parliament in his earlier ones :—

"My Lords," he said in his last speech, on the 7th April '78, "I rejoice that the grave has not closed upon me, that I am still alive to lift up my voice against the dismemberment of this ancient and most noble monarchy. Pressed down as I am by the hand of infirmity, I am little able to assist my country in this most perilous conjuncture; but, my lords, while I have sense and memory, I will never consent to deprive the royal offspring of the house of Brunswick, the heirs of the Princess Sophia, of their fairest inheritance. Where is the man, that will dare to advise such a measure. My lords, his majesty succeeded to an empire as great in extent, as its reputation was unsullied. Shall we tarnish the lustre of this nation by an ignominious surrender of its rights and fairest possessions? Shall this great kingdom, that has survived, whole and entire, the Danish depredations, the Scottish inroads, and the Norman conquest, that has stood the threatened invasion of the Spanish armada, now fall prostrate before the house of Bourbon? Surely, my lords, this nation is no longer what it was! Shall such a people, that, seventeen years ago, was the terror of the world, now stoop so low as to tell its ancient inveterate enemy,—take all we have, only give us peace? It is impossible."

Indeed, a motion made in the House of Commons by Mr. Powys, in April '78, to authorize the commissioners, employed to treat with America, to declare the independence of that country, though supported by Mr. Fox and Mr. Burke, seems to have been generally discountenanced, and was finally rejected without a division. Commissioners were, however, appointed under Lord North's act, who proceeded to America, but the Congress refused to treat with them.

This is the first and only attempt, of which any traces now remain, made by Lord North's administration for a cessation

of hostilities. They held to the terms, proposed in the commission of February '78, with a zeal and resolution, that finally proved fatal to them. Some interest may be attached to the first sincere endeavour of the mother country to conclude a peace with the United States. This effort, it is true, was not accompanied with the least success, nor can it in any way be connected with the treaty of '83. But it belongs to the diplomatic history of the period, and it is worthy of attention as illustrating the decided progress the "rebellion in the Massachusetts," as the first lord of the treasury was in the habit of calling it, had already made in the course of four years. It will not escape observation, that these terms, if embraced, substantially amounted to independence, or very speedily must have resulted in that state of things.

In '81 a proposition was made by the imperial courts of Russia and Austria, to arrange in a Congress, under their mediation, the terms of a general peace. This business occupied the attention of the European courts during several months. France, never satisfied with the manner in which America on her part conducted the war, probably disappointed in the advantages she expected to reap from the contest, and already embarrassed to a great degree in her own finances, was anxious in the extreme for peace, and took great pains to render the mediation effectual. France behaved with good faith on this occasion. Though, separate from the determination of the English government, not to bring the affair of her colonies before a European Congress, (a process attempted in one time with equal ill success in reference to another part of the American continent) insuperable difficulties arose in relation to the terms that should serve as the basis of the mediation, and the manner in which the representatives of America should appear. We shall not extract the articles of mediation offered by the imperial courts, as they merely propose in the usual form to guarantee a general pacification. But the terms were obviously inadmissible, as the independence of the United States was not made the basis of the mediation. Austria and Russia were not much disposed to acknowledge at that time the indepen-

dence.—An extract of a letter from the Marquis de Verac, French Minister at St. Petersburg, to Mr. Dana, American Commissioner, who had consulted him on the propriety of making known the credentials with which he was intrusted for that court, will leave little doubt on that head. The date of the letter is Sept. 1781 :—

“The mediating courts understand by this (the articles) that your deputies shall treat singly with the English ministers, as they have already treated in America with the commissioners in 1778. That the conclusion of their negotiation shall teach the other powers, upon what footing they are to be regarded, and that their public character shall be acknowledged without difficulty *from the moment when the English, themselves, shall no longer oppose it.* It is the design of the mediating powers to avoid committing themselves, by acknowledging the independence of the United States, till England herself shall have pronounced such an acknowledgment.”

It will not be necessary to follow Lord North's administration through the various debates, that took place from the time of his conciliatory bills to the fatal resolution moved by General Conway in Feb. '82. During that interval the revolution made no progress in Parliament. The opposition did not gain a man from the ministry for three years; on the contrary, they appear to have been convinced, that the question of peace or war, however much discussed in Parliament, was not there to be decided. America, itself, was the scene of action; and the event proved that, in that country, the time and terms of the treaty were to be dictated. Either the death of Lord Chatham had chilled and enfeebled the ardour and strength of opposition, or the indignation of the nation was roused at the alliance of the United States with their ancient enemy. It was said by a person, who interested himself infinitely in the concerns of America at that time, “that England would fight for a straw to the last man and the last shilling, rather than be dictated to by France.” One party, perhaps, was desperate and indifferent, and the other exhausted and disgusted. At least, it is certain that, till the capture

of Lord Cornwallis, less interest had been manifested for the affairs and fate of the colonies from the winter of '79 to that of '82 than in the preceding years.

We shall now recite, with some detail, the circumstances, that immediately preceded and attended the celebrated peace by which the independence of this country was acknowledged. This is the first effort in history of a proud and powerful government to meet, in negotiation, revolted and aspiring colonies. And we may add, the first instance where a parent state has proposed and consented to arrange, in a solemn instrument, even after a bloody contest, the terms of a solid and sincere reparation—to create, by the simple process of a treaty, made in the usual forms, another great and independent nation;—an event probably as unexpected to the European courts, as was the discovery of the continent, where that nation was founded, and from which it took its name. A new state was added to the civilized family of mankind with a government organized and administered upon a plan, unknown and undreamt of either in history or speculation, the model and the original of those civil and political institutions, now covering the vast continent of North and South America.

Very little change had taken place in the composition of the ministry since the commencement of hostilities; but towards the close of the war, a diversity of opinion existed on the subject of independence. Lord North was probably satisfied that it could not be withheld. His speeches betray the unsettled state of his mind—the agony of a minister struggling to disguise or repress opinions, it was both his duty and his desire not to entertain or express, but which were rapidly forcing themselves upon his conviction. On the other hand, Lord George Germaine declared, in the very last debate, that, sooner than acknowledge the independence, he would retire from the ministry. And Mr. Dundas went even so far as to say, that the person, who should propose an avowal of it would be guilty of a crime little short of high treason. No peace could be expected from this administration. They

maintained their places upon the simple tenure of not subscribing to the single condition on which a peace could be made; and while a prospect remained of regaining the colonies, the great majorities, with which the ministry began the war, remained faithful to them. The 22d February '82, General Conway made a first motion in the commons for putting an end to the American war. This motion, after a debate that lasted till 2 o'clock in the morning, was lost by the majority of a single vote, 193 to 194. As the question had been decided by so slight a majority, Mr. Fox immediately gave notice, that the motion would be shortly renewed. Accordingly, on the 27th of the same month, a motion similar in substance was made by the same member, and at a very late hour this resolution was adopted by a vote of 234 to 215, ministers being left in a minority of 19. The administration had suffered itself to be conquered in America; but the triumph of its adversaries at home was a tardy and faint one. The House of Commons relinquished the contest with evident reluctance. Indeed, we shall shortly see, that these votes did not at all indicate the feelings of that body on the subject of independence, and that a portion of the members still believed the colonies would be re-annexed to the empire. Lord North was abandoned, because it was out of the question to continue the war; but this did not necessarily lead, in the minds of all, to the further immediate consequence—the acknowledgment of independence. The next Cabinet, even formed as it was on the ruins of the war ministry, refused to recognize the act of July '76. It was dissolved partly on account of this circumstance, and partly on account of the death of the Marquis of Rockingham. Mr. Fox, one of the Secretaries of State, withdrew when it was ascertained that a principal condition on which it had been composed, the independence of America, was disavowed by a majority of the Cabinet. It would not be, therefore, quite correct to say, that the vote of February 27th, though it settled, as far as England



was concerned, the question of war, decided, in the same view, that of independence.

Towards the end of March, '82, the new administration was formed. It was called the Rockingham, from the name of the nobleman at the head of it. Mr. Fox and Lord Shelburne were the principal Secretaries of State.

In the beginning of April, Lord Shelburne sent Mr. Oswald to Paris to meet Dr. Franklin, then the only commissioner there, in a character partly official, but principally for the purpose of obtaining information. He was not authorized to propose terms of peace, though he intimated that the independence of the colonies would be agreed to. We find, however, this suggestion clogged with a condition, that England should be placed by France in the state of 1763. Mr. Oswald made one or two journeys between Paris and London, but nothing was accomplished. In April Mr. Grenville was sent by Mr. Fox to Paris. When he first arrived, it was supposed he was to engage in a negotiation for a general peace. He had various conversations with Dr. Franklin and M. de Vergennes; but, when his powers were produced, they were very full in regard to France, but contained no mention of the allies. He said, his power was a copy of an official form in the office, and that America was doubtless omitted by accident. His instructions from Mr. Fox directed him to acknowledge the independence, previous to the commencement of a treaty.

The British ministry, though soon dissolved by the death of the Marquis of Rockingham, were early distracted by a want of unanimity, and early lost the confidence of the people. The negotiation with America during May and June made no progress. Mr. Oswald was the agent of Lord Shelburne, known to be opposed to the acknowledgment, and Mr. Grenville, of Mr. Fox. This ministry had been forced upon the king by a vote of the House of Commons. The hopes of regaining America were again excited by the decisive victory of Lord Rodney in the West Indies, and the unexpected suc-

cesses of Sir Eyre Coote against Hyder Ali in the East; and, if credit may be given to the reports of the day, the government looked forward with some confidence to the making a separate peace with Congress by means of Sir Guy Carleton, who had been appointed to the command of the forces in North America. These circumstances combined to render this attempt at peace abortive. The American commissioners were at this time entirely in despair. Mr. Adams, writing from the Hague, June 13, '82, observes, "I cannot see a probability that the English will ever make peace, until their finances are ruined, and such distress brought upon them, as will work up their parties into a civil war."

It was not till September of the same year, under Lord Shelburne's administration, formed upon the dissolution of the Rockingham, that the British government took a decisive and sincere step to make peace, and authorized their commissioner, Mr. Oswald, at Paris, to acknowledge the independence of the colonies. The following are the words of this instruction:—

"In case you find the American commissioners are not at liberty to treat on any terms short of independence, you are to declare to them, that you have authority to make that concession. Our ardent wish for peace disposing us to purchase it at the price of conceding the complete independence of the thirteen colonies, viz. : New-Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties in Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in North America."

This is the first instruction given by the British *Ministry* in which it was proposed to recognize the celebrated act of July 4th, 1776. A great and immediate progress was now made in the preliminaries. We have hitherto confined this relation entirely to the proceedings of the British government; for it always depended upon England to make peace. America could not be desirous of continuing the war; but she had declared her independence, and was able to maintain it.

There were, therefore, only two conditions upon which she could consent to a cessation of hostilities; either that the king's fleets and armies should be withdrawn, or the independence recognized. As early as August '79, Congress prepared a draft of instructions, and, in September following, appointed John Adams, of Massachusetts, a commissioner to make a treaty of peace, with subsequent instructions to conclude one of commerce with Great Britain. The commissioner was particularly directed to make it, "a preliminary article to every negotiation, that Great Britain shall agree to treat with the United States as sovereign, free, and independent." Mr. Adams went without delay to Europe, being subsequently appointed to the Hague. But he was not authorized to make propositions to the court of St. James, and there is no ground for believing that America, at any time, during the war, and after the act of July '76, made any attempt at negotiation, either directly or by means of her allies. At the period of the interviews of Mr. Pultney with Dr. Franklin at Paris, Congress had neither appointed a commissioner nor prepared instructions. We have not been able, in the secret journals of Congress, to discover the slightest intimation of a desire to abandon the ground of the instructions of August, '79. America at all times rejected with great emphasis even the project of a short truce. This was considered highly dangerous to the liberties of the country, though a favourite notion with many of her best friends in England. In the instructions of October, '80, and of June, '81, the same direction is inserted in relation to the acknowledgment. The commission, under which the preliminaries of the treaty were actually concluded, was issued by Congress in June '81.

It empowered "John Adams, Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson, or the majority of them, or such of them as may assemble, or in case of the death, absence, indisposition, or other impediment of the others, to any one of them, full power and authority, general and special commission to repair to such place, as may be fixed upon for opening the nego-

tiations for peace, and there for us, and in our name, to confer, treat, agree, and conclude with the ambassadors, commissioners, and plenipotentiaries of the princes and states, whom it may concern, vested with equal powers, relating to the establishment of peace, and whatsoever shall be agreed and concluded for us, and in our name, to sign, and thereupon make a treaty or treaties, and to transact every thing that may be necessary for completing, securing and strengthening the great work of pacification, in as ample form, and with the same effect, as if we were personally present and acted therein."

All the commissioners, except Mr. Jefferson, were present during the discussions, being in Europe at the time the meeting was appointed. Mr. Jefferson was in America, and did not leave it, as a report reached the government that the preliminaries were already signed. Mr. Oswald's commission in proper form was not issued till the 21st of September. Some delay had taken place in consequence of objections made by the American commissioners to the style, by which the United States were designated. The true and proper appellation of this country was omitted, the denomination of "colonies" being employed. But the American envoys refused to proceed in the business until a commission, giving to the United States their public and diplomatic name, was sent to Mr. Oswald. This appellation was the thirteen United States of America.

There were two subjects that created difficulty and great irritation: the fisheries, and compensation to the loyalists and refugees. The last point threatened at one time to put an end to the negotiation. As to the independence, the French minister appeared to attach less importance to a formal recognition than the American commissioners. M. de Vergennes thought the first commission of Mr. Oswald sufficient; he did not think it necessary America should insist on a formal acknowledgment. We have intimations of this disposition as early as July '79, in the communication of Mr. Gerard, the French minister to Congress. The unpopularity

of that gentleman in this country was supposed to be owing to the steps he took to induce Congress to renounce the idea of a formal recognition, together with the right of the fisheries, and the boundaries of the Mississippi.

The American loyalists or refugees, prolonged the war by the ill founded accounts they gave the ministers respecting the state of parties in America. Indeed, if the British cabinet had been less under the influence of those unfortunate individuals than of their own officers, the disastrous contest with the colonies would certainly have terminated at an earlier period. It is a remarkable fact that the principal military men, who returned from America, such as General Burgoyne, Lord Cornwallis, Sir Wm. Howe, and Sir Henry Clinton, expressed opinions unfavourable to a continuation of the war. Whether the loyalists had taken arms against the United States from an honourable attachment to the mother country, or from interested motives, could not, and ought not, to affect the question. In considering this subject, it is impossible to go back to the original proposition, whether the parent state or colonies first violated the social compact that held them together, because that is really the point which led to the war and terminated in the independence. Neither does it signify that the war did not first begin on the part of the colonies for independence. Repeated and aggravated injustice fully warranted that last step, if the first measures of the people and of Congress could be justified. The loyalists had had the misfortune, or ill luck, to join a cause that had failed. Justice did not require that the victorious party should make them an indemnity. On the other hand, if the mother country had recovered the government of the colonies, the loyalists would have received an abundant reward, both of wealth and honours. All humane persons might have felt compassion for their deplorable condition. They were objects of pity; they had lost their country and their property. But at the conclusion of the revolution war, the American government was not in a condition to extend gra-

tuitously bounties to foreigners, as at this time the loyalists had unhappily, for themselves, become. It could not pay even its own officers and soldiers, much less its numerous citizens who had suffered such great losses by the desolations of the enemy. Again, "a constitutional" difficulty presented itself. The estates of the loyalists had been confiscated by the acts of the states, and in numerous instances, had passed by the usual legal transfers into the hands of various individuals. Congress was not invested by the articles of the Union with any power over these local and domestic acts. It was a matter exclusively reserved to the internal polity of the states themselves. The British insisted with great earnestness, that full indemnity should be provided for the whole body of loyalists. They were at the pains of sending an under Secretary of State, Mr. Strachey, to Paris, to urge this point. But he made no impression upon the American commissioners. The instruction of the government issued October 18th, 1780, was precise and positive.

"That with respect to those persons, who have either abandoned or been banished from any of the United States, since the commencement of the war, he is to make no stipulations whatsoever for their re-admittance, and, as to an equivalent for their property, he may attend to propositions on that subject only on a reciprocal stipulation that Great Britain will make full compensation for all the wanton destruction which the subjects of that nation have committed on the property of the citizens of the United States."

This obstacle delayed the negotiation; and, at one time, great apprehensions were felt, that the objection would be fatal. The ministry, some time after, in a debate on the provisional articles, declared, the business had come to such a pass, that the government had the alternative of continuing the war, or of abandoning the loyalists. While the articles of the provisional treaty were under discussion, Great Britain was still in possession of New-York, Charleston, Penobscot, Rhode-Island, Detroit, and the fisheries; and the surrender of these places and rights, was made a condition of compensa-

tion to her American subjects. This was a very troublesome demand ; but at this difficult crisis, a compromise was effected, in itself, perhaps, little more than nominal, considering the relation of the confederation to the independent states that composed it. This arrangement will be found in the 5th article of the treaty. The commissioners were satisfied that a treaty was impracticable, without some arrangement respecting the loyalists, though the article is an undoubted departure from their instructions. Congress, however, ratified the whole instrument, by an unanimous vote.

The provisional treaty was signed at Paris, the 30th November, 1782,—on the part of America, by Messrs. Franklin, Adams, Laurens and Jay,—and, on the part of Great Britain, by Mr. Richard Oswald, Lord Shelburne being still at the head of affairs in that country. The preliminary articles, being ratified, within the term specified, by the respective governments, the *definitive* treaty of peace, substantially a copy of the *provisional* one, was signed,—for America, by Messrs. Franklin, Adams and Jay,—and for England, by Mr. David Hartley, at Paris, the 3d September, 1783.\* This treaty was

\* We insert in a note the important articles of the *definitive* treaty, with a reference to the others. The boundaries, on the east, north and north-west, are not entirely defined to this day, though in amicable progress:—

“ART. 1. 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.

“ART. 2. 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 north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source

unanimously ratified by Congress, on the 14th of February, 1784. And, on the same day, they unanimously issued a re-

of Saint 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-westernmost 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 Iroquois, 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 Philipenux, to the Long Lake; thence through the middle of the 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 straight 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.

“ART. 3. It is agreed, that the people of the United States shall con-



commendation to the states in pursuance with the stipulations of the 5th article. Hostilities ceased, by proclamation, in April

tinue 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 gulf 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.

"ART. 4. 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.

"ART. 5. Congress to recommend to the states to provide for the restitution of confiscated estates, &c. Twelve months allowed to certain persons to endeavour to recover their estates, &c. Congress to recommend to the states a re-consideration of their laws concerning confiscations, &c. Persons having an interest in confiscated lands, to meet with no lawful impediment in the prosecution of their just rights.

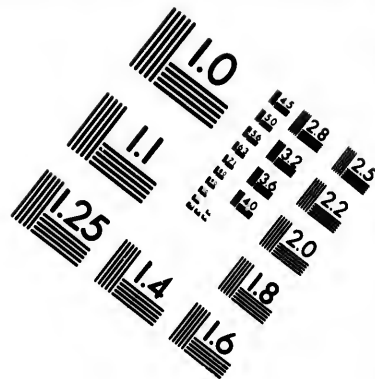
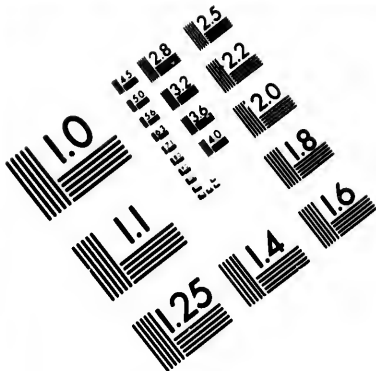
"ART. 6. Confiscations and prosecutions to cease, &c.

"ART. 7. Firm and perpetual peace; prisoners to be released; negroes not to be carried away; armies and fleets to be withdrawn; archives, records, &c. to be restored, &c.

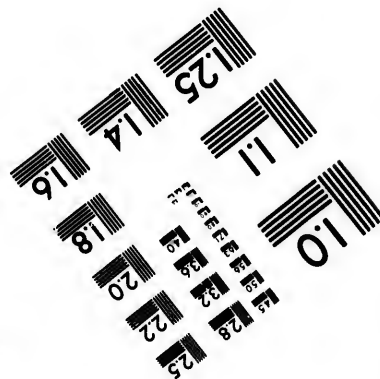
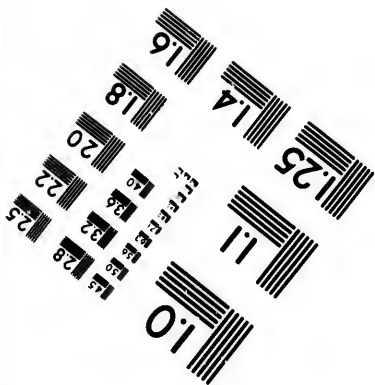
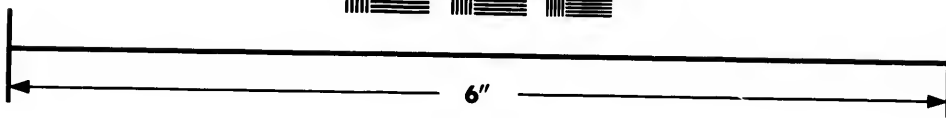
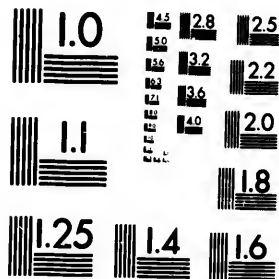
"ART. 8. The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain, and the citizens of the United States.

"ART. 9. 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."





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

0  
16  
18  
20  
22  
25  
28  
32  
36  
40

40  
36  
32  
28  
25  
22  
20  
18  
16  
14  
12  
10  
8  
6  
4  
2  
0

of the preceding year. The British minister refused to insert an article into the treaty, on the subject of commerce.

The boundary of the United States, established by this treaty was, with the exception of the north-west portion, precisely in conformity with the instructions of Congress of August, '79. America succeeded to the territorial rights of the British king, a principle distinctly and publicly announced, and of infinite value in subsequent negotiations with Spain. The instructions of '79, would have deprived this country of the use of lake Superior, whereas the treaty boundary included the navigation of all the lakes. A greater extent of territory, also, fell into our hands. The English were desirous of holding all the territory described by the Quebec bill of '74. Canada, by that instrument, was bounded south by the Ohio, and thence, due west to the Mississippi. This boundary, of course, included all the lakes, the present states of Ohio, Indiana and Illinois, and the territory of Michigan, and of the north-west. The Quebec bill was one of the grievances of which the colonies complained, and is alluded to in the declaration of independence. But this proposition was at once rejected. The British commissioner stipulated, with great care for the free navigation of the Mississippi. A very wrong estimate appears to have been formed, by his government, of the value of this privilege. The English fur companies had hunting grounds about its source; but its mouth was, at that time, in the possession of Spain,—and, from the 45th degree to the Gulf of Mexico, England did not own a foot-hold upon its banks. The navigation could have been valuable, only on the expectation of coming again into possession of West Florida; though, by treaty, it still remained in the hands of Spain. The English government seemed to have had hopes of this acquisition; as a separate article, never communicated to France, was introduced into the *provisional* treaty, to meet that change of territorial right. But, according to appearances, in '82, the British might as well have stipulated for a right to navigate the Rhine, or Rhone.

The geography, about the sources of the Mississippi, was little understood in those days; and the stipulations, on this head, were made in the dark by both parties. It is now ascertained, that the British boundaries of '83 did not touch that river. They would, therefore, have had a right to have gone through the territories of the United States. for the stipulation of navigation was an unconditional one. One remark naturally forces itself upon us at this time. England and America divided, in this treaty, a vast extent of territory, which, to say the least, was entirely unknown to both, and was inhabited by tribes of savages, certainly uncivilized, but independent, and who had never fallen under the dominion of either country. America preserved her original right in the fisheries, and such territorial rights as belonged by charter to the colonies. The north-west boundary was a matter of great embarrassment; but it is obvious, at once, that the proposition to bring the British boundary down to the Ohio, and to settle the loyalists in the Illinois, would have led to serious and immediate difficulties.

We are not aware, that the right of any nation to the fisheries was formally recognized, till the treaty of Utrecht, in 1713. The 13th article of this treaty ceded Newfoundland, with the adjacent islands, to Great Britain; Cape Breton, with the other islands situated in the mouth and in the gulf of St. Lawrence, together with the right of taking and curing fish on the coasts of Newfoundland, from Cape Bonavista, on the eastern side, to the northern extremity of the island, and thence down the west coast to Point le Riche, were reserved to France. The treaty of Paris, of '63, made some alterations in this arrangement; though Newfoundland, itself, remained as in 1713. But the French were restricted from fishing in the gulf of St. Lawrence, within three leagues of the British coasts, and fifteen of Cape Breton. They retained the small islands of St. Pierre and Miquelon, with the right of keeping a military post on them. Spain, by the 18th article of the same treaty, renounced, in favour of Great Britain, her right of fishing in the neighbourhood of New-

foundland. It therefore happened, when the revolution war began, that the most valuable fishing grounds and privileges were in the possession of England, and of her subjects in North America.

Under the different charters defining the powers and extent of the New England colonies, or provinces, persons, born in any of these governments, were declared to have all the rights and privileges of natural born subjects. A right of fishing on the coasts was particularly specified; as well as to build all necessary stages, in places not occupied, for drying and curing fish.

“ It was their birth-right, as British subjects; it was their special right, as secured to them by charter; and the British Parliament itself, could deprive them of it, as they did, only by one of those acts which provoked and justified the declaration of independence. In March, '75, Parliament passed ‘an act to restrain the trade and commerce of the provinces of Massachusetts Bay, and New Hampshire, and colonies of Connecticut and Rhode Island, and Providence plantation, in North America, to Great Britain, Ireland, and the British islands in the West Indies; and to prohibit such provinces and colonies from carrying on any fishery on the Banks of Newfoundland, and other places therein mentioned, under certain conditions and limitations.’ In moving for leave to bring in this bill, Lord North ‘supported his motion by declaring that, as the Americans had refused to trade with this kingdom, it was but just that we should not suffer them to trade with any other nation. In particular, he said, that the fishery on the Banks of Newfoundland, and the other banks, and all the others in America, was the undoubted right of Great Britain; therefore we might dispose of them as we pleased. That, although the two houses had not declared all Massachusetts Bay in rebellion, they had declared, that there is a rebellion in that province. It was just, therefore, to deprive that province of its fisheries’

“ In the debates upon this bill, all the abilities and all the eloquence of both parties, in the British Parliament, were called forth. On this bill, Mr. Charles Fox said, ‘that the bill must have been calculated to put an end to all that remained of the legislative au-

thority of Great Britain over America. That it must be intended to show to the colonies, that there was no one branch of supreme authority, which Parliament might not abuse in such a manner, as to render it reasonable to deny, and necessary to resist it.' Then, after enumerating all their previous acts of oppression, he added, 'but the British legislature is now to convince the Americans, that this power, thus used, may be made by far the most oppressive, and worse than any of those they had hitherto denied. He was quite satisfied, that the bill was meant for nothing else, but to exasperate the colonies into open and direct rebellion.' Mr. Burke, pursuing the same idea, and enlarging upon it, applied to the ministry, who brought forward the bill, the passage from Macbeth,—

'I am in blood  
Stept in so far, that, should I wade no more,  
Returning were as tedious as go o'er.'

He said, 'that the scheme was new, and unheard of, in any civilized nation, to preserve your authority by destroying your dominions. It was rather the idea of hostility between independent states; where one, not being able to conquer another, thinks to reduce its strength gradually, by destroying its trade, and cutting off its resources.' On the passage of the bill through the House of Lords, there was a protest against it, signed by sixteen peers, among whom are the names of Rockingham, Camden, and Fitzwilliam.

"The nature of the rights and liberties, consisted in the free participation in a fishery. That fishery, covering the bottom of the banks, which surround the island of Newfoundland, the coasts of New England, Nova Scotia, the gulf of St. Lawrence, and Labrador, furnishes the richest treasure, and the most beneficent, that ocean pays to earth, on this terraqueous globe. By the pleasure of the Creator of earth and seas, it had been constituted, in its physical nature, ONE fishery, extending, in the open seas around that island, to little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself into all the bays, creeks, and harbours, to the very borders of the shores. For the full enjoyment of an equal share in this fishery, it was necessary to have a nearly general access to every part of it. The habits of the game, which it pursues, being



so far migratory, that they were found, at different periods, most abundant in different places; sometimes populating the banks, and at others swarming close upon the shores. The latter portion of the fishery had, however, always been considered as the most valuable, inasmuch as it afforded the means of drying and curing the fish, immediately after they were caught, which could not be effected upon the banks. By the law of nature, this fishery belonged to the inhabitants of the regions in the neighbourhood of which it was situated. By the conventional law of Europe, it belonged to the European nations, which had formed settlements in those regions.

“The continuance of the fishing liberty was the great object of the article;\* and the language of the article was accommodated to the severance of the jurisdiction, which was consummated by the same instrument. It was co-instantaneous with the severance of the jurisdiction itself; and was no more a grant from Great Britain, than the right acknowledged in the other part of the article,—or than the independence of the United States, acknowledged in the first article. It was a continuance of possessions enjoyed before; and, at the same moment, and by the same act, under which the United States acknowledged those coasts and shores as being under a foreign jurisdiction, Great Britain recognized the liberty of the people of the United States to use them for purposes connected with the fisheries. As a possession, it was to be held by the people of the United States, as it had been held before. It was not, like the lands partitioned out by the same treaty, a corporeal possession; but, in the technical language of the English law, an incorporeal hereditament,—and, in that of the civil law, a right of mere faculty, consisting in the power and liberty of exercising a trade, places, in which it is exercised, being occupied only for the purposes of the trade. Now, the right or liberty to enjoy this possession, or to exercise this trade, could no more be affected or impaired by a declaration of war, than the right to the territory of the nation. The interruption to the exercise of it, during the war, could no more affect the right, than the occupation, by the enemy of territory, could affect the right to that. The right to territory could be lost

\* See Treaty, Art. 3.

only by abandonment, or renunciation, in the treaty of peace; by agreement to a new boundary line,—or by acquiescence in the occupation of the territory by the enemy. The fishery liberties could be lost, only by express renunciation of them in treaty,—or by acquiescence, on the principle that they were forfeited, which would have been a tacit renunciation.”\*

The treaty of '83 was an instrument of a peculiar character. It differed in its most essential circumstances from most of the treaties made between nations. It was a treaty of partition;—a treaty to ascertain the boundaries and the rights of the nation, the mother country acknowledged to be created by that instrument. Independence was one of the stipulations made in favour of America by Great Britain, the boundaries were another, the fisheries a third;—for the mother country asserted equal claims to all these rights or privileges. The treaties made by France or Holland with the United States before '83, were of a different description. Those countries had no pretensions to the government, territories or rights of the colonies. And, therefore, America did not seek from them an acknowledgment of her own rights or privileges.

The conduct of the American commissioners, in agreeing to the provisional articles without consulting the court of France, has never been fully explained. The 8th article of the treaty of alliance, absolutely, though not in direct terms, forbids either party to enter into any negotiations for peace without the consent of the other. The instructions given to the commissioners on this point, were as precise and positive as language could make them; and they were often repeated. We shall quote one resolution from the secret journals of Congress.—“Resolved, unanimously, that as neither France or these United States may of right, so these United States will not conclude either truce or peace with the common enemy, without the formal consent of their ally first obtained; and that any matters or things, which may be insinuated or as-

\* The Fisheries, and the Mississippi.

serted to the contrary thereof, tend to the injury and dishonour of the said states." One of the commissioners, at least, was as deeply impressed as Congress with the impropriety of making a separate peace; and as late as January '82, only a few months before the provisional articles were signed, he made use of the following emphatic language:—"The Congress will never instruct their commissioners to obtain a peace on such ignominious terms; and though there can be but few things in which I should venture to disobey their orders, yet if it were possible for them to give me such an order as this, I should certainly refuse the act. I should instantly renounce their commission, and banish myself forever from so infamous a country." It is impossible to suppose that these sentiments were not sincere. At that time it could neither have been for the welfare nor the honour of America to have consented to such an arrangement. M. de Vergennes had been at great pains to inform the American commissioners of the intrigues of the English for a separate peace; and had apparently spoken with pride and exultation of the readiness and firmness with which he had resisted these endeavours. In the first instructions given to Mr. Adams, France having complained, that the commissioner was not directed to consult the French court, a resolution was adopted to remove this ground of uneasiness. England, as M. de Vergennes declared, in the spring of '82, offered France, to induce her to a separate peace, the possession of her conquests in the West Indies, the suppression of the commissary at Dunkirk, and advantages in the East. This proposal was indignantly rejected. Uncommon harmony, a mutual good understanding, and a ready communication of all important matters, appear to have prevailed up to the hour that the preliminaries were signed. The negotiation was conducted both on the part of France and of the United States, agreeably to the recommendation and advice of M. de Vergennes, expressed a few months before. Though each nation treated with a separate commissioner, the negotiation was simultaneous, and it was under-

stood that the preliminaries should all be signed on the same day. On the 29th of November, Dr. Franklin wrote to M. de Vergennes, to inform him, that the provisional articles between Great Britain and the United States were agreed on. He concluded by saying: "To-morrow I hope we shall be able to communicate to your excellency a copy of them." The next day, the 30th, they were signed. But they were not communicated till after the signatures were affixed. The separate article respecting Florida was never communicated at all. The court of France regarded this proceeding with great dissatisfaction; and the minister soon expressed in bitter language, the chagrin and mortification he felt at the circumstance:—

"I find great difficulty in explaining your conduct and that of your colleagues. You have concluded your preliminary articles without giving us information, though your instructions particularly directed you to take no steps without the participation of the king. You are going to raise in America hopes of an undoubted peace, and we are here in reality ignorant of the state of your negotiation. You are celebrated, sir, for wisdom; you are acquainted with the obligations of society; you have discharged your duties with exactness during your life. Do you think that in this business you have fulfilled those that bind you to the king? I shall not extend my reflections farther. I leave them to your own ideas of propriety."

We shall extract part of the letter Dr. Franklin wrote in answer to these reproaches. We believe none of our readers will think it remarkable for its dignity:—

"Nothing has been agreed on in the preliminaries contrary to the interests of France, and no peace is to take place between us and England, till you have concluded yours. Your observation is, however, apparently just, that in not consulting you before they were signed, we have been guilty of neglecting a point of bienséance. But as this was not from want of respect for the king, whom we all love and honour, we hope it will be excused, and that the great work, which has hitherto been so happily conducted, is so

nearly brought to perfection, and is so glorious to his reign, will not be ruined by a single indiscretion of ours. And, certainly, the whole edifice sinks to the ground immediately, if you refuse on that account to give us any further assistance. It is not possible for any one to be more sensible than I am, of what I and every American owe to the king, for the many and great benefits and favours he has bestowed upon us. All my letters to America are proofs of this, all tending to make the same impressions on the minds of my countrymen, that I felt in my own. And I believe that no prince was ever more beloved and respected by his own subjects, than the king is by the people of the United States. The English, I just now learn, flatter themselves they have already divided us. I hope this little misunderstanding will, therefore, be kept a perfect secret, and that they will find themselves totally mistaken."

This direct deviation from positive instructions, this apparent ingratitude and perfidy to a faithful and valuable ally, is susceptible of a full and ready explanation. Early in '82, it was foreseen that England was not the only country, that would present obstacles to a peace, safe and satisfactory to the United States. America, now independent, found herself compelled to resist Spain, claiming territory on the one hand, and France seeking an exclusive possession of the fisheries on the other. She had succeeded to the rights, the advantageous position, and a portion of the commerce of the mother country in the new world; and undoubtedly France and Spain were well aware, that the United States would become dangerous neighbours on the land, and troublesome competitors on the ocean. The American colonies had always been so, even while their trade was subject to the control and prohibition of Great Britain. But France and Spain did not anticipate, that America would either claim, or be able to maintain all the former rights of the colonies. They entered into the negotiation of '82 with the intention and expectation of extorting from England, to the injury of the United States, some portion of her territory, and a part of one of

ner most valuable privileges. Both those countries had a heavy balance to settle with Great Britain in the new world; and they remembered, with bitterness and mortification, the provisions of the two treaties of Utrecht and Paris.

Spain was the first court that advanced pretensions incompatible with the just and undoubted boundaries of the United States. At the time of Mr. Juy's negotiation in that country, in '80, the Spanish minister, Count d'Aranda, intimated an intention, on the part of his government, of excluding America from territory to the westward of the Alleghany. The pretension was in every way ill-founded; but Spain was a powerful nation, governed by a Bourbon, in close alliance with France, firmly united to that country by a family compact, and an uncommon identity of views and policy. They had been engaged in the general war with England, and were engaged in the general negotiation at Paris. The ministers of the two Bourbon princes acted upon all occasions in exact concert, and would mutually contribute either to depress England, or to abridge the new and unconfirmed powers and rights of the United States. In truth, to consult France concerning boundaries, was indirectly obtaining the approbation of Spain; and the commissioners had every reason to suppose that latter country would never consent to the western frontier, marked out in the preliminary articles. The apprehension of meeting with obstacles in securing this most valuable, nay, indispensable boundary, acted as a powerful inducement not only to hasten the progress of the preliminaries, but as a very justifiable pretence for withholding the knowledge of them from the court of France. These considerations rendered it inexpedient to communicate, at any period of the negotiation, the separate article on the conditional boundaries of West Florida. The boundaries America sought, were the legitimate boundaries of her country; at least, it ill became Spain to contest them. No other country in Europe, but England, could possibly claim a right to dictate to the United States on the western quarter; for England, in her original capacity,

actually owned as far as the Mississippi. The negotiation had taken at this time a very unexpected turn. America and England became parties to oppose the aspiring spirit of the house of Bourbon. Circumstances produced a sudden coalition between two nations, engaged for seven years in cruel warfare, and which had ended in the final discomfiture of one of them. It was for the benefit of both to conclude a peace as speedily as possible, England to lessen the number of her enemies, and America to prevent her former allies from despoiling her of those rights, her recent enemy had consented to resign.

On the side of France, America had much more to fear. She was disposed to curtail her fishing rights and privileges, to maintain Spain in her pretensions respecting boundaries, and to aid England in exacting a compensation for the loyalists. A letter written by M. de Marbois, secretary of the French legation, from Philadelphia, dated March 13th, '82, intercepted and decyphered at the time, if it did not give the first intimation of similar designs in the French court, strengthened, at least, the suspicions before entertained. M. de Marbois advised M. de Vergennes to cause it to be intimated to the American ministers, "his surprise that the Newfoundland fisheries have been included in the additional instructions. That the United States set forth pretensions therein, *without paying regard to the king's (French) rights*, and without considering the impossibility they are under of making conquests, and of keeping what belongs to Great Britain.\* It will be better to have it declared at an early period to the Americans, that their pretensions to the fisheries of the great Bank are not founded, and that his majesty does not mean to support them." These extracts, taken in connexion with the obvious policy of the French court, could leave few doubts

\* Mr. Ralph Izzard, of South Carolina, suggested to Mr. Adams, in April '78, that France had formed a design to deprive America of the fisheries.

concerning its designs. The commissioners had received very precise and positive instructions, on no account to surrender the fisheries.\* The importance of this branch of com-

\* This remark requires an explanation. In the instructions to conclude a *treaty of peace*, an "equal common right to the fisheries," was *not* made an ultimatum. But on the subject of a "treaty of commerce," the following directions were given to the commissioners:-- "In order that you may be the better able to act with propriety on this occasion, it is necessary for you to know, that we have determined, 1st. That the common right of fishing shall in no case be given up. 2d. That it is essential to the welfare of all these United States, that the inhabitants thereof at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said states. 3d. That application shall be made to his most Christian Majesty to agree to some article or articles for the better securing to these states a share in the said fisheries. 4th. That if, after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States, in taking fish on the banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said states, and the force of the Union be exerted to obtain redress for the parties injured; and 5th. That our faith be pledged to the several states, that without their unanimous consent, no *treaty of commerce* shall be entered into, nor any trade or commerce carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are, therefore, not to consent to any treaty of commerce with Great Britain, without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland, and other fisheries in the American seas, any where, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation. And in the negotiation, you are to exert your most strenuous endeavours to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia, as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries, by the inhabitants of these states." The parties in Congress on the fisheries, appear to



merce was well known to them. They saw it was in jeopardy, and they believed it to be more for the interest of the country to adhere to this portion of their instructions, than to disobey those that related to the communication of the preliminaries.\*

The French minister was also disposed to unite with England in insisting upon a compensation to the loyalists. France did not join in the war for the sake of supporting the cause of liberty; nor could the French government regard the principles of the American revolution with kindness or confidence. It was natural France should feel a greater sympathy for monarchical governments, and individuals that maintained monarchical principles. When she assisted America, it is not at all likely she looked to the kind of government that would be established; but it is most likely she would have preferred the establishment of any other than a republican one; at any rate, there appears to be no inconsistency in supposing that France might be desirous that the United States should succeed against England, and at the same time, think it extremely just that a compensation should be given to that portion of the people who had been faithful to their king. The preliminaries signed with England contained nothing unfavourable to France. England ceded to the United States nothing that either France or Spain could under any reasonable pretence claim. And it was made a condition of the preliminaries that the definitive treaty should not be concluded till peace was made between England and France. The commissioners may have been guilty of a neglect of

have been equally divided; at least, the struggle was very long. One party could not obtain a majority to induce Congress to give them up, nor the other to make them an ultimatum of peace.

\* Congress directed the commissioners to communicate every step to the French minister, "ultimately to govern themselves by the advice and instruction of the French court." This arrangement actually made M. de Vergennes minister plenipotentiary for the United States. It committed their independence and interests to his control.

bienséance (to use Dr. Franklin's expression,) but no harsher term could justly be applied to their conduct. France set the example of disregarding the spirit of concert and mutual aid and confidence, enjoined upon the two powers by the treaties of amity and alliance. France was secretly using her influence, at that time very powerful, in a manner injurious to America. The confederation, therefore, was no longer under any obligation to adhere to the conditions of the treaty of '78. Being opposed, nay deserted, by their ally on the first approaches of peace, the American commissioners considered themselves absolved from obeying the instruction that directed them to consult France. Indeed, the silence of the French minister in relation to this proceeding, affords ample justification for their conduct. The only notice of the dissatisfaction of his government, we have on record, is in the letter written to Franklin by M. de Vergennes. The minister rather intimates there that the commissioners had been guilty of an act of indecorum. The letter is severe and reproachful in its terms and allusions, but it does not treat the deviation as a very serious business, as in reality, it was not. The intercourse between the ministers was not interrupted. M. de Vergennes sent despatches by the vessel the commissioners had engaged to carry a copy of the provisional articles. The resident in America entered no protest touching the conduct of the commissioners, nor did he make any complaint whatever. The French court appeared to be satisfied with the explanations that were given. We may, therefore, infer from these circumstances, either that the government thought the deviation quite insignificant, or that there were sufficient reasons for it.\* These remarks are made for the single pur-

\* When the definitive treaty was signed, the English commissioner refused to sign it at Versailles. It was therefore signed at Paris. M. de Vergennes desired the American commissioners to send him an express to Versailles when it was done, as he did not choose to sign on the part of France till he was sure the American treaty was completed.

pose of justifying the American commissioners. To France herself, America was under great obligations. That country had certainly afforded very material assistance, especially in the supply of arms, money and military stores. These articles were furnished at an early period of the war, when they were indispensable, and could not have been obtained from other countries. In the course of '78, 79, 80, France loaned America, 8,000,000 on favourable terms. It is unreasonable and even ridiculous to enquire into the motives that induced her to make the alliance. It is sufficient to say that it was most fortunate for America that she could offer such inducements to France as ultimately to lead her into the measure.

This treaty was exceedingly favourable and honourable to America ; and was negotiated by the commissioners with uncommon address. They took advantage very successfully of the ancient jealousy and enmity that existed between England and the house of Bourbon. Without entering into this fearful war for independence, America obtained an acknowledgment of it in the fullest manner, as well as a confirmation of the original boundaries of the colonies, and a recognition of her rights and privileges in the fisheries. She made a much more favourable treaty with Great Britain than either Spain or France. In England the treaty with America was exceedingly unpopular, and taken together with the concessions she was absolutely under the necessity of making at the same time to France and Spain, threw the ministry into a minority in the first debate in the House of Commons. The acknowledgment of the independence of this country would have cost any administration their places, but the time had come when the colonies must be sacrificed, together with the ministry that consented to the dismemberment. It was an act of self-devotion to the good of their country, and, one may truly say, of the world. On the part of Great Britain, it was a treaty to declare the independence of America. The other conditions concerning territory and the fisheries, though undoubtedly extorted, followed

as necessary consequences. But time has proved that necessity acted on this occasion the part of good policy. America would have been uneasy under any terms that at all abridged the freedom and perfect independence of her situation. She had become a nation, and she properly and naturally required all those rights and privileges, which belong to that condition. Great Britain could not have held a hunting lodge, or exercised a single franchise within territory or jurisdiction, once strictly colonial, without awakening immediate jealousies or speedily interrupting the peace.

Before finishing the account of this treaty, it is only necessary to remark that the commissioners did not succeed in making any commercial arrangements. They thought it advisable to defer the consideration of that subject, though they had already secured one of the principal objects proposed in a commercial treaty. The English sought for delay in this business; they were not prepared for the new state of things; they had not determined on what conduct to pursue in regard to America; or they might have had hopes that the revolution was not thoroughly consolidated. Evidently, an expectation was entertained, that the confederacy would dissolve from weakness, and that some portion of the wreck would seek again the support and union of the mother country; a sentiment which was universal throughout Europe.

## CHAPTER IX.

## TREATY OF 1794 WITH GREAT BRITAIN.

*Confederation no power over Commerce—Commercial conventions with France, Holland, Prussia and Sweden—No trade—Trade to England only important one—Depended on an annual act of Parliament—Policy at variance with Europe—Mr. Adams chosen to St. James—First envoy—Well received—England refused to make a treaty—Account of violations of treaty of '83—Debts—Interest—Confederacy dissolved—Hammond, first envoy to this country—Morris—Pinckney—Origin of oppressive acts by belligerents—war between France and England—Provisions contraband—Rules of neutrality—Danger of a war—Executive appoints Mr. Jay to London—Decides question of neutrality—Concludes a treaty—Unpopular—Eventually favourable to United States.*

**T**HE United States, at the close of the war of '83, had commercial treaties with France, Sweden and Holland, but no trade with either of those countries. The Congress of the confederation were not invested with the power to regulate commerce, or to levy imposts, and a proposition, made to the states, authorizing the government to assess a duty of 5 per cent. ad valorem on imports, had been rejected. The confederacy was adopted for the purpose of carrying on the war, and was, in reality, adapted to few other purposes. The excitements of the contest and the necessity of securing their independence, supported the people in their hardships. But

peace left them, if possible, with still greater hardships, and without a single circumstance of excitement. The external pressure, that alone had kept the states united, was removed; and at this juncture there appeared thirteen sovereign, independent governments, bound together nominally in one confederation, each entitled and equally qualified in its own capacity to assess taxes, to establish duties and rates of tonnage, and to open or forbid with each other or with foreign nations, every species of trade or intercourse. America, in a state of colonization, had been permitted to drive only a restricted commerce. The exports were limited to the parent country, and to the least valuable markets of Africa, of the south of Europe, and to the West Indies; though the articles termed in the navigation and subsequent acts, "enumerated commodities," were confined exclusively to Great Britain. The parallel of Cape Finisterre, the boundary of the trade to the north, entirely cut off France, Sweden, and Holland; countries with whom, as we have said, America had commercial conventions, but no habits of intercourse. The whole trade to Great Britain, her colonies and possessions, (altogether the only one of any value at that period,) rested upon the precarious tenure of an annual act of Parliament.

The course of trade, and of every description of communication with Europe, had formerly been that of a colony. And now become independent, the policy of America could in no way be made to follow in the same current with that of the nations, with whom she was brought immediately to act. Those countries were old and hardened in a system of exclusion and commercial proscription. They held colonies upon whom, according to the fashionable doctrines of the day, not yet entirely exploded, it was just and proper to impose restrictions for the purpose, to use the emphatic words of the preamble to the statute 15 Charles II. "of keeping them (the colonies) in a firmer dependence upon it (the mother country) and" rendering "them yet more beneficial and advantageous to it." On the other hand, the United States having no manufactures at home to protect, or foreign possessions, whose

trade it was necessary to monopolize, found themselves at variance on every point with the systems of the European governments. In their earliest instructions, Congress recommended the adoption of a very liberal scheme of commerce, a system now gradually introducing itself through the world, but at the time exceedingly disrelished and condemned by most of the writers on commerce, particularly Lord Sheffield, in a pamphlet, that attracted great notice. And, undoubtedly, without the alarm caused in the governments of Europe by the French revolution, that led them to consider every reform an innovation, we should already have had a much greater freedom of commercial, and, perhaps, also political institutions in the old world. The commercial regulations of these instructions of Congress of '84 differ little from the doctrines of the armed neutrality, a short time before that period in high repute, but then falling into decay.\*

\* The first administration under the constitution was disposed to maintain the same system. We shall quote a remarkable passage from a report of the Secretary of State for the year '92. "Instead of embarrassing commerce under piles of regulating laws, duties, and prohibitions, could it be relieved from all its shackles, in all parts of the world, could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others mutual surpluses for mutual wants, the greatest mass possible would then be produced of those things which contribute to human life and human happiness; the numbers of mankind would be increased, and their condition bettered. Would even a single nation begin with the United States this system of free commerce, it would be advisable to begin it with that nation; since it is one by one only, that it can be extended to all. Where the circumstances of either party render it expedient to levy a revenue, by way of impost on commerce, its freedom might be modified in that particular, by mutual and equivalent measures, preserving it entire in all others. Some nations, not yet ripe for free commerce in all its extent, might still be willing to mollify its restrictions and regulations for us, in proportion to the advantages which an intercourse with us might offer. Particularly, they may concur with us in reciprocating the duties to be levied on each side, or in compensating any excess of duty by equivalent advan-

Great anxiety naturally existed in America on the subject of commercial intercourse. The commissioners, that made the treaty of '83, were empowered, as has already been said, to conclude a commercial convention. They did not succeed in that object; for Great Britain manifested uncommon reluctance to take any other step in her diplomatic relations with America, than to acknowledge the independence of the country. In the meanwhile, the nation rushed into a most ruinous commerce with England, that in a short time added infinitely to the alarming evils the war and the weakness of the confederacy were daily causing. The very earliest measures were adopted, however, by the government to obtain a formal protection for the trade of the country. On the 1st of May '83, ten days only after the ratification of peace, Congress ordered a second commission to be prepared for Messrs. Adams, Franklin, and Jay, or either of them, to enter into a treaty of commerce with Great Britain. But this commission appears to have accomplished nothing.

The commission of '83 not having succeeded in concluding a commercial convention, John Adams of Massachusetts was chosen in February '85 minister plenipotentiary to the court of St. James; the first envoy sent to Great Britain by the United States; he was well received by the king and ministry.\*

tages of another nature. Our commerce is certainly of a character to entitle it to favour in most countries. The commodities we offer are either necessaries of life, or materials for manufacture, or convenient subjects of revenue; and we take in exchange, either manufactures, when they have received the last finish of art and industry, or mere luxuries. Such customers, too, whose demands, increasing with their wealth and population, must very shortly give full employment to the whole industry of any nation whatever, in any line of supply they may get into the habit of calling for from it."

\* We believe the following account may be relied on as an authentic version of the remarks of the king on the occasion of the interview of the American minister:—

"Mr.



But the English government does not appear to have paid much attention to America the first five or six years after the peace. They were occupied, entirely, with domestic affairs;—in renewing their ancient alliances with Holland, Prussia, and other governments of the continent, disturbed by the revolution war—in concluding a commercial convention with France—in regulating the trade of Quebec and Ireland—and, besides the customary topics of India and the catholics, two unexpected and very laborious subjects, the establishment of a regency, and the impeachment of Warren Hastings, engrossed a great deal of time and deliberation. England, taking advantage of the general calm, to repair, as rapidly as she could, the disasters of the war, (not, to be sure, preparatory to the tremendous contest, in which she was about to be involved, far more terrible, and in the end fortunate for her, than the one from which she had just emerged,) saw America struggling, and at one time nearly overpowered, with her own

“Mr. Adams, according to etiquette, was introduced to the king’s closet, where (‘as is usual for foreign ministers’) he made a speech to his majesty; in performing which, he was somewhat affected, and when he had finished, the king said:—

“‘SIR,—The whole of this business is so extraordinary, that the feelings you discover on the occasion appear to me to be just and proper. I wish, sir, to be clearly understood, before I reply to the obliging sentiments, you have expressed in behalf of the United States. I am, you may well suppose, the last person in England, that consented to the dismemberment of the empire, by the independence of the new states, and, while the war was continued, I thought it due to my subjects to prosecute that war to the utmost. But, sir, I have consented to the independence, and it is ratified by treaty, and I now receive you as their minister plenipotentiary; and every attention, respect, and protection, granted to other plenipotentiaries, you shall receive at this court. And, sir, as I was the last person that consented to the independence of the United States, so I shall be the last person to disturb, or in any way infringe upon, their sovereign independent rights; and I hope and trust, that from blood, religion, manners, habits of intercourse, and almost every other consideration, the two nations will continue for ages in friendship and confidence with each other.’”

domestic difficulties. At this period, it could not be said the American revolution was consummated. Europe, probably, supposed this country was destined to go through the agony of a civil war, a condition of society, heretofore a necessary consequence of any great change in the form of government. But this evil America escaped, either because the country was exhausted, or from the character of the people, long accustomed to self-government, and not bewildered by independence. The interval, from the peace to the establishment of the present federal constitution in '89, is properly the second period in the history of the revolution, during which all the elements of a civil war were consumed in the inefficient but harmless conflicts of the confederation with the states.

The treaty of '83, much as it effected, still left many causes of great uneasiness particularly harassing to the American government and people, and to that portion of the subjects of the mother country, who had entered into her armies, or abandoned the colonies and their cause. The British government took their part, though at first without the appearance of much zeal or irritation. It sent no minister to America during the time of the confederation; refused to agree to any commercial arrangement whatever; and contented itself with the barren but provoking satisfaction of holding, contrary to the treaty, the north and western ports. To make all the objects of Mr. Adams' mission intelligible, it will here be necessary to give a brief account of the difficulties in fulfilling the terms of the treaty, that arose between the United States and Great Britain, and which were only finally removed by the treaty, that makes the subject of this chapter.

The ninth article of the act of confederation and perpetual union conferred upon the United States, in Congress assembled, the sole right and power of making treaties. This power, though limited and specific, is full and perfect in its kind. In making treaties, the states did not possess a concurrent jurisdiction, though a treaty properly made, like any other act the Congress were authorized to perform, was a part of the law of

the land. It was a contract with another power competent to make such contract. The same body, to whom the confederation confided the power of making treaties, necessarily possessed the right of explaining, interpreting and enforcing them. The states could not make treaties; they could not judge of them. A treaty, when duly ratified, being part of the law, all doubts that arose respecting it between individuals became simple judicial questions. There was then in the country no court erected by the confederation. The duty, therefore, of interpreting and enforcing the provisions of a treaty, under the general restriction, just mentioned, fell to the state courts. This was the situation and condition of the government; this the extent and nature of its authority in regard to foreign relations, conferred upon it by the celebrated articles of confederation and perpetual union. Congress very faithfully and punctually exercised, in regard to the British treaty, all the authority with which it was legitimately invested. On two occasions, the first in '83, and again in '87, it unanimously recommended to the states, and it could do no more, (the British commissioner was aware of this fact when the treaty was made,) to comply speedily and exactly with that portion of the instrument that concerned creditors and royalists; though the article was no part of the law of the land, for it contained only a recommendation. But the states did not yield an immediate attention even to the recommendation; and, in vindication of themselves, they said that grievous infractions of the treaty were committed by the other party,—that the garrisons were not withdrawn with convenient speed, the English still holding the posts of Michilimachinac on lake Michigan, Detroit, Fort Erie, Oswego and Niagara, Oswegatchie on the St. Lawrence, Point au fer and Dutchman's Point on Lake Champlain,—that British officers exercised jurisdiction over the country in the vicinity of those posts—and that a large body of negroes, the property of American citizens, had been embarked at New-York against the special remonstrance of the American commissioners. Indeed, Lord Carmarthen in a letter, dated

February 28, '86 to the American minister, directly admitted that the fourth article had been violated; and fully justified the proceeding on the ground, that infractions had been committed by the Americans, particularly as it respects the recovery of debts.

But no foundation appears to exist for the charge, at that time repeated with great earnestness, and, indeed, one of the principal sources of complaint on the part of England, that the integrity and independence of the American courts were obnoxious to reproach. The uprightness of their decisions can by no means be impeached. There was undoubtedly a great popular excitement against British creditors, which in the end extended itself to creditors of all descriptions. This circumstance deterred some individuals from bringing actions. All the evil consequences men feel, who are compelled from duty or situation to pursue unpopular measures, unquestionably befell British creditors, just after the peace. They suffered all the inconvenience, met with all the delays and obstacles that a highly heated public sense could oppose to them. This was not a violation of any provision of the treaty: it was an evil, along with many others, the war had brought upon them. But unless the court or the creditor was overawed and arrested in their proceedings by popular tumults, or threats, or commotions, we are not aware that any infractions of the treaty can justly be complained of. Any man who undertook to recover his lawful debts immediately after the peace, certainly rendered himself exceedingly unpopular. This state of things produced a serious rebellion in one part of the country. It was also impossible, that the article concerning the recovery of debts could have been immediately fulfilled by the Americans. The distress for money was extreme. It had been so for three years before the termination of the war. The country rushed instantly, and with great avidity, into an extensive foreign commerce, which did but increase the mischief. The opposition to paying the foreign as well as domestic debts, undoubtedly arose, in a great mea-

sure, from the lamentable, and apparently increasing poverty of the people. It was not an opposition by any means directed exclusively against the treaty; but all persons in the situation of creditors suffered equally, and for similar reasons. At the same time the foreign creditor was more obnoxious to popular clamour; for not only the odium of the war was attached to him, but the demands of this class of persons were very great. And they were pressed with a zeal which to the debtor appeared somewhat harsh and unreasonable, though the foreign merchant probably felt very differently on the subject. At any rate, it is difficult to blame men, who strive to get their just debts in the form prescribed by law.\*

\* The strict law of nations authorizes the confiscation of debts and all other incorporeal things belonging to alien enemies. (Vatt. vol. ii. p. 323.) The modern practice suspends, but does not annul, the right of an enemy to a debt. "It is a principle of law," says Sir Wm. Scott, (1 Rol. Rep. 200.) "that during a state of war, there is a total inability to sustain any contract by an appeal to the tribunals of the one country, on the part of the subjects of the other. In the law of almost every country, the character of an alien enemy carries with it a disability to sue or to sustain, in the language of the civilians, a *persona standi in judicio*. The peculiar law of our own country applies this principle with great rigour. The same principle is received in our courts of the law of nations; they are so far British courts, that no man can sue therein, who is a subject of the enemy, unless under particular circumstances that *pro hac vice* discharge him from the character of an enemy; such as his coming under a flag of truce, a cartel, a pass, or some other act of public authority that puts him in the king's peace *pro hac vice*."

"This short statement sufficiently testifies what is the law on the subject of withholding the debt during the war. The following decision will evince, what is the law on the subject of restoring the debt at the return of peace. A petition came on in the Court of Chancery in the matter of Boussmaker, a bankrupt, praying that the petitioner might be admitted to prove, under the commission, a debt which the commissioners refused to admit, upon the objection, that the creditors, applying to prove, were alien enemies. The Lord Chancellor explained the distinctions of the law and its principles on this important question, whether the right of an alien enemy was destroyed or only suspended by war. 'If this,' said his Lordship, 'had been a debt, aris-

It now remains to speak of interest, another subject of complaint, on the part of the British. It was the custom of the British merchant before the war, to allow the American one

ing from a contract entered into with an alien enemy during war, it could not possibly stand; for the contract would be void; but if the two nations were at peace at the date of the contract, though, from the time of war taking place, the creditor could not sue, yet the contract, being originally good, upon the return of peace the right would revive: it would be contrary to justice, therefore, to confiscate this dividend. Though the right to recover is suspended, that is no reason why the fund should be divided among the other creditors. The point is of great moment, from the analogy to the case of an action. The policy of avoiding contracts with an enemy, is sound and wise; but where the contract was originally good, and the remedy is only suspended, the proposition, that therefore the fund should be lost, is very different." Great Britain did not meet her colonies in war as she would have met an independent European power. Some individuals were declared rebels, and a price was set upon their heads in public proclamations. Others, and in considerable numbers, joined the English, and waged a cruel warfare against their own countrymen. The nature of this contest would, therefore, have justified recourse to extraordinary means for carrying it on. A peace to an independent nation, even when it is discomfited, seldom costs more than a colony or a few square miles of frontier. But peace to the Americans without independence, would have been annihilation. If England had succeeded, the laws of war would have justified her, not only in punishing the principal authors and actors in the scene, but in confiscating their property, in levying the expense of the contest upon the colonies, and in subjecting them to great disabilities in future. To escape the infinite evils of such a deplorable condition, the United States would have found ample apology in adopting many severer measures than in an ordinary war between two independent nations would have been tolerated. The estates of the royalists were confiscated. No blame can be attached to this proceeding. The same reasoning does not at all apply to the "debts," but different considerations would, perhaps, have warranted the confederation in refusing to make provision for them. We think, however, that the state legislatures possessed no right whatever to annul or confiscate debts due from their own citizens to the bona fide enemy or British subject. All the rights and powers appertaining to the acts of war, peace or of treaties, were confided to

year's credit, and, after the expiration of that time, interest was charged. The treaty made no provision for interest; it refers only to *bona fide debts*, and they remained in their ante bellum state. It rested, therefore, with the courts alone, whether interest should be allowed. Wherever it entered expressly into the contract, it, of course, was paid; it was part of the bona fide debt. If the government could not confiscate the debt, they could not confiscate the interest. But in other cases, it was the duty of the jury to judge if war, or other circumstances, would justify the withholding of interest. The war was one of necessity, and it was thought by those who waged it, a just defence of their precious rights. It was a measure to which they resorted only in the last extremity. During hostilities, the country itself, was not only exposed to the very worst evils of that state of things, but was debarred from the whole of its foreign commerce; it was left in a condition of extreme poverty. Should interest, therefore, be allowed on a debt, that could not be paid, not solely on account of the poverty of the debtor, but in some degree on account of the circumstances that led to that state of poverty? Even intercourse between the creditor and debtor was forbidden by the acts of the British Parliament. Lord Carmarthen said in conversation that, by the construction of the law of England, it was high treason in a creditor of Great Britain to receive a remittance from his debtor in America during the war. In assessing interest, therefore, the circumstances attending the war and the state of the country after the peace, might justly be taken into the account, and mitigate the amount allowed. Juries were compelled to exercise a discretion in apportioning it. The law, itself, in all coun-

the United States, in Congress assembled. To confiscate the property of an enemy, the subject of a foreign government, is, therefore, an act of sovereignty. In regard to an enemy, the states in their separate capacities had no sovereignty. The thirteenth part of a nation cannot exercise a power, which belongs only to the thirteen parts united.

tries and the customs of merchants contemplate and exact a variety of exemptions. They are all founded in justice and common sense, and present an additional reason why such cases as are not accompanied with similar conditions or circumstances, should not be entitled to equal privileges. We confess we are not of the opinion that war necessarily stops interest amongst traders or merchants, when for a great number of years it has been the custom to allow it; and if in ordinary warfare, it has become the practice of civilized people, whatever may be the law of nations, not to confiscate debts due to individuals, there appears to be no good reason for confiscating the interest, when it is equally the practice of such people to allow it in their intercourse with each other.

Having already gone at greater length into the violations of the treaty of '83 than we intended, we shall spare the reader the details of the intricate question, which government was guilty of the first violation. The correspondence on this subject between the two governments was attended with no other result than to confirm the parties in their original impressions. England refused to evacuate the posts till all the impediments to the recovery of debts were removed, and they refused to pay for the slaves carried off by Lord Dorchester on the ground that as slaves were personal property by the laws of the states, they had the same right to them as to any other article of personal property, taken in the course of the war.\* Mr. Adams still remained at the court of St. James, but no progress was made in the negotiation, nor did the British government return the customary diplomatic courtesy of sending a minister to the United States. Congress again, in '87, sent instructions to their minister to conclude a convention with England. The substance of part of these instructions

\* Before Bryan Edwards' act of '97, to repeal the act making negroes "real assets," slaves in all the British West India islands were chattels; they were moveables.



was afterwards incorporated into the treaty agreed on by Mr. Jay.

We have now reached the period when the confederation was about to be dissolved. In the way of a treaty, nothing was done with England by that body after '83, and we shall see that that was in reality the last treaty concluded by the confederation with any European state. The Federal constitution was established in '89 with such powers as necessarily removed most of the objections made to the confederation, though this circumstance does not appear to have produced any effect on Great Britain. That government, perhaps, thought it prudent to wait till the experiment of the stability of the second union was, in some degree, tried. We cannot suppose England was still indifferent to a commercial arrangement, though it will readily occur, that just at the same moment a revolution was terminated in the new world, another, that led to a more immediate and extensive temporary derangement of society, broke out in one of the most accomplished nations of the old. It seemed doubtful in which of these revolutions Great Britain was most interested.

Mr. Adams, having been elected Vice President under the new constitution, left London, and was succeeded in that mission in '89, by Gouverneur Morris of New Jersey, as commissioner. In the course of '91, Mr. George Hammond arrived in this country, as minister plenipotentiary from Great Britain. Mr. Hammond was the first diplomatic agent sent by England to America, but he was not provided with powers to conclude a definitive arrangement. He was merely authorized to discuss and adjust the principal points, preliminary to a final settlement. This limited power was matter of just complaint. Negotiation on this side the Atlantic was, however, attended with no better success than on the other. In '92, Thomas Pinckney, of South Carolina, was appointed Minister Plenipotentiary to Great Britain. This period is rendered exceedingly important in the diplomatic history of the country by the extraordinary condition of Europe. It was the beginning

of a system of blockades, and oppressive acts committed by the belligerents, that, together with incalculable mischief to the trade of the United States, inflicted a serious wound upon the prosperity of the country, and in the end led, after an interval of nearly twenty years unprofitable negotiation, to a war with Great Britain. We shall confine ourselves in this chapter solely to the proceedings of that government; the public acts of France having already been mentioned in their proper place.

In the spring and summer of '93, Great Britain, Russia, Spain, Prussia, and the emperor of Germany, made a treaty for the purpose, among other things, of shutting their ports, "and prohibiting the exportation of all military or naval stores, corn, grain, and provisions from their ports, for the ports of France." They further engaged, "to take all other measures in their power for injuring the commerce of France," to unite all their efforts "to prevent other powers, not implicated in this war, from giving, on this occasion of common concern to every civilized state, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or prosperity of the French, on the sea or in the ports of France." The only one of these powers, possessing at all the means of executing this treaty on the ocean, was Great Britain. And whether in retaliation of the French order of May 9th of the same year, or for purposes mentioned in the treaty above referred to, that government issued, on the 8th of June '93, additional instructions to all public and private armed vessels under its flag. We shall give the substance of this order:—

"It shall be lawful to stop and detain all vessels loaded wholly, or in part with corn, flour, or meal, bound to any port in France, or to any port occupied by the armies of France, and to send them to such ports as shall be most convenient, in order that such corn, meal, or flour may be purchased on behalf of his majesty's government, and the ships be released after such purchase, and after due allowance for freight, or that the masters of such ships, on giving

due security, to be approved of by the court of admiralty, be permitted to proceed to dispose of their cargoes of corn, meal, or flour, in the ports of any country in amity with his majesty."

A question immediately arose on this instruction, not only whether provisions were contraband of war at all, but whether the doctrine could be applied to a whole country, particularly one of the extent of France. This discussion, in the actual circumstances of the United States, whose exports at that period consisted so much in the produce of their own soil, assumed an uncommon degree of importance. The articles, heretofore laid down as contraband of war, were not numerous. In most treaties they are specifically enumerated, and by most writers on the laws of nations, have been confined to the particular object of carrying on war,—such articles as come under the general denomination of military stores. These have increased in number as the art of war has become more perfect. But the number and quality depend on conventional law, and not on the primitive laws of nations. Neither does the interest or policy of nations indicate contrabands with certainty; for the policy of nations is seldom permanent. On the other hand, treaties contain only the regulations of states that are parties to them. Then it is to be observed, that treaties of an ancient date do not mention specifically merchandize that shall be denominated contraband. But, from about 1650,\* there are, we believe, few treaties on commerce and navigation, which do not prohibit the carrying of military or warlike weapons to a port or town of the enemy of one of the contracting parties. This prohibition had become, by this time, matter of very general international law, and was introduced in a variety of shapes and under numerous modifications. It is evident that provisions were early made a subject of conventional law. This fact is at once ascertained by examining the collection of treaties. But it is equally evident that they are far, indeed, from being placed

\* Martens.

on the same footing as military or naval stores, though in the celebrated treaty of Utrecht, in 1713, between France and England, "naval stores even were declared free of war." On this occasion the conduct of England, both on account of her power on the ocean, and as having been the author of the instructions of June 8th, is particularly worthy of notice. We have treaties on record between that state and the United Provinces in 1645,—with France in 1667 and 1668,—with Spain in 1713,—with Denmark in 1782,—and with Russia in 1804,—peculiarly the last act of the second armed neutrality, in which provisions are by name excluded from the list of contraband.\* The authority of England is, therefore, in itself sufficient to prove that provisions are not rigidly contraband by conventional law. In the ordinary incidents of war, provisions form only an article of trade,—a very important one, it is true; but there would seem to be almost as much propriety in declaring three-fourths of the whole trade of neutrals contraband of war. Every commodity employed in the manufacture of clothing may, on the same ground, be declared a contraband. Indeed, such is now the perfection of the art of war, such a vast variety of articles now enter into the proper *disposition* of a military armament, we know not what limit could be assigned to this description of merchandize. We are well aware that contrabands cannot be specifically defined with such distinctness in treaties as to meet all possible cases.

"The catalogue of contrabands," says Sir William Scott, "has varied very much, and, sometimes, in such a manner as to make it very difficult to assign the reason of the variations, owing to particular circumstances, the history of which has not accompanied the history of the decisions." But the definition appears broad and liberal enough, that an article is contraband of war, which can immediately be employed for the purposes of war. "The king having, by his prerogative, the power to promulgate who are his enemies, is bound to watch over the safety of the state; he may, there-

\* Martens.

fore, make new declarations of contraband, when articles come into use, as implements of war, which were before innocent; this is not the exercise of discretion over contraband; the law of nations prohibits contraband, and it is the *usus bellici*, which, shifting from time to time, make the law shift with them. The greatest difficulty seems to have occurred in the instance of provisions, which have not been held universally contraband, though Vattel admits that they become so on certain occasions, when there is an *expectation of reducing the enemy by famine*. In modern times, one of the principal criteria adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether those provisions be in a rude or in a manufactured state. For all articles, in such examinations, are treated with greater indulgence in their native condition, than when they are wrought up for the convenience of the enemy's immediate consumption."

Latterly the practice, when asserted at all, has been undoubtedly a more mitigated one, a certain proof the belligerent was not wholly confident of his right to confiscate. The belligerent has exercised the right of pre-emption only,—a right of purchase, with a reasonable compensation to the individual, whose property has been diverted by the act of the belligerent, from its original destination. This is a less evil than absolute confiscation, but is attended with great inconvenience and distress to the neutral. Separate from the circumstance of having the enterprize disturbed or defeated, the neutral is compelled to accept such a price for his provisions as the belligerent may choose to allow. If the belligerent believes he is exercising a just right of war in arresting the neutral, he may, on the same presumption, refuse to allow such a price as the market of the port to which he was bound might indicate. That would probably be a very high price, caused by great suffering, perhaps even famine. Still, the consideration of this price may be the only thing that induces the neutral to undertake the voyage. Another difficulty will arise concerning the character of the port to which the vessel

is bound. This should justly have great weight on the character of the cargo. The port may be one of general commerce, and the provisions may not be intended for military uses. Still the cargo is at the mercy of the belligerent, and whether subject to the right of pre-emption or that of confiscation, the belligerent will exercise his discretion in judging.

This is the right of pre-emption, considered as applied to a single port or station. But in the instructions of the 8th of June, provisions bound to any port of a vast territory, were held subject to the same right on the part of the belligerent. There can be but one ground for asserting this right,—a well founded expectation of reducing a whole country to terms by means of famine. This idea was formerly very general, but after the experience of the last thirty years, few persons, we presume, imagine it is now practicable to starve an entire nation. The experiment has failed even in relation to small islands. As it respects the particular state against which the instructions were directed, no undertaking could be more extraordinary or visionary; one of the richest, best cultivated, most fertile, and most extensive countries of the old world, with a large population, exceedingly temperate and industrious, surrounded by other countries equally fertile and productive,—a country, too, where provisions have always been remarkably cheap, and in which, at the very moment the order was issued, bread, and every article of food, was cheaper than in England.\* We need not say, that in such a situation it would have required a great many years to have reduced France to reasonable terms of peace. France was in greater danger of famine in 1709 than in '93. But Great Britain did not then think it worth while to resort to the expedient of declaring provisions contraband. It was, undoubtedly, a new operation in war to starve 30,000,000 of people, men, women, and children. The English government, more-

\* The order comprehended only corn, meal, and flour, subject to a right of pre-emption. Rice was excluded.

over, protested against this doctrine when Frederick IV., king of Denmark, undertook to put it in practice against Sweden.

The provisions shipped for France at the beginning of the revolution, were in the accustomed course of trade. The United States, even now an agricultural nation, were at that time vastly more so in proportion to their wealth. The provision trade, in any shape, was of great moment; and, in the most favourable point of view, it was the exercise of uncommon power in a belligerent to disturb and control so important a branch of the commerce of a neutral. America, it is true, had no commercial treaty with Great Britain. She had no treaty in which contrabands were enumerated, though in the treaties made with France, Holland, and Sweden, not an article had been added to the catalogue of contrabands, and in the convention with Prussia, military stores were not even forfeited.

Though exceedingly urged and solicited by the United States, Great Britain made no alteration in her maritime system. Indeed, we may truly say, that she manifested no other friendly feeling than resulted from the barren act of exchanging a minister. This was done late in the negotiation; and it appeared, that the individual employed in the business, was merely to conduct a correspondence that led to a vast deal of mutual reproach and recrimination between the two governments. From that year to the signing of the treaty, Great Britain issued various additional orders and instructions under the dates of Nov. 6, '93, Jan. 8, '94, Jan. 25, March 18, and August 18, '94.\* One of these instructions involved a prin-

\* "1793, November 6th. The British commanders were directed to detain all neutral vessels laden with the produce of the French colonies, and all vessels carrying provisions or other supplies to said colonies."

"1794, January 8th. The order issued on the 6th of November, 1793, was revoked, new regulations were adopted, pursuant to which, all vessels laden with merchandise of the French West India colonies, and going from the said colonies to any port in Europe, were brought

ciple in maritime law, extremely pernicious to neutral countries, owning a great tonnage,—a principle fatal to the carrying trade, and one that had not been revived to a great extent since 1756. In that year it was first generally established, and is now commonly known by the title of the rule of the war of '56. The rule forbids neutrals to carry on in time of war, a trade that was interdicted to them in time of peace. This definition comprehended the whole and the strict right claimed by the belligerent. Relaxations of it have at different periods taken place, particularly in the year preceding the treaty signed by Mr. Jay. We have inserted those relaxations in a note, intending, hereafter, to enter at large into an examination of the rule itself.

in for adjudication. Vessels laden with merchandise, as aforesaid, were ordered to be brought in, to whatever port they might be bound; provided the merchandise was the property of any French subject. All vessels attempting to enter the blockaded ports of said colonies were seized, and all such as had on board naval and military stores, bound to their ports, were brought in for adjudication."

"1794, January 25th. The instructions issued on the 8th instant, were revoked. In future, all vessels, laden with the produce of any island or settlement belonging to France, Spain, or the United Provinces, and coming directly from any port thereof to any port in Europe, not being a port of Great Britain, nor a port of that country to which such ships, being neutral ships, belonged, were brought in for adjudication. All vessels, having on board the property of the subjects of the enemies' countries aforesaid, to whatever port they might be bound, were directed to be brought in as aforesaid. All vessels attempting to enter the blockaded ports aforesaid, and all such as had on board military or naval stores, were seized and brought in."

"1794, March 18th. The French West India Islands were declared to be in a state of blockade."

"1794, August 18th. The instructions dated 8th June, 1793, were revoked. Henceforth all ships laden with corn, flour or meal, destined for French ports, were brought in for adjudication, without any purchase of their cargoes being made on behalf of the British government."

This concludes the list of orders or instructions to the treaty of '94.



The people of the United States were at this period uncommonly excited. A strong disposition, very naturally awakened by the French revolution, developed itself to form an alliance with France. Relieved from the pressure of their own domestic difficulties and embarrassments, and their independence secured beyond the possibility of danger, all the passions of the people were left free to indulge in the most exaggerated sympathy for the progress of the French revolution. Every circumstance, to excite the deepest concern of a whole nation, existed, with remarkable emphasis, in this case. The Americans regarded that event, not only with the eager feelings and profound interest of propagandists—of the authors of a new political faith, but with the sincere affection and intense anxiety of brethren, viewing, at a distance, the struggle and sufferings of a people, to whom they were themselves most recently under great obligations, now contending in mortal combat for liberty and life. For more than twenty years, America had been in a state of extreme agitation; all the different passions, of which man is susceptible, had been brought into constant and intense action; at one time directed to the disasters and devastations of war, then absorbed by a contemplation of the poverty and miseries and real dangers of the country, finally at peace; and, at last, engaged in a discussion of the abstract provisions of a constitution, which will be accompanied in history with the unrivalled praise of presenting the fullest development, yet known, of the virtues and faculties of man. Every motive to domestic excitement had ceased, and, before men had time to fall into the quiet, soothing habits of regular, uniform industry and occupation, the whole violence of all their passions was suddenly again roused and concentrated upon the French revolution.

The feeling of hostility towards England was extreme. Her commercial regulations exceedingly affected the trade of the country; and, while none of the old grievances were removed, complaints were made of the dangerous conduct of the Indians under English influence. On the other hand, the Bri-

tish government represented in very strong terms, the indulgence shown to French privateers, in allowing them to be equipped, and of their actually capturing British vessels in the waters of the United States—of permission being granted to sell prizes in our ports—and of the difficulties with which creditors, under the treaty, were assailed. But the conduct of the American government, at this period, is now justly matter of unqualified applause, both at home and abroad. It has been mentioned by foreign statesmen with signal commendation.\* It preserved the honour of the country; manifested the entire independence and impartiality of the administration; and, by maintaining a condition of neutrality, obtained that vast and most lucrative commerce, which may justly be said to have been the foundation of the uncommon wealth and prosperity, by which the United States are now distinguished.

In the spring of '93 France declared war against England and Holland. America had treaties of amity with these powers. That with France, made in '78, did not materially differ from the common treaties; but the treaty of alliance, signed the same day, is of an unusual character. The first ten articles of that instrument undoubtedly relate to the actual war between America and England, or such other war between France and England, as should grow out of the "alliance." The *eleventh* article is a mutual guarantee of possessions and sovereignty "from the present time and forever."† And the *twelfth* is a further confirmation of the construction of the *eleventh*. Some remarks on this subject will be found under the head of France, title "Convention of 1800."—A part of the Cabinet considered this article as applying, altogether, to a defensive war. Separate from the very great difficulty of defining a defensive war, there appears to be no provision in

\* We particularly refer to a speech made by Mr. Canning in the House of Commons.

† See Treaty—second chapter.

the article itself, to warrant that interpretation. It is a simple guarantee, in very brief, plain language, of the "present possessions or such as should be acquired by the peace." The article does not guarantee possessions that shall be made by conquests in future wars. But whatever may be the legitimate construction of this celebrated treaty of alliance, we have only in this place to remark, that the government regarded it as involving an obligation on their part impossible to fulfil.

Soon after the state of war in Europe was known, the President issued a proclamation,\* enjoining a strict neutrality on all the citizens, and declaring that the government would not protect from confiscation such articles as were deemed contraband by the "*modern usage of nations.*" The government, however, determined to receive a minister from the French republic, though the treaty of amity made with Louis XVI. led to embarrassments on this subject, as well as the existence of a regency consisting of certain members of the late royal family of France. But it may well be a question, how far it is incumbent upon nations to adhere to the provisions of treaties, made with a government that has been dispossessed. Though nations should only be discharged in the last extremity from the obligations of treaties, when solemnly made, they are required by public law to recognize new governments as soon as it is evident they are able to maintain their own independence, and system of internal or municipal law. This is done for the welfare and security of society.†

\* See before, title "Convention of 1800."

† We publish in this place the rules of neutrality, established by the government, and sent in instructions to its Custom House officers.

"1. The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

"3. Equipments

The Executive was resolved, not only to maintain its neutral position, but the hope of concluding a commercial arrangement with one of the great belligerents was not entirely abandoned. The dispatches and advices, received from England, indicated a wish, on the part of that government, not to drive this country into a war; at any rate, it was desirable to ascertain, beyond a doubt, the dispositions of the British ministry,—and either to remove the causes of the quarrel then

“3. Equipments in the ports of the United States of vessels of war, in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France coming with their prizes into the ports of the United States, pursuant to the 17th article of our treaty of amity and commerce with France.

“4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commission, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize, &c.

“5. Equipments of any vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

“6. Equipments of every kind in the ports of the United States of privateers of the powers at war with France, are deemed unlawful.

“7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the 18th article of our treaty with France, the 16th of our treaty with the United Netherlands, the 9th of our treaty with Prussia; and except those mentioned in the 19th article of our treaty with France, the 17th of our treaty with the United Netherlands, the 18th of our treaty with Prussia.

“8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens, not being inhabitants of the United States; except privateers of the powers at war with France, and except those vessels which shall have made prize, &c.”

existing, or to obtain satisfactory evidence that Great Britain was indifferent to their existence. The President, accordingly, on the 16th of April, 1794, sent the following message to the Senate :—

“ The communications, which I have made to you during your present session, from the dispatches of our minister in London, contain a serious aspect of our affairs with Great Britain. But, as peace ought to be pursued with unremitting zeal, before the last resource, which has so often been the scourge of nations, and cannot fail to check the advanced prosperity of the United States, I have thought proper to nominate, and do hereby nominate, John Jay, as envoy extraordinary of the United States, to his Britannic Majesty.

“ My confidence in our minister plenipotentiary in London continues undiminished. But a mission like this, while it corresponds with the solemnity of the occasion, will announce to the world a solicitude for the friendly adjustment of our complaints, and a reluctance to hostility. Going immediately from the United States, such an envoy will carry with him a full knowledge of the existing temper and sensibility of our country; and will thus be taught to vindicate our rights with firmness, and to cultivate peace with sincerity.”

This has been considered one of the boldest and most decided resolutions adopted by General Washington during his administration. It is one that at the moment, awakened most reproach and censure; but we doubt exceedingly, whether any one measure, proposed by that illustrious individual, has been, in the end, accompanied with more good consequences to the nation. It confirmed at the time, the neutrality of the country; and, consequently, extended to trade and commerce all the confidence and security the certainty of that fact could bestow. No one feared that the United States would take part with England. This was impossible. Her neutrality could not be disturbed in that direction. And, when an envoy extraordinary was nominated to his Britannic Majesty, the nation was satisfied, that the executive, at least, was determined not to take part with France. This nomination set-

ted the question of neutrality for many years. The oppressive acts of the belligerents were then in their infancy. America had, comparatively, suffered little; and though not a stipulation, in favour of neutral rights, was made in the treaty of '94, Great Britain appeared to rest, for a moment, from the unjust exercise of her vast power on the ocean. America escaped a war at this time, and she escaped an evil infinite in its consequences. The wasting wars of the French revolution were just then beginning; and if this country had, at that early period, with all the heat and excitement of the moment upon her, rushed into the fray, no one could have meted out the degree of honour or dishonour that would have attended her course, or have foretold the disasters that would have overtaken her own matchless institutions. The progress of events, at last, drove her into a war with one of the great belligerents; but this was toward the close of a scene, of which she had been for twenty years a spectator. The distance of America from Europe, the youth and peculiarity of her government, at that time little understood, and certainly far from being confirmed, the narrowness of her resources, the entire absence of every species of military armament, powerfully combined to point out the course she should adopt. In ordinary times, it would have required neither uncommon firmness nor dexterity to have conducted the affairs of the nation. But this was a most extraordinary period—extraordinary, not only from the remarkable circumstance, that France had now become professedly herself a republic, and was threatened with annihilation by a European coalition, at the head of which was England,—but more extraordinary still, from the moral phenomenon, that the minds of men, in all civilized countries of the world, were infinitely excited by an universal and overwhelming political infatuation. The government of the United States, depending solely on opinion, had to contend with this spirit. And that opinion, to which it looked for support and defence, was, itself, exceedingly infected and bewildered.

Mr. Jay arrived in London in June. He was deputed for an extraordinary purpose ; and there can be no question, but a war would have taken place, if he had not succeeded in making a treaty. This instrument was signed, with the British minister, in November of the same year, (1794.)\*

\* This treaty of amity, commerce and navigation, was signed in London, Nov. 19, 1794, by William Wyndham, Baron Grenville, for Great Britain, and Mr. Jay for America. It is one of the longest treaties in the collection. We shall give some of the articles entire, and an abstract of the remainder :—

“ART. 2. Great Britain to withdraw her troops from certain posts within the boundary line of the United States, on or before the 1st of June, 1796, &c. Settlers and traders, residing in the precincts of the posts to be surrendered, to enjoy their property unmolested, &c. These settlers not to be compelled to become citizens of the United States, or take the oath of allegiance, &c.

“ART. 3. Freedom of intercourse and trade mutually allowed to citizens and subjects of the two parties, and to the Indians, on the continent of America ; the limits of Hudson's bay company excepted. Goods and merchandise not wholly prohibited, to be mutually admitted into the territories of each party, &c. Each party may export goods not prohibited from the territories of the other. No duty of entry to be levied on peltries brought by land, &c. Indians not to pay impost or duty. No higher or other tolls, &c. to be demanded than are payable by natives, on either side ; and no duty to be paid on goods which are merely carried over portages, and not attempted to be sold or exchanged in the passage.

“ART. 4. A joint survey of the Mississippi to be made, from one degree below the falls of St. Anthony to the principal sources of that river, to ascertain whether a line, drawn due west from the lake of the woods, will intersect the Mississippi.

“ART. 5. Commissioners to be appointed to identify the river St. Croix, designated in the definitive treaty of peace.

“ART. 6. 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

It is well known that this treaty was exceedingly unpopular. The President had early determined to ratify it; and, after a very long and careful examination, it was finally rati-

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 loss, if the said 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. Five commissioners to be appointed to ascertain the amount of losses which the United States consent to make good to British creditors.

"ART. 7. Whereas complaints have been made by divers merchants, and other 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 claimant. Five commissioners to be appointed with the same powers, (*mutatis mutandis*,) as those appointed in virtue of the 6th article of this treaty.

"ART.



lied by the Senate, a precise constitutional number voting for it. A reservation was, however, made, in relation to the *twelfth* article. That article regulated the trade between the

“ART. 9. American citizens and British subjects holding lands in the territory of either party, to exercise the rights appertaining thereto, as if they were natives.

“ART. 10. No debts, or moneys, vested in funds, to be confiscated in the event of war.

“ART. 13. Vessels belonging to citizens of the United States, to be admitted into the ports of the British East Indies. Proviso: restricting, in time of war, the exportation of military and naval stores and rice from the British ports. Reciprocity, as to tonnage duties, &c. Reciprocity, also, as to duties on cargoes. The trade from the British East Indies to be *direct* to the United States. American vessels not allowed to carry on the coasting trade in the British East Indies. The citizens of the United States not to reside in, or go into the interior parts of the British East Indies, without permission.

“ART. 14. Reciprocal and perfect liberty of commerce, &c. between the British dominions in Europe and the United States.

“ART. 15. Neither party to pay, in the ports of the other, higher or different duties than are paid there by other nations on like articles.

“ART. 17. Vessels captured on suspicion of having contraband, or *enemy's property*, to be sent into the nearest port; the contraband, &c. to be taken out, and the vessel and remainder of the cargo to be allowed to proceed.

“ART. 18. Vessels of either party, not to be detained, on attempting to enter a blockaded place, unless previously warned off.

“ART. 21. A third (enemy) power, not allowed to enlist citizens or subjects of either party. Persons taken offending against the provisions of this article may be treated as pirates.

“ART. 24. Privateers of a third (enemy) power, not to arm in the ports of either nation, nor to sell their prizes.

“ART. 25. Prizes made by ships of war and privateers of either party, allowed to enter and depart from the ports of each other, without examination. Neither party to allow the ships or goods belonging to citizens or subjects of the other, to be taken within cannon shot of its coast.

“ART.

United States and the West Indies. The Senate agreed to the ratification, on condition an article was added, suspending the operation of the 12th. This presented a new and great difficulty. The Senate advised to the ratification of an article that had not been laid before them; and the President was called upon, under that advice, to ratify a treaty, into which the article, that was made the condition of the ratification, had not been introduced. In the mean time, the English revived their provision order. This circumstance led to considerable delay, on the part of the American government. However, in the month of August, the President, being satisfied that the proceedings of the Senate fell clearly within the meaning of the constitution,\* resolved to ratify the treaty, and to accompany that act by a strong memorial, directed against the provision order. This step was attended with happy consequences. The order was revoked, and the treaty was at last ratified in the usual form, the 28th of October, 1795, together with an additional article, suspending the operation of the *twelfth*.

The objection of the Senate to the twelfth article was perfectly just. It allowed a direct trade between the United States and the British colonies in the West Indies, in vessels not exceeding *seventy* tons in burthen, but the United States

“ART. 26. In case of a rupture, the merchants and others of the two nations, during good behaviour, allowed to continue their trade.

“ART. 27. Persons charged with murder or forgery, seeking an asylum in the dominions of either party, to be delivered up on requisition.”

The first ten articles were agreed to be permanent. In 1796, an explanatory article, respecting the third article, (concerning the Indians,) was agreed on; and in '98, another article, relating to the source of the St. Croix, was made—the first in Philadelphia, between Mr. Pickering, the Secretary of State, and Mr. Bond, the English Consul General,—and the other at London, between the American Minister, Mr. King, and Lord Grenville.

\* Art. 2. Sec. 2. par. 2.

were under an obligation to *restrain* their vessels from carrying certain articles, the produce of those islands, to any other place than the United States. One of these articles was cotton. It is now generally known, that the American minister, who negotiated the treaty, was not aware that cotton was already introduced into the United States, and had become an article of export ;—a fact of which he could well be ignorant, for we find it stated in the debates of Congress, that a member from South Carolina observed, in the House of Representatives in '89, that the people of the southern states intended to cultivate cotton, and “if good seed could be procured, he believed they might succeed.” When the treaty was made, the amount of the export could not be ascertained ; for, till 1802, no discrimination was made between cotton wool of domestic and of foreign growth. The twelfth article would, therefore, have certainly stopped the export of that commodity, which amounted, at the time this article would have expired by its own limitation, to about 45,000,000lbs. annually. It is also quite clear, that this article would have broken up the greater part of the American carrying trade. During the continuance of it, the Americans were forbid from carrying “*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.*” This provision would have, in effect, deprived America of a great part of the benefits she derived from a state of neutrality, during the wars in Europe. Access to the West India islands, under the protection of treaty, was abandoned by cancelling this article ; though the arrangement, as to the burthen of the vessel, may be considered a judicious one. On another occasion, an intercourse was permitted, by the French government, with their islands, in vessels not exceeding sixty tons in burthen. The treaty restored the posts on the western frontier to the Americans, without an indemnity for their long detention, or for the slaves carried off by Sir Guy Carleton. The English had held these posts *twelve* years, in violation of

the treaty of '83. This provision can only be considered as an acknowledgment, on the part of the Americans, of having violated the same treaty, to the extent declared by the English,—and it was an absolute surrender of the property removed from New York in '83.

Ship timber, tar, hemp, sails and copper were declared contraband, though declared free in all the treaties made with the United States and other nations. The laws of nations do not specifically enumerate them as subject to confiscation. Provisions also, were declared contraband, according to the modern usage of nations.\* This is, obviously, an arbitrary distinction, and in most respects unmeaning,—because the question, in the correspondence between the two governments, had turned upon the point, whether public law made provisions contraband or not. Referring the principle to this standard was, in other words, acknowledging the pretensions of England. Wherever she had the power to enforce her orders, she had declared provisions contraband of war. There was, also, an express declaration, that the flag did not cover the merchandise. This is the only treaty, signed by America, in which this acknowledgment can be found. We have never been able to obtain from England a denial of this right of the belligerent, but silence wears a very different aspect from a direct confirmation of the legality of the practice. The American government had, however, before acknowledged this principle, in its official correspondence. We refer to a passage in Mr. Jefferson's letter of July '93.† The treaty did not define the right of search or blockade, but acknowledged both in general terms.

\* The article, however, entitled them to the right of pre-emption; though this provision does not, in reality, alter the *principle* of the stipulation.

† “Les marchandizes neutres chargées par l'ennemie sont libres mais le pavillon neutre ne neutralize pas la marchandise ennemie.” (Schoell, vol. iv. p. 15.) This is the leading doctrine in the oldest

These were the points that related to the laws of nations. They certainly could not be considered as favourable to the United States; but these were doctrines England would not relinquish, as this government has had abundant experience. She would not yield them to the armed neutrality of '80, nor has any one state, or coalition of states, yet succeeded in compelling her to abate a tittle from a rigorous enforcement of them. Mr. Jay's treaty has been called an instrument that settled nothing. There is some ground for the description. The position and boundaries of the Mississippi and the St. Croix, the debts, and the spoliations, were referred to commissioners; the West India trade, reciprocal duties, contrabands, the neutral flag, and provisions, to future negotiations. These were really the principal provisions of the treaty. It is worth while to trace, for a moment, the history of these different objects of negotiation. The north-western and north-eastern boundaries, though in progress, have not been settled to this day; the *commission* on the debts was suspended,—and the American government agreed to pay, under the convention of Mr. King, in 1802, a sum of £600,000, as a release from the obligations of the sixth article of Mr. Jay's treaty; the West India trade has not yet been secured; and the great questions of neutral flag, contrabands, and provisions, rest in the same profound uncertainty that they did in '94. But the treaty was not without some advantages to the United States, though its principal advantage

work extant on maritime law. It was received at a time when it was easy to ascertain the ownership of goods or cargo—when the owner embarked with and accompanied his goods to a market. The application is more difficult in modern days. Business is now done by commission, and the transfers of trade are constant, and exceedingly involved. England, at the peace of Utrecht, acknowledged that the flag covered the merchandize. The basis of the armed neutrality of 1780, and 1800, was this principle,—but they effected nothing for neutral commerce.

consisted in its having decided the question of neutrality ;— if it settled none of the leading questions of neutral rights, it at least prevented a war, at a moment when the government and nation were in every respect unprepared,—in itself a vast benefit. It opened all the ports of Great Britain in Europe, on equal terms ; all her ports in the East Indies,—but it made the trade round the cape direct, and forbid the coasting trade. Before the treaty, the Americans had both an indirect and a coastwise trade in India. They carried cottons, for example, from the British settlements in the East Indies, to Canton. But the trade to India and Europe depended, before '94, on the pleasure of the British government. It was now secured by treaty ; a fur trade to Canada was also gained.

The ratification of this treaty may be considered the proper solid foundation of the commercial prosperity of the United States. It was the first act of the government that proved the stability of the federal constitution. It was a severe trial ; and the steadiness with which the government bore the shock, may be attributed, in some degree, to the personal character of the President.\*

\* In 1791, the lords of the committee of Privy Council made a very minute report on the trade of England with America. This report was intended to show on what terms it would be favourable for Great Britain to conclude a treaty with the United States. The West India planters were very desirous of having an intercourse opened with America, immediately after the peace of '83.—(Collection, &c. of reports on trade and navigation, &c. London, 1807, published by order of the society of ship owners, &c.)

## CHAPTER X.

## 'TREATY OF GHENT OF 1814 WITH GREAT BRITAIN.

*Little settled by Jay's treaty—Mr. King, minister to England—Made no treaty—Succeeded by Mr. Monroe—Proposes a convention to Lord Hawkesbury—Rule of '56—Account of it—Injurious to American commerce—Special mission of Messrs. Monroe and Pinkney—Convention with Lords Holland and Auckland—Most favourable ever made—President rejects it without consulting Senate—Impressment—Account of it—Opinions of Foster, Mansfield, and Chatham—Convention with Lord St. Vincent—Chesapeake—England offered reparation—Refused to consider the affair in connexion with other topics in discussion—Mr. Rose—Mission ineffectual Orders in council—Great sensation—Erskine arrangement—Unsuccessful—Erskine withdrawn—Mr. Jackson—His correspondence with government—Dismissed—England expresses no mark of displeasure—Antedated decrees—England refuses to repeal orders—Declaration of 1812—War—Remarks on neutrality—Mediation of Russia—Not successful—Peace of Ghent—No disputed point settled—Peace—Policy of America—War of 1812, good effect on national character—Mr. Adams, minister to England—Mr. Bagot to this country.*

WE shall give, in this chapter, an account of the different negotiations that led to the war of 1812 with Great Britain, and finally terminated in the peace of Ghent of 1814. We propose to divide this period into two parts;—the first relating to events immediately preceding the orders in council of

1807, and the other, comprehending the portion of time from that event to the peace above-mentioned.

We have remarked in the preceding chapter that the treaty of '94 in reality settled but few of the important points in discussion. If Europe had relapsed into its original condition of peace and quietness, this circumstance would have presented itself to the mind with little relief. But subsequent events gave to those questions an importance no one could have anticipated. As the power of France increased on the land, that of England seemed, with corresponding industry and activity, to magnify itself on the ocean. Fresh conquests led to new blockades, and retaliation became a pretext for renewed and aggravated outrages on neutral rights. They were repeated and enforced every year with increased severity and an alarming augmentation of power till a place of refuge or safety could be found for the neutral, neither on the ocean, nor in any part of the continent of Europe. The peace, or rather truce of Amiens, afforded a momentary respite, but with that slight exception, it must be considered that the two belligerents actually waged a maritime war upon America from the year 1792 to 1812.

Rufus King, of New-York, was appointed minister plenipotentiary to the court of St. James, in May '96. He remained in that country till 1803.\* He discussed in a full and

\* We shall give in this note a continuation, from the last chapter, of the hostile acts of Great Britain :—

" 1797, April 11. Horatio Nelson declared Cadiz to be in a state of blockade.

" 1799, March 22. All the ports of Holland declared in a state of rigid blockade.

" 1799, Nov. 27. The blockade of March suspended.

" 1803, June 24. Instructions issued, not to interrupt the direct trade between neutrals and the colonies of enemies, unless, upon the outward passage, contraband articles had been furnished by the neutrals.

" 1804, January 5. Certain ports of Martinique and Guadaloupe declared in blockade. The siege of Curacoa converted into blockade.

" 1804,



satisfactory manner the principal provisions of maritime law, in which this country feels an interest, though with the exception of two conventions in relation to the treaty of '94, already mentioned, he did not succeed in agreeing on any formal instrument, regulating the commerce or defining the rights of neutrals. To the article of impressment, Mr. King gave particular attention, and made great progress in securing an arrangement that would have afforded essential protection to our seamen. But it failed from a cause that will be hereafter mentioned. Violations of neutral rights, though very galling, were trifling during his residence in England, compared with those of the preceding or succeeding years. Mr. King returned to this country in 1803, and was succeeded by James Monroe of Virginia.\*—As it will be necessary to examine with some attention the points in dispute between the two countries, in giving an account of the treaty concluded with the British government in 1806 by Messrs. Monroe and Pinkney, we have presented only a very brief summary of Mr. King's negotiations. For the same reason, we shall pass rapidly over the diplomatic intercourse of Mr. Monroe with that country. Early in 1804 he proposed to the British ministry, by direction of his government, a convention regulating the right of search, blockades, contrabands, &c. A copy of it will be found in the state papers for the year 1804. The war, between France and England, having been renewed in 1803, the British government having given indications of returning to her former maritime pretensions, and, in consequence of the peace of Amiens, the commercial part of the treaty of '94 having expired in the autumn of the preceding year, it was matter of very pressing importance, not only that

"1804, August 9. A rigorous blockade established at the entrances of the ports of Fecamp, St. Vallery, and other places on the French coast."

\* Mr. Robert Liston (afterwards Sir Robert Liston) succeeded Mr. Hammond, as envoy extraordinary and minister plenipotentiary, in this country. He was appointed in March, 1796.

the rights of the neutral should be finally ascertained and secured, but that the trade of Great Britain and the United States should be placed upon a firmer and more permanent footing than the law of the respective countries afforded. From that period to the year 1815, the whole American commerce to the British possessions, in every part of the world, rested upon the uncertain and most unsatisfactory protection of acts of Parliament. Undoubtedly, it might be expected, that mutual interest would maintain, on both sides, a continuance of such regulations as should be just and equal. But the convention, submitted to lord Hawkesbury by Mr. Monroe, embraced only articles having a reference to our maritime rights. It failed, for the same reason that all other negotiations of the like tenor have failed, with the British government.

Matters stood in this situation till August, 1805; when, by an instruction of the British government, of the 17th, the "direct trade with the enemies' colonies was made subject to restrictions." This revived, in full force, the celebrated rule of the war of 1756. Few acts of the belligerents have more deeply wounded the rights of this country or done a more serious mischief to its commerce. We shall take an opportunity, in this place, in order to avoid future repetition, to compress into a brief form those general considerations, that belong to the history, application and justice of this assumed principle of maritime law.\*

This rule is generally called the rule of the war of '56. It was then first universally promulgated, and applied in strict

\* We refer the reader to a work, entitled "An Examination of the British Doctrine, which subjects to Capture a Neutral Trade, not open in time of peace." This dissertation was understood to have been written by Mr. Madison. One of the best productions on the other side, is "War in disguise, &c." by Mr. James Stephen, who made himself conspicuous, as a member of Parliament, on the American question. We shall, shortly, have occasion to refer to his speech on the orders in council.

rigour, though it existed previous to that time, particularly in 1744.\* An impression has generally prevailed, that this "rule" was not exercised during the war of the revolution. Robinson, in the note to which we have just referred, furnishes undoubted evidence that it was maintained; and, if the application was not universal, it was only because some of the enemies' colonies had been opened before the war, for the purpose of supplying them with provisions. Here the colonial trade was not altered (*flagrante bello*) by the pressure of the enemy. In the admiralty courts, the principal discussions have been on the modifications or relaxations of the rule. We shall give the general principle in the words of the author before quoted:—

"The fundamental maxim of the trade being founded on a system of monopolizing to the parent state, the whole trade to and from her colonies, in time of peace; it is not competent to neutral states, in time of war, to assume that trade on particular indulgences, or on temporary relaxations, arising from the state of war. Such a trade is not entitled to the privileges and protection of a neutral character."—"The neutral has a right to carry on his accustomed trade. In time of peace, he is excluded from the colonial trade; he, therefore, suffers no injury, in being excluded from it in time of war. If he is admitted to it, it is only in consequence of the pressure of the enemy. But a neutral has no right to interpose in a war, and afford aid to one of the belligerents. Whenever suspensions of the colonial system have been enacted by the mother country, before war, the admiralty has always respected them *flagrante bello*."

The British government maintained, from the time the war with France began in 1792, to the peace of Amiens in 1802, and again upon the renewal of the war in 1803 till 1805, the substance and spirit of the rule of '56. They did not allow the direct trade between the colonies and the mother country, but the various relaxations of this rule mitigated the severity of its application. An indirect trade was permitted, and

\* Robinson's Reports, vol. vi. Append. Note.

as a proof of an indirect trade, the courts required no other state of things than that the goods should have been fairly imported, and the duties paid on them; a continuation of the voyage was, therefore, made to depend upon the evidence furnished. But the court of appeal, in the case of the *Essex*, in 1805, established that the trade was illegal, the continuity of the voyage not being broken. The sole reason of this extraordinary decision was, that the duties on the cargo had not been paid in money, but by a bond of the importer. This distinction embraced the whole foreign trade of the United States. The decision was rapidly and eagerly spread among the public and private armed vessels of Great Britain; and in the course of a few months, the ports of that country were crowded with American vessels for trial.\*

\* This decision of the Court of Appeals, is not a deviation from the strict principle of the English government, in regard to the trade of a neutral with an enemy's colony; but it was exceedingly fatal to the American commerce, from the circumstance, that the whole trade which it interrupted, had been safely and confidently conducted since, at least, 1801, not only under the protection of an opinion of the king's advocate general, officially communicated, but also of the order of August 1803. That instruction has, already, been cited; but in 1801, the minister in England, Mr. King, having protested against certain decisions of the vice-admiralty courts, lord Hawkesbury notified to him, in a formal manner, the opinion of the principal law officer of the crown, which is in these words:—"The high court of admiralty have expressly decided, (and I see no reason to expect that the court of appeals will vary the rule,) that landing the goods and paying the duties in the neutral country, breaks the continuity of the voyage, and is such an importation as legalizes the trade; though the goods be re-shipped in the same vessel, and on account of the same neutral proprietors, and forwarded for sale to the mother country."—The decision of 1805 was founded on this consideration, that as the duties were not actually paid, the greater part being returned in the shape of debentures, (a provision of the custom-house laws of this country, with which the English do not appear to have been acquainted,) the importation was not a bona fide one. See judgment of Sir William Grant, in case of *William*.—Robinson, vol. v. p. 387.

The rule of '56, and its modifications, or relaxations, are liable to numerous objections. A colony is part of a country, and, therefore, as much subject to commercial regulations as any other part of the country. In peace, the parent state has the whole monopoly of a colony; in war, it has the same right to regulate its trade. A belligerent can acquire no rights to the territory of another, but by conquest; or to control its trade, except upon the acknowledged principles of blockade or contraband, so far as the neutral is concerned. If neutrals are allowed to have, in war, only the trade permitted in time of peace, it is obvious, that as few limitations as possible should be put to this trade. But war cuts off a great deal of trade, in the customary form of contrabands and blockades. Neutrality is not a new state of things, as it respects the conduct of the neutral. He is placed in that situation by the conduct of other parties. The state of war or peace of a third party cannot, by any natural right, affect the right of a neutral nation to conduct its commerce, for neutrality is a continuation of its former condition. The condition of the belligerent is changed, not that of the neutrals;—the right to disturb the condition of the neutral is, therefore, a conventional one. If the war opens a new course of trade in innocent articles, the neutral has a right to take advantage of it; he may in this way remunerate himself for the privations the laws of nations compel him to submit to. A neutral has a right to carry neutral commodities from one port to another of the mother country. Why not from a colony to the mother country? In time of war, the mother country may alter her commercial regulations. She may allow the neutral to export or to bring to her articles not permitted in time of peace. We see no difference, in this respect, between the trade of a colony and that of the mother country. Both are systems of monopoly; both subject to such commercial regulations as the parent state may choose to adopt. This right cannot be conceded to the belligerent, because it would really throw into his hands the principal part of the commerce of

the world. The neutral has no interest in the war ; and the just construction of the laws of war is, that they should abridge the rights of a third party to the smallest possible degree. The whole business of contraband is one of convention. We allow, too, the legitimacy of a blockade only on the consideration, that the belligerent has actual possession of the waters, or the territory, and has the means of establishing and enforcing on it his own municipal regulations, precisely as he could do at home. Great Britain has, also, repeatedly suspended her own colonial acts, in time of war, and opened new trades to the neutral. Contrabands, as they are specified in most conventions, constitute but a very small portion, indeed, of the trade of every country. But to supply one belligerent with them, may do a vast injury to the other. On this ground, the neutral foregoes the slight benefit of a trade in those articles. The colonial trade has a very different character. To arrest vessels, engaged in this business, upon any part of the ocean, is permitting to the belligerent the exercise of a great power, exerted in a very oppressive manner.

In itself the right of navigation is of course as unlimited as the ocean, and the right of commerce depends on the pleasure of the nation whose ports we wish to frequent. The privileges of commerce do not depend upon the laws of nations, but upon the will of the parties ; and these privileges are regulated by treaties. Nations are not under any obligation to account to the world for their commercial regulations ; and regulations that depend upon treaties are (of course) not affected by a war in which either party may engage. War does not deprive neutrals of a single right,—their commerce remains unshackled, with the exception of those articles that are directly and immediately useful in war. Undoubtedly, it is for the benefit of the belligerent to contract as much as possible the trade of the neutral ; but utility does not constitute a right. The neutral abandons the trade in contrabands because the belligerent considers these articles dangerous.

It is difficult to understand why he should abandon a trade, that is perfectly innocent. If belligerents are allowed to cut off the trade of neutrals,—to abridge their commerce, it is difficult to conceive, why the neutral should not be allowed to profit by all the trade that is open. Great Britain allows a relaxation in her navigation laws, in time of war. She allows a trade to a colony whose supplies are intercepted by the war. She allowed a license trade, to a very great extent, during the war with France from 1802 to 1811.\* The rule of '56 annihilates the neutral character; it makes all trading nations parties to a war; it denies to a neutral the right of commerce during the war, for if the principle may be made to apply to a colony, it is obviously perfectly easy and just to transfer the whole severity to the mother country. But, in truth, the belligerent has nothing to do with enforcing the municipal laws, the colonial acts of its enemy.

Mr. Pitt died in January 1806, and the formation of a new ministry in the beginning of February, in which Mr. Fox was Secretary of the Foreign Department, awakened hopes that American affairs would assume a more favourable aspect. No change, however, in the views or proceedings of government, took place. The new ministry appear to have imbibed the sentiments that governed former administrations. England had entered too deeply upon a system of policy, to be disturbed by the private or personal wishes or opinions of individuals. Nothing seemed to remain to ministers, from whatever political party they were taken, but to keep the nation firm and steady in its course. Mr. Fox died in September of the same year.

Our own government determined, at this time, to make a fresh and stronger effort for a maritime arrangement; not only induced to this step by a change of ministry in Eng-

\* From a statement, made to the House of Commons, it appears that 53,277 licenses to trade with the enemy, were granted during this period.

land, but feeling every day more and more the great necessity of securing a formal protection for neutral commerce. In May, a commission was issued, appointing Mr. Monroe, still resident in London, and William Pinkney, of Maryland, jointly and severally, ministers plenipotentiary and envoys extraordinary to the court of St. James.\* They were directed to propose the terms of a convention more ample, and embracing a greater number of points, than the one unsuccessfully presented in 1804 by Mr. Monroe. These commissioners concluded, on the 31st December 1806, a treaty of amity, navigation and commerce with lords Holland and Auckland. Although this instrument was not ratified by the United States, yet, as the most favourable arrangement ever made with Great Britain, it is in every view an important event in the diplomatic history of the country. We shall briefly state the principal provisions of it. The articles of the treaty of '94, not expired, were confirmed in their full tenor;—the trade to India was made a direct one; the treaty of '94 allowed any trade to, but only a direct trade from, the British possessions in the East Indies;—a reciprocal and perfect liberty of commerce and navigation was agreed on between the United States and British dominions in Europe. As to the West Indies, all parties remained in full possession of their rights; but the colonial trade (11th article) with an enemy's colony, was regulated in a manner satisfactory to this country. The commissioners were permitted, by their instructions, to adopt the principle, in relation to a colonial trade, that is found in the supplement of the treaty (added in October,) of June 1801, between England and Russia. This was not a departure from the principle of the rule of '56, though not a full enjoyment of the right on the part of the belligerent; it was only an abridgment of the right. The United States could

\* It is proper to state in this place, that Mr. Anthony Merry, appointed in February 1803, succeeded Mr. Liston as envoy extraordinary and minister plenipotentiary. He remained till the appointment of Mr. Erskine.



not consent to destroy the continuity of the voyage more than by *landing the goods and securing the duties on changing the vessel*. This is all the government could concede, and no other evidence of this fact could be furnished, than the documents of the custom-house officers. The American government have never acknowledged the validity of the rule of '56; but as the commerce of the country had accommodated itself to the various relaxations, introduced since '92, and as this commerce was exceedingly valuable,—without renouncing any principle whatever, they were desirous of conferring upon it all the consistence and protection, circumstances would admit. The precise meaning of the 11th article, taken in connection with the British orders, instructions, and decisions of courts, does not appear to have been altogether understood. At the time the convention was made, the only point in controversy, on the application of the rule of '56, between the two governments was, what constituted a *continuity of a voyage*. The convention defined this;\* and, in reality, obtained all the United States at the time sought. Provisions were exempted from the list of contraband. This was a great improvement on the treaty of '94. On the right of search, and impressment, no stipulations, at all effectual, were made. Our government, in their instructions, consented to the right of search,—but with such modifications as exist in conventions with other states. The neutral should never be compelled to send his boat on board an armed vessel, nor be required to assist the belligerent in the very detention, from which he is suffering. It is sufficient, that he should be detained, and it is more convenient for the belligerent to send, as he is supposed to be prepared for these purposes. It is, also, in many cases exceedingly dangerous for the neutral to undertake that business; the crew being often small, and the boats bad. The papers of the vessel, and the lives of the men, are, in this way, put in jeopardy.

\* See letter of Mr. Monroe.

The President, without consulting the Senate, refused to ratify this treaty, principally because the instrument did not contain a provision against impressments on the high seas. It is certainly now a subject of great doubt whether this proceeding was judicious. The treaty gave a permanent, and, in most respects, a satisfactory character to American commerce, for ten years at least, in Europe, and in the East and West Indies; and, compared with previous and subsequent treaties, it is probably the most favourable arrangement ever made with Great Britain. It was concluded with lords Holland and Auckland, under the Grenville administration, of which Mr. Fox was a principal member till his death. This country could not have expected to obtain such advantageous terms from any other ministry. The parties had laboured with great zeal upon the points in dispute; and they brought to the consideration of the subject uncommon talents and an unusual portion of experience. It cannot be questioned but that they entered into the undertaking with a most sincere desire to conduct this long, irritating, and unprofitable discussion to an honourable conclusion.

This treaty is another of the illustrations furnished by the diplomatic history of this country, of the impracticability of obtaining from England an acknowledgment of the general laws of nations, touching the right of search and impressment, as well as the difficulty of making any satisfactory arrangement concerning the West India trade. It is quite evident, that England would not have peaceably renounced her construction of maritime law, and, if this country had insisted on it as indispensable, a war was inevitable. But this, America never has done; the war of 1812 was not declared on these grounds. One administration refused to sign a convention, in which there was no stipulation on the subject of impressment. But we are not aware that the denial of this right, on the part of England, was ever made by America a condition of peace or war; it has always been considered matter of negotiation. If the country was not prepared to proceed to

hostilities for the most just protection of the rights of her own seamen, it is not easy to understand the policy that should dictate the rejection of a treaty, in other respects advantageous, which was simply silent on this topic. The government could have seen nothing in the situation of England, that promised a relaxation of the principle; and Messrs. Monroe and Pinkney were convinced, it was impossible to make any satisfactory arrangement on this head.

England has ever insisted, with remarkable zeal, on the abstract right of impressment, not so much, perhaps, on account of the number of her seamen in foreign service, as to prevent them from leaving her own. She has appeared to think there was a great demand for her men in the United States, and that American commerce offered uncommon temptations. On the other hand, the undoubted truth is, that the population of America has, generally speaking, produced sailors fully equal to the demand. Foreign seamen have never been preferred in any of her ports; and if any preference was shown, it was certainly rather for men from the Baltic than for British seamen. A large supply of foreign sailors could not have found employment either in the public or private service of this country. The American navy, in times of peace, comparatively absorbing very few sailors, the demand was altogether for the merchant service. That demand was uniform, and the increase regular, for great numbers of men are never unexpectedly wanted on sudden emergencies, as in England. The native population of the country, therefore, not only supplied the demand, but easily kept pace with the increase.

This is one of the earliest species of employment, in which the Americans made themselves known. While under the crown, American seamen were subject to all the liabilities of native-born subjects, and many of them were impressed, particularly during Lord Chatham's wars with France. It was well known to the American colonial or provincial governments, that the practice of granting powers to the admiralty

to issue press warrants was considered legal and constitutional in the British courts. This power, it is true, has been constantly disputed; and, till the time of the celebrated argument of Sir Michael Foster, in 1743, was submitted to with very great reluctance. Mr. Justice Foster considers this practice to be of ancient date, to have been "uniformly continued to the present time, and, on that ground, to have now become a part of the common law. No statute has, however, expressly declared this power to be in the crown. But it is implied in a great number." This circumstance formerly gave rise to much embarrassment and difficulty. But the legality of press warrants is now established; and as a number of decisions have been made concerning them, it is not likely that any doubt, as to their legality, could exist in a court of justice. Indeed, we have the following words of lord Mansfield on this point:—"The power of pressing is founded upon immemorial usage allowed for ages. If not, it can have no ground to stand upon, nor can it be vindicated or justified by any reason but the safety of the state. The practice is deduced from that trite maxim of the constitutional law of England, that private mischief had better be submitted to, than that public detriment and inconvenience should ensue. Though it be a legal power, it may, like many others, be abused in the exercise of it." As an authority of a character entirely different from that of lord Mansfield, we shall quote the words of lord Chatham. This is an extract from a very remarkable speech he made on the subject of the Falkland Islands, in November '70. Lord Chatham was at the time in the opposition:—

"My Lords, the subject on which I am speaking, seems to call upon me, and I willingly take this occasion to declare my opinion upon a question, on which much wicked pains have been employed to disturb the minds of the people, and to distress government. My opinion may not be very popular, neither am I running the race of popularity. I am, myself, clearly convinced, and I believe every man, who knows any thing of the English navy, will acknowledge that,

without impressing, it is impossible to equip a respectable fleet within the time in which such armaments are usually wanted. If this fact be admitted, and if the necessity of arming upon a sudden emergency should appear incontrovertible, what shall we think of those men, who, in the moment of danger, would stop the great defence of their country. Upon whatever principle they may act, the act itself is more than faction—it is labouring to cut off the right hand of the community. I wholly condemn their conduct, and am ready to support any motion that may be made for bringing those aldermen, who have endeavoured to stop the execution of the admiralty warrants, to the bar of this house. My Lords, I do not rest my opinion upon necessity. I am satisfied, that the power of impressing is founded upon uninterrupted usage. It is the *Consuetudo Regni*, and part of the common law prerogative of the crown.”\*

By the laws of nations and the tenor of treaties, a belligerent has a right, only, to take out of a neutral vessel enemies engaged in military service; no where has he a right to take out his own subjects. The municipal law, that is the law of allegiance of a country, cannot extend to the high seas—if so, it would apply in peace as well as in war, and to property as well as to persons. If a sovereign has once a right to the persons of his subjects on the high seas, he always has that right. He may want their services as well against an internal as an external enemy, and for other purposes than those of war. If he has a right to take, he has, also, a right to search. But on the occasion of every war, in which England has been engaged, American seamen have been visited with the arbitrary and pernicious effects of this system.† It is

\* See, also, a passage in Junius (vol. ii. p. 351. Woodfall's edition) written about the same time, together with the opinions of Messrs. Wedderburn, Glyn and Dunning.

† We are aware that the evil is one of long standing between the governments. Seamen were impressed as early as 1792 on the coast of Africa, and in British ports in the first year of the war between England and France.

true it is a municipal regulation of a foreign nation ; but in practice it affects the neutral more deeply than the subjects of the government, from which the law emanates. A great many projects to remedy the evil have been conceived ; but none have been satisfactory to both parties, as America would not consent to any arrangement, that should not secure her citizens from impressment on the *high seas*. Mr. King in 1803, was on the eve of concluding a very satisfactory convention with lord St. Vincent, the first lord of the admiralty. It was in these words :—“ No seaman nor seafaring person shall upon the high seas, and without the jurisdiction of either party, be demanded, or taken out of any ship or vessel belonging to the citizens, or subjects of one of the parties, by the public or private armed ships, or men of war belonging to or in the service of the other party ; and strict orders shall be given for the due observance of this engagement.”\* As the United States did not object that their vessels should be visited in port under the protection of the consul, this article afforded all necessary security. Lord St. Vincent ultimately refused to sign, on the pretext, that the narrow seas should be exempted from the operation of the provision. It was not to be expected that the doctrine of the *mare clausum* would be revived on that occasion, but it served effectually to frustrate the convention.

“ Is there a question of contraband, is the vessel destined to a blockaded port in violation of established principles, or does she contain enemies' property, the greatest extent to which the maritime law is carried by any nation ? In these cases she is conducted to port for trial, the parties are heard by an impartial and responsible tribunal, and are heard again by appeal, if they desire it.

\* June 1797 to 1801—2059 applications for seamen impressed including many made previous to those years by Mr. King and Mr. Pinkney—102 only British subjects—less than 1-20th of the whole impressed—1142 discharged as not being British subjects—more than one half—805 for further proof—with a strong presumption that the whole, or a greater part, at least, were aliens.

it. Are any of the passengers on board the neutral vessel in the naval or military service of the enemy? If such are found, they are made prisoners, but as prisoners they have rights, which the opposite belligerent is bound to respect. This practice, (impressment) however, looks to other objects than are here recited. It involves no question of belligerent on one side, and of neutral on the other. It pursues the vessel of a friend for an unlawful purpose, which it executes in a manner equally unlawful. Every commercial vessel of the United States, that navigates the ocean, is liable to be invaded by it, and not an individual on board any of them is secure, while the practice is maintained. It sets up every officer of his majesty's navy as a judge, from whose decision there is no appeal. It makes him a judge not of property, which is held more sacred, nor of the liberty of his fellow subjects only, however great the trust and liable to abuse on the main ocean, but of that of the citizens of another power, whose rights, as a nation, are trampled on by the decision: a decision, in rendering which every rule of evidence is violated, as it puts the proof of innocence on the accused, and is further highly objectionable, as there is too much reason to believe that it has been often guided more by the fitness of the party for service than any other circumstance.

“ It is possible that this practice may in certain cases, and under certain circumstances have been extended to the vessels of other powers, but with them there was an infallible criterion to prevent error. It would be easy to distinguish between an Englishman and a Spaniard, an Italian or a Swede; and the clear irresistible evidence of his national character, and, perhaps, of his desertion, would establish the British claim to the individual, and reconcile the nation, into whose service he had entered, to his surrender. But the very circumstances, which would constitute an infallible criterion in those cases, would be sure to produce endless error in the other. Who is so skilful in physiognomy as to distinguish between an American and an Englishman, especially among those whose profession and whose sea terms are the same? It is evident that this practice, as applied to a foreign nation to any great extent, has grown out of the American revolution, and that it is impossible for the United States not to see in it the assertion of a claim, which is utterly incompatible with that great event. When

the character of this claim, and the pernicious tendency of the practice are maturely weighed, it must furnish cause for surprize, that some just and friendly arrangement has not long since been adopted to prevent the evils incident to it."

We shall now return to the regular course of this narration. We have already said the American government refused to ratify the treaty of 1806. But notice of this circumstance was not received in England till July of the next year; where Mr. Pinkney remained as minister plenipotentiary. We have not spoken of the proceedings of the British ministers in this country with our own government during the period, of which a brief account has just been given.—It would be but a repetition; and, in reality, with the exception of Spain to a certain extent, all the important negotiations of this country have been conducted in Europe; particularly with France and England.

The vexatious conduct of the English on the American coast continued during the spring of 1807. The unfortunate and extraordinary affair of the Chesapeake\* took place in

\* *United States frigate Chesapeake,*

CHESAPEAKE BAY, JUNE 23, 1807.

SIR,—Yesterday, at 6, A. M. the wind became favourable, and knowing your anxiety that the ship should sail with all possible despatch, we weighed from our station in Hampton Roads, and stood to sea. In Lynnhaven bay we passed two British men of war, one of them the *Bellona*, the other the *Melampus*; their colours flying, and their appearance friendly. Some time afterwards, we observed one of the two line of battle ships that lay off cape Henry to get under way, and stand to sea; at this time the wind became light, and it was not until near four in the afternoon that the ship under way came within hail. Cape Henry then bearing N. W. by W. distance 3 leagues. The communication which appeared to be her commander's object for speaking the *Chesapeake*, he said he would send on board; on which I ordered the *Chesapeake* to be hove to for his convenience. On the arrival of the officer, he presented me with the enclosed paper No. 1. from the captain of the *Leopard*, and a copy of an order from admiral Berkeley, which another officer afterwards took back, to which I gave the cu-



June, and on the second day of July following, the President issued his proclamation, requiring all British vessels, bearing a king's commission to depart, and forbidding all to enter the waters of the United States. The government determined,

closed answer, No. 2, and was waiting for his reply. About this time I observed some appearance of a hostile nature, and said to captain Gordon, that it was possible they were serious, and requested him to have his men sent to their quarters with as little noise as possible, not using those ceremonies which we should have done with an avowed enemy, as I fully supposed their arrangements were more menace than any thing serious. Captain Gordon immediately gave the orders to the officers and men to go to quarters, and have all things in readiness; but before a match could be lighted, or the quarter bill of any division examined, or the lumber on the gun deck, such as sails, cables, &c. could be cleared, the commander of the Leopard hailed; I could not hear what he said, and was talking to him, as I supposed, when she commenced a heavy fire, which did great execution.

It is distressing to me to acknowledge, that I found from the advantage they had gained over our unprepared and unsuspecting state, did not warrant a longer opposition; nor should I have exposed this ship and crew to so galling a fire had it not been with a hope of getting the gun deck clear, so as to have made a more formidable defence: consequently our resistance was but feeble. In about twenty minutes after I ordered the colours to be struck, and sent lieutenant Smith on board the Leopard, to inform her commander that I considered the Chesapeake her prize. To this message I received no answer; the Leopard's boat soon after came on board, and the officer who came in her demanded the muster book. I replied the ship and books were theirs, and if he expected to see the men he must find them. They called on the purser, who delivered his book, and the men were examined, and the three men demanded at Washington, and one man more, were taken away. On their departure from the ship, I wrote the commander of the Leopard the enclosed No. 3, to which I received the answer No. 4. On finding that the men were his only object, and that he refused to consider the ship his prize, and the officers and crew his prisoners, I called a council of our officers, and requested their opinion relative to the conduct it was now our duty to pursue. The result was, that the ship should return to Hampton Roads, and there wait your further orders.

I have

at once, to suspend all negotiation, till reparation was made for this outrage. The immunity of a national ship from search, for any purpose whatever, is not contested by any nation; and the terms of reparation, demanded by the American

I have sent this letter to you by Captain Gordon, in order that you may have an opportunity of getting such information as you may wish.

With great respect, I have the honour to be, &c.

(Signed)

JAMES BARRON.

HON. ROBERT SMITH, *Secretary of the Navy, Washington.*

No. 1.

The captain of his Britannic majesty's ship *Leopard*, has the honour to enclose to the captain of the United States ship *Chesapeake*, an order from the honourable vice-admiral Berkeley, commander in chief of his majesty's ships on the North American station, respecting some deserters from the ships (therein mentioned) under his command, and supposed to be now serving as part of the crew of the *Chesapeake*.

The captain of the *Leopard* will not presume to say any thing in addition to what the commander in chief has stated, more than to express a hope, that every circumstance respecting them may be adjusted in a manner that the harmony subsisting between the two countries may remain undisturbed.

*H. M. ship Leopard, at sea,  
June 22, 1807.*

*To the commander of the U. S. ship Chesapeake.*

No. 2.

I know of no such men as you describe. The officers that were on the recruiting service for this ship, were particularly instructed by the government, through me, not to enter any deserters from his Britannic majesty's ships; nor do I know of any being here: I am also instructed never to permit the crew of any ship that I command to be mustered by any other but their own officers. It is my disposition to preserve harmony, and I hope this answer to your despatch will prove satisfactory.

JAMES BARRON.

*At sea, June 22, 1807.*

*To the commander of his B. M. ship Leopard.*

No. 3.

SIR,—I consider the frigate *Chesapeake* your prize, and am ready

I have

government, on this occasion, were not only a formal disavowal of the act and restoration of the four men taken out, but as a security for the future, an entire abolition of the practice of impressment under the American flag. It was a particular injunction to the American minister in London not to treat of the affair of the Chesapeake separately, but to consider all those injuries, which properly fell under the same head, as one entire subject. For this assault upon its dignity and sovereignty, the country had a right to exact the most solemn and public form of retribution and acknowledgment. Both England and France have, within the last century, sent an extraordinary ambassador for the purpose of offering an apology for a violation of national sovereignty, infinitely less important.

This mode of discussion met with an unfavourable reception from the British government. The act of the officer had been early disavowed, and a promise of ample reparation made. But England refused to consider this matter in connexion with the subject of impressment, or any other point

to deliver her to any officer authorized to receive her. By the return of the boat I shall expect your answer, and have the honour to be, &c.

JAMES BARRON.

*Chesapeake, at sea, June 22, 1807.*

*To the commander of his B. M. ship Leopard.*

No. 4.

SIR,—Having to the utmost of my power fulfilled the instructions of my commander in chief, I have nothing more to desire, and must in consequence proceed to join the remainder of the squadron, repeating that I am ready to give you every assistance in my power, and do most sincerely deplore that any lives should have been lost in the execution of a service which might have been adjusted more amicably, not only with respect to ourselves; but the nations to which we respectively belong.

I have the honour to be, &c.

S. P. HUMPHREYS.

*Leopard, at sea, June 22, 1807.*

*To the commander of the U. S. ship Chesapeake.*

} 3 killed,  
} 18 wounded.

then under discussion. The proclamation of the President was, also, regarded as in some degree assuming, by the act of the American government itself, restitution for this unfortunate business. England professed to consider this measure altogether in a hostile light, and as precluding the offer of reparation they were disposed to make. Here Mr. Monroe's mission terminated.

The ground the ministry took on this occasion, was attended with every advantage they could hope to derive from delay, though their ships were exposed the whole time to the very great inconvenience of being deprived of their usual ports and places of resort on the American coast. They could not have desired a war with the United States. There had been, perhaps, no period since the French revolution, when policy more clearly pointed out to them the propriety of avoiding difficulties with America. Napoleon had, a short time before, succeeded in overwhelming, at the disastrous battle of Jena, the strength and pride of Prussia; and he appeared no longer to have an enemy to the west of the Vistula. When the proclamation of the President was issued, before notice of it could even be transmitted to the British government, the alternative of transferring the negotiation to the United States, or of declaring war, was offered to England. Mr. Canning (September 3,) at once informed Mr. Monroe, that a minister would be sent to the United States, provided with proper instructions to bring this unhappy dispute to an honourable conclusion. Mr. G. H. Rose was accordingly sent, and arrived in this country in January 1808. But his mission was altogether unsatisfactory. He had positive instructions not to treat of the affair of the Chesapeake, while the proclamation of the President was in force; nor was he permitted at all to connect the subject of impressments from private vessels with that matter. The British government still considered the proclamation as a hostile measure, as assuming retribution; and, while in force, no arrangement for the wrong done could be made on equal terms. They had at once dis-

avowed the act of the officer, and voluntarily made an offer of reparation. On the other hand, the American government regarded the proclamation as a measure of precaution, for the purpose of protecting their citizens and shores from outrages, not only similar to this, but from a repetition of scenes scarcely less a violation of national rights, though presenting a less striking character. The proclamation was not directed alone to the affair of the Chesapeake; it had in view the conduct of the British officers on the coast, from the beginning of the European war. This consideration of the matter on the part of America immediately put an end to the mission of Mr. Rose.

The affairs of the two countries were, at this time, in a more aggravated and alarming state than they had been since '94. We have now reached the close of the year 1807; it is the termination of the first period we proposed to consider in this chapter; a period immediately preceding the orders in council.\* With the brief exception of a single year, France and England had been constantly at war since 1793. America, setting out with the fairest prospects, and with the sincerest determination to maintain an exact and impartial neutrality, saw every year fresh inroads made on her rights and commerce. She was more and more impressed with the necessity of either retiring altogether from the ocean, and adopting the policy, recommended by one of her Presidents in a work written during the revolution war,—or of becoming a party in the contest. Her studious, unceasing negotiations had availed nothing; one scheme of a convention the British government refused to accept,—another the American government refused to ratify;—not a maritime right, not a commercial privilege was secured. Her diplomatic labours had not meliorated a single decree of the belligerents, had not delayed for a single hour their rapid course, in sweeping to destruction neutrals and all their rights. We cannot say the country

\* First orders promulgated in November 1807.

bore these indignities with composure ; but, at least, they bore them with patience, in the hope that relief would still be found in negotiation. At the time of the attack on the Chesapeake, few persons believed the forbearance of the government or of the people, could have been put to a more cruel trial. But our neutrality survived even that affair.

In the mean time, very important events had taken place in Europe. In November 1807, the first orders in council were issued ; and a copy of them was communicated to Congress by the President, on the 2d February 1808. They will be found, at length, in the documents accompanying that message. On account of their length, we shall here give only an abstract of them, for which we are indebted to an intelligent writer of the day :—

“ All trade directly from America to every port and country of Europe, at war with Great Britain, or from which the British flag is excluded, is totally prohibited. In this general prohibition, every part of Europe, with the exception at present of Sweden, is included ; no distinction whatever is made between the domestic produce of America, and that of the colonies re-exported from thence.

“ The trade from America to the colonies of all nations, remains unaltered by the present orders. America may export the produce of her own country, but that of no other, directly to Sweden.

“ With the above exception, all articles, whether of domestic or colonial produce, exported by America to Europe, must be landed in England, from whence it is intended to permit their re-exportation, under such regulations as may hereafter be determined.

“ By these regulations, it is understood that duties are to be imposed on all articles so re-exported ; but it is intimated, that an exception will be made in favour of such, as are the produce of the United States, that of cotton excepted.

“ Any vessel, the cargo whereof shall be accompanied with certificates of French consuls abroad of its origin, shall, together with the cargo, be liable to seizure and condemnation.

“ Proper care is taken that the operation of the orders shall not commence until time is afforded for their being known to the parties interested.”

These orders had been preceded by a proclamation of the British government, (October 16, 1807,) recalling and prohibiting British seamen from serving foreign princes. We do not intend to go into the question of the priority of these orders or of the French decrees; though it is well known they were issued on the solitary and broad ground of retaliation; the British courts of admiralty ever considered them in that light. But in war, retaliation has a very comprehensive meaning; a thing entirely unwarrantable in itself, is excused on this pretext. And, after all, it is in some degree uncertain how far the British government can reasonably profit of this justification; though, as it respects the neutral, not affording the slightest apology, relief, or consolation. Any one, who will take the pains to look into the very full examination on the orders in council, before the House of Commons,\* will, at least, be inspired with some doubt as to the amount of mischief the Berlin decree did British commerce. We admit the matter is a most perplexed one, particularly as it related to the course of exchange; and we are far from being in a situation to give an opinion on it. But, in another point, retaliation furnished a still feebler excuse. The British orders were a much greater grievance to the neutral than the Berlin and Milan decrees; for England possessed, in some degree, the power to execute them. And it is a remarkable combination of circumstances, that the very navy, directed to enforce

\* On the petitions from Liverpool, Manchester, and London, against orders in council in 1808. These petitions were heard by evidence, and by counsel (Mr. Brougham) at the bar of the House. One of the most concise, and, perhaps, ablest defences of the "orders," will be found in the speech of Mr. Stephen, delivered in the House of Commons, March 6th, 1809, on a motion of Mr. Whitbread, relative to the "late overtures of the American government." This speech is reported at length in App. to Parliamentary Debates, vol. xiii. It is, however, just to state, that one of the principal opponents of the orders in England, declared that British trade suffered very much two or three months previous to the orders in council, in consequence of the Berlin decree, or of the great power of Bonaparte on the continent.

these orders, was at the same moment virtually engaged in protecting neutral commerce from the operation of the French decrees. The right of retaliation was not exercised for a year; for no other notice was, in the outset, taken of the Berlin decree, than in prohibiting, in January 1807, all trade between those countries of Europe so much under the influence of France as to reject British trade.\* England waited to ascertain whether the French would carry their threats into execution, and whether neutrals would acquiesce in those maritime usurpations.

The British orders produced an extreme sensation in this country. The neutral was placed between confiscation and confiscation; if he went to a French port without touching at a British, and paying such taxes or duties as the government chose to impose, he was liable to capture;—and if he touched at the British port, he was certain of condemnation when he arrived at the French. The actual loss by capture, to the declaration of war in June 1812, was, in itself, very great; but a still more severe loss arose from the

\* The effect of the order of January, was to forbid the coasting trade of the enemy. On the part of England this might have been a judicious undertaking, but it is quite evident that the ground assumed on this occasion was, that the British government did not choose to interrupt the commerce of neutrals. When General Armstrong protested against the Berlin decree, within a month after its promulgation, he received an answer from the French minister Decrès, that the instrument did not apply to America. During the first twelve months of this decree, American commerce increased with England, and the case of the *Horizon*, and of the first orders in council, were both known at the same time in the United States. We have in '96, '97, and in 1800, specimens of decrees somewhat similar to the Berlin. They were never executed out of the limits of France. As a neutral government, the aid of America could not be justly invoked in checking the evils the acts of one belligerent did to the commerce of the other. And, after all, the misfortune of this country was, that whether the belligerents adopted offensive measures, or simply those of retaliation, America was one of the first and greatest victims.



alarm these orders spread through the mercantile part of the community, from the necessity merchants were under of so shaping their adventures as not to expose their property to destruction, and from the various restrictive acts, to which the American government thought itself compelled to resort for the protection of the vessels and of the rights of the citizens. In consequence, there was a vast capital lying idle, and a great number of enterprising, industrious, intelligent citizens living without employment. To shield itself against these constant inroads on its neutrality, the United States had recourse only to such measures as a desire of peace could dictate. It will be seen that they were not vigorous enough for the occasion. Negotiation abroad having failed, a course of municipal regulations, in the shape of restrictions and prohibitions, was commenced in 1806. The first measure was an act to forbid the importation of certain goods, wares, and merchandise from Great Britain and its dependencies, after November of that year. This was followed by the embargo of December 1807, and the non-intercourse of March 1809. We have not mentioned the partial or supplementary acts. From 1806, to the declaration of war in 1812, the nation was subjected, the greater part of the time, to a restrictive system. But the trade was never so extensive, or more profitable, than in the two years immediately preceding this period. The imports and exports were both greater than they had been in any former years, and the commerce of the country was obviously making a rapid and solid progress. The export trade, in the course of sixteen years, had acquired an "augmentation of 89,331,109 dollars." In 1807, it was reduced in an instant to the aggregate of 22,430,960 dollars, only 1,677,862 more than the amount in 1791, the second year after the organization of the present government.\* The restrictive system was adopted to secure the rights and save the property of the citizens, to prepare the country for a war, or to pre-

\* Seybert. Statistical Annals.

vent, as much as possible, circumstances of irritation and aggression on the part of the belligerents. The experiment was attended with little success. The belligerents were too powerful, too deeply engaged, to be diverted from their course by measures so entirely passive. It is impossible to compel countries like France and England, abounding in such infinite resources, to abandon a whole system of policy, particularly of the magnitude of the one for which they were then contending, by depriving them, for a few years, of the commerce of a single neutral state.

In the summer of 1808, it was intimated to the British government, that the embargo, and the acts supplementary to it, would be repealed, as it respected that country, whenever the orders in council, so far as they related to the United States, should be suspended. This offer England rejected, refusing to obtain a favour from America by a concession to France. The embargo was considered, by the ministry, as a municipal measure, affecting only the citizens of the United States; they did not pretend to make any complaint of it. But they took a very different view of the orders in council,—in their opinion, a right of retaliation, they exercised against their enemies.

The difficulties and embarrassments of the country became every day greater. There appeared to be no alternative but an entire suspension of commerce with all the world, or war both with England and France. We shall extract a paragraph from a report made to the House of Representatives in November 1808 :—

“ The aggressions of England and France, collectively affecting almost the whole of our commerce, and persisted in, notwithstanding repeated remonstrances, explanations and propositions the most candid and unexceptionable, are, to all intents and purposes, a maritime war waged by both nations against the United States. It cannot be denied, that the *ultimate* and only *effectual mode* of resisting that *warfare*, if persisted in, is *war*. A permanent suspension of commerce, after repeated and unavailing efforts to obtain peace, would

not properly be resistance,—it would be withdrawing from the contest, and *abandoning our indisputable right freely to navigate the ocean.* The present unsettled state of the world, the extraordinary situation in which the United States are placed, and the necessity, if war be resorted to, of making it at the same time against both nations, and these the two most powerful of the world, are the principal causes of hesitation. There would be none in resorting to that remedy, however calamitous, if a selection could be made on any principle of justice, or without a sacrifice of national independence.”

This gloomy prospect was for a moment relieved by a circumstance, hailed as most auspicious in the outset, but which ultimately added to the accumulation of difficulties and provocations. We speak of Mr. Erskine's negotiation in April, 1809.\* This arrangement suspended, for a short time, the appearance and necessity of war. The proposition made by Mr. Erskine, that the orders in council, of January, and November, 1807, should be withdrawn, on the 10th day of June, as far as respected the United States, provided the intercourse should be renewed between America and England, was received with great satisfaction by this government. An immediate answer, on the same day, was made by the Secretary of State, that the President would, in pursuance of the 11th section of the statute, commonly called the non-intercourse act, issue a proclamation, so that the trade of the United States with Great Britain might on the same day be renewed, in the manner provided in that act. Accordingly, on the very day (April 19) on which this note was written, the following proclamation was officially published:—

“ By the President of the United States, a proclamation. Whereas it is provided by the 11th section of the act of Congress, entitled “ an act to interdict the commercial intercourse between the

\* Mr. Rose, and Mr. David M. Erskine, were envoys extraordinary and ministers plenipotentiary. Mr. Rose left this country in March, 1808.

the United States and Great Britain and France, and their dependencies, and for other purposes," that, "in case either France or Great Britain shall so revoke or modify her edicts, as that they shall cease to violate the neutral commerce of the United States," the President is authorized to declare the same by proclamation, after which the trade suspended by the said act, and by an act laying an embargo on all ships and vessels in the ports and harbours of the United States, and the several acts supplementary thereto, may be renewed with the nation so doing. And whereas, the honourable David Montague Erskine, his Britannic majesty's envoy extraordinary and minister plenipotentiary, has, by the order and in the name of his sovereign, declared to this government, that the British orders in council, of January, and November, 1807, will have been withdrawn, as respects the United States, on the 10th day of June next—Now, therefore, I, James Madison, President of the United States, do hereby proclaim, that the orders in council, aforesaid, will have been withdrawn on the said tenth day of June next, after which day, the trade of the United States with Great Britain, as suspended by the act of Congress above mentioned, and an act laying an embargo on all ships and vessels in the ports and harbours of the United States, and the several acts supplementary thereto, may be renewed."

Mr. Erskine having likewise offered reparation for the affair of the Chesapeake, the proposition was accepted by the American government. He declared, at the same time, that a minister, possessing full powers, would be sent to this country, to conclude a treaty on all the points in discussion. But the satisfaction the arrangement of the 19th diffused, was soon dispelled. On the 3d of July of the same year, Mr. Erskine gave official notice to the Secretary of State, that his government had not thought proper to confirm the provisional agreement he had entered into. It was well known, at the time, that the motive of this refusal of the ministry was the circumstance of the minister having exceeded his instructions. In consequence of this communication, the President issued a second proclamation of August 9, 1809, declaring that the

non-intercourse act was again in force, in regard to Great Britain. The British government also issued orders to protect from capture such American vessels as had left the United States in consequence of the proclamation of the President, of April 19th.

This was an unfortunate business; it was justly a disappointment to the American government and people, and exceedingly increased the probability of war. We believe that no doubt now remains, but that it would have been for the benefit of Great Britain to have confirmed the arrangement of April, 1809,—or what was, in reality, equivalent to it, the proposition of the American government, of the summer of 1808. England would not accede to either, on the ground, that such a state of things would amount to a virtual repeal of her orders. Mr. Erskine certainly exceeded his instructions, as he admits himself, in his letters to Mr. Canning. He attempts no justification of his conduct, in relation to the two conditions of his instructions, concerning the colonial trade, and the enforcing the embargo against France, by the means of English men of war, though he offers satisfactory explanations upon some minor points.\* He closes a letter, dated August

\* These instructions of Mr. Canning, from a letter to Mr. Erskine, of January 23, 1809, not only contain two extraordinary propositions, but as they constitute a principal ingredient in the correspondence between Mr. Jackson and Mr. Smith, we shall extract them entire. "From the reports of your conversations with Mr. Madison, Mr. Smith, and Mr. Gallatin, it appears, 1st, that the American government is prepared, in the event of his majesty's consenting to withdraw the orders in council, of January and November, 1807, to withdraw, contemporaneously, on its part, the interdiction of its harbours to ships of war, and all non-intercourse and non-importation acts, so far as respects Great Britain, leaving them in force with respect to France, and the powers which adopt or act under her decrees. 2dly, what is of the utmost importance, as precluding a new source of misunderstanding, which might arise after the adjustment of the other questions, that America is willing to renounce, during the present war, the pretension of carrying on, in time of war, all trade with the enemies' colonies, from

10, the last he appears to have written, with this expression:—"Nothing could have induced me to have deviated, in the slightest degree, from the orders I had received, but a thorough conviction upon my mind, that by so doing, to a certain extent, I should accomplish the object which his majesty had in view, when, by too strictly adhering to the letter of my instructions, I might lose the opportunity of promoting essentially his majesty's wishes and interest." The instructions to this minister, and the entire correspondence, have since been published.

In the arrangement made with Mr. Erskine, the American government relinquished the ground, taken immediately after the capture of the Chesapeake, that they would not treat of that affair, except in connexion with the business of impress-

which she was excluded during peace. 3dly, Great Britain, for the purpose of securing the operation of the embargo, and of the bona fide intention of America to prevent her citizens from trading with France, and the powers adopting and acting under the French decrees, is to be considered as being at liberty to capture all such American vessels as may be found attempting to trade with the ports of any of those powers; without which security for the observance of the embargo, the raising of it nominally, with respect to Great Britain alone, would in fact raise it with respect to all the world. On these conditions, his majesty would consent to withdraw the orders in council, of January and November, 1807, so far as respects America."—"Upon receiving through you, on the part of the American government, a distinct and official recognition of the three above mentioned conditions, his majesty will lose no time in sending to America a minister, fully empowered to consign them to a formal and regular treaty."—"Upon the receipt here of an official note, containing an engagement for the adoption, by the American government, of the three conditions above specified, his majesty will be prepared, on the faith of such engagement, either immediately, (if the repeal shall have been immediate in America) or on any day specified by the American government for that repeal, reciprocally to recall the orders in council, without waiting for the conclusion of a treaty. And you are authorized, in the circumstances herein described, to take such reciprocal engagement on his majesty's behalf." Par. Hist. vol. xvii. Append. 124, 125, 126.

ment. The government, also, expressed no dissatisfaction, that the officer, admiral Berkley, had not only been recalled, but had recently been appointed to a high command at Lisbon. Nor could America have been satisfied with the partial explanation, given by Mr. secretary Canning to Mr. Pinkney, of the reasons of the disavowal of the Erskine arrangement; particularly as the secretary intimated, that the minister then in America would be furnished with instructions on this subject. Propriety obviously required, that the explanation should be given on the spot; and, as the confidence of his government had been withdrawn from the individual who framed the provisional convention, he was an unsuitable person for that purpose. These instructions were never executed by him. This was a duty that naturally, and with great fitness, fell upon his successor. It is, however, proper to state, that Mr. Erskine was not invested with full power to make a treaty; and he had never exchanged his powers with any persons properly authorized, on the part of the American government. When the convention was made, he stood in the light only of an accredited minister. In a recent instance, our government withheld their sanction from a treaty, concluded by envoys invested with full powers, and especially accredited for that purpose. The ratification was refused, in that case, without the customary form of submitting it to that body, invested, under the constitution, with the examination of treaties. It is, indeed, evident, from an expression, in Mr. Erskine's letter, of April 18th, that he himself did not possess a full power. It is as follows:—"On these grounds and expectations, I am instructed to communicate to the American government, his majesty's determination of sending to the United States an envoy extraordinary, invested with full powers to conclude a treaty on all the points of the relations between the two countries." At that time, Mr. Erskine was authorized to bind his government, only on the *three* conditions of his instructions. He was, moreover, authorized to assure the American government, that if they wished to act

upon the arrangement, before a formal treaty could be made, full and immediate effect should be given to it in England.

The next negotiation presents us with still greater circumstances of irritation, though of a very novel character. It began in anger, and was speedily terminated. Mr. Jackson, the successor of Mr. Erskine, who had been recalled, arrived in this country in the autumn of 1809. Having presented his credentials, he had two conferences with the secretary of state; but verbal communication did not extend beyond that point. On the 9th of October, the secretary addressed him a letter, complaining that no distinct or solid reasons had been given for the disavowal of the Erskine arrangement. The government was entitled to receive not only a formal disavowal from a public functionary on the spot, but the acknowledged principles of the laws of nations (Vattel) required, that the reasons should be "solid and weighty." The case was an extraordinary one: in the usual conventions, made between nations, no part of them were, in general, subject to be executed, till ratified by the respective governments. But the arrangement of 1809 was carried, by the American government, into immediate execution; and the merchants, relying upon the good faith with which it was concluded, sent their vessels to sea, as soon as the time, fixed by the proclamation of the President, would allow. The letter concluded with the following expression:—"To avoid the misconceptions, incident to oral proceedings, I have the honour to intimate, that it is thought expedient, that our further discussions, on the present occasion, be in the written form." An answer was written to this letter, on the 11th, by Mr. Jackson:—

"I have had the honour of receiving your official letter of the 9th inst. towards the close of which you inform me, that it has been thought expedient to put an end to all verbal communication, between yourself and me, in discussing the important objects of my mission. Considering that a very few days have elapsed, since I delivered to the President a credential letter from the king, my master—and that nothing has been even alleged to have occurred.



to deprive me of the facility of access, and of the credit to which, according to immemorial usage, I am by that letter entitled, I believe there does not exist, in the annals of diplomacy, a precedent for such a determination, between two ministers, who have met for the avowed purpose of terminating amicably the existing differences between their respective countries; but, after mature reflection, I am induced to acquiesce in it, by recollection of the time that must necessarily elapse, before I can receive his majesty's commands upon so unexpected an occurrence, and of the detriment that would ensue to the public service, if my ministerial functions were, in the interval, to be altogether suspended. I shall, therefore, content myself with entering my protest against a proceeding, which I can consider in no other light, than as a violation, in my person, of the most essential rights of a public minister, when adopted, as in the present case, without any alleged misconduct on his part."

This declaration was, perhaps, hasty; and the opinion, here expressed, will, on examination, be found to be incorrect. Two discussions had been held, and such progress made in the topic, as to render a precise statement necessary, in order that the views and propositions of the respective parties might be exactly understood. This is not unusual in diplomacy. A very recent instance took place in the negotiation between Mr. Pinkney and Mr. Canning in 1808. The late diplomatic intercourse between the two governments rendered such a precaution abundantly necessary. Various and very important misconceptions had arisen from neglect of this mode of proceeding. The instructions, sent by Mr. Canning to Mr. Erskine, originated entirely in a misunderstanding on the part of the latter gentleman of the sentiments expressed in conversation with members\* of the government. Mr. Jackson was, also, somewhat incorrect in the construction he put on this intimation of the American secretary; the language not admitting of a meaning, so broad and comprehensive. It was apparently intended, that the restriction to writ-

\* Messrs. Gallatin, Smith and Madison.

ten communication should apply only to the particular discussions then in hand;—by no means to a denial of all verbal intercourse whatever. Mr. Jackson was satisfied with an explanation of this matter, subsequently given.

The correspondence between the American secretary of state and the British minister began under these and other unfavourable auspices; it had a speedy and unfortunate termination. Omitting other matters, that led to some angry remarks, we shall proceed at once to the particular topic that immediately brought about the dismissal of Mr. Jackson. It turned upon the point, *whether the whole of Mr. Erskine's instructions were known to the American government*. We shall begin with an extract from Mr. Jackson's letter of October 11, where this subject is first mentioned:—

“It was not known, when I left England, whether Mr. Erskine had, according to the liberty allowed him, communicated to you in extenso his original instructions. It now appears that he did not. But in reverting to his official correspondence and particularly to a dispatch addressed on the 20th of April to his majesty's secretary of state for foreign affairs, I find that he there states, that he had submitted to your consideration the three conditions, specified in those instructions as the ground work of an arrangement, which, according to information received from this country, it was thought in England might be made with a prospect of great mutual advantage. Mr. Erskine there reports *verbatim et seriatim* your observations upon each of the three conditions, and the reasons, which induced you to think, that others might be substituted in lieu of them. It may have been concluded between you, that these latter were an equivalent for the original conditions, but the very act of substitution evidently shows, that those original conditions were in fact very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions, and those contained in the arrangement of the 18th and 19th of April, is sufficiently obvious to require no elucidation, nor need I draw the conclusion, which I consider as admitted by all absence of complaint on the part of the American government; viz., that under such

circumstances his majesty had an undoubted and incontrovertible right to disavow the act of his minister. I must here allude to a supposition, which you have more than once mentioned to me, and by which, if it had any the slightest foundation, this right might perhaps have been in some degree affected. You have informed me that you understood that Mr. Erskine had two sets of instructions by which to regulate his conduct, and that upon one of them, which had not been communicated either to you or to the public, was to be rested the justification of the terms finally agreed upon between you and him. It is my duty, sir, solemnly to declare to you, and through you to the President, that the dispatch from Mr. Canning to Mr. Erskine, which you have made the basis of an official correspondence with the latter minister, and which was read by the former to the American minister in London, is the only dispatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement with this country on the matter to which it relates."

This paragraph plainly intimates that the American government were acquainted with Mr. Erskine's instructions. They, therefore, must have known that the convention was contrary to those instructions; and it cannot and it ought not to be matter of surprise, that the convention was disavowed. This conclusion is strengthened, in the opinion of the English envoy, by the absence of all complaint on the part of America. But the extract ends with a qualifying phrase inconsistent in its meaning with the leading feature of the paragraph. If Mr. Erskine had, in the belief of the American government, other instructions than those he communicated to the American secretary, it is quite obvious, the American government could not positively have known that the convention concluded was at variance with his instructions. If an envoy has several sets of instructions, if he exhibits only one set to the minister with whom he treats, and after that makes a treaty at variance with the instructions exhibited, particularly of the simple and precise character of those shown by Mr. Erskine, the impression on the minister's mind probably would be, that he

had not seen all the instructions of the envoy. In the letter of October 19th of the secretary of state will be found a particular answer to the quotation already made from Mr. Jackson's letter of the 11th :—

“ The stress you have laid on what you have been pleased to state, as the substitution of the terms finally agreed on, for the terms first proposed, has excited no small degree of surprise. Certain it is, that your predecessor did present for my consideration the three conditions, which now appear in the printed document—that he was disposed to urge them more than the nature of two of them (both palpably inadmissible and one more than merely inadmissible) could permit, and that, on finding his first proposal unsuccessful, the more reasonable terms comprised in the arrangement respecting the orders in council were adopted.”—“ The declaration that the dispatch from Mr. Canning to Mr. Erskine of the 23d January, is the only dispatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it relates,” is now for the first time made to this government, and I need hardly add, that if that dispatch had been communicated at the time of the arrangement, or if it had been known, that the propositions contained in it, and which were at first presented by Mr. Erskine, were the only ones on which he was authorized to make an arrangement, the arrangement would not have been made.”

In this extract the secretary distinctly states, that Mr. Jackson's letter furnished the government with the first information, that Mr. Canning's dispatch of the 23d of January contained the conditions upon which a treaty *alone* could be concluded; a positive declaration, that the American government did not know before that Mr. Erskine did not possess other instructions, than those shown to the secretary; and if the government had possessed that knowledge, the convention never would have been made. It is important to mark this expression, because here the controversy on that particular point could well have terminated; neither party was under any obligation to return to it. The language of these

letters, both of secretary and minister, had not been particularly mild or conciliatory. They both obviously wrote under some degree of irritation. But no permanent offence had been given, Mr. Jackson having declared, he was satisfied with the explanation offered by Mr. Smith respecting the form of intercourse. Mr. Jackson's answer, under date of October 23d, is in the following words:—

“I have, therefore, no hesitation in informing you, that his majesty was pleased to disavow the agreement concluded between you and Mr. Erskine, because it was concluded in violation of that gentleman's instructions, and altogether without authority to subscribe to the terms of it. These instructions, I now understand by your letter, as well as from the obvious deduction, which I took the liberty of making in mine of the 11th instant, were at the time in substance made known to you; no stronger illustration, therefore, can be given of the deviation from them which occurred, than by a reference to the terms of your agreement. Nothing can be more notorious than the frequency with which, in the course of a complicated negotiation, ministers are furnished with a gradation of conditions, on which they may be successively authorized to conclude. So common is the case, which you put hypothetically, that in acceding to the justice of your statement, I feel myself impelled to make only one observation upon it, which is, that it does not strike me as bearing upon the consideration of the unauthorized agreement concluded here, inasmuch as, in point of fact, Mr. Erskine had no such graduated instructions. You are already acquainted with that which was given, and I have had the honour of informing you, that it was the only one, by which the conditions on which he was to conclude, were prescribed. So far from the terms, which he was actually induced to accept, having been contemplated in that instruction, he himself states, that they were substituted in lieu of those originally proposed.”

This language may bear a double construction, though the presumption undoubtedly is, that a foreign minister would not attempt to insult a government, to which he was accredited, in the gross manner that one form of interpretation would imply. If Mr. Jackson intended only to say, that the

convention was disavowed, because it was in violation of Mr. Erskine's instructions, that, as he had now ascertained those instructions were known to the American government, and as he had himself informed them, that those were the only instructions Mr. Erskine possessed, the American government could not have been surprised the convention was discovered, most assuredly no cause of objection or exception could justly lie to this language. There is manifestly no intimation in this construction, that the American government knew at the time of the convention *all* the instructions of Mr. Erskine, and the government always admitted that they had seen a *part* of his instructions. The other interpretation of this language, and the one the government obviously assigned to it, is, that the American government did know at the time of the convention, that the instructions exhibited by Mr. Erskine were the *only ones* he possessed. Owing to indisposition, the Secretary of State did not reply to this letter before the 1st of November. He observes:—

“I abstain, Sir, from making any particular animadversions on several irrelevant and improper allusions in your letter, not all comporting with the professed disposition to adjust, in an amicable manner, the differences unhappily subsisting between the two countries. But it would be improper to conclude the few observations, to which I purposely limit myself, without adverting to your repetition of a language, implying a knowledge on the part of this government, that the instructions of your predecessor did not authorize the arrangement formed by him. After the explicit and peremptory asseveration, that this government had no such knowledge, no such arrangement would have been entered into, the view which you have again presented of the subject, makes it my duty to apprise you that such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes to itself.”

Whatever character may be ascribed to this language, it put it in the power of Mr. Jackson to explain that portion of his letter, at which the American secretary had taken offence.

The secretary himself, in the course of their short correspondence, had already offered an explanation upon another topic that appeared to be peculiarly irritating to Mr. Jackson. Mr. Jackson was, evidently, a man of talents; his correspondence is conducted with ability; certainly with more power of argument and expression than that of any of his predecessors. He had been employed many years in the diplomatic service of his country; and he was, therefore, in every respect, competent to judge of the meaning that Mr. Smith had ascribed to his language. It was quite apparent, that a direct attack by a foreign functionary upon the honour and veracity of a government was, under all circumstances, inadmissible. After Mr. Smith had undertaken to interpret, on his part, the language of Mr. Jackson, and to attribute to it a meaning, that every diplomatic agent must know was exceedingly offensive, there was presented to the latter gentleman the alternative, either of confirming or rejecting the construction of the American secretary. On the other hand, Mr. Jackson obviously did not consider, that he was under any obligation to offer an explanation of his own language. The government, with whom he was sent to treat, had undertaken to interpret the phrases and sentences of his letters, and the accuracy of their constructions not only rested in their discretion, but he, in justice, could only be made answerable for his own expressions, and not for the interpretation of others. This appears to have been the view the British minister took of this unfortunate business; and with these impressions he replied to the letter of Mr. Smith. We subjoin an extract from Mr. Jackson's answer of November 4th:—

“I am concerned, Sir, to be obliged a second time to appeal to those principles of public law, under the sanction and protection of which I was sent to this country. Where there is not freedom of communication in the form substituted for the more usual one of verbal discussion, there can be little useful intercourse between ministers; and one, at least, of the epithets, which you have thought proper to apply to my last letter, is such as necessarily

abridges that freedom. That any thing therein contained, may be irrelevant to the subject, it is of course competent in you to endeavour to show, and, as far as you succeed in so doing, in so far will my argument lose of its validity ; but as to the propriety of my allusions, you must allow me to acknowledge only the decision of my own sovereign, whose commands I obey, and to whom, alone, I can consider myself responsible. Beyond this, it suffices that I do not deviate from the respect due to the government, to which I am accredited.

“ You will find that in my correspondence with you, I have carefully avoided drawing conclusions that did not necessarily follow from the premises advanced by me, and, last of all, should I think of uttering an insinuation where I was unable to substantiate a fact. To facts, such as I have become acquainted with them, I have scrupulously adhered, and in so doing, I must continue wherever the good faith of his majesty’s government is called in question, to vindicate its honour and dignity, in the manner that appears to me the best calculated for that purpose.”

On the 8th of Nov. the following letter was sent to Mr. Jackson, from the Department of State :—

“ In my letter of the 19th ult. I stated to you, that the declaration in your letter of the 11th, that the dispatch from Mr. Canning to Mr. Erskine of the 23d January, was the only dispatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it related, was then for the first time made to this government ; and it was added, that if that dispatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it, were the only ones on which he was authorized to make an arrangement, the arrangement would not have been made.”

“ In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ultimo, of a language implying a knowledge of this government that the instructions of your predecessor did not authorise the arrangement formed by him, an intimation was distinctly given to you, that after the explicit and peremptory asseveration that this government had not any knowledge, and that with



such a knowledge, such an arrangement would not have been made, no such insinuation could be admitted by this government.

“Finding that in your reply of the 4th instant, you have used a language, which cannot be understood, but as reiterating and even aggravating the same gross insinuation, it only remains, in order to preclude opportunities, which are thus abused, to inform you that no further communications will be received from you, and that the necessity of this determination will, without delay, be made known to your government. In the mean time, a ready attention will be given to any communications affecting the interests of the two nations through any other channel that may be substituted.”

Mr. Jackson immediately withdrew with every member of his mission from Washington; he made New-York the place of his residence. The Secretary of Legation was desired, by Mr. Jackson, to give notice of that circumstance to the Department of State. The government, without delay, requested the recall of Mr. Jackson. Mr. Pinkney, the American minister in London, (whose commission had been renewed in February 1808,) received notice on the 14th March 1810, that Mr. Jackson had been directed to return to England, but his recall was not accompanied with any mark of the displeasure of his own government. We have not thought it proper to pass over in entire silence the recall of Mr. Jackson, though the extracting a portion of the correspondence has exceeded the limits, we have in most cases prescribed for ourselves. Being the second instance of a minister having been recalled, at the request of the government, since the constitution, and, on some other accounts, an important point in the diplomatic history of the period we have endeavoured to present, in as brief a manner as the subject would admit, and without entering into a protracted discussion, a complete view and illustration of this whole transaction. Separate from the uncommon feeling it awakened at the time, it was attended with the serious and lamentable consequence of an interruption of a most important negotiation.

Thus a second negotiation was broken off. Eighteen months had passed, and no reparation whatever had been made for the affair of the Chesapeake. The country was plunging deeper and deeper into the disputes of the belligerents; and the prospect every day diminished, that it would be able peaceably to rescue itself with honour from the embarrassments of the occasion. England at this time manifested a great degree of indifference concerning her relations with America.\* She probably did not apprehend a war, and she had doubtless resolved that no negotiation should induce her to make a change in her foreign policy. The information, that the recall of Mr. Jackson had been requested, was receiv-

\* We shall here conclude the series of British orders and instructions.

Jan. 8th. 1808. Carthagena, Cadiz, St. Lucar and intermediate ports declared in blockade.

March 28th. 1808. Duties fixed by act of Parliament on all merchandize exported from Great Britain under regulations of orders in council of November 11 and 27.

April 11th. 1808. Public and private armed vessels directed not to interrupt neutrals bound to British "islands, colonies, or settlements, in the West Indies or South America, to whomsoever property may appear to belong, and notwithstanding such vessel may not have regular clearances and documents on board."

April 14th. 1808. Exportation of cotton wool to foreign places prohibited till end of next session of Parliament. Provisions of late orders in council confirmed.

May 4th. 1808. Island of Zealand declared in blockade.

June 23d. 1808. American and British vessels permitted, by act of Parliament, to bring to British ports, directly from America, merchandize of American growth or manufacture, "subject to such duties only as were payable on the like commodities imported from other countries."

October 14th. 1808. French leeward Carribean islands declared in blockade.

April 26th, 1809. Holland declared in blockade.

May 24th. 1809. This blockade suspended for a time on account of Erskine arrangement.





2  
15  
128  
132  
138  
142  
148  
152  
158  
162  
168  
172  
178  
182  
188  
192  
198  
202  
208  
212  
218  
222  
228  
232  
238  
242  
248  
252  
258  
262  
268  
272  
278  
282  
288  
292  
298  
302  
308  
312  
318  
322  
328  
332  
338  
342  
348  
352  
358  
362  
368  
372  
378  
382  
388  
392  
398  
402  
408  
412  
418  
422  
428  
432  
438  
442  
448  
452  
458  
462  
468  
472  
478  
482  
488  
492  
498  
502  
508  
512  
518  
522  
528  
532  
538  
542  
548  
552  
558  
562  
568  
572  
578  
582  
588  
592  
598  
602  
608  
612  
618  
622  
628  
632  
638  
642  
648  
652  
658  
662  
668  
672  
678  
682  
688  
692  
698  
702  
708  
712  
718  
722  
728  
732  
738  
742  
748  
752  
758  
762  
768  
772  
778  
782  
788  
792  
798  
802  
808  
812  
818  
822  
828  
832  
838  
842  
848  
852  
858  
862  
868  
872  
878  
882  
888  
892  
898  
902  
908  
912  
918  
922  
928  
932  
938  
942  
948  
952  
958  
962  
968  
972  
978  
982  
988  
992  
998  
1002  
1008  
1012  
1018  
1022  
1028  
1032  
1038  
1042  
1048  
1052  
1058  
1062  
1068  
1072  
1078  
1082  
1088  
1092  
1098  
1102  
1108  
1112  
1118  
1122  
1128  
1132  
1138  
1142  
1148  
1152  
1158  
1162  
1168  
1172  
1178  
1182  
1188  
1192  
1198  
1202  
1208  
1212  
1218  
1222  
1228  
1232  
1238  
1242  
1248  
1252  
1258  
1262  
1268  
1272  
1278  
1282  
1288  
1292  
1298  
1302  
1308  
1312  
1318  
1322  
1328  
1332  
1338  
1342  
1348  
1352  
1358  
1362  
1368  
1372  
1378  
1382  
1388  
1392  
1398  
1402  
1408  
1412  
1418  
1422  
1428  
1432  
1438  
1442  
1448  
1452  
1458  
1462  
1468  
1472  
1478  
1482  
1488  
1492  
1498  
1502  
1508  
1512  
1518  
1522  
1528  
1532  
1538  
1542  
1548  
1552  
1558  
1562  
1568  
1572  
1578  
1582  
1588  
1592  
1598  
1602  
1608  
1612  
1618  
1622  
1628  
1632  
1638  
1642  
1648  
1652  
1658  
1662  
1668  
1672  
1678  
1682  
1688  
1692  
1698  
1702  
1708  
1712  
1718  
1722  
1728  
1732  
1738  
1742  
1748  
1752  
1758  
1762  
1768  
1772  
1778  
1782  
1788  
1792  
1798  
1802  
1808  
1812  
1818  
1822  
1828  
1832  
1838  
1842  
1848  
1852  
1858  
1862  
1868  
1872  
1878  
1882  
1888  
1892  
1898  
1902  
1908  
1912  
1918  
1922  
1928  
1932  
1938  
1942  
1948  
1952  
1958  
1962  
1968  
1972  
1978  
1982  
1988  
1992  
1998  
2002  
2008  
2012  
2018  
2022  
2028  
2032  
2038  
2042  
2048  
2052  
2058  
2062  
2068  
2072  
2078  
2082  
2088  
2092  
2098  
2102  
2108  
2112  
2118  
2122  
2128  
2132  
2138  
2142  
2148  
2152  
2158  
2162  
2168  
2172  
2178  
2182  
2188  
2192  
2198  
2202  
2208  
2212  
2218  
2222  
2228  
2232  
2238  
2242  
2248  
2252  
2258  
2262  
2268  
2272  
2278  
2282  
2288  
2292  
2298  
2302  
2308  
2312  
2318  
2322  
2328  
2332  
2338  
2342  
2348  
2352  
2358  
2362  
2368  
2372  
2378  
2382  
2388  
2392  
2398  
2402  
2408  
2412  
2418  
2422  
2428  
2432  
2438  
2442  
2448  
2452  
2458  
2462  
2468  
2472  
2478  
2482  
2488  
2492  
2498  
2502  
2508  
2512  
2518  
2522  
2528  
2532  
2538  
2542  
2548  
2552  
2558  
2562  
2568  
2572  
2578  
2582  
2588  
2592  
2598  
2602  
2608  
2612  
2618  
2622  
2628  
2632  
2638  
2642  
2648  
2652  
2658  
2662  
2668  
2672  
2678  
2682  
2688  
2692  
2698  
2702  
2708  
2712  
2718  
2722  
2728  
2732  
2738  
2742  
2748  
2752  
2758  
2762  
2768  
2772  
2778  
2782  
2788  
2792  
2798  
2802  
2808  
2812  
2818  
2822  
2828  
2832  
2838  
2842  
2848  
2852  
2858  
2862  
2868  
2872  
2878  
2882  
2888  
2892  
2898  
2902  
2908  
2912  
2918  
2922  
2928  
2932  
2938  
2942  
2948  
2952  
2958  
2962  
2968  
2972  
2978  
2982  
2988  
2992  
2998  
3002  
3008  
3012  
3018  
3022  
3028  
3032  
3038  
3042  
3048  
3052  
3058  
3062  
3068  
3072  
3078  
3082  
3088  
3092  
3098  
3102  
3108  
3112  
3118  
3122  
3128  
3132  
3138  
3142  
3148  
3152  
3158  
3162  
3168  
3172  
3178  
3182  
3188  
3192  
3198  
3202  
3208  
3212  
3218  
3222  
3228  
3232  
3238  
3242  
3248  
3252  
3258  
3262  
3268  
3272  
3278  
3282  
3288  
3292  
3298  
3302  
3308  
3312  
3318  
3322  
3328  
3332  
3338  
3342  
3348  
3352  
3358  
3362  
3368  
3372  
3378  
3382  
3388  
3392  
3398  
3402  
3408  
3412  
3418  
3422  
3428  
3432  
3438  
3442  
3448  
3452  
3458  
3462  
3468  
3472  
3478  
3482  
3488  
3492  
3498  
3502  
3508  
3512  
3518  
3522  
3528  
3532  
3538  
3542  
3548  
3552  
3558  
3562  
3568  
3572  
3578  
3582  
3588  
3592  
3598  
3602  
3608  
3612  
3618  
3622  
3628  
3632  
3638  
3642  
3648  
3652  
3658  
3662  
3668  
3672  
3678  
3682  
3688  
3692  
3698  
3702  
3708  
3712  
3718  
3722  
3728  
3732  
3738  
3742  
3748  
3752  
3758  
3762  
3768  
3772  
3778  
3782  
3788  
3792  
3798  
3802  
3808  
3812  
3818  
3822  
3828  
3832  
3838  
3842  
3848  
3852  
3858  
3862  
3868  
3872  
3878  
3882  
3888  
3892  
3898  
3902  
3908  
3912  
3918  
3922  
3928  
3932  
3938  
3942  
3948  
3952  
3958  
3962  
3968  
3972  
3978  
3982  
3988  
3992  
3998  
4002  
4008  
4012  
4018  
4022  
4028  
4032  
4038  
4042  
4048  
4052  
4058  
4062  
4068  
4072  
4078  
4082  
4088  
4092  
4098  
4102  
4108  
4112  
4118  
4122  
4128  
4132  
4138  
4142  
4148  
4152  
4158  
4162  
4168  
4172  
4178  
4182  
4188  
4192  
4198  
4202  
4208  
4212  
4218  
4222  
4228  
4232  
4238  
4242  
4248  
4252  
4258  
4262  
4268  
4272  
4278  
4282  
4288  
4292  
4298  
4302  
4308  
4312  
4318  
4322  
4328  
4332  
4338  
4342  
4348  
4352  
4358  
4362  
4368  
4372  
4378  
4382  
4388  
4392  
4398  
4402  
4408  
4412  
4418  
4422  
4428  
4432  
4438  
4442  
4448  
4452  
4458  
4462  
4468  
4472  
4478  
4482  
4488  
4492  
4498  
4502  
4508  
4512  
4518  
4522  
4528  
4532  
4538  
4542  
4548  
4552  
4558  
4562  
4568  
4572  
4578  
4582  
4588  
4592  
4598  
4602  
4608  
4612  
4618  
4622  
4628  
4632  
4638  
4642  
4648  
4652  
4658  
4662  
4668  
4672  
4678  
4682  
4688  
4692  
4698  
4702  
4708  
4712  
4718  
4722  
4728  
4732  
4738  
4742  
4748  
4752  
4758  
4762  
4768  
4772  
4778  
4782  
4788  
4792  
4798  
4802  
4808  
4812  
4818  
4822  
4828  
4832  
4838  
4842  
4848  
4852  
4858  
4862  
4868  
4872  
4878  
4882  
4888  
4892  
4898  
4902  
4908  
4912  
4918  
4922  
4928  
4932  
4938  
4942  
4948  
4952  
4958  
4962  
4968  
4972  
4978  
4982  
4988  
4992  
4998  
5002  
5008  
5012  
5018  
5022  
5028  
5032  
5038  
5042  
5048  
5052  
5058  
5062  
5068  
5072  
5078  
5082  
5088  
5092  
5098  
5102  
5108  
5112  
5118  
5122  
5128  
5132  
5138  
5142  
5148  
5152  
5158  
5162  
5168  
5172  
5178  
5182  
5188  
5192  
5198  
5202  
5208  
5212  
5218  
5222  
5228  
5232  
5238  
5242  
5248  
5252  
5258  
5262  
5268  
5272  
5278  
5282  
5288  
5292  
5298  
5302  
5308  
5312  
5318  
5322  
5328  
5332  
5338  
5342  
5348  
5352  
5358  
5362  
5368  
5372  
5378  
5382  
5388  
5392  
5398  
5402  
5408  
5412  
5418  
5422  
5428  
5432  
5438  
5442  
5448  
5452  
5458  
5462  
5468  
5472  
5478  
5482  
5488  
5492  
5498  
5502  
5508  
5512  
5518  
5522  
5528  
5532  
5538  
5542  
5548  
5552  
5558  
5562  
5568  
5572  
5578  
5582  
5588  
5592  
5598  
5602  
5608  
5612  
5618  
5622  
5628  
5632  
5638  
5642  
5648  
5652  
5658  
5662  
5668  
5672  
5678  
5682  
5688  
5692  
5698  
5702  
5708  
5712  
5718  
5722  
5728  
5732  
5738  
5742  
5748  
5752  
5758  
5762  
5768  
5772  
5778  
5782  
5788  
5792  
5798  
5802  
5808  
5812  
5818  
5822  
5828  
5832  
5838  
5842  
5848  
5852  
5858  
5862  
5868  
5872  
5878  
5882  
5888  
5892  
5898  
5902  
5908  
5912  
5918  
5922  
5928  
5932  
5938  
5942  
5948  
5952  
5958  
5962  
5968  
5972  
5978  
5982  
5988  
5992  
5998  
6002  
6008  
6012  
6018  
6022  
6028  
6032  
6038  
6042  
6048  
6052  
6058  
6062  
6068  
6072  
6078  
6082  
6088  
6092  
6098  
6102  
6108  
6112  
6118  
6122  
6128  
6132  
6138  
6142  
6148  
6152  
6158  
6162  
6168  
6172  
6178  
6182  
6188  
6192  
6198  
6202  
6208  
6212  
6218  
6222  
6228  
6232  
6238  
6242  
6248  
6252  
6258  
6262  
6268  
6272  
6278  
6282  
6288  
6292  
6298  
6302  
6308  
6312  
6318  
6322  
6328  
6332  
6338  
6342  
6348  
6352  
6358  
6362  
6368  
6372  
6378  
6382  
6388  
6392  
6398  
6402  
6408  
6412  
6418  
6422  
6428  
6432  
6438  
6442  
6448  
6452  
6458  
6462  
6468  
6472  
6478  
6482  
6488  
6492  
6498  
6502  
6508  
6512  
6518  
6522  
6528  
6532  
6538  
6542  
6548  
6552  
6558  
6562  
6568  
6572  
6578  
6582  
6588  
6592  
6598  
6602  
6608  
6612  
6618  
6622  
6628  
6632  
6638  
6642  
6648  
6652  
6658  
6662  
6668  
6672  
6678  
6682  
6688  
6692  
6698  
6702  
6708  
6712  
6718  
6722  
6728  
6732  
6738  
6742  
6748  
6752  
6758  
6762  
6768  
6772  
6778  
6782  
6788  
6792  
6798  
6802  
6808  
6812  
6818  
6822  
6828  
6832  
6838  
6842  
6848  
6852  
6858  
6862  
6868  
6872  
6878  
6882  
6888  
6892  
6898  
6902  
6908  
6912  
6918  
6922  
6928  
6932  
6938  
6942  
6948  
6952  
6958  
6962  
6968  
6972  
6978  
6982  
6988  
6992  
6998  
7002  
7008  
7012  
7018  
7022  
7028  
7032  
7038  
7042  
7048  
7052  
7058  
7062  
7068  
7072  
7078  
7082  
7088  
7092  
7098  
7102  
7108  
7112  
7118  
7122  
7128  
7132  
7138  
7142  
7148  
7152  
7158  
7162  
7168  
7172  
7178  
7182  
7188  
7192  
7198  
7202  
7208  
7212  
7218  
7222  
7228  
7232  
7238  
7242  
7248  
7252  
7258  
7262  
7268  
7272  
7278  
7282  
7288  
7292  
7298  
7302  
7308  
7312  
7318  
7322  
7328  
7332  
7338  
7342  
7348  
7352  
7358  
7362  
7368  
7372  
7378  
7382  
7388  
7392  
7398  
7402  
7408  
7412  
7418  
7422  
7428  
7432  
7438  
7442  
7448  
7452  
7458  
7462  
7468  
7472  
7478  
7482  
7488  
7492  
7498  
7502  
7508  
7512  
7518  
7522  
7528  
7532  
7538  
7542  
7548  
7552  
7558  
7562  
7568  
7572  
7578  
7582  
7588  
7592  
7598  
7602  
7608  
7612  
7618  
7622  
7628  
7632  
7638  
7642  
7648  
7652  
7658  
7662  
7668  
7672  
7678  
7682  
7688  
7692  
7698  
7702  
7708  
7712  
7718  
7722  
7728  
7732  
7738  
7742  
7748  
7752  
7758  
7762  
7768  
7772  
7778  
7782  
7788  
7792  
7798  
7802  
7808  
7812  
7818  
7822  
7828  
7832  
7838  
7842  
7848  
7852  
7858  
7862  
7868  
7872  
7878  
7882  
7888  
7892  
7898  
7902  
7908  
7912  
7918  
7922  
7928  
7932  
7938  
7942  
7948  
7952  
7958  
7962  
7968  
7972  
7978  
7982  
7988  
7992  
7998  
8002  
8008  
8012  
8018  
8022  
8028  
8032  
8038  
8042  
8048  
8052  
8058  
8062  
8068  
8072  
8078  
8082  
8088  
8092  
8098  
8102  
8108  
8112  
8118  
8122  
8128  
8132  
8138  
8142  
8148  
8152  
8158  
8162  
8168  
8172  
8178  
8182  
8188  
8192  
8198  
8202  
8208  
8212  
8218  
8222  
8228  
8232  
8238  
8242  
8248  
8252  
8258  
8262  
8268  
8272  
8278  
8282  
8288  
8292  
8298  
8302  
8308  
8312  
8318  
8322  
8328  
8332  
8338  
8342  
8348  
8352  
8358  
8362  
8368  
8372  
8378  
8382  
8388  
8392  
8398  
8402  
8408  
8412  
8418  
8422  
8428  
8432  
8438  
8442  
8448  
8452  
8458  
8462  
8468  
8472  
8478  
8482  
8488  
8492  
8498  
8502  
8508  
8512  
8518  
8522  
8528  
8532  
8538  
8542  
8548  
8552  
8558  
8562  
8568  
8572  
8578  
8582  
8588  
8592  
8598  
8602  
8608  
8612  
8618  
8622  
8628  
8632  
8638  
8642  
8648  
8652  
8658  
8662  
8668  
8672  
8678  
8682  
8688  
8692  
8698  
8702  
8708  
8712  
8718  
8722  
8728  
8732  
8738  
8742  
8748  
8752  
8758  
8762  
8768  
8772  
8778  
8782  
8788  
8792  
8798  
8802  
8808  
8812  
8818  
8822  
8828  
8832  
8838  
8842  
8848  
8852  
8858  
8862  
8868  
8872  
8878  
8882  
8888  
8892  
8898  
8902  
8908  
8912  
8918  
8922  
8928  
8932  
8938  
8942  
8948  
8952  
8958  
8962  
8968  
8972  
8978  
8982  
8988  
8992  
8998  
9002  
9008  
9012  
9018  
9022  
9028  
9032  
9038  
9042  
9048  
9052  
9058  
9062  
9068  
9072  
9078  
9082  
9088  
9092  
9098  
9102  
9108  
9112  
9118  
9122  
9128  
9132  
9138  
9142  
9148  
9152  
9158  
9162  
9168  
9172  
9178  
9182  
9188  
9192  
9198  
9202  
9208  
9212  
9218  
9222  
9228  
9232  
9238  
9242  
9248  
9252  
9258  
9262  
9268  
9272  
9278  
9282  
9288  
9292  
9298  
9302  
9308  
9312  
9318  
9322  
9328  
9332  
9338  
9342  
9348  
9352  
9358  
9362  
9368  
9372  
9378  
9382  
9388  
9392  
9398  
9402  
9408  
9412  
9418  
9422  
9428  
9432  
9438  
9442  
9448  
9452  
9458  
9462  
9468  
9472  
9478  
9482  
9488  
9492  
9498  
9502  
9508  
9512  
9518  
9522  
9528  
9532  
9538  
9542  
9548  
9552  
9558  
9562  
9568  
9572  
9578  
9582  
9588  
9592  
9598  
9602  
9608  
9612  
9618  
9622  
9628  
9632  
9638  
9642  
9648  
9652  
9658  
9662  
9668  
9672  
9678  
9682  
9688  
9692  
9698  
9702  
9708  
9712  
9718  
9722  
9728  
9732  
9738  
9742  
9748  
9752  
9758  
9762  
9768  
9772  
9778  
9782  
9788  
9792  
9798  
9802  
9808  
9812  
9818  
9822  
9828  
9832  
9838  
9842  
9848  
9852  
9858  
9862  
9868  
9872  
9878  
9882  
9888  
9892  
9898  
9902  
9908  
9912  
9918  
9922  
9928  
9932  
9938  
9942  
9948  
9952  
9958  
9962  
9968  
9972  
9978  
9982  
9988  
9992  
9998  
10002  
10008  
10012  
10018  
10022  
10028  
10032  
10038  
10042  
10048  
10052  
10058  
10062  
10068  
10072  
10078  
10082  
10088  
10092  
10098  
10102  
10108  
10112  
10118  
10122  
10128  
10132  
10138  
10142  
10148  
10152  
10158  
10162  
10168  
10172  
10178  
10182  
10188  
10192  
10198  
10202  
10208  
10212  
10218  
10222  
10228  
10232  
10238  
10242  
10248  
10252  
10258  
10262  
10268  
10272  
10278  
10282  
10288  
10292  
10298  
10302  
10308  
10312  
10318  
10322  
10328  
10332  
10338  
10342  
10348  
10352  
10358  
10362  
10368  
10372  
10378  
10382  
10388  
10392  
10398  
10402  
10408  
10412  
10418  
10422  
10428  
10432  
10438  
10442  
10448  
10452  
10458  
10462  
10468  
10472  
10478  
1

ed with perfect coolness, and in giving notice that his return would be directed, Lord Wellesley indulged in no complaint. On the contrary, he signified with great courtesy his concern that the diplomatic intercourse of the two countries had been for a moment interrupted. We consider the affair of Mr. Jackson altogether as a personal one. He had no instructions to enter into the business of Mr. Erskine's convention, nor various other retrospective affairs into which the warmth of discussion led the two ministers. The circumstance, that brought about the immediate and unfortunate termination of his mission, was not at all of an official nature. At any rate, this event did not cause the slightest change in the diplomatic relations of the two governments. Mr. Pinkney remained in England as the envoy of this country, and in July 1810, Lord Wellesley informed that gentleman, it was his intention to recommend the appointment of an envoy extraordinary and minister plenipotentiary to the United States. Some dissatisfaction was expressed in the beginning of the year 1810, that the business of the nation was left in the hands of a chargé in America, and Mr. Pinkney was directed to take a corresponding step, as it respected the affairs of his own country. In order, however, not to interrupt the narration, we should state here, that no minister having been appointed, notwithstanding the repeated assurances of Lord Wellesley, as late as January 1811, Mr. Pinkney, by the direction of his government, requested an audience of leave. He appointed Mr. Smith chargé d'affaires. The American government was still desirous of an arrangement with England, and as early as January 1810, a few months after the affair of Mr. Jackson, Mr. Pinkney was instructed to renew, under the original commission of May 1806, a negotiation "relating to wrongs committed between the parties on the high seas or other waters, and for establishing the principles of navigation and commerce between them." This attempt was also ineffectual.

We have now arrived at another perplexing and most irritating discussion, the last of that unprofitable series that preceded the war. We refer to the controversy respecting the repeal of the Berlin and Milan decrees. Without repeating what has already been said under the head of France, we shall here give a brief history of this business. The act of March 1809, and of May 1810, gave the President power to suspend by proclamation the operation of the embargo, of the non-importation and of the non-intercourse laws in relation to that power, who should repeal such parts of her maritime decrees, as affected the rights of neutral powers. We have already remarked, that in June 1809, the President, in consequence of declarations made to this government by Mr. Erskine, gave notice, in the manner prescribed by the act, that the trade might be renewed with Great Britain.\* On the 5th of August 1810, a few months after the passing the act above-mentioned, the French Minister of Foreign Affairs, M. de Champagny,† duke of Cadore, addressed a letter to the American minister in Paris, which has already been quoted in the chapter on the continental system. This was a conditional repeal of the Berlin and Milan decrees in a two fold sense; one condition applied to Great Britain, and the other to the United States. The last is one the United States herself proposed to the belligerents. At the time of Mr. Erskine's arrangement, she had virtually, and in substance, taken the same position in regard to England that France now upon her own original declaration proposed to her to assume. The condition concerning the United States is clearly, that they should cause their rights to be respected, not in any manner France herself might intimate, but in the manner the United

\* See section 4 of act of May 1810.

† This name has, in several places, been written without the de; but according to the rules that govern the names of French families it should be inserted, as this minister is the descendant of a noble family before the Revolution.

States themselves had proposed, a form of proceeding that applied equally to both belligerents. The proposition on the part of the French government was a fair and legitimate one; it was merely accepting the condition offered by America. The same condition had been accepted in the year 1809, by Mr. Erskine as envoy of Great Britain. The act of the French government announced in M. de Champagny's letter of August 1810, was met with instant good faith by the President. A proclamation was issued on the 2d November, giving notice that all the restrictions imposed by the act of the first of May 1810, in regard to France and her dependencies, were discontinued from the date of the instrument. On the other hand, the declaration of the French government was explicit and direct, viz. :—"after the first day of November 1810, they (the decrees of Berlin and Milan) will cease to have effect." And the condition exacted on the part of the United States was, that they should cause certain sections of the non-intercourse laws of March 1809, to be enforced against Great Britain. As this edict of the French government was founded on the law of May 1810, the contract was complete between the belligerent thus revoking, and the United States. And in the "unexpected and improbable emergency" that Great Britain did not rescind her orders in council, the non-importation act would be enforced against that country. The President declared in his proclamation of November 2d. that the act would be enforced. This circumstance should have satisfied the French government. Still, we find instructions given to the President of the Council of Prizes on the 25th of December of the same year, after the President's proclamation was known in France, to which indeed, a reference is made in the document itself, to suspend all causes that might arise under the decrees after November 1st, till the 2d of February 1811, in order to ascertain whether the law of May 1810, and the proclamation of November of the same year, would be enforced. If this was done, the captures should be declared void, and the vessels and cargoes delivered to their owners. The



French government did not furnish the American with the evidence of any decree relating to the revocation, and the declaration of M. de Champagny of August 5th, was afterwards clogged and embarrassed by the report of the French Minister of Foreign Affairs, and the letter of the Minister of Justice.

A representation of the declaration of M. de Champagny was made without delay to Great Britain, accompanied with the assurances of all the diplomatic agents of the United States in France,\* that no condemnations had taken place since the repeal, and a repeal of her orders was claimed on the ground, that they were only retaliatory. As a neutral nation, it could not signify to America what conditions France exacted from England. On this particular occasion, America did not join with France, or any other nation in calling upon England to renounce her maritime principles. She invited that country to repeal orders passed in retaliation of decrees that France declared no longer to exist. But England resisted this application on the ground that she was furnished with no evidence that the decrees had been rescinded; that the decree, affecting the repeal, had never been promulgated, that vessels were still captured and condemned under them, that she was not bound to be satisfied with the evidence that had satisfied a neutral power, and that conditions were exacted which never could be complied with. It, certainly, is true, that no evidence of any decree could be found, nor was any decree promulgated till long after this period, but if Great Britain placed no reliance on the positive and direct declaration of the French Minister of Foreign Relations, no great value could have been attached to a decree.

\* Barlow's Letter of March 2d. 1812.

Russell's do.

Russell's affidavit—Appendix. Arguments on the Snipe, p. 386. and following.

We have already said that Mr. Pinkney left England in the beginning of the year 1811. In February of the same year, Mr. Foster was appointed envoy to this country. He accomplished nothing.\* He was the last minister sent before the war, and remained till it was declared in June 1812. In November 1811, the government, however, accepted the terms proposed by Mr. Erskine in 1809, for the reparation of the wrongs done by the attack on the Chesapeake. They were in substance as follows :—

1. That the British government disavowed the act of Admiral Berkley.

2. Agreed to restore the men taken from the Chesapeake to such place as the American government should name.

3. A suitable pecuniary compensation to the families of the men killed in action and of the wounded.

In May 1811, and at other times, till the 29th of July 1812, judgment was pronounced by Sir Wm. Scott, in the High Court of Admiralty, on the *Fox*, the *Snipe*, the *Martha*, the *Vesta*, and other American vessels, detained under the orders in council and brought to adjudication. These vessels were all condemned. It is not necessary to recapitulate the causes of this act. The Court allowed full weight to the argument that the orders in council were retaliatory measures,† but as

\* Mr. Foster protested against the possession of that portion of West Florida between the *Perdido* and the *Mississippi* in October 1810, but the American government refused to enter into a discussion on the subject, as that territory was the undoubted property of the United States.

† Argument on the *Snipe*.—"For retaliatory orders they are, they are so declared in their own language, and in the uniform language of the Government which has established them. I have no hesitation in saying that they would cease to be just if they ceased to be retaliatory, and they would cease to be retaliatory from the moment the enemy retracts in a sincere measure his on which they were intended to retaliate."

no decree had been passed or promulgated repealing the French decrees, the time had not arrived when that argument could be applied with the force that undoubtedly belonged to it. On the other hand it was remarked, that the fact of the repeal was notified to the American minister in Paris by the Minister of Foreign Affairs, and that the notification was published in the *Moniteur*, the official French paper, four days after the communication made to General Armstrong.

In April 1812, the British government published a "declaration" on the orders in council. This state paper enters into a brief history of the events that led to the orders, and explains the terms upon which they would be repealed. The following extract will show the sense they entertained, after a lapse of eighteen months of the proceedings of the imperial government, and of the representations of the American diplomatic agent concerning the French decrees:—"That if at any time hereafter the Berlin and Milan decrees shall by some authentic act of the French government, publicly promulgated, be expressly and unconditionally repealed, then and from thenceforth the order in council of the 7th day of January 1807, and the order in council of the 26th day of April 1809, shall without any further order be, and the same, hereby, are declared from thenceforth to be wholly and absolutely revoked." The decisions of the High Court of Admiralty and the declaration of April 1812, could leave no doubt of the construction put by the British government on the note of M. de Champagny of August 1810. England did not consider the French decrees repealed. The non-importation act had now been in operation more than a year, and there was no probability that the form of revocation pointed out in the state paper of April 1812, would take place. In this situation, the United States had two alternatives presented to its consideration, either of continuing that act in force, or of proceeding to a war with Great Britain. The government adopted the latter measure. War, having been preceded by an embargo of 90 days, was declared on the 18th of June 1812.

The American government, doubtless, supposed it offered all the evidence it ever could possess, that the decrees were repealed. It never could have been anticipated the extraordinary decree of April 28th, 1811; communicated to its minister in Paris more than a year after it purported to have been passed; a decree not known in this country at the time the war was declared. We shall make no remarks on that instrument in this place, having already spoken of it in a previous chapter. This decree was communicated to the British ministry on the 20th of May 1812, and on the 23d of June the same year an order was issued repealing the orders in council.

The history of the war does not belong to the subject of this work. We shall, however, be permitted to remark that many unfortunate circumstances accompanied the time and manner of its declaration, which the spirit and gallantry of the people, in its progress and towards its close, well redeemed. Neutrality was so obviously the policy of the country, and the form of government seemed so ill adapted to a state of hostilities, that we cannot be surprised if every other expedient was first tried and exhausted. But the doctrine of neutrality, the ark of safety to this country, a doctrine, that, in most cases, cannot be too highly commended, or too exactly maintained, was carried to an extreme degree of toleration; the restrictive system was not a successful one—it produced no effect on the belligerents. The country was wasting and perishing under it, and the passions of the political parties were inflamed to a dangerous degree. It would, perhaps, have been better that a war should have been declared in 1808, at the time of the report of a committee of the House of Representatives on the foreign relations of the country. It would, certainly, have been an unusual thing to have declared war against two nations at war with each other, but both those nations were then actually at war with America; and, owing to the particular condition of one of them, a war with England appeared to be virtually a war with both.

It should be recollected too, that about that period, began the severest operation of the French decrees, the British orders, and of our own restrictive system. After 1808, to the restoration of peace in 1815, the commerce of the country was of comparatively trifling value; in the language of the report of November, America had been compelled by the belligerents to abandon her right of freely navigating the ocean. A determined opposition was made to the war with England, but we believe that much, if not the greater part of it, arose from an apprehension it would lead to an alliance with France. It was extremely natural that this apprehension should be felt by one of the political parties, because an alleged preference for the measures of one of the belligerents, was the principal cause of opposition to the measures of our own government. The war was declared at a time when the French emperor was in the height, not only of his power, but of his prosperity; his armies had all passed the Vistula, in a rapid and victorious march for the capital of Russia, and he, himself, was in Poland employed in organizing that kingdom into a new confederation, of which he was to be the protector. But the correspondence of America with France at this period, and the very unsatisfactory condition of the claims of the one government upon the other, clearly show, that no event was less likely to take place than an alliance between the two countries. We have, already, in the chapter on the continental system, presented an outline of the proceedings of the United States with France, just before and during the war of 1812, though it seems hardly necessary to remark, that the whole course of policy of this government from its foundation in '89, nay, from the first year after the peace of '63,\* has been most sedulously to avoid every possible approach to alliances or connections with the European nations. America, fortunately exonerated from the obligations of the treaty of '78, reaped, at an early hour, the full

\* See chapter on Russia.

measure of all the experience that the pernicious consequences, with which she was threatened on that occasion, could give her.

Early in eighteen hundred and thirteen, the emperor of Russia offered his mediation to procure a peace between England and the United States. Russia, having made a treaty of peace and alliance with England, in the summer of eighteen hundred and twelve, the commerce of the northern nations of Europe appeared to be restored to its former extent and vigour; that event freed it from the restraints to which it was subject, in consequence of the hostile acts of England. But the American war renewed this state of embarrassment, and the northern nations were again deprived of the whole of the valuable commerce of the United States. America accepted the mediation, and commissioners were named to proceed to Russia. England, however, did not consent to treat, either at St. Petersburg, or under the mediation of a third power; but proposed to meet the American envoys directly, in London, or at Gottenburg. It is immaterial, whether this negotiation was proposed at the suggestion of England, or was the voluntary act of Russia,—those two powers being at that time closely united. Some prejudice had been excited against the United States, at the court of St. Petersburg, by reports that the government was disposed to enter into a more intimate connexion with France. Not only the relations of the United States with Russia, were remarkably amicable, during the whole war with England, but they were in a very unpromising and unsatisfactory state with the French emperor. We have before us a letter, written by the secretary of state, (Mr. Monroe,) dated July 1, 1812, to the American minister in Russia, (Mr. Adams,) from which we make the following extract:—"With France, our affairs, in many important circumstances, are still unsettled; nor is there any certainty, that a satisfactory settlement of them will be obtained. Should it, however, be the case, it is not probable that it will produce any closer connexion between the United

States and that power". It is not anticipated, that any event whatever will have that effect."

The negotiation for peace with England was finally opened at Ghent, where the British commissioners, lord Gambier, Messrs. Henry Gouldburn, and William Adams, arrived in August, 1814; the American commissioners, Messrs. John Quincy Adams, Albert Gallatin, and James A. Bayard, appointed April 17, 1813, and Henry Clay and Jonathan Russell, added to the commission January 18, 1814, being already assembled in that city. This negotiation terminated in a peace, concluded the 24th of December, 1814.\* The treaty made no altera-

\* This treaty of peace and amity principally relates to boundaries. We shall extract a portion of it, omitting the details that relate to the expenses of commissioners, &c. :—

"ART. 1. There shall be a firm and universal peace between his Britannic majesty and the United States, and between their respective countries, territories, cities, towns, and people of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both parties, as hereinafter mentioned. All territory, places and possessions whatsoever, taken by either party from the other, during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property. And all archives, records, deeds and papers, either of a public nature, or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Islands in the bay of Passamaquoddy to remain in the hands of the party occupying.

"ART. 2. Immediately after the ratifications of this treaty by both parties, as hereinafter mentioned, orders shall be sent to the armies, squadrons, officers, subjects, and citizens of the two powers, to cease from all hostilities: and, to prevent all causes of complaint which might arise on account of the prizes which may be taken at sea after the said ratifications of this treaty, it is reciprocally agreed, that all vessels and

tion in the situation of the countries, for the terms, proposed by the commissioners of the respective nations, were mutu-

effects which may be taken after the space of twelve days from the said ratifications, upon all parts of the coast of North America, from the latitude of twenty-three degrees north, to the latitude of fifty degrees north, and as far eastward in the Atlantic ocean as the thirty-sixth degree of west longitude from the meridian of Greenwich, shall be restored on each side: that the time shall be thirty days in all other parts of the Atlantic ocean, north of the equinoctial line or equator, and the same time for the British and Irish channels, for the gulf of Mexico, and all parts of the West Indies: forty days for the North Seas, for the Baltic, and for all parts of the Mediterranean: sixty days for the Atlantic ocean south of the equator, as far as the latitude of the Cape of Good Hope: ninety days for every other part of the world south of the equator: and one hundred and twenty days for all other parts of the world, without exception.

“ART. 3. All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the ratification of this treaty, as hereinafter mentioned, on their paying the debts which they may have contracted during their captivity. The two contracting parties respectively engage to discharge, in specie, the advances which may have been made by the other for the sustenance and maintenance of such prisoners.

“ART. 4. Whereas it was stipulated by the second article in the treaty of peace, of one thousand seven hundred and eighty-three, between his Britannic majesty and the United States of America, that the boundary of the United States should comprehend 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 Nova Scotia; and whereas the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Menan, in the said Bay of Fundy, are claimed by the United States, as being comprehended within their aforesaid boundaries, which said islands are claimed as belonging to his Britannic majesty, as having been at the time of, and previous to, the aforesaid treaty of one thousand seven hundred and eighty-three, within the limits of the province of Nova Scotia: in order, therefore, finally to decide upon these claims, it is agreed that they



ally rejected. The disputed points of maritime law, and the subject of commerce were reserved for future discussion. A

shall be referred to two commissioners, to be appointed in the following manner, viz: one commissioner shall be appointed by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof. In case of the commissioners' differing, reference to the arbitration of a friendly sovereign or state, whose decision is to be final.

"ART. 5. Whereas neither that point of the highlands lying due north from the source of the river St. Croix, and designated, in the former treaty of peace between the two powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers which extends from the source of the river St. Croix directly north to the above mentioned north-west angle of Nova Scotia, thence 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-westernmost head of Connecticut river; thence, down along the middle of that river, to the forty-fifth degree of north latitude; thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy, has not yet been surveyed; it is agreed, that for these several purposes, two commissioners shall be appointed, sworn, and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article.

"ART. 6. Whereas, by the former treaty of peace, that portion of the boundary of the United States, from the point where the forty-fifth degree of north latitude strikes the river Iroquois or Cataraguy to the lake Superior, was declared to be "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." And whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands lying in the same were within the dominions of his Britannic majesty or of the United States: in order, therefore, finally to decide these doubts, they

general peace having been concluded in Europe, no objection existed to this course.\* An account of the negotiation

shall be referred to two commissioners, to be appointed, sworn, and authorized to act, exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article.

“ART. 7. It is further agreed, that the said two last mentioned commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they are hereby, authorized, upon their oaths, impartially to fix and determine, according to the true intent of the said treaty of peace of one thousand seven hundred and eighty-three, that part of the boundary between the dominions of the two powers, which extends from the water communication between lake Huron and lake Superior, to the most north-western point of the lake of the woods, to decide to which of the two parties the several islands lying in the lakes, water communications and rivers, forming the said boundary, do respectively belong, in conformity with the true intent of the said treaty of peace of one thousand seven hundred and eighty-three; and to cause such parts of the said boundary as require it, to be surveyed and marked.

“ART. 9. Reciprocal pacification of the Indian tribes.

“ART. 10. Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice, and whereas both his majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed, that both the contracting parties shall use their best endeavours to accomplish so desirable an object.”

The commissioners were duly appointed, under these respective articles; but, as their reports on all the points of boundaries have not yet been accepted by the respective governments, we are obliged to abstain from making any remarks on those topics. In order to complete the course of treaties and conventions with Great Britain, to the treaty of Ghent, we shall mention in this place, that in January, 1802, Mr. King concluded, with lord Hawkesbury, at London, a convention, by which the United States agreed to pay 600,000*l.* to his Britannic majesty, for the benefit of British creditors under the sixth article of the treaty of '94, on condition of being released from all the obligations of that article. A commission was appointed, under the seventh article of the same instrument, on the subject of American claims for capture, who awarded a large sum, which was regularly paid by Great Britain.

\* The subject of the boundary of the United States on the Pacific, is likely to be one of uncommon interest. Spain, Russia, Great Britain

of Ghent\* having been published in 1822, we take this opportunity to refer to it for a history of the proceedings of that mission.

and America have claims on the extreme western part of this continent. By the convention of April, 1824, with Russia, the boundary of that country to the south does not extend below 54 deg. 40 min.; at least, it may be considered as having been fixed at that parallel. And by the last treaty with Spain, that country has transferred to the United States all her claims to the northward of the 42d deg. The territory between those two parallels is, therefore, the one in discussion between America and Great Britain. The principal object of each party appears to be to get possession of the country through which the Columbia or Oregon runs. There has been some correspondence between Mr. Rush and the English government on this subject. Being on this topic, we beg to extract a few paragraphs from the work, to which we have just referred, on the boundary of the Mississippi:—

“Before the war of 1812, three abortive attempts had been made to adjust this boundary. The first was by the treaty of 1794, when it was already conjectured, but not ascertained, that the line due west from the lake would not intersect the Mississippi. By the fourth article of the treaty of 1794, it was agreed, that a joint survey should be made, to ascertain the fact; and that if, on the result of that survey, it should appear, that the west line would not intersect the river, the parties would proceed, “by amicable negotiation, to regulate the boundary line in that quarter, according to justice and mutual convenience, and in conformity to the intent of the treaty of 1783.” This survey was never made. The second attempt to adjust the line, was by the convention signed on the 12th of May 1803, by Mr. King and lord Hawkesbury,—the fifth article of which, after reciting the same uncertainty, whether a line drawn due west from the lake of the woods would intersect the Mississippi, provided that, instead of the said line, the boundary of the United States in that quarter, should, and was declared to be, the shortest line which could be drawn between the north-west point of the lake of the woods, and the nearest source of the river Mississippi. This convention not having been ratified, the third attempt

\* The duplicate letters. The fisheries and the Mississippi, documents relating to transactions at the negotiation of Ghent, collected and published by John Quincy Adams, one of the commissioners at that negotiation. Washington, 1822.

This was the end of the war,—a measure into which the country obviously entered with infinite reluctance. The French revolution cost the United States, substantially, two wars; we could hardly have expected to escape at a less price. America is not a member of the holy alliance; she

tempt at adjustment had been made in the negotiation of Mr. Monroe and Mr. Pinkney, of 1806 and 1807; at which an article had been proposed and agreed to, that the line should be from the most north-western point of the lake of the woods, to the 49th parallel of latitude, and from that point, due west, along and with the said parallel, as far as the respective territories extend in that quarter. And with that article was coupled another, as follows:—"It is agreed by the United States, that his majesty's subjects shall have, at all times, free access from his majesty's aforesaid territories, by land or inland navigation, into the aforesaid territories of the United States, to the river Mississippi, with the goods and effects of his majesty's said subjects, in order to enjoy the benefit of the navigation of that river, as secured to them by the treaty of peace, between his majesty and the United States, and also, by the third article of the treaty of amity, commerce and navigation, of 1794. And it is further agreed, that his majesty's subjects shall, in like manner, and at all times, have free access to all the waters and rivers falling into the western side of the river Mississippi, and to the navigation of the said river."

"But the following observations upon the two articles, contained in a letter from Mr. Madison to Messrs. Monroe and Pinkney, of 30th of July, 1807, show how far Mr. Jefferson, then President of the United States, had authorized those commissioners to accede to them:—"Access by land or inland navigation, from the British territories, through the territory of the United States, to the river Mississippi, is not to be allowed to British subjects, with their goods or effects, unless such articles shall have paid all the duties, and be within all the custom house regulations, applicable to goods and effects of citizens of the United States. An access, through the territory of the United States, to the waters running into the western side of the Mississippi, is, under no modification whatever, to be stipulated to British subjects."

"Under this state of things, it had never been admitted by the British, nor could we maintain against them by argument, even that the Mississippi river was within our exclusive jurisdiction: for so long as they had a right by treaty to a line of boundary to that river, and consequently to territory upon it, they had also jurisdiction upon it."

is not connected with any nation by the form of her government, or by situation, or family compacts. But she is one of the great confederation of Christian states,—one of those powers who, by religion, arts and sciences, compose what is called the civilized part of the world. In this respect, Europe becomes only a geographical term. America, maintaining a more constant and frequent intercourse with the most powerful members of the European continent, than (with one exception) they hold with each other, must, unavoidably, partake, in some degree, of the changes, to which they are subject. Her territory, it is true, is not exposed to invasion or dismemberment; but she has most rapidly created a vast connexion and influence, moral, political and commercial, which will, at all times, render her liable to become involved in the general quarrels that disturb the old world.\*

\* The diplomatic intercourse of the two countries was renewed, by the appointment on the part of America, of John Quincy Adams, in February, 1815, and of Charles Bagot, on the part of Great Britain, in June of the same year, both as envoys extraordinary and ministers plenipotentiary.

## CHAPTER XI.

### TREATIES OF 1785 AND 1799 WITH PRUSSIA.

*Fourth power in Europe to conclude a Treaty—Lee appointed in '77 to Berlin and Vienna—Not received by either court—His full powers stolen at Berlin—Hessians made to pay same toll as cattle—Prince Henry—Treaty of '85—Peculiar provisions—Private war abolished—Treaty of '99.*

**T**HOUGH Prussia took no part in the revolution war, she was the fourth power in Europe to conclude a treaty of amity and commerce with the United States.\* During the whole course of that contest, Prussia was at peace with England, though, soon after the beginning of hostilities, she was threatened with a war by the emperor, which, indeed, actually took place about the time the United States applied to her government for aid and alliance. But Frederick II. usually called the great Frederick, was not animated with a friendly feeling towards England, and it is well known, he viewed the progress of the American revolution with satisfaction.† Very early in the war, Congress took steps to obtain the co-operation of Prussia, together with that of some other powers in

\* The treaty of '83 with England, was of a different description.

† The reader will find some remarks on this subject, in the 3d volume of his works.

Europe ; and in May '77, William Lee, of Virginia, was appointed a commissioner to the courts of Vienna and Berlin. The objects of his mission are fully explained in his instructions, of which we subjoin an extract :—

“ As it is of the greatest importance to these states, that *Great Britain be effectually obstructed in the plan of sending German and Russian troops to North America*, you will exert all possible address and vigour to cultivate the friendship and procure the interference of the emperor of Germany, and king of Prussia. To this end, you will propose treaties of friendship and commerce with these powers, on the same commercial principles as were the basis of the first treaties of friendship and commerce, proposed to the courts of France and Spain by our commissioners, and which were approved in Congress on the seventeenth day of September 1776 ; and not interfering with any treaties, which may have been proposed to, or concluded with the courts above mentioned. For your better instruction herein, the commissioners at the court of Versailles will be desired to furnish you from Paris with a copy of the treaty, originally proposed by Congress to be entered into with France, together with the subsequent alterations, that have been proposed on either side. You are to propose no treaty of commerce to be of longer duration than the term of twelve years from the date of its ratification by the Congress of the United States. And it must never be forgotten in these commercial treaties, that reciprocal and equal advantages to the people of both countries be firmly and plainly secured.”

He was not received by the emperor ; the court of Vienna positively refusing to have any thing to do with the revolted colonies ;—nor does it appear, that he was allowed to hold an official station at Berlin. Thièbault (vol. iii. p. 60.) tells a story of two Americans, who came to Berlin soon after the declaration of independence, for the purpose of buying arms, and to obtain other assistance. They were suffered to remain there ; but, in a short time, their full powers and instructions were stolen from their lodgings.\* Thièbault expresses his

\* At the end of a few hours, they were secretly and safely returned, having, obviously, been taken for the purpose of examination only.

surprise, that neither the king nor any other person took any notice of the transaction. But, if the envoy had not been properly received, the theft was not a violation of the law of nations; it was an affair that belonged solely to the police. The names of these Americans are not mentioned, but it is quite possible that Mr. Lee was one of them.

It was said at the time, that Frederick compelled the recruits of Hesse Cassel, who had been bought to carry on the war in America, (and who had occasion to pass through his dominions, in order to reach their places of embarkation,) to pay the same toll or duty per head, as was exacted from cattle. The king may have considered this an ingenious piece of pleasantry, or have adopted this mode of expressing his abhorrence and disgust at the practice of selling christian men. Nations, in alliance with others in times of war, often transfer their troops, and, in coalitions, nothing is more common than for one party to furnish the subsidy, and the other the army. In all ages, men have, as individuals, entered into foreign service; but, we believe, that the conventions, made in the year '76 with the states of Brunswick and Hesse Cassel, and county of Hanau, present the first instances in history, where governments, for the purpose of enriching their treasuries, have condemned their subjects to fight, not only in a foreign cause, but against a country, with whom their own was at peace. Some Prussian officers, however, entered into the American service, and made themselves very useful, (one in particular will always be gratefully remembered,) but they were not sent by the government; nor are we aware, that Frederick took an active part in the revolution, notwithstanding the intimation that has been given in regard to prince Henry. Peace, however, having been concluded with Great Britain, the independence of the United States acknowledged, and the American commissioners at the court of Versailles having received general instructions to conclude treaties with the powers of the continent, a treaty was made at the Hague



in September '85, with Prussia.\* It was negotiated on the part of America by Messrs. Franklin, Jefferson, and Adams, and on the part of Prussia by M. de Thulemeyer. This in-

\* Having already given numerous extracts from other treaties, we shall in this place only select the provisions of this treaty that are peculiar, remarking that it contains the stipulation respecting freedom of conscience, already cited in the treaties with the Netherlands and Sweden, and all other arrangements of the most favourable kind concerning commerce.

"ART. 4. More especially each party shall have a right to carry their own produce, manufactures, and merchandize, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, the king of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessels of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties, shall not import nor export the merchandize prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

"ART. 9. The ancient and barbarous right to wrecks, abolished between the parties.

"ART. 10. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the

strument, ratified the next year by Congress, was the last public act of Dr. Franklin in Europe.

The treaty is very remarkable for the provisions it con-

proceeds without molestation, and exempt from all rights of *detrac-tion* on the part of the government of the respective states. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by his majes-ty the king of Prussia, to prevent the emigration of his subjects.

“ART. 13. And in the same case of one of the contracting parties being engaged in war with any other power, to prevent all the dif-ficulties and misunderstandings that usually arise respecting the merchandize heretofore called contraband, such as arms, ammuni-tion, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to in-duce confiscation or condemnation, and a loss of property to indivi-duals. Nevertheless, it shall be lawful to stop such vessels and ar-ticles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reason-able compensation for the loss such arrest shall occasion to the pro-prietors: and it shall further be allowed to use in the service of the captors, the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed con-traband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not, in that case, be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

“ART. 16. It is agreed, that the subjects or citizens of each of the contracting parties, their vessels, and effects, shall not be liable to any embargo, or detention on the part of the other, for any mi-litary expedition, or other public or private purpose whatsoever. And in all cases of seizure, detention, or arrest, for debts contract-ed, or offences committed by any citizen or subject of the one par-

tains, though it does not appear that they have been attended with any good consequences to the parties, or have been of

ty, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

“ART. 23. If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance: and all women and children, scholars of every faculty, cultivators of the earth, artizans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power, by the events of war, they may happen to fall; but if any thing is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce.

“ART. 24. And, to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to each other, and to the world, that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships,

any practical utility to the world. Blockades of every description were abolished,—the flag covered the property,—

nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for their own troops; that the officers shall also be daily furnished by the party in whose power they are, with as many rations, and the same articles and quality, as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with, nor set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article, or for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners, of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided; and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations."

The treaty was limited to ten years from the year 1786.

contrabands were exempted from confiscation, though they might be employed for the use of the captor, on payment of their full value. This, we believe, is the only treaty ever made by America, in which contrabands were not subject to confiscation; nor are we aware that any other modern treaty contains this remarkable provision. We are probably indebted to Dr. Franklin for the article. It had long been a favourite subject with him to procure the exemption, from the evils of war, of all persons engaged in private pursuits, or occupations, and to abolish privateering. He was desirous of having similar articles inserted in the treaty with England of '83, and proposed them to Mr. Oswald.

All wars consist in attacks on private property, for there is scarcely any other mode of making a war felt. Few nations have public property within reach of an enemy. If a nation, like America, should withdraw the few public ships it has from the ocean, it is difficult to conceive how a war could be conducted against it, for all its trade, occupation, commerce, and manufactures would go on as in time of peace. If the enemy land, the treaty forbids them destroying, and even compels them to live at their own expense. This proposition seems to be incapable of application; for the distinction between the public and the private property of a nation is a vague one, more especially under a free government; and, after all, public property, speaking with strictness, even in despotic countries, constitutes a very small portion of the wealth of the state. We do not undertake to say, what effect it would have on the patriotism of the people, to separate them so entirely from the government, as this arrangement would do. But we have great doubts, supposing it all along perfectly practicable, whether this scheme would have any other effect than to make wars perpetual. They should be accompanied with some horrors, at least, to prevent nations from engaging in them too eagerly. As to the particular application of the part, relating to privateers to this country, it can never be the policy of America, *while that system exists among civilized na-*

tions, to debar themselves of the right of issuing commissions to private armed vessels. The country has the means, in time of war, of doing more injury to an enemy by that species of molestation, than any other whatever. Privateering is to be justified as one mode of harassing an enemy, that the customs of civilized nations allow a belligerent to adopt, and it can be defended on the same ground as most of the other practices of war. In finishing this paragraph, it will occur to every one, that the principal objection to the provisions of the 23d article would be the extreme difficulty of adhering to them.\*

This treaty expired in '96. The United States had no direct trade with Prussia before the year '99; the trade with that part of Germany having been principally conducted through Hamburg and Bremen. Since '99, we have had occasionally some slight commercial intercourse with Prussia, but it has been greatly interrupted by the wars in Europe, and the continental system. In general, however, the exports from Prussia have exceeded the imports. Prussia, since the last arrangement in 1815, now owns an extensive sea-coast, though our trade has latterly much fallen off to that part of the world. It is, at present, on the new footing of reciprocity.

The treaty of '85 was renewed in '99, at Berlin, by John Quincy Adams† on the part of the United States, and, on the part of Prussia, by the Count of Finckenstein, M. d'Alvensleben, and the Count of Haugwitz. This treaty, though a copy, in most of the articles, of that of '85, differed in several respects. The rule, that free ships make free goods, not having been respected during the two last wars, the parties agreed, at the return of peace, to concert such arrangements with the maritime powers, as should, hereafter, secure the navigation and commerce of the neutral. Contrabands were

\* It will be seen that in the next treaty made with Prussia in '99, the whole of this stipulation, respecting privateers and the exemption of private trading vessels, was omitted.

† Appointed minister plenipotentiary in June '95.

specified, and confined to military arms and stores; the exemption, stipulated in the 16th article of the treaty of '85, on the subject of an embargo, was annulled. Vessels were, thereafter, subject to embargoes on the principle of the most favoured nation, and an indemnity was stipulated for all vessels detained for public uses. The original regulation in the 23d article of the same treaty, respecting privateers and merchant and trading vessels, was abolished. This treaty expired, by its own limitation, in 1810. It has not been renewed,—nor have the United States, since Mr. Adams's return in 1801, appointed a minister to Prussia.

## CHAPTER XII.

## TREATY OF 1795 WITH SPAIN.

*Spain powerful at time of Revolution—Family Compact—Great American possessions—Franklin appointed minister in '77 to Madrid—Important letter—Spain avoids the coalition—Strives to reconcile France and England—Fails—Declares war against England in '79—Jay sent to Spain—Officially received—Makes no treaty—Important instructions—Gardoqui, Spanish Chargé—Treats respecting boundaries—Nothing done—South and North divide on the navigation of the Mississippi—South in minority—Short and Carmichael, commissioners to Spain—Remarks on Mississippi—Spain, having entered the coalition of '93, unwilling to treat—Indians—Acts of hostility in Kentucky—Short—Viar—Jaudenes—Peace of Baste—Godoy—Pinkney sent to Madrid—Treaty of San Lorenzo el Real with Prince of Peace—Right of deposit at New Orleans suspended—Eastern and Western boundaries of Louisiana—France opposes claims of United States—Government take possession of W. Florida—Folch—Kemper—Spoliations—Settled by transfer of E. Florida—Humphreys—Yrujo—Bowdoin—Intercourse renewed in 1814—Erving.*

**A**T the time of the declaration of independence, Spain was mistress of half the continent of South America. She was one of the most powerful nations of Europe, not only from her own wealth, valuable colonies, and numerous and well appointed army and navy, but in consequence of an intimate



connection with France. The "family compact," adopted by the treaty of Paris of '61, an alliance between all the princes of the house of Bourbon, more especially the crowns of France and Spain, still existed. By that instrument, those two powers mutually guaranteed their states and possessions, and assumed, as the basis of their alliance, the diplomatic maxim, "Qui attaque une couronne, attaque l'autre." All the American possessions of Spain were then entire; she enjoyed an active, extensive, and lucrative commerce; and was as determined an enemy of England as France herself.

After arrangements had been made by the Congress of the confederation to obtain the assistance of France, one of the next subjects of attention was Spain. As early as December '76, it was resolved to send commissioners to that country, and, in the beginning of '77, Dr. Franklin was appointed the first envoy to Spain, though he never went to that court;\* but while in France, he addressed a letter to the Count d'Aranda, at that time the Spanish minister at Versailles. This letter is to be found in the memoirs of Dr. Franklin, and as it explains in a few words the situation of the two countries, we shall extract a portion of it:—

"Passy, April 7, 1777. Sir,—I left in your excellency's hands to be communicated, if you please, to your court, a duplicate of the commission from the Congress, appointing me to go to Spain as their minister plenipotentiary. But I understand the receiving such a minister is not at present thought convenient, and I am sure, the Congress would have done nothing that might incommode in the least a court they so much respect. I shall, therefore, postpone that journey till circumstances may make it more suitable. In the mean time, I beg leave to lay before his catholic majesty, through the hands of your excellency, the propositions contained in a resolution of Congress dated December 30, 1776, viz., "That if his catholic majesty will join with the United States in a war against Great Britain, they will assist in reducing to the possession of Spain the town and harbour of Pensacola, provided the inhabitants of the

\* For commission, see Secret Journals, vol. ii. Jan. 1, '77.

United States shall have the free navigation of the Mississippi, and the use of the harbour of Pensacola, and will (provided it shall be true that his Portuguese majesty \* has insultingly expelled the vessels of these States from his ports, or has confiscated any such vessels) declare war against the said king, if that measure shall be agreeable to, and supported by, the courts of France and Spain." It is understood that the strictest union subsists between these two courts, and, in case Spain and France should think fit to attempt the conquest of the English sugar islands, the Congress have further proposed to furnish provisions to the amount of two millions of dollars, and to join the fleet employed on the occasion with six frigates, of not less than 24 guns each, manned and fitted for service, and to render any other assistance, which may be in their power, as becomes good allies, without desiring for themselves the possession of any of the said islands.

Spain showed a great disinclination to take a part in the war declared in '78; and the measures, adopted by France to induce her to this step, were at first received with uncommon coolness. Spain, fatigued by her former contests, though of a recent date, and holding, herself, extensive and valuable foreign possessions, did not view the struggles of the Ameri-

\* In consequence of the celebrated Methuen treaty, the greater part of the Portuguese commerce had fallen into the hands of the English, and those two countries were in a very strict alliance and friendship. In the letter of B. Franklin quoted in the text, the reader will probably be struck with the uncommon willingness of the Congress to engage in foreign connections, though the motives and reasons of such measures are abundantly apparent and satisfactory. It is, however, remarkable, how few they formed; how entirely they escaped from every sort of entangling league and association, with the single exception of the provision respecting the guarantee in the treaty of '78. This circumstance is the more extraordinary, because England was at that time the common enemy of Europe, and an almost general armed confederation had been entered into against her. America is indebted for this good fortune, not only to the skill and discretion of her rulers, but to her "distant and detached situation," and to a very common impression in Europe of her weakness and inability to render valuable assistance to any cause.

cans with entire complacency. A writer of that period has prophesied, with remarkable exactness, the time and manner of the emancipation of Spanish America;\* and though the Spanish government might have had little faith in such predictions, it could not have been ignorant that the example of the North American colonies would have been attended with pernicious consequences to the metropolises of the old world. France exceedingly desired the assistance of Spain in this business, particularly as the navies of the two countries were, united, greatly superior to that of England.† The French king even wrote, in the beginning of '78, letters in his own hand to his catholic majesty, urging him to enter into the coalition:—

“England, our common and inveterate enemy, has been engaged for three years in a war with her colonies. We have agreed not to take a part in it, and, considering both parties as English, we have made the commerce of our state free to whoever should find his advantage in it. In this way America has provided herself with those arms and munitions, of which she was in want. I do not speak of the aid we have given that country in money and other articles, the whole having been done in the ordinary course of commerce. England has shown some vexation at this circumstance, and we are not ignorant that she will sooner or later revenge herself. This was the situation of the business the last November. The destruction of Burgoyne and the embarrassments of Howe have changed the face of things. America is triumphant; England is cast down. But her vast marine is still entire, and having abandoned the idea of conquering the colonies, she has resolved to form an alliance with them. All parties in England are agreed in this particular. Lord North has himself announced a plan of pacification. It does not much signify to us, whether he or any other mi-

\* Pownal.

† The combined fleets, commanded by Count d'Orvilliers, consisting of 66 sail of the line, besides frigates, appeared the next year in the English channel. This was the most numerous and formidable armament ever seen on those coasts.

nister is in place, actuated by different motives, they will still unite against us. *It is very important to prevent the re-union of the colonies with the mother country.*"

The answer of the king of Spain, Charles III. was extremely cold and circumspect; he was naturally of a pacific turn, then much advanced in life, and not disposed to disturb the remainder of his days by a destructive war. He appears, also, to have been offended in not having been consulted respecting the treaties made by France with the United States; as the family treaty of '61 entitled him to this attention and privilege. Determined to avoid hostilities, Spain despatched instructions to her minister at London, to offer the mediation of his court. But England, having required that France should retire altogether from the contest, preparatory to negotiation, and France, on her side, demanding that England should recognise the independence of the thirteen colonies, the Spanish minister, the Count d'Almadovar, found it impossible to reconcile terms so entirely at variance. But the efforts of Spain, to obtain an accommodation, did not end on the occasion of this first disappointment. Three other plans for an arrangement, proposed by her, successively failed. England could not forgive France for her interference in the affairs of North America, and, while that country remained the ally of the United States, she resolutely rejected all attempts at negotiation. In June '79, M. d'Almadovar withdrew from the court of St. James; and England having already committed acts of violence on the Spanish dominions, his catholic majesty could no longer avoid the obligation of the treaty, establishing the family compact. War was accordingly declared in June of the same year.\* This declaration was made in consequence of a convention concluded with France in the preceding April. The independence of the thirteen

\* Spain was probably induced to join the league, from the expectation she had of recovering her lost possessions. Immediately after the rupture, a Spanish force took possession of Baton Rouge, and finally conquered the whole of West Florida.

states was, however, not acknowledged in this instrument, though, by the treaty between France and America, Spain was entitled to accede to the alliance whenever she thought fit, and to have the benefit of all the stipulations.

In September '79, John Jay of New-York was elected by Congress, minister plenipotentiary to negotiate a treaty with Spain. Besides the general terms of his commission, Mr. Jay was furnished with particular instructions to guarantee the two Floridas to Spain on condition that the free navigation of the Mississippi should be secured to this country. The importance of this navigation attracted the earliest attention of Congress, and they insisted upon the right with great emphasis in all their directions to their agents abroad. Mr. Jay went to Spain in '80, and remained there till the spring of '82. He appears to have urged his application with the utmost zeal and fidelity, but he was utterly unable to overcome the system of delay and procrastination which even then distinguished the Spanish court, and which has since given this country so much just ground of complaint. Although Mr. Jay did not succeed in making a treaty, or obtaining subsidies, or assistance of any kind, he was accredited in the usual official forms; and the United States derived from that circumstance the uncommon advantage of having their independence virtually acknowledged by another of the most powerful nations of Europe. Spain was not willing to accede to the alliance between France and the United States; for she felt apprehensive, undoubtedly, for her possessions in Florida and Louisiana. She obviously anticipated, at that early hour, many of the difficulties that have since arisen, and refused to grant to the United States the free navigation of the Mississippi, or to establish that river as the western boundary. This business will be better understood by extracting part of the letter of instruction written by Congress to Mr. Jay in October '80. The reader will perceive, how very early, in the history of this country, those intricate questions arose with Spain, that subsequently were attended with such vast and increasing trouble.

“It is a fundamental principle, in all lawful governments, and particularly in the constitution of the British empire, that all the rights of sovereignty are intended for the benefit of those, from whom they are derived, and over whom they are exercised. It is known, also, to have been held for an inviolable principle by the United States, while they remained a part of the British empire, that the sovereignty of the king of England, with all the rights and powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as king by the people of England, or of any other part of the empire, but in virtue of his being acknowledged and obeyed as king of the people of America themselves, and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From these principles it results, that all the territory, lying within the limits of the states as fixed by the sovereign himself, was held by him for their particular benefit, and must equally, with his other rights and claims in quality of their sovereign, be considered as having devolved on them in consequence of their resumption of the sovereignty themselves. In support of this position, it may be further observed, that all the territorial rights of the king of Great Britain within the limits of the United States, accrued to him from the enterprizes, the risks, the sacrifices, the expense in blood and treasure of the present inhabitants and their progenitors. To Spain, claiming the territory about the Mississippi by the right of conquest, it is answered, that a right founded on conquest being only co-extensive with the objects of conquest, cannot comprehend the circumjacent territory. That if a right to the said territory depended on the conquests of the British posts within it, the United States have already a more extensive claim to it than Spain can acquire, having, by the success of their arms, obtained possession of all the important posts and settlements on the Illinois and Wabash, rescued the inhabitants from British domination, and established civil government in its proper form over them. They have, moreover, established posts on the strong and commanding situation near the mouth of the Ohio, whereas, Spain has a claim by conquest to no post above the northern bounds of West Florida, except that of the Natchez, nor are there any other British posts below the mouth of the Ohio for their arms to be employed against. That, whatever

extent ought to be ascribed to the right of conquest, it must be admitted to have limitations, which in the present case, exclude the pretensions of his catholic majesty. If the occupation by the king of Great Britain of posts within the limits of the United States, as defined by charters derived from the said king, when constitutionally authorized to grant them, makes them lawful objects of conquest to any other power than the United States, it follows, that every other part of the United States, that now is, or may hereafter fall into the hands of the enemy, is equally an object of conquest. Not only New-York, Long Island, and the other islands, in its vicinity, but almost the entire states of South Carolina, and Georgia might, by the interposition of a foreign power at war with their enemy, be forever severed from the American confederacy, and subjected to a foreign yoke. But is such a doctrine consonant to the rights of nations, or the sentiments of humanity? Does it breathe that spirit of concord and amity, which is the aim of the proposed alliance with Spain? Would it be admitted by Spain, herself, if it affected her own dominions? Were, for example, a British armament by a sudden enterprise, to get possession of a sea port, a trading town, or maritime province in Spain, and another power at war with Britain should, before it could be re-conquered by Spain, wrest it from the hands of Britain, would Spain herself, consider it as an extinguishment of her just pretensions? Or would any impartial nation consider it in that light? As to the proclamation of the king of Great Britain of 1763, forbidding his governors in North America to grant lands westward of the sources of the rivers falling into the Atlantic Ocean, it can by no rule of construction militate against the present claims of the United States. That proclamation, as is clear both from the title and tenor of it, was intended, merely to prevent disputes with the Indians and an irregular appropriation of vacant land to individuals, and by no means either to renounce any parts of the cessions made in the treaty of Paris, or to affect the boundaries established by ancient charters. On the contrary, it is expressly declared, that the lands and territory prohibited to be granted, were within the sovereignty and dominion of that crown, notwithstanding the reservation of them to the use of the Indians."———"The river Mississippi will be a more natural, more distinguishable, and more pre-

cise boundary than any other that can be drawn eastward of it, and consequently will be less liable to become a source of those disputes which too often proceed from uncertain boundaries between nations. As this territory lies within the charter limits of particular states, and is considered by them as no less their property than any other territory within their limits, Congress could not relinquish it without exciting discussions between themselves and those states. The territory in question contains a number of inhabitants, who are at present under the protection of the United States, and have sworn allegiance to them. These could not, by voluntary transfer, be subjected to a foreign jurisdiction, without manifest violation of the common rights of mankind, and of the genius and principles of the American government."——"Congress have the greater hopes, that the pretensions of his catholic majesty on this subject will not be so far urged as to prove an insuperable obstacle to an alliance with the United States, because they conceive such pretensions to be incompatible with the treaties subsisting between France and them, which are to be the basis and substance of it. By article eleventh of the treaty of alliance, eventual and defensive, the possessions of the United States are guaranteed to them by his most christian majesty. By article 12th of the same treaty, intended to fix more precisely the sense and application of the preceding article, it is declared that this guarantee shall have its full force and effect the moment a rupture shall take place between France and England. The next object of the instructions is the free navigation of the Mississippi for the citizens of the United States, in common with the subjects of his catholic majesty. On this subject, the same inference may be made from article seventh of the treaty of Paris, which stipulates this right in the amplest manner to the King of Great Britain, and the devolution of it to the United States, as was applied to the territorial claims of the latter. Besides, as the United States have an indisputable right to the possession of the east bank of the Mississippi for a very great distance, and the navigation of that river will essentially tend to the prosperity and advantage of the citizens of the United States that may reside on the Mississippi, or the waters running into it, it is conceived that the circumstance of Spain being in possession of the banks on both sides near its mouth cannot be



deemed a natural or equitable bar to the free use of the river. But, notwithstanding the equitable claim of the United States to the free navigation of the Mississippi, and its great importance to them, Congress have so strong a disposition to conform to the desires of his catholic majesty, that they have agreed that such equitable regulations may be entered into, as may be requisite security against contraband, provided the point of right be not relinquished, and a free port or ports, below the thirty-first degree of north latitude, and accessible to merchant ships, be stipulated to them. The reason why a port or ports thus described, was required must be obvious. Without such a stipulation, the free use of the Mississippi would, in fact, amount to no more than a free intercourse with New-Orleans and other parts of Louisiana. From the rapid current of this river, it is well known, that it must be navigated by vessels of a peculiar construction, and which will be unfit to go to sea. Unless, therefore, some place be assigned to the United States, where the produce carried down the river, and the merchandize arriving from abroad may be deposited till they can be respectively taken away by the proper vessels, there can be no such thing as a foreign trade. There is a remaining consideration respecting the navigation of the Mississippi, which deeply concerns the maritime powers in general, but more particularly their most christian and catholic majesties. The country, watered by the Ohio, with its large branches, having their sources near the lakes on one side, and those running north-westward and falling into the other side, will appear from a single glance on a map to be of vast extent. The circumstance of its being so finely watered, added to the singular fertility of its soil, and other advantages presented by a new country, will occasion a rapidity of population not easy to be conceived. The spirit of emigration has already shown itself in a very strong degree, notwithstanding the many impediments which discourage it. The principal of those impediments is the war with Britain, which cannot spare a force sufficient to protect the emigrants against the incursions of the savages. In a very few years after peace shall take place, this country will certainly be overspread with inhabitants. In like manner, as in new settlements, agriculture, not manufactures, will be their employment. They will raise wheat, corn, beef, pork, tobacco, *hemp*, flax, and

in the southern parts, perhaps, rice, and *indigo*, in great quantities. On the other hand, their consumption of foreign manufactures will be in proportion, if they can be exchanged for the produce of their soil. There are but two channels through which such commerce of the west can be carried on; the first is down the river Mississippi, the other up the rivers having their sources near the lakes, thence, by short portages to the lakes on the rivers falling into them, through the lakes and down the St. Lawrence. The first of these channels is manifestly the most natural and by far the most advantageous. Should it however, be obstructed, the second will be found far from impracticable.

“So fair a prospect could not escape the commercial sagacity of Great Britain. She will embrace it with avidity. She would cherish it with the most studious care, and, should she succeed in fixing it in that channel, the loss of her exclusive possession of the trade of the United States might prove a much less decisive blow to her maritime pre-eminence and tyranny than has been calculated.”\*

It ought to be mentioned in this place, that during Mr. Jay's negotiations at Madrid, Spain had no minister or representative in this country. Mr. Jay left that court in '82, leaving William Carmichael, who had been secretary of legation, as *chargé d'affaires*. In '85, (July,) a *chargé d'affaires*, D. Diego Gardoqui, was received and accredited by Congress, from Spain. Upon the arrival of D. Diego Gardoqui at Philadelphia, the negotiation was transferred to this country, and Mr. Jay, then Secretary of State for Foreign Affairs, was authorized, by a special commission of Congress, to treat respecting the boundaries. The subject was beset with a new difficulty, from the circumstance, that England, in her treaty of '83 with this country, acknowledged the claim of the Uni-

\* These instructions are long and valuable. We have only ventured to extract a few detached portions of them. The state papers on the Mississippi and the western boundary, are prepared with uncommon care and ability;—they are, probably, not surpassed by any other documents that the Congress of the confederation, during the war, have left on record;—all, titles to the gratitude, applause and admiration of all posterity.

ted States to the lands bordering on the Mississippi to the north of the northern boundary of West Florida, and transferred all her right in the navigation of that river. Shortly after the treaty, the Spanish government protested against the transfer, as in their opinion the English had ceded what they did not own. The arrangement with Spain remained in the hands of the Secretary of State till the dissolution of the confederation in '89.

This was the most difficult, intricate, and vexatious negotiation undertaken by that government. Separate from the delays, to which all discussion with the court of the Escorial is necessarily incident, and, in this case, from the unreasonable demands made by that government, the business was further and greatly embarrassed by a division of sentiment in the American Congress;—a division unfortunately arising altogether from local influence and considerations. The northern portion of the confederation, that is to say, New-Hampshire, Massachusetts, Rhode-Island, Connecticut, New-York, New-Jersey, and Pennsylvania, were in favour of concluding a commercial treaty with Spain upon terms of reciprocity, and upon condition of forbearing the use of the Mississippi for twenty-five or thirty years, below the northern boundary of the United States to the ocean. This arrangement did not, of course, include access to the possessions of Spain in the new world; for it had always been one of the fundamental maxims of that court to exclude all mankind from their American shores. A treaty of this description would certainly have been favourable to America, if the position, then assumed, had been correct, namely, that the navigation of the Mississippi was at that period of little importance; that it would not become valuable in twenty-five or thirty years; and that it could not be called a sacrifice to forbear the use of a thing we do not want. These doctrines, formally maintained in Congress thirty-five years ago, will, perhaps, create no surprise in the minds of those, who are acquainted with the situation of the western country during the early discussion with Spain. The navigation of the Mis-

Mississippi certainly did then appear of trifling value, and, considering the amount of population in the Atlantic states, the great quantities of land, there still unoccupied, the little accurate knowledge possessed of the territory beyond the Alleghany, there were slight reasons, indeed, for anticipating the vast wealth and population, to which that district has since so rapidly risen. In some of the states, that are now powerful and have a numerous population, there was not at this period even a settler. With Spain\* at the south, and England at the north, both powerful nations, and neither desirable neighbours, it was certainly difficult to imagine what temptations could attract into unexplored regions emigrants from the borders of the Atlantic.

This appears to have been the first question, on which the states were seriously divided according to their geographical limits. The matter occupied an unusual portion of the attention of Congress;—a great variety of propositions were made in relation to it, but no change took place in the votes. The five states south of Pennsylvania, viz: Maryland, Virginia, North Carolina, South Carolina, and Georgia, were constantly opposed to the northern, and consequently in the minority. We have already said, that the Secretary for Foreign Affairs was directed to prepare a treaty on the basis of a perfect commercial reciprocity, for a term of twenty-five or thirty years, and to stipulate a forbearance of the navigation during that period, though the right to the navigation was by no means intended to be ceded by that act.† On this question the northern portion of the confederation prevailed. It was vehemently and in a most persevering manner, opposed by the

\* Spain claimed both the Floridas, and contended that West Florida extended up the Mississippi higher than the limit indicated in the treaty of this country with England, though in the year '86 she had not clearly determined upon what boundary she should fix.

† The resolution, directing him to conclude a treaty on this basis, as an ultimatum, was adopted by Congress on the 30th August '86, though he was instructed to insist on the boundaries.

south ; but part of the opposition was founded in doctrines, that would not at this day be considered very sound by any portion of the Union ;—sentiments, entirely at variance with the provisions of the treaty of commerce made with France, with the general principles attempted to be inserted in all our treaties with Europe, and with the obvious policy of the country,—more especially that, which administrations are now attempting to inculcate. We allude to the objection made to the doctrine of reciprocity proposed as the basis of the Spanish treaty. We shall extract a paragraph from a report made on the subject :—

“ How contrary would such a stipulation (reciprocity) be to the policy of Great Britain, to the policy of her navigation act, an act, which gives to her own subjects in their intercourse with all other nations, the high privileges and immunities, they do not enjoy. To the wisdom of this act, and her other regulations in commerce, it is owing, that she hath attained to such a height of power and grandeur on the seas, as to be at the same time the terror and the admiration of the world, that her subjects have obtained such commercial wealth and astonishing resources, as to be able to support her in the most splendid enterprises, and the longest and most difficult wars, that her councils could devise, or the change of fortune expose her to.”

It is somewhat unusual to hear the celebrated commercial regulations of Cromwell,\* regulations within a few years publicly condemned by one of the wisest, most ingenuous, as well as experienced statesmen England has ever known, receive such remarkable applause in a country, whose whole ambition and policy have been to break through the navigation acts and colonial systems of the European powers, and whose greatest wealth has been accumulated under the relaxations of those measures rendered inevitable by wars, or the progress of sound views on commercial subjects. But it was a just

\* The “act of navigation,” considered as the foundation of all subsequent proceedings, was originally passed October 9th, 1651, and then fully adopted on the restoration of Charles II.

ground of objection, that the proposed Spanish treaty was not, in reality, reciprocal ; for we were to have those advantages only in Spain and the Canaries ; but were excluded from the Phillipines and the Spanish possessions in America. Another ground was, also, perfectly legitimate and reasonable, and, as time has proved, unanswerable :—

“ As to the surrender or forbearance of the use of the navigation of the Mississippi for the term proposed and for the consideration proposed, (the right of the United States to dismember the government being out of the question,) it is inadmissible upon the principle of the right, and, independent of the right, upon the highest principles of national expedience, which apply even if the commercial project were an advantageous one. The states, who have ceded them, and the confederacy at large, look up to the western lands as a substantial fund for the discharge of the public debt. The value of these lands will depend, in a great measure, on the navigation of the Mississippi. By the contract with Virginia, it is stipulated, that the western country shall be divided into states, and admitted with the rights of the original states into the confederacy. The spirit of this compact is, that the territory should retain all its rights, and have them promoted under the patronage of Congress. This act would, therefore, be a direct violation of it, and have a tendency to fix the weight of population on one side of the continent only.”—“ By the second article of the confederation of these United States, each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not therein expressly delegated to the United States in Congress assembled. This is a fundamental law of the nation, and the powers granted in the ninth article, to make treaties, must be construed in subordination to it. No treaty, even of peace, entered into by the United States in Congress assembled, extending to a cession or suspension of the rights of any of the states without their consent, can, therefore, be valid, much less can such a treaty of commerce, which in point of political necessity can never be so pressing.”

The report of a commercial treaty with Spain produced an alarming sensation in the west. The Spaniards had been

prevented by the people from trading up the river; their goods at Vincennes and Illinois seized, and they, themselves, threatened with being driven from the mouth of the Mississippi. The citizens expressed great indignation at the conduct of Congress; they considered themselves sold to the Spaniard, deserted by their government, and the boon offered them, of transporting their goods to the ware-houses of New-Orleans, was regarded, not only as a cruel insult, but as a treacherous sacrifice of property. Affairs had arrived at such a crisis, that men spoke seriously of throwing off their allegiance, and seeking the protection of a foreign country.

A vast emigration had suddenly taken place to the west at the close of the war. Great numbers of the inhabitants of the Atlantic states, oppressed with taxes and impoverished with debt, crossed the mountains, where they found land very cheap, and a soil exceedingly rich. They had an enemy in the savages, and in the relentless, monopolizing system of the Spaniards. But nature had been so profuse in her best gifts to that region, and the Atlantic states were wasting under such an accumulation of debts, struggling with bad governments and highly excited parties, almost approaching, in some instances, to rebellion and anarchy, that settlers soon arrived in crowds on the banks of the great western rivers. While Congress was discussing the points of a treaty, a nation was created there. The question, touching the navigation of the Mississippi, was to them a vital one; and so remarkable is the water communication in that country, that the inhabitants, most deeply planted in the interior, farthest removed from the outlet of this "father of rivers," were equally concerned in the decision of this controversy. But it was not the navigation of the Mississippi alone, from which Spain intended to exclude the United States. She proposed to confine them within the Alleghanies. As early as '82 this design of that court was manifest. Dr. Franklin mentions it in a letter to the Secretary for Foreign Affairs, and advises Congress to adhere both to the navigation and to the boundary of the Mis-

Mississippi.—The confederation did not succeed in making a treaty or arrangement of any kind with Spain. That country appeared disposed to agree to nothing, or in other words, she had not determined what she should claim. The time having nearly approached when the federal government was to be organized, no sort of progress having been made in the negotiation, and great uneasiness still existing in the public mind on the subject of the navigation, Congress dismissed this tedious and vexatious business in September '88, by the following resolution:—

“Resolved, That the free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such. Resolved, That no further progress be made in the negotiations with Spain by the Secretary for Foreign Affairs, but that the subject, to which they relate, be referred to the federal government, which is to assemble in March next.”

At the organization of the federal government, Mr. Carmichael of Maryland, originally the secretary of Mr. Jay, remained at Madrid as chargé d'affaires of this country. He was not engaged in any negotiation, and our affairs with Spain remained in the situation, in which they were left by the confederation till the latter part of the year '91. At that time, an intimation was officially given, that Spain was disposed to treat at Madrid on one of the subjects then unsettled, viz., the navigation of the Mississippi. This notice related to a matter of too great importance to this country to be neglected, though the former conduct of the Spanish court, or of the agents of that government in the United States, could not inspire much confidence that the business would be brought to a speedy or satisfactory termination. Commissioners were, however, appointed without delay to proceed to Madrid. Mr. Carmichael and Mr. Short, then chargé at Paris, were named for that purpose. Their commission was afterwards extended to include the boundaries and a commercial arrangement. As to the latter part of it, the United



States proposed to place Spain on the footing of the most favoured nation. We had, at that period, treaties with France, Prussia, Sweden and Holland on that basis. Spain was equally entitled to the privilege with either of these last named powers. Indeed, she was the only European nation, with the exception of France, that had declared war against England during the revolution, though England became involved with Holland before the peace of '83. The other points to regulate were those of the navigation and the limits of the Mississippi. We cannot do better than quote, from a report of the Secretary of State of '91, some remarks on one of these subjects, particularly as the navigation of the Mississippi was among the most important questions brought into discussion since the independence of the country :—

“ Our right to navigate the Mississippi from its source to where our southern boundary strikes it, is not questioned. It is from that point downwards only that the exclusive navigation is claimed by Spain ; that is to say, where she holds the country on both sides, to wit, Louisiana on the west and Florida on the east.

“ Our right to participate in the navigation of that part of the river also, is to be considered under

“ 1. The treaty of Paris of 1763.

“ 2. The revolution treaty of 1782-3.

“ 3. The law of nature and nations.

“ 1. The war of 1755—1763 was carried on jointly by Great Britain and the thirteen colonies, now the United States of America, against France and Spain. At the peace, a right was secured to the subjects of Great Britain to navigate the Mississippi in its whole breadth and length, from its source to the sea, and expressly that part which is between the island of New Orleans and the right bank of the river, as well as the passage both in and out of its mouth ; and that the vessels should not be stopped, visited, or subjected to the payment of any duty whatsoever. These are the words of the treaty, ARTICLE VII. Florida was, at the same time, ceded by Spain, and its extent westwardly was fixed to the lakes Pontchartrain and Maurepas and the river Mississippi ; and Spain received soon after from France a cession of the island of New

Orleans, and all the country she held westwardly of the Mississippi, subject of course to our right of navigation between that country and the island previously granted to us by France. This right was not parcelled out to us in severalty, that is to say, to each the exclusive navigation of so much of the river as was adjacent to our several shores, in which way it would have been useless to all, but it was placed on that footing on which alone it could be worth any thing, to wit, as a right to all to navigate the whole length of the river in common. The import of the terms and the reason of the thing prove it was a right of common in the whole, and not a several right to each of a particular part. To which may be added the evidence of the stipulation itself, that we should navigate between New-Orleans and the western bank, which, being adjacent to none of our states, could be held by us only as a right of common. Such was the nature of our right to navigate the Mississippi, as far as established by the treaty of Paris of 1763.

“ 2. In the course of the revolutionary war, in which the thirteen colonies, Spain, and France, were opposed to Great Britain, Spain took possession of several posts held by the British in Florida. It is unnecessary to inquire whether the possession of half a dozen posts scattered through a country of seven or eight hundred miles extent could be considered as the possession and conquest of that country. If it was, it gave still but an inchoate right, as was before explained, which could not be perfected but by the relinquishment of the former possession at the close of the war; but certainly it could not be considered as a conquest of *the river*, even against Great Britain, since the possession of the shores, to wit, the island of New-Orleans on the one side, and Louisiana on the other, having undergone no change, the right in the water would remain the same, if considered only in its relation to them; and if considered as a distinct right, independent of the shores, then no naval victories obtained by Spain over Great Britain in the course of the war gave her the colour of conquest over any water which the British fleet could enter. Still less can she be considered as having conquered the river, as against the United States, with whom she was not at war. We had a common right of navigation in the part of the river between Florida, the island of New-Orleans, and the western bank, and nothing which passed between Spain and Great

Britain, either during the war, or at its conclusion, could lessen that right. Accordingly, at the treaty of November, 1782, Great Britain confirmed the rights of the United States to the navigation of the river, from its source to its mouth, and in January, 1783, completed the right of Spain to the territory of Florida by an absolute relinquishment of all her rights in it. This relinquishment could not include the navigation held by the United States in their own right, because this right existed in themselves only, and was not in Great Britain. If it added any thing to the rights of Spain respecting the river, between the eastern and western banks, it could only be that portion of right which Great Britain had retained to herself in the treaty with the United States, held seven weeks before, to wit, a right of using it in common with the United States.

“So that as, by the treaty of 1763, the United States had obtained a common right of navigating the whole river from its source to its mouth: so, by the treaty of 1782, that common right was confirmed to them by the only power who could pretend claims against them founded on the state of war; nor has that common right been transferred to Spain by either conquest or cession.

“3. If we appeal to this, as we feel it written on the heart of man, what sentiment is written in deeper characters than that the ocean is free to all men, and their rivers to all their inhabitants? Is there a man, savage or civilized, unbiassed by habit, who does not feel and attest this truth? Accordingly, in all tracts of country united under the same political society, we find this natural right universally acknowledged and protected by laying the navigable rivers open to all their inhabitants. When their rivers enter the limits of another society, if the right of the upper inhabitants to descend the stream is in any case obstructed, it is an act of force by a stronger society against a weaker, condemned by the judgment of mankind. The late case of Antwerp and the Scheld was a striking proof of a general union of sentiment on this point; as it is believed that Amsterdam had scarcely an advocate out of Holland, and even there its pretensions were advocated on the ground of treaties, and not of natural right. (The commissioners would do well to examine thoroughly what was written on this occasion.) The commissioners will be able, perhaps, to find, either in the practice or the pretensions of Spain, as to the Douro, Tagus, and Gua-

diana, some acknowledgments of this principle on the part of that nation. This sentiment, of right, in favour of the upper inhabitants, must become stronger in the proportion which their extent of country bears to the lower. The United States hold 600,000 square miles of inhabitable territory on the Mississippi and its branches, and this river and its branches afford many thousands of miles of navigable waters penetrating this territory in all its parts. The inhabitable grounds of Spain below our boundary and bordering on the river, which alone can pretend any fear of being incommoded by our use of the river, are not the thousandth part of that extent. This vast portion of territory of the United States has no other outlet for its productions, and these productions are of the bulkiest kind. And in truth their passage down the river may not only be innocent, as to the Spanish subjects on the river, but cannot fail to enrich them far beyond their present condition. The real interests then of all the inhabitants, upper and lower, concur in fact with their rights.

“ If we appeal to the law of nature and nations, as expressed by writers on the subject, it is agreed by them, that were the river, where it passes between Florida and Louisiana the exclusive right of Spain, still an innocent passage along it is a natural right in those inhabiting its borders above. It would indeed be what those writers call an imperfect right, because the modification of its exercise depends in a considerable degree on the conveniency of the nation through which they are to pass. But it is still a right as real as any other right, however well defined; and were it to be refused, or to be so shackled by regulations not necessary for the peace or safety of its inhabitants, as to render its use impracticable to us, it would then be an injury, of which we should be entitled to demand redress. The right of the upper inhabitants to use this navigation is the counterpart to that of those possessing the shores below, and founded in the same natural relations with the soil and water. And the line at which their rights meet is to be advanced or withdrawn, so as to equalize the inconveniences resulting to each party from the exercise of the right by the other. This estimate is to be fairly made with a mutual disposition to make equal sacrifices, and the numbers on each side are to have their due weight in the estimate. Spain holds so very small a tract of

habitable land on either side below our boundary that it may in fact be considered as a strait in the sea; for though it is 80 leagues from our boundary to the mouth of the river, yet it is only here and there in spots and slips that the land rises above the level of the water in times of inundation. There are then and ever must be so few inhabitants on her part of the river that the freest use of its navigation may be admitted to us without their annoyance. For authorities on this subject, see Grot. L. 2. c. 2. § 11, 12, 13, c. 3. § 7, 8. 12. Puffendorf, L. 3. c. 3. § 3, 4, 5, 6. Wolff's Inst. § 310, 311, 312. Vattel, L. 1. § 292. L. 2. § 123 to 139.

“It is essential to the interests of both parties that the navigation of the river be free to both, on the footing on which it was defined by the treaty of Paris, viz. through its whole breadth. The channel of the Mississippi is remarkably winding, crossing and re-crossing perpetually from one side to the other of the general bed of the river. Within the elbows thus made by the channel there is generally an eddy setting upwards, and it is by taking advantage of these eddies, and constantly crossing from one to another of them, that boats are enabled to ascend the river. Without this right the whole river would be impracticable both to the Americans and Spaniards.

“It is a principle that the right to a thing gives a right to the means without which it could not be used, that is to say, that the means follow the end. Thus a right to navigate a river draws to it a right to moor vessels to its shores, to land on them in cases of distress, or for other necessary purposes.”\*

The government had been engaged in its Spanish negotiation for twelve years. Some of the nations of Europe, such as Austria, had refused to receive and acknowledge our ministers, and although this might be matter of regret, it could not be of complaint. But Spain, early in the revolution embark-

\* On the subject of the navigation of rivers, we refer the reader to the articles of the Congress of Vienna of 1815, respecting the navigation of the Rhine, the Neckar, the Main, the Moselle, the Meuse and the Scheld, particularly, State Paper No. 16.—“Regulations for the Free Navigation of Rivers.” (Schoell, *Recueil des Pièces Officielles*, &c. Tom. viii.)

ed as an associate against the common enemy, had in other respects manifested a conduct, far, indeed, from being friendly. During hostilities, America had not rendered that country any essential services; she was contending for her independence with very feeble means; and, instead of being able to confer obligations, she sought assistance from foreign states. Spain entered into the contest, not certainly in consequence of any contract or convention with the United States; but stimulated, probably, by the prospect of aggrandizement in her American colonies.

Mr. Short, having arrived in Madrid, the commissioners were regularly received and accredited in the beginning of February '93. The negotiation was conducted with Don Diego Gardoqui, who had been a chargé in America. But it was soon ascertained, that Spain was not at that time disposed to admit the limits, or the navigation of the Mississippi. Circumstances were quite unfavourable for the success of this undertaking. The threatened rupture between England and Spain, on account of the seizure of the English settlement in Nootka sound by Martinez in 1789, had been prevented by the convention of the Escorial of 1790. In '93 the National Convention declared war against Spain; a measure, which at the moment appeared an act of desperation; it was certainly an unnecessary proceeding, for Spain had given France no other cause of war than an application to the convention in behalf of Louis XVI. Soon after this event, Spain joined the league against France by a treaty signed with Lord St. Helens at Madrid, in May '93. And, in the course of the year, all the European powers, with the exception of Sweden, Denmark, the grand Duchy of Tuscany, Swisserland, and the republics of Genoa and Venice, became parties to this coalition. France appeared in the act of being crushed; and Spain, having the support of England, and being a principal member of an alliance, which could well be considered irresistible, felt herself better able to maintain her unjust pretensions in North America, than she had done in any former

year. Some considerations, personal to the Spanish minister, also, presented obstacles to the termination of the negotiation. Mr. Gardoqui, who had resided in the United States during the confederation, and had been an eye witness of the weakness of that government, of its feeble and uncertain control over the states, of the apparent discord and divisions that existed in the country, more especially on the Spanish subject, of the tardy and ineffectual manner in which the provisions of treaties had been enforced, of the unsatisfactory authority, with which it was invested in relation to foreign powers, had naturally imbibed an impression, that a government, composed of such disjointed and jealous parts, could neither be strong nor permanent. The minister very frankly said, he did not believe, that the northern, middle and southern states could be brought to act in concert against a foreign enemy, nor could their efforts ever cause much apprehension, as the government had no navy. This conviction added to the reluctance expressed by the court of Spain, to enter into a treaty with us. The old court of France, also, opposed formerly the claims of the Americans in this quarter, an opposition, the effects of which were still felt at Madrid. We have ample proofs of this fact in a letter from the French minister at Aranjuez to M. de Vergennes, made public, when the bureaux of the ministers of Louis XVI. were seized upon by the constituent assembly :—

“The cabinet of Madrid thinks it has the greatest interest not to open the Mississippi to the Americans, and to disgust them from making establishments on that river, as they would not delay to possess themselves of the commerce of New-Orleans and Mexico, whatever impediments should be opposed to their progress, and that they would become neighbours the more dangerous for Spain, as, even in their present weakness, they conceive vast projects for the conquest of the western shore of the Mississippi. Montmorin adds, “that Spain is decided to make the savages a barrier between her possessions and those of the Americans, that it would oppose, if necessary, other obstacles to their progress, and that his christian

majesty could not give to his catholic majesty a greater proof of his attachment, than in employing his influence in the United States to divert their views from the navigation of the Mississippi."

The instructions of the commissioners, in relation to the boundary and the navigation, were in the nature of a *sine qua non*. But they believed it was not for the advantage of the United States to break off the negotiation at once, though no doubt could remain of the impossibility of obtaining those conditions at that moment.

We shall interrupt this narrative to relate a few circumstances, that properly belong to the diplomatic history of Spain, though not immediately connected with this particular negotiation. The Indians on our southern borders were the causes of the same misunderstanding with the Spaniards, as those of the northern portion had been with the English. It was extremely difficult to avoid mutual jealousy, irritation and recrimination. These aborigines, native independent nations, inhabited a territory, which they actually owned; not acquainted with the rules that direct the intercourse of civilized people, they did not possess any accurate notions on the subject and propriety of neutrality; their modes of life were such, that if they committed acts of hostility, it was not easy to detect them, and their friendship being easily purchased, it was still more difficult to trace the foreign influence, to which they were subject. Their territory was, also, infested by numbers of white men, whom vices or a restless disposition had led from their own country, and whose artifices and influence over the Indians were often attended with pernicious consequences. The United States, in their diplomatic relations with Spain and Great Britain, have suffered an unusual portion of inconvenience and mischief from the existence of these tribes on their frontiers, equally unavoidable with the wrongs and outrages, to which the natives, themselves, have been necessarily exposed—wrong and outrages which it seems the order of nature, however difficult to comprehend, or much to be deplored, that barbarous nations



should always encounter, when they come in contact with civilized ones. The Creeks, Chickasaws, Choctaws, Cherokees, and other warlike tribes, had their residence on the frontiers of the boundaries of Georgia and the Spanish possessions. These tribes, powerful and numerous, well supplied with arms and ammunition, committed various acts of aggression on our borders, and they probably did not spare the Spanish. Some of them had been engaged with Great Britain in the revolution war against us, others were, at this time, connected with Spain by treaties of friendship and alliance, and others again were on the same footing with the United States. These various circumstances, and the situation and alliances of the different tribes readily led to irritation, often to murders, and desolations. It is not necessary to give a detailed account of the remonstrances and complaints of the Spanish commissioners in relation to unprovoked Indian hostility, and the criminal interference of the United States. But they all appear to have been unfounded. They arose from misapprehension on the part of Spain. The frontiers of that nation had unquestionably suffered from the acts of the Indians. Smarting from the incursions of these marauders, and provoked with the United States for resisting their pretensions in the west, the Spaniards, naturally enough, attributed to the American government those aggressions, which, in truth, were caused by the peculiar condition and circumstances of the Indian tribes.

It is, however, certain that, after war was declared by France in March '93, hostile armaments were organized in Kentucky against the dominions of Spain on the Mississippi, not only by foreigners, but, also, by American citizens. We have already alluded to the great degree of uneasiness that existed in the western country on the subject of the navigation of the Mississippi. Information was given to the department of state, that four foreigners had left Philadelphia for Kentucky in the month of October, furnished with authority from the French minister to engage and enlist men, whether

citizens or not, on any part of their route, to undertake an expedition against the Spanish settlements, of which the ultimate object was the conquest of New-Orleans. They were, also, supplied with money and blank military commissions. It was clearly proved, that a number of American citizens had received commissions, that preparations of provisions and ammunitions were made, and that a military force was organized within the limits of the United States, and about to set out on a military expedition against the dominions of Spain. This business had a serious aspect. President Washington observed, in a message to Congress, the scheme "sets public order at defiance, and places the peace of the United States in the discretion of unauthorized individuals." A proclamation was issued without delay, forbidding the enterprize, and the necessary orders sent to the United States officers on the points threatened. A correspondence, also, took place between Mr. Jefferson and the governor of Kentucky on the subject. The governor was officially informed of these hostile proceedings, and his assistance requested in maintaining the laws of the country and of nations. A wrong impression appears to have been entertained there at that time respecting the powers of the general government, the more remarkable, as, in the painful controversy with Mr. Genet, the executive had repeatedly and very recently exercised the power vested in it by the constitution and by statute, (act of May 2, 1792,) of requiring the aid of the governors of states in cases precisely similar to those which occurred in Kentucky. The governor intimated a doubt, whether he had a right to restrain men from leaving the state with arms and ammunition. We shall presently quote his own words. This was the beginning of the Federal government; and, connected with the controversy with France, it may well be called its crisis. These instances of reluctance in the states to comply with the requisitions of the national executive, not only show with remarkable distinctness the difficulties the government had to surmount at its first setting out, but they illustrate, in the most intelligible

and practical way, the legitimate scope and action of the constitution :—

“ I have great doubts, even if they do attempt to carry their plan into execution, (provided they manage their business with prudence,) whether there is any legal authority to restrain or punish them, at least, before they have actually accomplished it, for if it is lawful for one citizen of this state to leave it, it is equally so for any number of them to do it. It is, also, lawful for them to carry with them any quantity of provisions, arms, and ammunition, and if this act is lawful in itself, there is nothing but the particular intention with which it is done, that can possibly make it unlawful.”

The following extracts from a letter of the Secretary of State, comprise the whole of the argument in defence of the constitutional exercise of power required by the executive:—

“ That foreigners should meddle in the affairs of a government where they happen to be, has scarcely ever been tolerated, and is often very severely punished. That foreigners should point the force of a nation against its will, to objects of hostility is an invasion of its dignity, its tranquillity, and even safety. Upon no principle can the individuals on whom such guilt shall be fixed, bid the government to wait until their numbers shall defy the ordinary animadversions of law, and until they are incapable of being subdued by the force of arms.”——“ Nor is this offence of foreigners expiated or lessened by an appeal to a presumed right in the citizens of Kentucky to enlist under such banners without the approbation of their country. In a government instituted for the happiness of the whole, with a clear delineation of the channels in which the authority derived from them, must flow, can a part only of the citizens wrest the sword from the hands of those magistrates, whom the whole have invested with the direction of military power? They may, it is true, leave their country, they may take arms and provisions with them, but if these acts be done not on the ground of mere personal liberty, but of being retained in a foreign service for purposes of enmity against another people, satisfaction will be demanded, and the state to which they belong cannot connive at their conduct without hazarding a rupture.”

“ The laws have rendered it lawful for the President, in case of

invasion, to call forth the militia, or to issue his orders for that purpose to such officer of the militia as he shall think proper. They have empowered him to call forth the militia of one state for the suppression of an insurrection in another. under certain circumstances, and to subdue by the militia any combinations against the laws which may be too powerful for ordinary judicial proceedings."

The American commissioners, at the court of Madrid, having found in the state of public affairs in Europe insuperable difficulties to the successful termination of their mission, Mr. Carmichael returned to the United States, leaving Mr. Short as minister resident.\*

In the spring of '95, a great change became apparent in the situation and feelings of that court. Spain had been unsuccessful in the war with France, and the alliance with England was unpopular. A fatal disagreement had taken place in the Mediterranean between the English Admiral Lord Hood and the Spanish Admiral Langara, and the French armies of the Western Pyrenees, having taken Roses, Pampeluna, and gained other advantages, were advancing rapidly on the line of the Ebro. The Spanish government, having neither men nor money left, suddenly extricated itself from the dangers with which it was then enveloped, by a peace signed at Basle in July '95. This peace, extremely popular at Madrid, was negotiated under the auspices of Manuel Godoy, at that time Duke of Alcudia, become since every where famous by the name of Prince of Peace, a title conferred on him as a compliment to his successful efforts on that occasion.† Spain

\* During the first administration under the constitution, Spain was represented in this country by Messrs. Jaudenes and Viar, in the capacity of commissioners or ministers resident.

† The royal order, by which this title was granted to Manuel Godoy, is of so singular a character that we venture to present an extract of it to the reader:—"It is my desire," says Charles IV., "that besides his usual arms, and other emblems of dignity, he shall bear, in his quality of Prince of Peace, above the ducal coronet, a Janus, or head, with

escaped a political revolution, and the overthrow of the younger branch of the Bourbons on its throne, with which it was then menaced by the French armies. But by this treaty the Court of Aranjuez recognized the authority of that government, which had demolished its elder branch in France, and did little more than delay its own annihilation. Though the peace of Basle was forced upon Spain, a foreign writer has well observed, that the best commentary upon it is to be found in an expression of the proclamation of Joseph Bonaparte, issued at Cordova in 1810:—"When an extraordinary revolution expelled from the throne in France the reigning family, the Spanish branch should either not have laid down its arms till it had been re-established, or *should expect itself some day or other to be driven from the throne of Spain.*"

The exhausted state of Spain, the ill success of the coalition of '93 against France, from which she was, however, released by the treaty of Basle, though not without suffering her full share of damage, and the rapidly decaying condition of her marine and commerce presented a favourable opportunity for renewing the negotiations respecting the Mississippi. The reputation which the treaty of Basle had given the Prince of Peace, made him ambitious of more distinction in the same career. His court, threatened with a war by the United States, and exceedingly alarmed by the determined disposition of the inhabitants of the Western States, particularly the state of Kentucky, (whose celebrated resolutions at Lexington in the year '94, have now passed down the smooth, quiet stream of oblivion, together with so many other political acts in this country, which, at the time, seemed to forebode nothing less than the dissolution of the union,) could expect to derive little benefit from a continued delay and evasion. In the coalition of '93, Spain gave the first indication of that decline and

two faces, as a testimony of the wonderful prudence he has shown on the occasion of this peace; for, in reality, the prudent man should be provided with two faces, both to observe the past and the future," &c.

decrepitude, of which we have since witnessed the miserable consummation. Until this period, that celebrated people had retained in Europe a large portion of the influence which their ancient and well earned renown most legitimately conferred on them. With the old governments of the continent Spain had easily kept an equal pace; but when circumstances brought her in contact with France, then fresh, youthful, and aspiring, or with the firm, vigorous, and well matured government of Great Britain, it was soon perceived that her glory and strength existed only in tradition. The Spanish court was, undoubtedly, impressed with a sense of its own weakness, with the palsy of its institutions, and it anxiously considered in what way it could best retire from the contest. Her geographical situation fortunately permitted her to be for several years a mere spectator of the perilous events of those times, for it was quite evident that until a political regeneration took place among her people, war would bring her nothing but disgrace, disaster and impoverishment. But the treaty of Basle placed Spain in a situation certainly new as it regarded England. That power, on account of its navy and colonial possessions, was capable of doing Spain a great deal more mischief than France. This circumstance, probably, had some influence in the final negotiation respecting the Mississippi.

Thomas Pinkney, of South Carolina, having been nominated the preceding November, envoy extraordinary, arrived in Madrid in '95, before the conclusion of the peace with France. He was sent from London as a special minister, with instructions to propose a settlement. Spain finally made a sacrifice of the limits and the Mississippi, but it was done with the utmost reluctance. It was not till October that the treaty was signed.\* Though Spain had, no doubt, determined to

\* This is a treaty of friendship, limits, and navigation. It contains no stipulations respecting commerce, as it relates to the intercourse of the two nations: it defines the right of search, but not that of block-

make the sacrifice in the last extremity, so much delay was again resorted to, that Mr. Pinkney demanded his passports to return to England. This treaty, usually called the treaty

ade, and contains the usual stipulation on the head of trade with an enemy's ports:—

“ART. 2. The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the river Apalachicola, or Catahouche; thence along the middle thereof to its junction with the Flint; thence strait to the head of St. Mary's river, and thence down the middle thereof to the Atlantic ocean.

“ART. 4. It is likewise agreed, that the western boundary of the United States, which separates them from the Spanish colony of Louisiana, is in the middle of the channel, or bed of the river Mississippi, from the northern boundary of the said states, to the completion of the thirty-first degree of latitude north of the equator. And his catholic majesty has likewise agreed, that the navigation of the said river, in its whole breadth, from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention.

“ART. 5. No treaties, except treaties of peace, to be made by one party, with the Indians living within the boundary of the other.

“ART. 7. Citizens and subjects, vessels and effects, not liable to embargo, or detention, for any military expedition, &c. by either party.

“ART. 21. Differences occasioned by losses sustained by American citizens, from Spanish captures, to be referred for decision to commissioners.

“ART. 22. And, in consequence of the stipulations contained in the fourth article, his catholic majesty will permit the citizens of the United States, for the space of three years from this time, to deposite their merchandises and effects in the port of New-Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and his majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interests of Spain; or if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment.” This treaty was signed the 27th day of October 1795.

of San Lorenzo el Real, was properly a treaty only of limits and navigation; for it did not contain any commercial regulations. The boundaries both to the south and the west were fixed agreeably to the demands of the United States. They are to be found in the 2d and 4th articles. The whole breadth of the Mississippi was ceded during the term of the treaty for navigation, though his catholic majesty was authorized to cede, by a special convention, the same to any other nation. A right of deposite for goods at New-Orleans, on condition of paying a reasonable price for storage, was obtained, and a condition that if the same right was not renewed, another place of deposite should be granted. The principle, that the flag covered the merchandize was also recognized, and contrabands were remarkably curtailed. The firmness and perseverance of the government in refusing to conclude a treaty without a recognition of the limits and navigation, were well rewarded in the end. While the mouth of the Mississippi remained closed, the fertile territories of the western waters were substantially withheld from all the benefits of a market, the population checked, the price of land kept down, and the people themselves, were not only in some degree beyond the just control and influence of the national government, but it could not be expected, they should feel the same degree of attachment to the union as the inhabitants of the Atlantic states, who were enjoying all possible prosperity under the protection of its laws.

Every step of the negotiations of this country with Spain has been marked with delays and difficulties. It was 15 years before Spain would consent to consign in a treaty the legitimate limits of the United States, and, yet, the only boundary that could reasonably give rise to controversy, the southern boundary of Georgia, (for Great Britain ceded in '83 the Floridas to Spain without any specific limits, and to the United States her own claims to all territory north of the 31st degree of north latitude,) was a very slight obstacle to the termination of the negotiation. After all, this boundary was not



drawn, nor the Spanish troops withdrawn till '98, three years after the signature and ratification of the treaty of San Lorenzo el Real. Under the provisions of the 3d article, Mr. Andrew Ellicot was appointed, on the part of the United States, commissioner to run the southern boundary; he repaired to Natchez as soon as possible after the ratification. But the country was not evacuated till '98, though by the 2d article, all troops, garrisons, and settlements, were to be withdrawn within the space of six months after that formal act. An equal delay took place in the running of the boundary line. This tardy execution of the treaty was justified under various pretences. The Spaniards had been at some expense in erecting new or repairing the old fortifications, and it was not stipulated whether they should be demolished, or left standing. Now, it is a new idea in diplomacy, that to withdraw, means to demolish. When it is the intention of the parties that works should be destroyed or paid for, it is always so stipulated. When a country is ceded, it is ceded in statu quo, unless otherwise agreed. In this case, the Spanish troops were to evacuate, and were allowed to take their "goods and effects" with them. The same expression, as to withdrawing, occurs in the treaty between the United States and Great Britain. The troops were withdrawn and the works left standing. In the same year ('83), Great Britain ceded the Floridas to Spain, and her troops evacuated the territory without demolishing the fortifications. No maxim in public law is of higher and more general authority, than that "it is not allowable to interpret what has no need of interpretation." The American government subsequently consented that the fortifications should be demolished. The Spaniards, also, refused to evacuate the Walnut Hills, a principal post on the eastern bank of the Mississippi, near the confluence of the Yazoo and that river, a degree and a half to the northward of the boundary line. They alleged, it was necessary to retain this post in order to protect Upper Louisiana against an English expedition from Canada; Spain having declared war against England in October '96. This expedition could not proceed

without violating the territory of the United States, and every possible assurance was furnished, that no such enterprise had ever been contemplated. Even if this pretence was well founded, the Spaniards obviously had no right to retain territory or fortifications formerly ceded. The other pretexts were equally frivolous, and destitute of defence. We refer the reader, for the details of this transaction, to Mr. Ellicot's Journal, published in 1803.

A short time after this difficulty was overcome, and a detachment of American troops put peaceably in possession of the country, a very alarming and distressing event took place at New-Orleans. From the time of the ratification of the treaty, not only the navigation of the Mississippi had been fully enjoyed, but the right of deposite, under the 22d article, had been constantly used, and been found highly beneficial. Spain was allowed, under the provisions of the treaty, to suspend this right at the expiration of three years, at the particular spot of New-Orleans. But that period having passed, nay, the seventh year of the privilege being entered upon, no suggestion having been given, that it was prejudicial to the interest of Spain, on the contrary, the parties appearing to derive great advantages from it, there was no cause to apprehend, that the right would be revoked. The act of the intendant Morales, suspending the right of deposite, promulgated the 2d Oct. 1802, excited, therefore, as much surprise, as alarm and indignation. We shall insert the decree issued on this occasion; and it is necessary to remark, that these difficulties, though the act of the intendant was disowned by the Spanish government, were not entirely removed till the final transfer of Louisiana to the United States:—

“As long as it was necessary to tolerate the commerce of neutrals, which is now abolished, it would have been prejudicial to the province, had the intendant, in compliance with his duty, prevented the deposite in this city of the property of the Americans, granted to them by the 22d article of the treaty of friendship, limits and navigation of the 27th October, 1795, during the limited

term of three years. When the publication of the ratification of the treaty of Amiens,\* and the re-establishment of the communication between the English and Spanish subjects took place, that inconvenience has ceased. Considering that the 22d article of the said treaty takes from me the power of continuing the toleration, which necessity required, since after the fulfilment of the said term, this ministry can no longer consent to it, without an express order of the king: Therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date, the privilege, which the Americans had, of importing and depositing their merchandize and effects in this capital, shall be interdicted.

Under the head of France, we have given an account of the transfer of Louisiana to this country. That subject does not belong at all to this part of our history; as Louisiana, at the time of the cession, was the property and in the possession of France. Spain, however, was exceedingly opposed to this arrangement, and showed great reluctance to evacuate the territory. In the outset, a formal protest was made by that court against the transfer; but she was induced in the end to withdraw it, and to give her consent to the convention of April, 1803, between France and the United States.† We are not acquainted with the secret history of the treaty of St.

\* It is very evident, that the pacification in Europe induced the intendant to revoke the deposite; in order that the trade might fall into the hands of the Spaniards; for, while the war continued, they could not conduct it.

† The ground of the opposition of Spain to the transfer of Louisiana, separate from any secret articles that may have existed in the treaty, undoubtedly was, that France had not fulfilled on her part the conditions, in consideration of which the retrocession was made. It is not our purpose to enter into the intricacies of the negotiations of that period. It is sufficient to remark, that the secret treaty of St. Ildefonso of 1800, the treaty of Luneville of 1801, and of Madrid of the same year, created the modern kingdom of Etruria, for the benefit of the prince of Parma, who had married a daughter of Charles IV. of

Ildefonso, by which Louisiana was "retroceded to France." The third article is the only one that is known, and that has been already quoted. But it has usually been said, that to the transfer was annexed a condition, either that France should not cede Louisiana to any other power, or if she should hereafter wish to alienate it, the preference should be given to Spain. There is little doubt, that there was some secret stipulation or other of that kind; for the very news of the transfer to the United States, awakened not only surprise, but even indignation in Spain. It is well known, that the Spanish government, at first, refused to acknowledge the validity of it; and did not, as it was, yield the whole province, without an angry and protracted discussion, which had nearly involved the two countries in a war. Indeed, taken in connexion with the suspension of the deposite at New-Orleans, and the depredations on our commerce, a committee of the House of Representatives of Congress reported, in January, 1806, that there was ample cause for a formal declaration of war with Spain.

The difficulties this country has had with Spain, respecting boundaries and territories, were, indeed, remarkable. We may attribute this circumstance in some degree to the ignorance generally existing respecting the countries in description; they had never been surveyed, and in the treaties with France, Spain, and England, by which they had often changed owners, their limits were never accurately described. In particular, the article of cession of Louisiana by France to

Spain, and who, according to the Spanish order, was the eventual successor to that throne. In consideration of this creation, Louisiana, the duchy of Parma and Placentia were transferred to France; and it is supposed, that the prince of Parma, become of Etruria, signed, soon after, a renunciation of the Spanish throne. In 1807, by the convention of Fontainbleau, Etruria was ceded to Napoleon Bonaparte, and the reigning family transferred to a government styled Northern Lusitania, made out of the Portuguese provinces of Entre Duero y Minho.

this country, was most likely to lead to doubt and controversy, for the language was of an unusual description to employ in describing the bounds of a territory. The discussion respecting the portion of West Florida to the westward of the Perdido, began between the two governments at the time of the cession of Louisiana, in 1803, and was not concluded till 1810, when, the Bourbon family in Spain having been dethroned, the United States thought it imprudent longer to delay enforcing their right. Possession was accordingly taken of that territory by Governor Claiborne in 1810, by order of the President.—The negotiation, concerning the eastern as well as western boundaries of Louisiana, were not only tedious and vexatious, but exceedingly intricate. Of the western limits, we shall speak hereafter; at present, we shall give a brief account of the eastern. The boundary of Louisiana, when in the hands of the French, before the treaty of '63, extended on the east to the river Perdido. The country farther to the east of that, part of which has since been called West Florida, was then known by the general name of Florida. The celebrated treaty of peace and friendship between England, France, and Spain, signed at Paris in '63, changed the ownership of this territory. That treaty extinguished, apparently forever, the dominion of France in North America, for what she did not cede to Great Britain, she ceded to Spain, though, in strict accuracy, western Louisiana, with the island of New-Orleans, was transferred to Spain by a secret convention, signed at Paris in November '62, the day the preliminaries of the definitive treaty were signed. This was done by France to remunerate Spain for parting with Florida to England. The treaty of '63 made Great Britain mistress of all the North American continent to the east of the Mississippi, with the exception of the island of New-Orleans. It is, also, very important to bear in mind, that it changed the boundaries, as well as the ownership of Louisiana, separating the eastern portion from the great mass, and transferring it to England.

That government immediately united that portion of Louisiana with Florida, formed two territories, separated by the river Apalachicola, and called them East and West Florida. The circumstance of this transfer, and the separation of the territory into two districts, (for before the treaty of '63, neither East nor West Florida was known in geography,) was the origin of the controversy between Spain and the United States, respecting the boundaries of Louisiana. The opposition of Spain was influenced by her unwillingness to abandon Louisiana, and by irritation at the President's proclamation of November 1804, erecting the territories and the waters of the Mobile into a collection district, declaring them to be within the boundaries of the United States, and establishing a custom-house there.—We have,\* already, said that the transfer of Louisiana to the United States, was made in 1803. It was described in the manner following; the words, which we are under the necessity of repeating here, though already quoted under the head of France, title Louisiana, are taken from the secret treaty of St. Ildefonso, of 1800. "His catholic majesty promises and engages on his part to *retrocede* to the French republic, the colony or province of Louisiana, *with the same extent it now has in the hands of Spain*, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states." This language is apparently ambiguous, and can only be understood by attending carefully to the history of the various cessions. In justification of withholding the country between the Iberville and the lakes and the Perdido, Spain contended that France could only convey to the United States the rights she had acquired from Spain, and by the treaty of 1800. Spain *retroceded* to France what she (Spain) had received from France in '62, that is to say, a territory bounded on the east by the rivers Mississippi and Iberville, and the lakes Maurepas and Pontchartrain. But of the territory eastward of this line.

\* Chap. iv. Cession of Louisiana.

called afterwards by the English West Florida, and ceded the same day by France to England, Spain never received the least portion. She never owned a square mile of this territory, either before or after the treaty of '63. Spain could, therefore, never give back or *retrocede* to France, a district she had never owned. This word, *retrocede*, was interpreted by the Spanish minister with strictness. The treaty, itself, being called a treaty of *retrocession*, the whole movement and action of the instrument depended on that word; and it would be no compliment to the parties to that act to attribute to them the use of a vague unmeaning term. The treaty of 1800 must, therefore, be considered entirely in reference to that word *retrocession*. Spain, said D. Pedro Cevallos,\* possesses Florida as Florida. She received that district from England in '83. "His Britannic majesty cedes and guarantees to his catholic majesty, eastern and western Florida." (art. 5th.) When France "*possessed*" it, therefore, and when she delivered it to Spain, it had the same extent as when in the "hands of Spain" at the time of the "*retrocession*." France made a complete cession to England. The territory, after '63, was in all respects English, but after '83 it became equally Spanish. These two acts are, in themselves, entirely distinct, and have no reference to any former boundaries of Louisiana. A new territory was erected in the hands of a new government, and called Florida. From that period we lose sight of the original eastern boundary of Louisiana. Two territories cannot be made to mean the same territory, nor can they be legally incorporated in the same instrument by the same name that are acquired at different times, by different names, and from different parties, unless a special reference is made to these circumstances. Spain received Louisiana from France in '63, and Florida from England in '83. The title of Spain to Florida is entirely independent of France. Another very great

\* This is the same minister who accompanied Ferdinand VII. to Bayonne in 1808. See *Exposés* of D. Juan Escoiquiz, and D. Pedro Cevallos.

difficulty, in the opinion of Spain, presented itself in this view. Since '63, all the country south of the 32d degree of latitude and east of the Iberville, has been called Florida. But before the treaty of that year, the limits of the French possessions extended on the north from the Mississippi to the Ohio and Illinois rivers. It is, therefore, quite as correct to call that country about those rivers Louisiana, as it is the country about the Mobile. The style of East and West Florida has been recognized in a variety of public documents, more especially the treaties between Spain and England in '83, and Spain and the United States in '95. Part of the title of the governor of the Havana is, captain-general of "*the Floridas.*" That country is also called, on the maps, East and West Florida. It is therefore evident that this appellation, *West Florida*, was known, not only in diplomacy, but also in geography, and that when it was mentioned in any official public instruments, either treaties, commissions, or proclamations, it was always denominated *West Florida*, and not *Louisiana*, or any portion of Louisiana. If, therefore, in the treaty of 1800, it had been the intention of the parties to include this district, it would have been specifically named. No uncertainty need to have existed, because the boundaries were perfectly run, and the name every where known. If it had been the intention of the parties to include West Florida, they would have used the words *West Florida*, and not employed a phrase so exceedingly vague and ambiguous. If the United States were about to cede the state of Ohio, or Illinois, which at one time belonged to France, and then to England, and was then known by very different names, she would not have gone back to the times when France or England owned the country. She would simply have described the cession under the appellation of the state of Ohio, or Illinois. The simplest and most intelligible language is always employed on such occasions. It would have been absurd to have called it Louisiana, because it had once formed a part of that province. With the same propriety we might call Ohio, Louisiana. It is, also,



absurd to deliver the territory with the *same* and yet more extent,—same extent as when France possessed it in '63, and same extent that it *now* has in the hands of Spain,—if more, obviously, it is not the same. The phrase, "*when France possessed it,*" not indicating a fixed time, for France possessed it under two very different conditions, should be determined by the clauses of the treaty; and not be so interpreted as to make those clauses inconsistent. If that expression refers to a period anterior to '63, it is quite evident, Spain could not comply with the provisions of the treaty, for a large part of Louisiana, as it was before the cession to England in '63, is now Kentucky, and other portions of the United States. It is not to be supposed, that the parties, having a full knowledge of the subject, should have made a treaty, the provisions of which are at variance, and which one of the governments could not execute. It is certainly much more reasonable to construe the treaty in such a manner, as that one of the parties should have been able to comply with its provisions, and make the cession proposed. This interpretation Spain, one of the parties, puts on the treaty;—the other party, France, confirms this interpretation. In August 1804, the minister of foreign relations, M. de Talleyrand, delivered the following opinion on this subject:—

"The eastern limits of Louisiana are indicated by the course of the Mississippi and the Iberville, the lakes Pontchartrain and the Maurepas. It is at this line, that terminates the territory ceded by Spain to France. France had nothing to demand of Spain beyond this limit, and as she has now transferred to the United States the right she thus acquired, they cannot require of Spain a cession of territory more extensive."

On the last clause of the cession, "*such as it should be after the treaties subsequently entered into between Spain and other states,*" the Spanish government contended, that there were but two treaties to which this language could apply; that of '83 between Spain and England, and of '95 between Spain and the United States. The treaty of '83 gave his catholic

majesty the territory of West Florida. This territory, acquired by a different name, twenty years after the original cession of Louisiana, could, by no process whatever, be incorporated with the latter named province. It was an addition, generally, to the possessions of Spain, but it could never be considered a special one to the province of Louisiana. If the United States should cede Ohio to Spain, it would be an extravagant liberality of construction, to call it immediately part again of its original province. Louisiana itself was dismembered, it had been withdrawn from the government of its original proprietor, different portions of it had belonged to different states for a long period of time, had acquired new names, and had boundaries exactly defined. It is certainly the first example of the kind, that the simple act of a fresh cession should cause all these names and boundaries to disappear. The party, acquiring the possessions, may cause them to disappear, and incorporate the whole again into one territory. But Spain could not recognize a right of this description in a party to a second contract, in direct opposition to the opinion of the parties to the first original instrument, and to her very great cost and serious damage, where not a single direct stipulation could be produced to authorise this violent proceeding. The treaty of '95, between Spain and the United States, principally related to the boundaries of Louisiana and Florida. So far, therefore, as it has any bearing on the subject, it excludes West Florida from the reach of the treaty of St. Ildefonso.

The reader will observe, that the entire success of this reasoning, by which Spain supported her pretensions to this territory, depends upon the single point, *what period is indicated by the possession of France*. That is, after all, the clause in the cession, that ought to determine the boundaries. The American government contended, that this period was one anterior to the year '63, for France divested herself of both portions of Louisiana on the same day. The east she ceded to England, and the west to Spain. When France, therefore.

possessed Louisiana, it was an entire province. She never possessed it as Spain has since done. France could not cede an exact boundary to the United States, because that had not been agreed on in the treaty of St. Ildefonso. The treaties of '63, and '83, and '95, had changed exceedingly the limits of Louisiana; and the only legitimate mode of making an undisputed cession, was not to include, or exclude any territory specifically. In the transfer to America, the original article of the treaty of St. Ildefonso is employed; and, though that treaty is called a treaty of *retrocession*, the word is of no other importance, than as it expressed the act of the treaty better than any term could do. Besides, France once possessed Louisiana, and a cession to her by any power of that territory would be a retrocession. The single general action of this instrument concerns that province. France was the first European state that owned it, and it once held as much of the province as any other power has since held. Whatever, therefore, was ceded to France, whether a large or a small portion, must have been a *retrocession*. Still, this word is of little importance, because three distinct phrases, or specifications, are introduced to define the extent of the cession. We shall very briefly state the substance of the reasoning on these three points. 1st. "The colony or province of Louisiana, with the same extent it now has in the hands of Spain." This is a very easy matter to determine. We have, simply, to inquire what portion of Louisiana was in the hands of Spain when the treaty of St. Ildefonso was made. All Louisiana, to the eastward of the Mississippi, from the 31st degree of north latitude to the northern limits of the United States, had been ceded by France to Great Britain, by the treaty of '63, to which Spain was a party. It is the 7th article, and is in these words:—"His most christian majesty cedes and guarantees to his Britannic majesty the river and port of Mobile, and all the territory he possesses on the left bank of the Mississippi, with the exception of the city and island of New-Orleans." (Martens.) This same territory, to the north of the

31st degree, was confirmed, (art. 2,) to the United States, by Great Britain, by the definitive treaty of peace and amity. Again, this territory was further confirmed to the United States, by the treaty of alliance of '78, (art. 6,) and by the 2d and 4th articles of the treaty of friendship, limits and navigation, of '95, between Spain and the United States. It is evident, therefore, that this specification does not touch a square mile, for not a square mile of it was in the hands of Spain in 1800. 2d. "The same extent that it had *when France possessed it.*" This was in the year '63, or anterior to that period. That is to say, all France then possessed, and which had not been subsequently ceded to other powers, according to the exception of the first specification; otherwise, this clause would have included all that Spain had *ever* owned, which neither France nor Spain obviously could cede, for it belonged to a third power. A reference to its state, anterior to '63, necessarily excluded all subsequent modifications of the territory, in consequence of new names having been given to any part of it; for a part of Louisiana remained in the hands of Spain, under a new denomination. Great Britain called that portion, ceded by the treaty of '63, West Florida, and Spain might have called some part adjoining Mexico by some other name. Therefore, to avoid embarrassment proceeding from a change of names, a period was taken when those names did not exist. It follows from this second clause or specification, that no part of the province then in the hands of Spain, ever possessed by France, should be excluded. 3d. "*Such as it should be after the treaties subsequently entered into between Spain and other states.*" The treaty of '83, ceded West Florida to Spain. This, therefore, she did not acquire of France. But this portion falls within the first specification, because it is now in the hands of Spain, and within the second specification, because France once possessed it. If Spain, instead of receiving, had ceded West Florida, anterior to the treaty of St. Ildefonso, this third specification would have expressly excluded it. A treaty that

enlarged the extent of the province could not diminish the extent of the cession. The treaty of '95 with the United States excluded whatever was to the north of the 31st degree and to the east of the Mississippi. That treaty, therefore, brought nothing within the reach of this 3d clause.

As the claim of the United States to this territory, in itself of great importance, was undoubted, we have given the course of argument in considerable detail; and, though Spain never presented any satisfactory answer or explanation, she refused to deliver the country. The conduct of France, on this occasion, was unfriendly in the extreme. She openly adopted and defended the opinions of Spain; and condemned the proceedings of the American government, in an unreserved and gratuitous manner. We extract a single passage from a letter of M. de Talleyrand, of December, 1804:—

“This result his imperial majesty will learn with real interest. He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence, which, not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to his majesty, because the United States seemed, in this measure, to avail themselves of their treaty with France, as an authority for their proceeding, and because he could scarcely reconcile with the just opinion which he entertains of the wisdom and fidelity of the federal government, a course of proceeding, which nothing can authorize towards a power, which has long occupied, and still occupies, one of the first ranks in Europe.”

The United States had, therefore, the whole influence and power of France against her in this business; for, from the treaty of Basle to the year 1808, Spain was the steady, faithful, and most useful ally of that power.

Although not entirely in course, we shall here conclude the account of the eastern boundary of Louisiana. The negotiations on the subject ceased in 1805; Spain prepared to defend the possession of it.—and, undoubtedly, an attempt to

occupy it, on the part of the United States, would have led to a war. The territory was of great importance to the Americans, particularly on account of the waters of the Mobile, the principal rivers of Alabama emptying themselves into this bay; which is the natural outlet of an exceedingly fertile country of great extent. Before the cession of Louisiana, the United States had attempted to buy the territory on the Mobile, of Spain. They claimed, also, for the citizens residing on the Tombigbee and Alabama rivers, its free navigation to the ocean, as a natural right, and as secured by the general principles of the laws of nations in similar cases. This privilege, however, was not obtained; for the Spanish authorities on the Mobile continued to levy, from time to time, a duty of 12½ per cent. on merchandise that passed through, for or from the upper country. We have already said, that, in 1804, a collection district, under the usual custom house laws, was established on the Mobile. The Spaniards complained of this act, as a violation of their territory and sovereignty. But the American government attempted to exercise no further jurisdiction over the territory, till the year 1810, when the juncture of affairs in Europe made it extremely imprudent to suffer their right to West Florida to remain any longer in suspense.

In the year 1807, after the treaty of Tilsit, the emperor Napoleon began the overthrow of the Bourbon dynasty in Spain, by attacking Portugal. The progress of this business is well known. At last, in 1810, Charles IV. and Ferdinand VII. being dethroned, the supreme junta of the Cortes driven to the isle of Leon and dissolved, and the English and Portuguese armies appearing to be besieged, as it were, in the celebrated lines of Torres Vedras, nearly at the extremity of the peninsula on the west, there was every reason to suppose, that the unprincipled project of the French emperor had succeeded; and that the ancient monarchy of Spain and the Indies, upon whose possessions, in the expressive language of an author of that country, the sun never set, was completely

annihilated. The Spanish authorities in West Florida were, by this revolution, and by the treaties signed by Charles and Ferdinand, released from all obedience to the former Spanish government. West Florida, itself, was divided into two parties; one, under the influence of governor Folch, was attached to the mother country; the other, said to be the most numerous, directed by colonel Kemper, was desirous of a union with the United States. This portion of the people held a convention at Baton Rouge, in the summer of 1810, and addressed a letter to the secretary of state, soliciting to be received under the protection of the United States, and to have the privileges enjoyed, under the constitution, by other citizens of the union. They published a proclamation at the same time, which was somewhat at variance with the claims of the American government on that territory. France, having obtained possession of the Spanish government, and having originally opposed the claim of the United States to West Florida, would undoubtedly endeavour, as soon as possible, to get possession of it. The Spanish colonies, with some exceptions, were, themselves, exceedingly agitated with a spirit of revolt, and several had declared themselves independent. A similar state of things appeared to exist in West Florida. The American government had already forborne, for a long time, to exercise their undoubted rights, in regard to this territory. But circumstances made it extremely dangerous to rely any longer upon the success of this system. Orders were, therefore, sent to Wm. C. C. Claiborne, in the autumn of 1810, to take possession of the country, in the name of the United States, and to incorporate it, for the time, with the Orleans territory. This was effected without bloodshed. The motives of this step are to be found in the proclamation issued by the President on that occasion. It is the first time the United States had been compelled to employ force to obtain possession of their own country. Those parts of the states of Alabama and Mississippi, that border on the gulf of Mexico, are composed of the ancient territory of West Florida.

This part of the account of the relations with Spain would be quite imperfect without an examination of the western boundary of Louisiana. Though this was finally settled at a period not embraced by this work, it properly belongs to the act constituting in 1803 a transfer of that province, more especially as the negotiations, respecting this boundary, were originally carried on at Madrid in 1804 and 5 by Messrs. Monroe and Pinkney, at the same time with that relating to the other frontier. This is not a subject susceptible of much discussion; for the right of the United States depends upon a few plain facts, perfectly substantiated, though the topic, like every other with the court of Spain, has led to a protracted and minute correspondence.

The Sieurs Joliet and Marquette from Canada, penetrated, as early as 1673, down the Mississippi to the Arkansas. Father Hennequin in 1680, La Salle and Tonti in 1682, descended to the ocean, and named the country Louisiana, placing it by the most solemn acts under the government of France, and by making settlements, and building forts. In 1685, La Salle landed with 240 persons in the bay St. Bernard from France, and built two forts there. Louis XIV., by letters patent in 1712, granted the commerce of the country to Anthony Crozat, defining its boundaries as all the land, coasts, and islands, situated in the Gulph of Mexico, between Carolina on the east, and New and Old Mexico on the west, with all the streams that empty into the ocean within those limits, and the interior country dependent on the same. We mention these few facts, in a very abridged form, to show that France first discovered Louisiana, and, according to the whole European practice, came into the rightful possession of it:—

“ The principles, which are applicable to the case, are such as are dictated by reason, and have been adopted in practice by European powers in the discoveries and acquisitions, which they have respectively made in the new world. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession



of any extent of sea coast, that possession is understood, as extending into the interior country, to the sources of the rivers, emptying within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same. It is evident that some rule or principle must govern the rights of European powers in regard to each other in all such cases, and it is certain, that none can be adopted in those, to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described, for the same society, to have connected its several parts together by the ties of a common interest and to have detached them from others. If this principle is departed from, it must be, by attaching to such discovery and possession, a more enlarged or contracted scope of acquisition, but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested, a doctrine, which has been totally disclaimed by all the powers, who made discoveries, and acquired possessions in America. The other extreme would be equally improper, that is, that the nation who made such discovery, should, in all cases, be entitled to the whole of the territory so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice, but in that of a continent, it would be absolutely absurd. The great continent of America, North and South, was never claimed or held by any one European nation, nor was either great section of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent. This principle was completely established in the controversy which produced the war of 1755. Great Britain contended that she had a right, founded on the discovery and possession of such territory, to define its boundaries by given latitudes in grants to individuals, retaining the sovereignty to herself, from sea to sea. This pretension, on her part, was opposed by France and Spain, and it was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. The

second is, that whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above-mentioned, the middle distance becomes such of course. A third rule is, that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other power, by virtue of purchases made by grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there by all the European powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz. : the treaty of Utrecht in 1713, and that of Paris, 1763. In conformity with the 10th article of the first mentioned treaty, the boundary between Canada and Louisiana on the one side, and the Hudson Bay and North Western companies on the other, was established by commissaries by a line to commence at a cape or promontory on the ocean in fifty-eight degrees, thirty minutes north latitude, to run thence southwestwardly to latitude forty-nine degrees north from the equator, and along that line indefinitely westward. Since that time no attempt has been made to extend the limits of Louisiana, or Canada, to the north of that line, or of those companies to the south of it, by purchase, conquest, or grants from the Indians. By the treaty of Paris 1763, the boundary between the present United States and Florida, and Louisiana, was established by a line to run through the middle of the Mississippi, from its source to the river Iberville, and through that river, &c. to the ocean. Since that time no attempts have been made by those states, since their independence, or by Great Britain before it, to extend their possessions westward of that line, or of Spain to extend hers eastward of it, by virtue of such acquisitions made of the Indians. These facts prove incontestably, that this principle is not only just in itself, but that it has been invariably observed by all the powers holding possessions in America in all questions to which it applies relative to those possessions. On the authority of the principle first above stated, it is evident that, by the discovery and possession of

the Mississippi; in its whole length and the coast adjoining it, the United States are entitled to the whole country dependent on that river, the waters which empty into it, and their several branches within the limits on that coast. The extent to which this would go, it is not now possible to say, but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it. It is equally evident, by the application of the second principle to the discovery made by M. de la Salle of the Bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance between that point and the then nearest Spanish settlement, which it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say, nor is it material, as the possession in the bay of St. Bernard, taken in connexion with that on the Mississippi, has been always understood, as of right it ought, to extend to the Rio Bravo on which we now insist."

The western boundary of Louisiana was established by a treaty, ratified in 1821, at the mouth of the Sabine in the Gulf of Mexico; it proceeds along the west bank of that river to the 32d degree of north latitude; thence by a line north to the river Arkansas, thence along the south bank of that river to its source; thence south or north, as the case may be, to the parallel of 42 north latitude, and thence west to the Pacific. The treaty, regulating this boundary, and which, as far as the geography of the country is known, conforms to the doctrines, for which America, through the whole of this vexatious business, has always contended, was concluded at Washington, in 1818.

It is now proper to return to the other parts of the negotiation, undertaken by Messrs. Monroe and Pinkney at Madrid, in 1805. Mr. Pinkney (Charles) of South Carolina, appointed minister plenipotentiary in June 1801, was the resident minister, and Mr. Monroe, minister at the court of St. James, was joined with him in a special and extraordinary

mission. The examination of the points in dispute between the two countries began in January 1805. We have already spoken of the boundaries of Louisiana. The other topics related to illegal captures, and the suspension of the right of deposite at New-Orleans. Spain never having denied the propriety of making indemnity for illegal captures by bona fide Spanish privateers, this business had been arranged in the convention of 1802. But Spain suddenly refused to ratify this instrument, though made under the eyes of the court, because Louisiana had been ceded to the United States.\* The illegal captures were those made by French privateers, either within Spanish jurisdiction, or condemned in the Spanish ports before the month of September 1800, by French consuls. The United States claimed indemnity for these spoliations from Spain. But the claim was rejected. That government contended that the convention of 1800, between France and the United States, released her from any obligation to pay for them; and by a supplementary article to that instrument, the American government agreed to make no demand on France for captures or spoliation. It was done in consideration of being exonerated from the weighty obligation imposed by the treaty of '78, involving the guarantee of the French possessions. This has been explained under its proper head. By this article of that treaty, the United States avowed themselves satisfied on that subject. Now, if a

\* The Senate ratified this convention in 1804. We take this opportunity to say that the first minister plenipotentiary, sent by Spain to this country, was the Chevalier Carlos Martinez de Yrujo; he arrived after the treaty of '95, and his commission was renewed in 1801, when he was created or became a marquis. He is supposed to have been the author of a paper, signed Verus, addressed to the native American, and published in the Aurora towards the close of the year '97. He was the last Spanish minister in America, before the renewal of the diplomatic intercourse on the restoration of the royal family. David Humphreys, of Connecticut, was appointed a minister plenipotentiary to Madrid, in May '96.

nation, in a treaty with another, declares herself satisfied for a claim against a third, she obviously can have no further demand against the third. This is a principle of eternal justice, and not of municipal law. This defence on the part of Spain would not admit of an answer, if the facts, assumed by that government, were correct. The convention of 1800 released only France from indemnity. There is no reference in it to a third party. The American government did not make a demand on the French for a wrong, committed by any one of their allies. But, in support of this principle, Spain presented the following view of the case. From the year '95 to the treaty of Amiens, France and Spain were allies, and at war with England. France armed privateers in Spanish ports to cruise against English vessels. This was lawful; but the violations she committed on neutrals out of the jurisdiction of Spain, by means of these same privateers, were beyond the control of Spain. They were not acts done in Spanish waters, nor by Spanish officers or tribunals. As a proof of this, the French tribunals decided that the captured vessels should be condemned. The court of cassation at Paris was full of appeals from the Americans interested, supported by the agents of that country. The American merchants themselves, therefore, considered the French responsible, for the merchants appealed to the courts of that government for redress. But Spain preserved the attitude of an independent nation till the overthrow of the Bourbon dynasty in 1808, and it would have been highly indecorous in the American government to have intimated that she was not able to maintain her sovereignty within her own acknowledged jurisdiction, as Spain never assumed this defence. Foreign governments would have been little justified in gratuitously presenting it to consideration, or for abstaining on that ground from making perfectly legitimate demands. She had every external attribute of a sovereign independent nation. She had made an honourable and separate peace with Great Britain in 1801, and she was not at any, one period, in the condition of

a conquered country. M. de Talleyrand, again, came to the aid of the Spanish minister, if not with arguments, at least with opinions unfavourable to the United States. We quote from a letter written by him in July 1804, to admiral Travina, ambassador of his catholic majesty at Paris:—

“Respecting the second point in dispute, (indemnities,) which your excellency does me the honour to speak of in your note, I must say that I had previously no knowledge of it. And, indeed, if I had been informed that his catholic majesty’s ministers had carried their condescension for the government of the United States so far, as to engage themselves towards it for indemnifying violations, pretended to have been committed by France, I should certainly have received orders from my government to express the dissatisfaction which France must feel on the occasion of so unseemly a deference, and this dissatisfaction would have been expressed still more warmly to the government of the United States than to that of Spain. There is every reason to suppose, that the court of Spain, by thus yielding to an improper demand, has emboldened the American government, and determined it to become pressing and even menacing on this occasion. As for the rest, the explanations formerly given to your court on this point, as well as those, which have been authorized to be given to the government of the United States by the chargé d’affaires of his imperial majesty, must enable you to judge of the opinion formed by his majesty on this question, which, having already been the subject of a long negotiation, and of a formal convention between France and the United States, cannot again become a subject of discussion.”

It will immediately occur, that the opinion of a French minister of foreign relations should not be entitled to much consideration, for France was a party deeply interested. The spoils of this confiscated property had been put in her treasury, and if Spain should never be obliged to pay for it, Spain would never have a demand to make on France. It is, also, very evident, that in regard to these claims Spain was not a party to the convention, and could not, therefore, be benefited by it. Spain never pretended that the claim on her for spoliations committed by her own privateers was discharged

by that convention. We are not aware that she could be justified in expecting an exemption under the same instrument for spoliations by French subjects within her limits. France was never released from this claim, because the United States never formally made it. Spain asserts that these acts were committed by foreigners, but they were not committed by stealth, nor were they acts of such sudden, unlooked for violence, that the Spanish authorities had neither time nor the means to interfere. Many of these vessels were taken lying in the Spanish ports, and all of them carried before French consuls, and condemned in public day. If the acts had been done, as Spain asserted, without her jurisdiction, there would have been no pretence for a claim on her. It is, moreover, the duty of government to see that all foreigners in their intercourse with it are protected in the enjoyment of those rights, to which they are entitled by the laws of nations. It is, also, another well established rule, that every government should be responsible for wrongs, committed within its limits by foreigners on other foreigners. This rule is founded on the plain consideration, that every government is supposed sovereign within its own limits, while it remains independent. Spain, in this particular case, was additionally bound by the special provisions of the treaty of '95 to protect American property. France committed these spoliations within the jurisdiction of Spain, and is immaterial whether France was eventually liable. The injury was done in Spain; Spanish laws were violated; Spain had cognizance of the case, and her government permitted the wrong; reparation was, therefore, due from her. It is true, the convention of 1800 released France from the claims, if she was eventually answerable for them; but application had already been made to Spain, and her demand would always be good against France. No nation can undertake to adjust the concerns of another without its authority, and no release given by one party can affect a third. France could not have made a convention to compel Spain to pay for all these demands.

By a similarity of reasoning she could not release her from them.\*

Spain refused at the time to do any thing on the subject of the claims for spoliations. She was closely allied with France, then exceedingly powerful, and her government did not apprehend the fate with which they were threatened. She had made an unfortunate bargain with France respecting Louisiana; she had had a great deal of protracted angry correspondence with the United States; and numerous quarrels on her frontiers, particularly respecting the Indians. Most of the concerns of the American government with Spain had taken an unfortunate turn, and almost every topic had led, not only to tedious, but to irritating discussions. Spain probably felt, moreover, that she was growing weak. She was losing her influence in Europe, and her colonies in America; she naturally parted with every thing with extreme reluctance, well knowing that she would never be able to regain her possessions. Her government had the habits of a decaying, perishing state. This arose partly from the modes of doing business, that had always prevailed in that country, and partly from the indecision and negligence, which always accompany debility. This country has never yet come to an open rupture with Spain; but there is no nation in Europe, with whom the relations of the American government have been so unsatisfactory.

We have but one more topic to examine before we arrive at the final termination of the mission of Messrs. Monroe and Pinkney. This related to the right of deposit at New-Orleans. We have already stated that it was suddenly suspended in October 1802, by the intendant of Louisiana. This was, undoubtedly, a gross violation of the 22d article of the trea-

\* This claim has since been adjusted by the act, transferring East Florida to the United States; on that account we have very briefly touched upon the history and principle of these claims, though they rest on the same considerations, as those against other European governments.



ty of '95. At the least, it was an unfriendly act to suspend the deposite without any notice, but the article obviously required that another place should be pointed out on the Mississippi for the same purpose. This was not done. The act was disavowed by the king, and the right renewed ; but the purchase of Louisiana in 1803, removed all the difficulties attending this transaction. The actual injury done to the navigation on the Mississippi was considerable, and a reparation for this was included in the instructions of the commissioners. This mission terminated in the beginning of 1805 ; Mr. Monroe having returned to London, Mr. Pinkney was succeeded by James Bowdoin, of Massachusetts, appointed minister plenipotentiary, who remained till 1807. The United States had no minister in Spain during the troubles in that country. The intercourse was renewed again in 1814, by the appointment of George W. Erving, of Massachusetts, a minister plenipotentiary.

## CHAPTER XIII.

## RELATIONS WITH RUSSIA.

*Not originally applied to for aid by Congress of '77—Little known at that time in Europe—Relations friendly—Armed neutrality—Dana sent to Russia in '80—Instructed to propose America as a member of the armed neutrality—Not received by the Empress—Russia not disposed to acknowledge independence—Anecdote of Franklin and Count du Nord—Neutrality awakens great anxiety—Congress, at return of peace, took earliest steps to prevent a connexion with "Neutrality"—Instructions to ministers in Europe not to agree to support neutrality by force of arms—Adams, minister to Russia—Pahlen to this country—Daschkoff—No treaty or commercial convention, though great trade.*

**R**USSIA was originally not one of the European states, to whom an application was made by Congress in '77 for aid, and for the recognition for the independence, though some circumstances, that will presently be mentioned in a subsequent year, appeared likely to give uncommon importance to the first diplomatic connections of the two countries. We may account for this omission of Congress entirely by local considerations. The weight and power of that nation, since become so formidable, had been confined principally to the north, and to wars with the Turks. Little known to Europe, except by her attacks on the Prussian dominions in the time of the great Frederic, and by sharing in the wicked partition of Poland in '72. the consequences of the French revolution

first brought her armies across the Alps and the Rhine, first developed the resources of that country to full view, and in most successful action. No European power has, however, conducted itself in a more friendly manner towards America than Russia; the relations of the two countries having all been of an amicable and satisfactory kind. As early as '91, we had a direct trade up the Baltic, but till 1809 and 10, it was principally confined to imports. It has since been very great, though, as to imports, consisting chiefly of articles that might well be made staples in this country. We have suffered less interruption in our commerce with Russia than with any other continental nation of Europe. The Emperor Alexander did not adopt the French system till after the treaty of Tilsit, in 1807, and he took the first opportunity to release himself from the obligation of enforcing it, by publishing the celebrated Ukase of December, 1810. Indeed, the system had never been executed with much severity in Russia. British goods had never been burnt in that country, as on other parts of the continent, and they were always admitted in neutral bottoms.

Notwithstanding Catharine II. was the author of the armed neutrality of '80, Russia was one of the first parties to the maritime coalition against France in '93. But the declaration of this Empress, in the year just mentioned, concerning the rights and duties of neutrals, immediately attracted the attention of Congress to Russia. The principles, announced in that instrument, though far from being complete or embracing the whole ground,\* were such as America would at once espouse; they were directly hostile to the system of Great Britain, and in that way were likely to produce a favourable influence on the war then waging between the mother country and the colonies. Congress did not delay to send a minister to Russia, for the armed neutrality presented an

\* The armed neutrality left contrabands matter of conventional law. nor did it establish any regulations for vessels under convoy

admirable occasion of attacking England in a vital organ. Another method of expressing their approbation of the principles of that confederacy was, also, adopted. We copy from the Journal of October '80, the following paragraph:—  
“Congress, willing to testify their regard to the rights of commerce, and their respect for the sovereign who hath proposed, and the powers who have approved the said regulations: Resolve, That the Board of Admiralty prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias on the rights of neutral vessels.”

Francis Dana, of Massachusetts, was elected, in December '80, minister plenipotentiary to the court of St. Petersburg; he was authorized to “*accede to the convention of the said neutral and belligerent powers for protecting the freedom of commerce and the rights of nations,*” and to propose a treaty of amity and commerce. This is the only instance in the history of the country, in which the United States volunteered themselves a party to a league of sovereigns in Europe. But not only was it an effectual mode of hastening the acknowledgment of independence, but the principles adopted by the northern confederacy were exceedingly grateful to the American government. It was a league, in reality, both offensive and defensive, what its name purported it to be, an armed coalition, or in the modern phrase, “war in disguise.” But even if the United States had been admitted to it, they were not in a condition, at that time, to furnish their quota of armament. England, at war with France, Spain, America, and shortly after Holland, regarded this coalition of the principal states of Europe against her with sullen silence; she replied to the notes of the different northern powers, notifying to her the formation of the confederacy, with uncommon adroitness, and with all possible diplomatic address and formality. With the exception of Portugal, she had not a real friend left in the year '81. in either hemisphere: and, with less power and

wealth to conduct and sustain the conflict, she was in a more desperate condition than in 1809.

Mr. Dana was neither received by the Russian court, nor was it officially known that he was at St. Petersburg, and as the empress had proposed to act a principal part in the mediation already mentioned, she could not consent to admit a minister from the United States. M. de Vergennes advised Mr. Dana not to appear in an official character, but to keep his commission secret, and to represent himself as a common traveller. He was well recommended to the Marquis de Verac, the French envoy at St. Petersburg, who rendered him essential services. M. de Verac, by the direction of his court, communicated all the proceedings of the American Congress to the Russian government, concerning the armed neutrality. Russia does not seem, at that time, to have been much disposed to acknowledge the independence of the United States, or to take any measures that should bring the war to a close. It appears to have been her policy to weaken France and England, on account of the ambitious designs Catharine had on Poland, and to render them incapable of counteracting her projects concerning the Turks. Mr. Dana in a letter, dated April '82, observes that the acknowledgment of the independence by the United Provinces was ill received at St. Petersburg; and Franklin relates an amusing story of the Count du Nord, afterwards the emperor Paul, that affords some illustration of the views of the empress, though an affair of mere etiquette:—

“The Comte du Nord, who is son of the empress of Russia, on arriving at Paris, ordered, it seems, cards of visit to be sent to all the foreign ministers. One of them, on which was written, *Le Comte du Nord et le Prince Bariatinski*, was brought to me. It was on Monday evening last. Being at court the next day, I inquired of an old minister, my friend, what was the etiquette, and whether the Comte received visits. The answer was, *Non, on se fait écrire. Voilà tout.* This is done here by passing the door, and ordering your name to be written in the porter's book. Accordingly, on Wednesday, I

passed the house of prince Bariatinski, ambassador of Russia, where the Compte lodged, and left my name on the list of each. I thought no more of the matter. But this day, May 24, comes the servant who brought the card, and in a great affliction, saying he was like to be ruined by his mistake in bringing the card here, and wishing to obtain from me some paper, of I know not what kind, for I did not see him. In the afternoon came my friend, M. Le Roy, who is, also, a friend of the prince's, telling me how much he, the prince, was concerned at the accident,—that both himself, and the Compte had great personal regard for me and my character, but that our independence not yet being acknowledged by the court of Russia, it was impossible for him to permit himself to make me a visit as a minister. I told M. Le Roy, it was not my custom to seek such honours, though I was very sensible of them when conferred on me; that I should not have voluntarily intruded a visit, and that in this case I had only done what I was informed the etiquette required of me. But if it would be attended with any inconvenience to prince Bariatinski, whom I much esteemed and respected, I thought the remedy was easy,—he had only to erase my name out of his book of visits received, and I would burn their card."

Peace having been made with England, Congress discovered at once, that they were about to be entangled in a very troublesome alliance, likely to lead to fresh quarrels. The project of a Russian treaty, and of acceding to the armed neutrality, was soon brought under consideration. The country had just accomplished its own independence, but it was not at all in a condition to enter into other wars, and though the doctrines of the northern league were cheerfully and readily adopted, the nation was not prepared to defend them by force of arms. It is true, all the powers of Europe were opposed in this business to Great Britain, and if circumstances had compelled the parties to proceed to hostilities, America could hardly have expected much share in it, or much disaster or disgrace. Not only America required a long rest at this moment; but the prospect of a general war, from which she should be exempted, gave her hopes of immediately appropriating to herself a valuable and profitable commerce. She

app  
in t  
that  
rapi  
the  
only  
with  
ges  
quit  
ther  
that  
unk  
colo  
tent  
men  
wou  
they  
to pa  
T  
and  
'83,  
had  
The  
of th  
Fede  
trio  
cept  
so m  
lity,  
trial  
to th  
char  
it we  
been  
ing r  
appr

appeared even then to be entering upon that career, which, in the course of fifteen years, was developed to her view, and that laid the foundation of her present great wealth with such rapidity and solidity. The continental Congress created for the sole purposes of war, and that had governed the country only during a war, was at that early hour deeply impressed with the necessity and wisdom of neutrality. The advantages of the remote and peculiar situation of this continent were quite apparent; the habits of the people were commercial; there were then no manufactories, and some of those articles, that have since become the staples of the country, were either unknown or little cultivated, having been discouraged by the colonial system of the mother country. With the great extent of sea-coast, and materials for ship-building, the government readily perceived the remarkable benefits the Americans would derive from becoming the carriers of the old world; they looked to commerce not only to enrich the nation, but to pay the debts of the war.

The subject of neutrality was discussed with great attention and anxiety by Congress, during the spring and summer of '83, before it was known in America that the armed neutrality had been dissolved on the restoration of a general peace. The votes and resolutions only remain to us, but the outlines of the system, adopted by the first administration under the Federal constitution, and which has rendered it equally illustrious and worthy of all imitation, are at that period quite perceptible. The fame, perhaps, of that administration does not so much rest on having been the author of a system of neutrality, as having maintained it during a season of unexampled trial and most unexpected difficulties. The policy belongs to the geographical situation of the country, to the form and character of the government; and the necessity and utility of it were as much felt in the confederation, as they have since been. We find, for example, as early as May '83, the following resolution adopted by Congress: "That though Congress approve the principles of the armed neutrality, founded on the

liberal basis of a maintenance of the rights of neutral nations, and of the privileges of commerce, yet they are unwilling at this juncture to become a party to a confederacy, which may hereafter too far complicate the interests of the United States with the politics of Europe, and, therefore, *if such a progress is not yet made in this business as to make it dishonourable to recede, it is their desire that no further measures may be taken at present towards the admission of the United States into that confederacy.*" A resolution, which is in reality the foundation of the whole policy of the United States from that day to the present. Mr. Dana had not entered into any arrangements, that could at all involve the United States; for he had never been invited to accede to that convention. But when peace was concluded with England, as it was not precisely known what stipulations he might have made with Russia, some anxiety was felt, lest the faith of the United States might be pledged. The general peace, however, entirely released America from the difficulties and dangers of this situation, for the "neutrality" expired with the war. Though the northern confederacy had been dissolved, a considerable degree of uneasiness still prevailed on the same subject, particularly in the government of the United Provinces. That government was desirous of forming another coalition, and propositions to that effect were made to the American ministers at Paris. The United States, having escaped from the embarrassments of one league, though, as it turned out, no ill could have befallen them under any circumstances, took the first opportunity to give instructions on that head to their ministers in Europe, and to repeat, in a decided manner, their sense of the propriety of a perfect neutrality:—

"Whereas the primary object of the resolution of October 5th, 1780, and of the commission and instructions to Mr. Dana, relative to the accession of the United States to the neutral confederacy, no longer can operate; and as the true interest of these states requires that they should be as little as possible entangled in the politics and controversies of European nations, it is inexpedient to renew



the said powers either to Mr. Dana, or to the other ministers of these United States, in Europe; but, inasmuch as the liberal principles, on which the said confederacy was established, are conceived to be in general favourable to the interests of nations, and particularly to those of the United States, and ought in that view to be promoted by the latter, as far as will consist with their fundamental policy,—Resolved, that the ministers plenipotentiary of these United States, for negotiating a peace, be, and they are hereby instructed, in case they should comprise in the definitive treaty, any stipulations amounting to a recognition of the rights of neutral nations, *to avoid accompanying them by any engagements, which shall oblige the contracting parties to support those stipulations by arms.*”

This country has no complaints to make against Russia for oppressions on its trade in Europe. Up to the period to which this work extends, (1814,) we are not aware that the two governments have ever had a single point in dispute. In regard to trade, however, and the rights of neutrals, the interest of Russia is much the same as that of America. We have always seen Russia take a principal part in all the leagues, or conventions, for the protection of neutral commerce and navigation. She depends principally upon the commerce of other nations for a supply of colonial, and other foreign articles, and for the exportation of the vast quantity of raw materials, produced by her. She has been an advocate, in time of war, for the greatest possible indulgence and relaxation in regard to neutrals.—The commercial intercourse of Russia and the United States first led to an exchange of ministers. This government having received an intimation that the court of St. Petersburg was desirous of instituting a diplomatic connexion, appointed, in June 1809, Mr. John Quincy Adams, minister plenipotentiary to Russia; this courtesy was soon after acknowledged by the arrival, in this country, of count Pahlen, a minister of equal rank. No other minister was appointed, on the part of the United States, before Mr. Bayard, after the peace of Ghent with England. but Russia was repre-

sented here by M. de Daschkoff, as envoy extraordinary and minister plenipotentiary.

In 1813, Russia offered her mediation in a very friendly manner, to procure a peace between the United States and Great Britain. She was at that time closely leagued with England in the last and sixth celebrated coalition against France. Notwithstanding this circumstance, the trade of the Baltic was exceedingly embarrassed, and, in the language of M. de Daschkoff, "his imperial majesty saw, with infinite regret, the great shackles which this new episode (war of 1812,) is about to oppose to the commercial prosperity of nations." "The peace of Russia with England, seemed to present this immense advantage to the commerce of nearly all sea-faring people, that it freed their relations from that constraint, from that continual vexation, to which it had been subjected for many years without interruption." The mediation, as has been said, was declined by Great Britain. The diplomatic relations\* with Russia have not extended beyond the exchange of ministers, nor are we aware that any circumstance in the intercourse of the two countries, within the period embraced by this work, requires to be particularly mentioned.

\* The arrangement respecting the North-West Coast, does not fall within our limits.

## CHAPTER XIV.

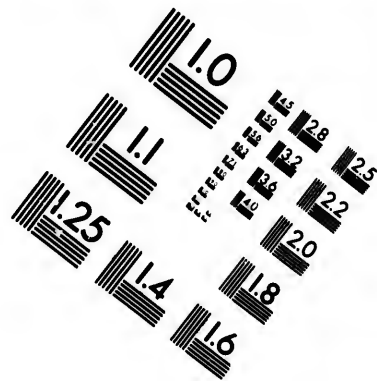
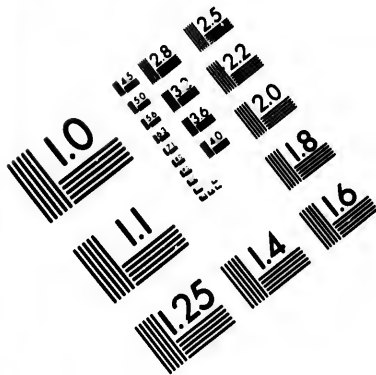
## RELATIONS WITH DENMARK.

*No diplomatic intercourse—Erving sent to Denmark in 1811—Account of spoliations—French and Danish privateers—Captures—Convoy cases—New aggression on neutral rights—Remarks on that subject—None of the condemnations of 1809, 1810, revised—Convoy cases not restored—Erving leaves Copenhagen.*

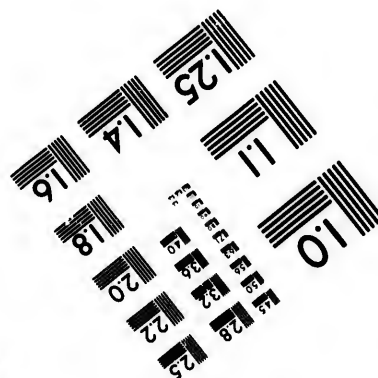
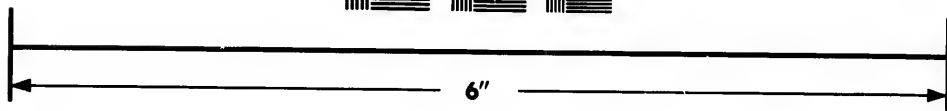
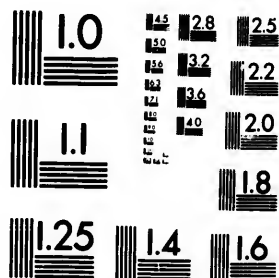
**A**MERICA has never had a regular diplomatic intercourse with Denmark ; though some vexatious circumstances, that at first excited great uneasiness, made it necessary to send a special commissioner to that country, in 1811.\* Denmark has been

\* Denmark has had diplomatic agents in this country, embracing, however, we believe, also, a commercial character. In 1801, Mr. Blicher Olsen was minister resident and consul general ; in 1803, Mr. Peter Pedersen was a chargé, also, with commercial functions, and latterly the same individual has become a minister resident and consul general. A "minister resident" is usually considered as of the third order of diplomatic functionaries, though, never having seen any of the powers or credentials, with which the Danish agents are invested, we are not precisely aware of the nature of their commission, though, we believe, it does not extend to what is usually called negotiation ;—beyond the making or receiving certain official communications. On the subject of consuls, all necessary information will, we believe, be found in the work on consular establishments, of Mr. D. B. Warden, late consul general of the United States at Paris.





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

2  
1  
LE 28  
LE 32  
LE 36  
LE 40  
LE 45  
LE 50  
LE 56  
LE 63  
LE 71  
LE 80  
LE 90  
LE 100  
LE 112  
LE 125

LE 125  
LE 112  
LE 100  
LE 90  
LE 80  
LE 71  
LE 63  
LE 56  
LE 50  
LE 45  
LE 40  
LE 36  
LE 32  
LE 28

celebrated for her defence of the rights of neutrals, and she has taken an active part in the leagues that have been formed for that purpose. Though the Danish navy has never been great, the peculiar situation of that country, at the mouth of the Baltic, if it has not given her the control, has, at least, put it in her power to harass the trade bound to the territories bordering on those waters. Having possession of the passes or straits, that connect the Baltic and German seas, Denmark has asserted pretensions, not easily justified by the laws of nations, though consecrated by a very ancient custom. But her general treatment of neutral commerce has not been oppressive, though the United States have, undoubtedly, had cause to complain ;—Danish and French privateers have committed acts of unwarrantable aggression on our commerce ; unjust condemnations have taken place in her tribunals, and our seamen have been treated in a tyrannical way in her ports. On the other hand, few of the powers of Europe have been in a condition so weak and precarious, during the wars of the French revolution ; accessible to the English by water, and to the French by land, the capital of Denmark has been twice taken by one belligerent within the century, and her whole fleet carried to England. Her territory and islands being occupied by French troops, Denmark was forced at an early hour into the continental system, which she executed with uncommon rigour ; and in the autumn of 1807, England declared a war against her, that did not terminate till the treaty of Kiel, of 1814. Denmark was neither in a state to resist singly either of the belligerents, nor did her situation at the mouth of the sound make it possible for her to preserve even the appearance of neutrality. The government was compelled to take side with France, both from the superiority of the French armies, and because the allies refused peace to the crown prince on any other terms than the transfer of Norway to Sweden.

The vexations, of which this country had to complain, took place from 1809 to 1812. They were the consequences of

the political situation of Denmark ; openly at war with England, forced to adopt the continental system, to admit French troops into her territories and French privateers into her ports. The government, however, still remained entirely sovereign, and to all appearances independent. The claim of the United States was, consequently, immediately on the Danish government, for injuries committed by her subjects, and the subjects of her ally, apparently within her control. The principle of this demand differed from that of the Neapolitan and Netherlands ; for in those cases, the depredations were confessedly committed by the new French dynasties,—but the original governments, having been restored, assumed in principle, the debts, as well as the power and revenues, of the revolutionary ones.

The United States, having no diplomatic agent of any description in any part of the Danish dominions, George W. Erving was sent, in 1811, special minister to Copenhagen, for the purpose of asserting the claims of the government, and of obtaining a discontinuance of the irregular proceedings of the French and Danish privateers. He received his audience from the minister of state, M. de Rosenkrantz, in June of the same year. During 1809 and 10, it appears, that 160 American vessels had been captured by the Danes ; and in the subsequent years, there had been numerous captures by French privateers. In general these vessels had valuable cargoes. Of these captures, 42 had been condemned ; and of the condemned, 16 were cases that had either violated the laws of the United States, such as the embargo and non-intercourse, or had forged certificates of origin, or in other respects were not legitimate. Many of these vessels were carried into Christiansand, in Norway. A principal item in these captures was, what has been called the convoy cases. We are not aware, that similar violations of the neutral rights of this country have ever before occurred ; and as they affect an important provision of the laws of nations, we shall give



an account of this business, and the representation concerning it, in Mr. Erving's own words :—

“ With my note of yesterday, I transmitted to your excellency a list of the “convoy cases,” twelve in number; the two last in that list are now depending on appeal before the high court, as is mentioned in a memorandum opposite to their names; the first eight vessels of the remaining ten were bound immediately from Petersburg and Cronstadt to the United States; they had all paid their sound dues, and several of them had been examined before the Danish marine tribunals, on entering the Baltic; and they were all arrested, in going out, by a British force, and compelled to join convoy. When that convoy was attacked by his majesty's gun brigs, the Americans, not conscious of any illegality in the nature of their voyages, or of any irregularity in their own conduct, made no efforts to escape, and were captured and brought into port. These vessels have been condemned under the authority of the article ‘D’ in the 11th clause of his majesty's instructions for privateers, issued on the 10th of March, 1810, which declares to be good prize ‘all vessels which have made use of British convoy, either in the Atlantic or the Baltic.’ At the time of this declaration, these vessels were in Russia, on the point of sailing, and wholly ignorant of it.”——“That the belligerent has a right to ascertain the character of neutrals met with at sea, I am not disposed to deny; but to say that the neutral shall be condemned on the *mere fact* that he was found under enemy's convoy, is to impose upon him a necessity of sailing without protection, even against his own separate enemies; for the case might well happen, indeed has happened, that though neutral with regard to the belligerent powers, he has had an enemy, against whom either of the belligerents might be disposed to protect him. Of such protection, the American commerce has often availed itself, during the war between the United States and the Barbary powers; nor was it ever supposed, by either of the great belligerent powers, that such commerce, so protected by its enemy, had thus become liable to capture and confiscation. The case might also occur, that of two allied belligerent powers, a third power should be enemy as to one, and neutral as to the other. I state these arguments against the *broad ground* taken in the royal instructions above quoted. But it will be said,

that the belligerent, having also an unquestionable right to ascertain the neutrality of vessels, and belligerent rights being paramount to neutral rights, where the two happen to be in collision,—hence the attempt of the neutral to deprive the belligerent of his right, by putting himself under convoy, forms of itself a ground of capture and confiscation. To this I answer, First, that the belligerent rights, where they come into collision with those of neutrals, are not to be deemed in all cases paramount; and that nothing can establish such a general rule but force, which is not law or justice. Secondly, that no presumption necessarily arises against the neutral, from the mere circumstance of his being found under enemy's convoy; but that this point will depend upon the peculiar circumstance of each case. Thirdly, that where the belligerent and neutral rights conflict, all other circumstances being equal, the plea of necessity ought to decide the question in favour of the neutral. In the case supposed, the belligerent is seeking the mere exercise of a right, but the neutral is occupied in his self preservation. These vessels did not seek convoy for any purpose, but they were forced into it; they had no motive to seek convoy as a protection against Danish cruisers. They had, indeed, other inducements to put themselves under convoy; the decrees of his majesty the emperor of France being then in force, that system, working against the English orders in council, produced such a state of things, with regard to the commerce of America, that scarcely one of its ships could move on the face of the ocean, without being exposed, under this unfortunate co-operation of hostile systems, to capture and confiscation. But, had this happened in the cases before us, yet it would not have formed a just ground of capture and confiscation; for, the merits or demerits of the Berlin and Milan decrees out of the question, those decrees have not been adopted by Denmark; indeed, at the time the vessels were taken, his majesty had not assumed any course, with respect to the American commerce, from which evil was to be apprehended; hence, I beg leave to repeat, that the vessels in question cannot be presumed to have sought protection under British convoy, for the purpose of avoiding his cruisers. But if the contrary had been proved, if it stood confessed, that they had sought convoy against Danish cruisers; in that case, they would have been liable to capture, certain-

ly,—but it is equally certain, that they would not have been liable to condemnation. I must again totally deny, that the rule laid down in the article of the royal instructions above cited, is supported by any principle to be found in the law,—and I can confidently ask your excellency to show me any authorities in its favour. If the writers be silent on the subject, then their silence is to be construed favourably for the neutral. But the law says, that neutral goods found under the enemy's forts, within his territory, or even on board his vessels at sea, which is to be as immediately and totally under his protection as is possible,—that these are not liable to confiscation, but shall be restored to the neutral owners. The doctrine laid down by Grotius, in the “*De Jure Belli ac Pacis*,” on this point, has never been refuted, but has, on the contrary, been adopted by subsequent writers. England herself has never gone to the extent of condemning vessels upon the mere ground of their having been taken under enemies' convoy; but she has captured them in that situation, and acquitted them.”

These vessels were condemned by the Danes, on the pretence, either that the property was English, the papers false, or that pretended certificates of origin were shown as given by the French consuls in America, when the French government had caused official notice to be given to the Danish government, on the 22d of September, 1810, that the French consuls were forbidden from furnishing these certificates. But upon proof being presented, that the French consuls in America did actually give these certificates, till the 13th of November, the Danish government immediately released all vessels furnished with them of a prior date.\* As to the con-

\* Official statement of June 23, 1811.

Captures in 1809, - - - -	38	} Danish islands.
Condemnations, - - - -	12	
Captures in Norway in 1810, -	36	
Pending of do. in High Court, 8, and not one finally condemned.		
Captures in Danish islands, in 1810, 68		}
Condemnations, - - - -	22	
Pending, - - - -	6	

Convoy

voy cases, the Danish government considered, that this circumstance deprived them of their original character of neutrality. "He who causes himself to be protected, by that act ranges himself on the side of the protector, and thus puts himself in opposition to the enemy of the protector, and evidently renounces the advantages attached to the character of friend to him, against whom he seeks protection. If Denmark should abandon this principle, the navigators of all nations would find their account in carrying on the commerce of Great Britain under the protection of English ships of war, without running any risk. We every day see that this is done, the Danish government not being able to place in the way of it sufficient obstacles." To this arbitrary, and obviously most unjust doctrine, the American government could never accede. But Denmark still continued to enforce it; and not only the vessels already condemned were not released, but all captures of American vessels, under English convoy, were held to be legal. Great difficulties having arisen in the examination of the cases as to jurisdiction, the French government proposed, that the prizes taken by privateers with French commissions, should be transferred to Paris. But the Danish government did not consent to this. None of the vessels condemned in 1809 or 1810 were released. No further interruption being given to American commerce in the Baltic, and no hope remaining that the condemned cases would be revised, Mr. Erving left Copenhagen, in April, 1812, for Paris, leaving Mr. Forbes as an agent for the American claims. On the whole, this business terminated more favourably than could have been expected. The Danish government conducted with more justice than most of the other European states against whom this country has claims, the condemnations being few in proportion to the captures. We cannot doubt, that some illegal trade was carried on un-

Convoy cases, (1810.)	-	-	18	}
Condemned,	-	-	8	
Pending,	-	-	10	
Total captures in 1809, 1810,			160	

der the American flag at that time. Indeed, we are officially informed of that fact, in a memorial of American ship masters to the President, in 1809, who had been taken, and carried into Christiansand. That portion of American property, left by Mr. Erving in sequestration, on which acts of condemnation had been passed, has not been settled to this day; and no change in the amount, or of the claim for indemnity, has taken place since Mr. Erving left Copenhagen, in 1812.\*

\* An account of these claims will be found in the Boston Monthly Magazine, for January, 1826.

T

T  
a  
of  
pe  
re  
me  
ga  
th  
th  
se  
to  
Po  
de  
of

## CHAPTER XV.

### RELATIONS WITH PORTUGAL.

*Trade in Mediterranean, exposed to Barbary cruisers, first led to diplomatic intercourse—Vessels taken by Algerines as early as '85—Before revolution protected by British passes—Number of captives in '93—Humphreys sent to Lisbon in '91—Freire to this country—Legation suspended in 1801—Smith in '97—No commercial or other treaty with Portugal.*

THE state of our commerce in the Mediterranean, first led to a diplomatic intercourse with Portugal. The circumstances of alliances, boundaries and original claims have conferred a peculiar character and uncommon importance upon all the relations, both of the confederation and the present government, with France, Spain and England. And though Portugal fell within the limits of the European trade, allowed by the mother country, we are not aware that the commerce of that nation, or its situation, or any other consideration, presented motives to a correspondence which were not common to nearly all the European states. But the war, in which Portugal was engaged with Algiers in the early part of President Washington's administration, suggested the expediency of sending a minister to that court.

Before the revolution, vessels from the American colonies, bound to the Mediterranean, sailed under the protection of British passes, granted to all the subjects of the empire. The trade to the Mediterranean in flour, wheat, and fish, was very considerable, employing, in 1774, about 1200 men, and 20,000 tons of shipping. But the independence of the colonies having necessarily deprived our vessels of this species of security, several fell into the hands of the Algerines, and about 130 seafaring people were carried into slavery.\* The congress of the confederation, entirely destitute of funds, had no means of redeeming even the small number of individuals, taken in the second year after the peace; but knowing the importance of the Mediterranean trade and its extremely exposed state, they employed, in '84, agents to proceed to Algiers and Morocco, for the purpose of making some sort of arrangement with those governments; this was effected with Morocco, from whom, by the friendly interference of Spain, a ship had just been delivered; but no arrangement was made with Algiers, nor were the men, taken in '85, ransomed, the Dey demanding 59,496 dollars for all the captives, whereas the agent was only authorized by Congress to offer 200 dollars a man. After this unsuccessful attempt, Congress accepted the offer of the services of the General of the religious order of the Mathurins,† but the revolution soon after beginning in France, this fraternity perished with the others. Very

\* 10 captured July '85, (21 originally captured.)

105 " " October '93.

This was the state of the captives Nov. 13, '93, at Algiers. Several had died, and three or four had been ransomed. The first vessels were taken by the Algerines in July '85; the schooner *Maria*, of Boston, and ship *Dauphin*, of Philadelphia—the captives amounted to 21.

† *Ordo Religiosorum, S. S. Trinitatis Redemptionis Captivorum.* (Bonnani.) They are called in English *Mathurins*, and brothers of the redemption. It was their business to go and ransom christians, held in slavery on the Barbary coast.

soon after the establishment of the constitution, negotiations were set on foot for the same purpose, but the demands of the Dey of Algiers were so exorbitant, that the government did not feel authorized to comply with them. Algiers, however, being then at war with Portugal, whose government had sent some armed vessels into the Mediterranean, in order to arrest the depredations of the corsairs, it was thought a favourable opportunity to send a mission from the United States to the court of Lisbon, under the expectation of being able to concert a plan of mutual protection. David Humphreys, of Connecticut, was, in February '91, appointed minister resident, and soon after, this diplomatic courtesy was returned, on the part of Portugal, by the appointment of the Chevalier Freire\* to the United States.

The Portuguese continued to keep an armament in the Mediterranean, and afforded essential protection to our vessels, till the autumn of the year '93; regular convoys being appointed to sail at fixed periods from certain designated ports. But in that year a truce made with Algiers, exposed our vessels as well as those of the Hanseatic towns to the cruisers of the Barbary coast. In March '93, Col. Humphreys was directed to proceed to Algiers for the purpose of entering into some arrangement with that regency, and in '95 he was furnished with a full power to conclude a treaty with the emperor of Morocco. It is not obviously in place here to mention the proceedings of that agent with those powers. In '96, President Washington appointed Mr. John Quincy Adams, then minister resident at the Hague, minister plenipotentiary to Lisbon. Before leaving the Hague, however, he was transferred to Berlin. William Lawton Smith, of South Carolina, was in the next year appointed with the same rank to Lisbon. Mr. Smith was the last minister to Por-

\* The chevalier (Cyprien-Bibeiro) Freire was transferred from this country to Madrid, and on the 29th of September, 1801, signed the celebrated treaty of Badajoz between France and Portugal.



tugal, we shall have occasion to mention within the limits of this work, the legation having been discontinued in June 1801. This country has never concluded a treaty or convention of any kind with Portugal, though at one period during the Peninsula war there was a great trade in provisions to Lisbon.

its of  
June  
aven-  
uring  
ns to

## CONCLUSION.

---

**T**HE peace of Ghent is, properly, the first period in the diplomatic history of this country. It is most probable, that the foreign relations will, hereafter, assume a different aspect, not only on account of the extraordinary revolution in South America, but because we cannot expect, again, to witness such another revolution as was consummated in Europe, by the general pacification of 1814.

Heretofore, nearly all the commerce of the United States, together with every other sort of communication, whether relating to the arts, sciences, literature or diplomacy, has been held with Europe; for, when this country became independent, every other portion of the American continent was in a condition of severe colonial subjection and oppression. America, following only that course of trade, indicated in the stipulations of treaties, favourable in general, though not on the most liberal principles, speedily attracted the attention of the world, as a great neutral and commercial state; and asserted claims exceedingly vexatious and embarrassing to the belligerents,—though actually possessing, herself, neither the means nor the power to support and enforce her system of foreign policy. This peculiar and very remarkable anomaly in the situation and condition of the United States, imparted a very novel character to the wars in Europe, in themselves of an extraordinary description. Those wars have now ended; and (separate from some difficulties respecting the Turks and the Spanish islands in the West Indies) there is, unquestionably, the prospect of a long peace. But not one of the neutral doctrines, for which America has always contended, and from the violation of which she has suffered so much, has yet been secured by treaty stipulation. The only undoubted foundation, laid

for peace, consists in the excellent domestic arrangements, nations appear to be making, for their own prosperity, welfare and safety. Congresses have settled many other matters, that were thought necessary for the repose of the world ; but regulations for the determination and preservation of neutral rights, perhaps one of the most effectual methods of preventing wars, have not yet met with that serious and solemn attention, to which they are most justly entitled.

Since the pacification of 1814, "eight sovereign and independent nations" have been erected, in South America, out of the ruins of the colonial governments. With these states, this country will probably have a great commercial and diplomatic intercourse. On the subject of neutrality, their interests will be the same ; and from their situation, they will be equally removed from the power and ascendancy of Europe. The United States will naturally take the lead in all the concerns of this part of the world ; and, without entering into coalitions or associations of any description, the influence of their institutions will be more extensively felt,—and the doctrines of their neutral policy and commercial intercourse will, hereafter, find a wider sympathy, and will be asserted with a greater prospect of support and encouragement. A portion of Europe is engaged in resisting and counteracting this spirit and disposition ;—in re-instating, in its ancient strength and grandeur, what, in the French idiom, is called, the monarchical principle. We have no reasons, perhaps, to expect wars from the opposition or rivalry of these systems,—but different races of men will certainly be prepared under their influence ; and, whatever effect the spirit of free inquiry and general education may have on the relations of nations with each other, (for the experience of the world has not yet shown, that the most enlightened states are the least exposed to wars), there can be no doubt but that changes and improvements in governments will, hereafter, be accomplished in a more gradual and satisfactory manner, and with less danger of violence and bloodshed.

## APPENDIX.

---

( N<sup>o</sup>. 1. )

### TREATIES WITH FRANCE.

1. Of *amity and commerce*, of the 6th of February, 1778 ; negotiated at *Paris*, by C. A. Gerard, B. Franklin, Silas Deane, and Arthur Lee. Ratified by Congress on the 4th of May, 1778. Annulled by act of Congress of July 7, 1798.

2. Of *alliance*, of the 6th of February, 1778 ; negotiated at *Paris*, by C. A. Gerard, B. Franklin, Silas Deane, and Arthur Lee. Ratified by Congress on the 4th of May, 1778. Annulled by act of July 7, 1791.

3. Contract concerning the *loan and re-payment of money*, of the 16th of July, 1782 ; framed at *Versailles*, by Gravier de Vergennes, and B. Franklin. Ratified by Congress on the 22d of January, 1783.

4. Convention concerning *consuls and vice-consuls*, of the 14th of November, 1778 ; negotiated at *Versailles*, by L. C. de Montmorin and Th. Jefferson. Annulled July 7, 1798.

5. Convention for *terminating differences*, of the 30th of September, 1800; negotiated at *Paris*, by Oliver Ellsworth, William Richardson Davie, William Vans Murray, and Joseph Bonaparte, Charles Pierre Claret Fleurieu, and Pierre Louis Ræderer. Provisionally ratified on the 18th of February, 1801; and finally declared to have been ratified on the 21st of December, 1801. Expired.

6. *Ceding Louisiana*, of the 30th of April, 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe, and Barbe Marbois. Ratified on the 21st of October, 1803.

7. Convention for the *payment of sixty millions of francs* to France for the cession of Louisiana, of the 30th of April, 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe, and Barbe Marbois. Ratified on the 21st of October, 1803.

8. Convention to *secure the payment of the sum due by France to citizens of the United States*, of the 30th of April, 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe, and Barbe Marbois. Ratified on the 21st of October, 1803.

#### TREATIES WITH THE STATES GENERAL OF THE UNITED NETHERLANDS.

1. Of *amity and commerce*, of the 8th of October, 1782; negotiated at the *Hague*, by John Adams, George Van Randwyck, B. V. D. Santheuvel, P. V. Bleiswyk, W. C. H. Van Lynden, D. I. Van Heeckeren, Joan Van Kuffeler, F. G. Van Dedem, and H. Tjassens. Ratified by Congress on the 23d of January, 1783.

2. Convention concerning *vessels re-captured*, of the 8th of October, 1782; negotiated at the *Hague*, by John Adams, George Van Randwyck, B. V. D. Santheuvel, P. V. Bleiswyk.

W. C. H. Van Lynden, D. I. Van Heeckeren, Joan Van Kuffeler, F. G. Van Dedem, and H. Tjassens. Ratified by Congress on the 23d of January, 1783.

## TREATY WITH SWEDEN.

1. Of *amity and commerce*, of the 3d of April, 1783; negotiated at *Paris*, by Gustavus Philip de Creutz, and Benjamin Franklin. Ratified by Congress on the 29th of July, 1783. By a separate article to this treaty, it was to have full effect only for fifteen years, counting from the day of the ratification. It consequently expired on the 29th of July, 1798.

## TREATIES WITH GREAT BRITAIN.

1. Provisional articles of *peace*, of the 30th of November, 1782; negotiated at *Paris*, by Richard Oswald, John Adams, Benjamin Franklin, John Jay, and Henry Laurens. Sanctioned by Congress on the 11th of April, 1783.

2. Armistice, declaring a *cessation of hostilities*, of the 20th of January, 1783; negotiated at *Versailles*, by Alleyne Fitz Herbert, John Adams, and B. Franklin. Sanctioned by Congress on the 11th of April, 1783.

3. *Definitive treaty of peace*, of the 3d of September, 1783; negotiated at *Paris*, by David Hartley, John Adams, Benjamin Franklin, and John Jay. Ratified by Congress on the 14th of January, 1784.

4. *Treaty of amity, commerce, and navigation*, of the 19th of November, 1794; negotiated at *London*, by William Wyndham, (baron Grenville,) and John Jay. The ratifications were exchanged at London, on the 28th day of October, 1795. The *first explanatory article* to this treaty was ratified on the

9th of May, 1796. The *second explanatory article* was ratified on the 5th of June, 1798. The former of these explanatory articles was negotiated at *Philadelphia*, on the 4th of May, 1796, by P. Bond, and Timothy Pickering; and the latter at *London*, on the 15th of March, 1798, by Lord Grenville, and Rufus King.

5. Convention relative to the *execution of the 6th article* of the treaty of the 19th of November, 1794, of the 8th January, 1802; negotiated at *London*, by Robert Banks Jenkinson, (lord Hawkesbury,) and Rufus King. Ratified on the 26th of April, 1802.

6. Of *peace and amity*, of the 24th of December, 1814; negotiated at *Ghent*, by James lord Gambier, Henry Goulburn, and William Adams, and John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin. Ratified on the 17th of February, 1815.

#### TREATIES WITH PRUSSIA.

1. Of *amity and commerce*. This treaty bears no special date, but was signed by the negotiators as follows: by B. Franklin, at *Passy*, on the 9th of July, 1785; by Thomas Jefferson, at *Paris*, on the 28th of July, 1785; by John Adams, at *London*, on the 5th of August, 1785; and by F. G. D. Thulemeyer, at the *Hague*, on the 10th of September, 1785. By the 27th article it was limited to ten years, and expired in 1796. Ratified by Congress on the 17th of May, 1786.

2. Of *amity and commerce*, of the 11th of July, 1799; negotiated at *Berlin*, by John Quincy Adams, Charles William count of Finckenstein, Philip Charles of Alvensleben, and Christian Henry Curce. Ratifications exchanged at Berlin, on the 22d of June, 1800. By the 27th article, it was limited to ten years, and expired on the 22d of June, 1810.

## TREATY WITH SPAIN.

1. *Of friendship, limits, and navigation*, of the 27th of October, 1795; negotiated at San Lorenzo el Real, by Thomas Pinckney, and the Prince of Peace. Ratified on the 3d of March, 1796.\*

\* United States Laws.







