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## Triumph of Reason & Truth :

OR,

The American Envoys to Talleyrand.

[Continued from the last Gazette.]

IT is then understood to be required, 1st. That the officers of the United States should execute the judgements of the consuls. 2ndly. That the judges of the United States should issue mandates of arrest against persons charged with being deserters, without a view of the original roll of the crew.

It is very justly observed by Mr Jefferson, in his letter to Mr. Morris which has been already cited, that, "every nation has, of natural right, entirely and exclusively all the jurisdiction which may be rightfully exercised in the territory it occupies. If it cedes any portion of that jurisdiction to judges appointed by another nation, the limits of their power must depend upon the instrument of cession." The parties to the convention profess its object to be, "to delineate and establish in a reciprocal and permanent manner the functions and privileges of consuls, and vice consuls."

It is to be expected then, as well from the intention of the convention establishing the tribunal, as from the nature of the tribunal itself, which is a foreign court instituted by a foreign authority, governed by foreign laws, and amenable for its conduct to a foreign government that no power is to be implied, and that it possesses no capacity, which is not expressly given to it. To ascertain then the precise extent of the stipulation, let the convention itself be considered.

The first point rests exclusively on the 12th article, which is in these words, "all differences and suits between the subjects of his most christian majesty in the U. S. or between the citizens of the United States within the dominions of the most christian king, and particularly all disputes relative to the wages & terms of engagement of the crews of the respective vessels, and all differences of whatever nature they may be, which may arise between the privates of said crews, or between any of them & their captains, or between the captains of different vessels, or their nations, shall be determined by the respective consuls and vice consuls either by a reference to arbitrators, or by a summary judgment, and without costs. No officer of the country, civil or military, shall interfere therein, or take any part whatever in the matter; and the appeals from the said consular sentences shall be carried before the tribunals of France or of the United States, to whom it may appertain to take cognizance thereof."

In this article no engagement is made to furnish the means of executing consular judgments. If therefore the preceding positions be just, there is an end to the question. But other arguments present themselves in support of the construction contended for by the United States. The consular authority in a foreign country, is usually either voluntary, or enforced by the laws of the nations to whom the consuls belong, and which may bind their own citizens or subjects under penalties to be inflicted on their return, or otherwise. Upon this idea it was sufficient to stipulate a permission of the jurisdiction in exclusion of the courts of the country; on any other idea, it would have been necessary to have been stipulated explicitly and perhaps in detail the manner in which its sentences should be executed. To accede to the demands of France would be to erect in a foreign country complete courts of justice with effectual process to compel the appearance of parties & witnesses & to execute their decisions. And as the transactions in commerce could not in the nature of things be confined to foreigners alone, the citizens of the country must often be necessary witnesses to those transactions, and of course rendered amenable to this foreign jurisdiction in their own country; whereas the jurisdiction granted by the article, is only of French consuls over French citizens in the United States, and reciprocally of American consuls over the citizens of the U. S. in France. This would be to extend, by implication, the authority of a foreign (government) over persons not contemplated by the treaty as subject to it. The article declares too, "that no officer of the country, civil or military, shall interfere therein, or take any part in the matter." But sheriffs, marshals and their deputies, or any other persons appointed by, and acting under the laws of the country, are "officers of the country," and consequently cannot aid in the executions of consular decisions, because they are expressly forbidden to "interfere therein, or take any part whatever in the matter."

But was it meant that the laws should give consuls the power to appoint such executive officers of their own nation? or should it be conceded that a person so appointed could not be considered as an officer of that nation by virtue of and according to whose laws he held his office, still we find no such thing in the convention. On the contrary in the case of deserters from vessels, mentioned in the 9th article, whom the consuls are authorized to cause to be

arrested, they are expressly directed to apply in writing to the "courts, judges and officers competent" to make the arrests, meaning the courts, judges and officers of the country where the consuls reside. In addition to this, if power could be given to consuls to appoint officers to execute their decisions these officers must of course have their fees of compensation to be paid by one or other of the parties. But the article giving the jurisdiction declares that the consular judgments shall be "without costs."

The second complaint is that the judges of the U. S. have required the exhibition of the original roll of the crew as a testimony which would authorize the issuing a mandate, to apprehend a Frenchman charged as a deserter. The right to require these mandates is founded entirely on the 9th article of the consular convention.

That declares "that the consuls & vice consuls shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the register of the vessel or ship's roll, that those men were part of the said crews; and on this demand so proved (saving however where the contrary is proved) the delivery shall not be refused."

It would be an idle waste of time to attempt to prove to you, citizen minister, that a register of the vessel or ship's roll, is not a copy of that paper, or that a copy does not satisfy a law which peremptorily requires the exhibition of the original. Your predecessor has thought proper to refer to the 5th article of that instrument, but a slight perusal of that article will convince you citizen minister, that it does not apply to the case. When the judges of the United States determined that the mandate of arrest could not be issued on the exhibition of a "copy of the register of the vessel or ship's roll," they did not so decide for the purpose of giving effect to the system of the government, but because the treaty was clearly understood by them positively to require the presentation of the original.

The undersigned regret, citizen minister, that your researches concerning the United States have not extended to their courts. You would have perceived and admired their purity; you would have perceived that America may repose herself securely on the integrity of her judges, and your justice would have spared the insinuation concerning them which have closed this part of your letter.

The undersigned will now consider what you have stated with respect to the treaty of amity, commerce and navigation formed with Great Britain.

You complain, citizen minister, in very strong terms, of the deception alleged to have been practised with respect to the objects of Mr. Jay's mission to London, and also of the contents of the treaty which that mission produced. You are pleased to observe that it was then said, that Mr. Jay had been sent to London only to negotiate arrangements relative to the depredations committed on the American commerce by the cruizers of Great Britain.

By whom, citizen minister, was this said?—Not by the President in his message to the Senate announcing the nomination of Mr. Jay; nor by the then Secretary of State in communicating to Mr. Fauchet the subject of that mission. The documents with respect to this assertion have been stated and have been fully commented on. It has been fully demonstrated that the American government did not seize this occasion, to practice a deception so unnecessary, so foreign to its well known character, and which could produce only mischief to itself. As you have in no degree weakened the testimony which is relied on as disproving the allegation, or produced any sort of evidence in support of it, the undersigned cannot but mingle some degree of surprise with the regrets they feel at seeing it repeated, accompanied with the charge of that "dissimulation," of which all who examine well the conduct of the government of the United States, will so readily pronounce it to be incapable. You also criminate the secrecy which attended this negotiation. To this complaint, when formerly insisted on it was answered, that so much of it as was material to this republic was immediately communicated to her minister; and that she had no right to enquire further, or to be dissatisfied that other objects were not disclosed: That it is not the practice of France, or any other nation to communicate to others the particular subjects of negotiation which may be contemplated, and no nation could be independent which admitted itself to be accountable to another for the manner in which it might judge proper to regulate its own concerns on points in which that other was not interested; or which was bound to give previous intimation of every article that might be inserted in a treaty, formed on the avowed principles of leaving in full force all pre-existing engagements. This reasoning is answered only by terming it a "sophism," "an insidious subterfuge." May not any reasoning, on any subject, be answered in the same manner? But can such an answer impair its force? With-

out doubt, citizen minister, the government of the U. S. when it informed France that the negotiation of Mr. Jay would not in any respect weaken its engagements to this republic, would have added, that they might eventually extend to a commercial treaty, if it had been supposed that the omission to give such information could really be considered as a breach of legitimate obligation, or as an evidence of diminished friendship. The information was most probably not given, because it was unusual, and because it could neither be considered as proper, as necessary, or as material. The undersigned trust that the painful and unavailing discussions on this subject, rendered so unpleasant by the manner in which it has been treated, will never again be renewed.

Passing to the treaty itself, you say that the small majority by which it was sanctioned in the two houses of Congress, and the number of respectable voices raised against it in the nation, depose honourably in favour of the opinion which the French government has entertained of it. But you must be sensible, citizen minister, that the criterion by which you ascertain the merits of the instrument in question, is by no means infallible, nor can it warrant the inference you draw from it. In a republic like that of the United States, where no individual fears to utter what his judgment or his passions may dictate, where an unrestrained press conveys alike to the public eye the labors of virtue, and the efforts of particular interests, no subject which agitates and interests the public mind can unite the public voice, or entirely escape public censure. In pursuit of the same objects a difference of opinion will arise in the purest minds, from the different manner in which those objects are viewed; and there are situations in which a variety of passions combine to silence the voice of reason, and to betray the soundest judgments. In such situations, if the merit of an instrument is to be decided, not by itself, but by the approbation or disapprobation it may experience, it would surely be a safer rule to take as a guide the decision of a majority, however small that majority may be, than to follow the minority. A treaty too may be opposed as injurious to the United States, though it should not contain a single clause which could prejudice the interests of France. It ought not to be supposed that a treaty would for that reason be offensive to this republic.

Had you been pleased to state any objections to this instrument drawn from the compact itself, the undersigned would have given to those objections the most serious and respectful consideration. But it is supposed that you adopt, without adding to the complaints made by your predecessor and Mr. Adet, when you observe, that you will not repeat what they have said. These complaints have been amply discussed in the memorial the undersigned had the honor to transmit you, bearing date 17th of January. It is believed to have been demonstrated that the stipulations complained of do not in the most remote degree wound the interests of France, affect the pre-existing engagements of the U. S. or change their situation in relation to the belligerent powers. Such, incontestably, was and is the opinion of the American government, and in this opinion only would the treaty have been agreed to. As no one of the arguments which have at various times been urged on this subject on the part of the U. S. has ever yet been noticed, the undersigned deem unnecessary any attempt to re-urge or to strengthen them. You say that you well content yourself "with observing, summarily, that in this treaty every thing having been provided to turn the neutrality of the U. S. to the disadvantage of the French republic, and to the advantage of England; that the Federal Government having in this act made to Great Britain, concessions the most unheard of, the most incompatible with the interests of the U. S. and the most derogatory from the alliance which existed between the said States and the French republic, the latter was perfectly free to avail itself of the pre-emptory means with which it was furnished by the laws of nature and of nations, and by its anterior treaty for the purpose of parrying the inconveniences of the treaty of London. Such are the reasons which have determined the arbiters of the Directory, of which the U. S. complain, as well as the conduct of its agents in the Antilles." But you have not shewn a single provision "which turns the neutrality of the U. S. to the disadvantage of the French republic and to the advantage of England." You have not shewn a single concession "incompatible with the interests of the U. S." or "derogatory from their alliance with France."

It is considered as having been demonstrated that this treaty leaves the neutrality of the U. S. with respect both to France and England, precisely in its former situation, and that it contains no concessions either unusual or derogatory from their alliance with this republic. But if in forming this judgment, the American government has deceived itself, still it ought to be remembered that it has ever manifested a readiness to place France on the footing of England, with respect to the articles complained of. You suppose that the 2d article of the treaty

between France and the United States justifies the arrests of which the latter power complains: But that article only entitles either of the contracting parties to a participation of any particular favor in respect of commerce or navigation which might thereafter be granted by the other to other nations, on allowing the same compensation, if the concession was conditional. It has never been pretended to extend to pre-existing rights held and exercised under the law of nations, and barely recognized by any subsequent treaty. If this could be insisted on still, it was shewn incontestably by the undersigned, that the arbitre particularly complained of, so far as it professes to found itself on the treaty with England, greatly transcends that treaty, and in its most noxious article, that requiring a role d'equipage, has no relation to it. This all essential circumstance you have not been pleased to notice; and it is with infinite regret the undersigned observe, that the discussions at which you hint are to be limited to the abuses of the principle established by the arbitre, and not extended to the compatibility of the principle itself with justice, the laws of nations, or existing treaties.

It is well known that such a discussion, if indeed the undersigned could be permitted to enter upon it, would avail but little, since the vast mass of American property captured by the cruizers & condemned by the courts of France, has been found in vessels not furnished with the role d'equipage.

The undersigned have been minute in their attention to every syllable you have uttered on this interesting subject, because it has been often considered as having given cause of just irritation to France; and they are extremely desirous of probing to the bottom every subject which may have assumed that complexion. Their wish is unaffected, to give to every complaint its real value, in order thus to prepare the way for accommodation, by the relinquishment of such as are not well founded; and the admission of those which have a real existence.

The third head of your complaints, relative to the conduct of the government of the United States, since their treaty with England:

You observe that so soon as the treaty in question had been put in execution, the government of the U. S. seemed to think itself dispensed from the observance of any measures towards this Republic, and you adduce in support of this general observation.

1st. The refusal to permit in the ports of the United States, the sale of prizes made by French cruizers.

2dly. The invectives and calumnies against the French gov. its principles and its officers, contained in certain journals, and pamphlets published in the United States, &c.

3dly. The speech of the President to Congress in May last.

First. The government of the United States does not permit the sale in their ports of prizes made upon England by the cruizers of France.

The fact is admitted. To erect it into an offence, it becomes necessary to prove that this measure violates either the engagements or the neutrality of the United States. Neither is attempted. To show that it violates neither, had this been rendered necessary, would by no means have been deemed an arduous task. It will now only briefly be observed, that the 17th article of the treaty of commerce of the 6th of February, '78, which alone relates to this subject, so far from stipulating for the sale of prizes in their ports of either nation limits itself to a declaration that the captors shall have liberty to bring them into port free from duties, arrests and searches, and to depart with them to the places expressed in their commissions; thereby evidently contemplating the then existing regulations of this nation. France has manifested her own opinion on this subject, in her treaty with Great Britain of the 26th of Sept. 1786. The 16th article of the treaty declares, "that it shall not be lawful for foreign cruizers who shall not be the subjects of one or the other Crown, and who shall have a commission from any Prince, or State, enemies of the one or the other, to arm their vessels in the ports of one or the other of the said two kingdoms, to sell there what they shall have taken, or to change the same in any manner whatever." In a war with England then, France being neutral, the cruizers of the U. S. are forbidden to sell their prizes in the ports of this republic. The 17th article of the treaty of Feb. 1778 being reciprocal, France has pronounced her decision, that it does not give her cruizers a right to sell their prizes in the ports of America. If this right had been given by the treaty of Feb. 1778, that between the U. S. and England could not be construed to impair it. Nor is the prohibition a departure from the neutrality of the U. S. An action to violate its neutrality must manifest a partiality for one of the belligerent powers, must accord favors not stipulated by pre-existing treaties to one which it refuses to the other. This is not even alleged in the present instance. Far from permitting British cruizers to sell in the U. S. prizes they have made on the French, they are not even allowed to bring them into port. A candid consideration of this subject will prove