## OFFICIAL DOCUMENTS.

THE KOSZTA CASE.

Mr. Hulsemann to Mr. Marcy .- [Translation.] AUSTRIAN LEGATION, Washington, August 29, 1853.
The undersigned, Charge d'Affaires of his Majesty the
Emperor of Austria, has been instructed to address this

efficial note to the honorable Secretary of State in relation to the difficulties which have occurred between the agents of the two Governments at the port of Smyrna. The facts which came to pass on that occasion are of public notoriety, and the undersigned thinks he may con-fine himself in his comments thereon to the most promi-ment points. Our Consul-General, Mr. de Weckbecker, ing the right of jurisdiction which has been gua-Fantied by treaties to the consular agents of Austria the East relative to their countrymen, had caused to be arrested and conveyed on board the Austrian brig-of-war "Huszor" the Hungarian refugee Martia Koszta, who, residing at one time in the interior at Kutahia, had left Purkey in company with Kossuth, and who, after having pledged himself in writing not to set foot again on Ottoman territory, broke that pledge by returning some months since to Smyrna. This arrest gave cause to some reclamations which Mr. Offley, United States Consul, "St. Louis," anchored in the roads before Smyrna, deemed it incumbent upon themselves to address to de Weckbecker, basing their demands upon the fact that the aforesaid Koszta having, according to them, caused frienself to be naturalized in the United States, was entitled to the protection of the American authorities. Upon this the Consul-General of the Emperor, accompanied by the American Consul and the American commander, re-paired on board the "Huszar," and these two functionaries had it in their power to convince themselves, from the declarations of the prisoner himself, that the latter had not acquired the quality of citizen of the United States, and that he was not even provided with an American passport.

own part the Chargé d'Affaires ad interim of the United States at Constantinople addressed a communica-tion, on the 27th of June, to the Imperial Internuncio, (Minister,) the object of which was to ask for the release of Koszta, upon the plea that he had taken some steps to be admitted as an American citizen. Baron de Bruck re-plied to this request on the same day, refusing to comply with it. Two days after Mr. Brown returned again to the charge by forwarding to Mr. de Bruck a copy of a declaration purporting to have been signed by Koszta, in New York, on the 31st of July last, and which the Charge d'Affaires of the Union seems to regard sufficient to im-ply the naturalization of that refugee in America. The Ligarian and that it was impossible for him to alter his determination, as he could not conside the individual in question as belonging to a facility jurisdiction so long as the ties and owned him to his country were not leas the tie-

The undersigned thinks it proper to embody with the very text of this note a copy of the document above-men-tioned, which has served as the basis to all the extraordimary proceedings both on the part of Mr. Brown and that of the commander of the St. Louis. Here it is:

Declaration made by Martin Koszta of allegiance to the Gov-ernment of the United States.

I, Martin Koszta, do declare on cath that it is bona fide my intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to all and every foreign prince, potentate. State, and sovereignty whatever,

sand particularly to the Emperor of Austria.

Sworn in open court this 31st day of July, 1852, before me, clerk of the court, &c.

MARTIN KOSZTA.

I, —, clerk of the court of —, being a court of record, baving common law jurisdiction and a clerk and scal, do cer-city that the above is a true copy of the original declaration of Mr. Koszta to become a citizen of the United States, remaining opened in my office.

[L. s.] and affixed the seal of the said court the 31st day of July, 1853.

It is difficult to conceive how the representative of the United States could have sought to found a proof of the pretended naturalization of Koszta upon a document des-titute of all authentic character, seeing that the form of legalization which is affixed to it, and which alone could have invested it with that character, leaves in blank\* both the name of the tribunal before which the declaration of Koszta must have been made, and the name of the clerk who is supposed to be the depositary of the sriginal document, and that moreover this pretended legalization has neither signature nor official seal attached to it. But even admitting the authenticity of this declaration, and supposing that Koszta could, without violating the laws of his country of his own accord, and, without any other formalities, have broken as under the bind him to his native soil, the text of the document shows that the author of it has done nothing more than to declare his intention of becoming a citizen of the United States, and, with that object in view, of remouncing his rights of nationality in the States of the

July the commander of the American sloop-of-war "St. Louis," Mr. Ingraham, sent a message to the commanding officer of the "Huszar," to the effect that, in pursuance of instructions received from the Charge d'Affaires of the United States at Constantinople, he had to call upon him to deliver the aforesaid Koszta into his hands; adding that, if he did not receive a satisfactory answef by four o'clock in the afternson, he should cause the prisone to be taken away by main force. As it was reasonable to expect, our commander, instead of complying with this request, prepared himself to repulse force by force; and when, at the hour designated, the American commander, getting ready to carry out his threat, ranged himself alongside our vessel and brought his guns to bear upon the imperial brig, and was about to carry matters to the last extremity, our brave sailors, although much inferior in numbers, were determined to oppose a vigorous re-sistance to the act of aggression which was on the point of being consummated in the neutral port of Smyrna, and on the part of a vessel of war belonging to a Power with which Austria was at peace. Our Consul General only succeeded in preventing this bloody catastrophe, which would probably have ended in the destruction of a considerable portion of the town of Smyrna and of vesshould temporarily, and until the settlement of the diffi culties of which he was the subject, be confided to the custody of the Consul General of France at Smyrna.

The return of Mr. Marsh to Constantinople a few days after these events brought on a discussion, between himself and our Internancio, of the question whether Martin Koezta was to be considered as an Austrian subject or as a citizen of the United States. Although still ignorant of this discussion, the Imperial Government has come to the determination not to delay any longer addressing itself to the Government of the United States through my instrumentality. There are two distinct questions involved in this discussion. One is the main question relating to the dispute about the rights of jurisdiction which risen between the legations of Austria and of the United States at Constantinople concerning Koszta; the other question, at least fully as important, is that which has those formalities in virtue of which the agents of the United States have deemed themselves auorized in urging their pretensions.

With regard to the first of these two questions, treated in the correspondence which has taken place on the subject between the Internuncio and the Charge d'Affaires ad interim of the United States in Turkey, the Imperia Government adopts entirely the views of Baron de Bruck. In our opinion, Koszta has never ceased to be an Austrian subject. Every thing combines to make the Imperia Government persist in this estimate of the matter. laws of his country are opposed to Koszta's breaking asunder, of his own account, and without having obtained permission to expatriate himself from the authorities of that country, the ties of nationality which bind him to it. The very declaration of that refugee on board the "Hus sar," in the presence of the American consul and of the commander of the "St. Louis," shows that he still con-siders himself as a subject of the Emperor. In short, even according to terms of the law of the Union, such a declaration, supposed to have been signed by Koszta, and from which Mr. Brown has pretended to infer his naturalization in the United States, is not sufficient to produce that effect. The undersigned thinks he may dispense entering into any further details in regard to this question, seeing that the Department of State of the United States constantly refuses to grant passports to individuals who find themselves in this category, and that official publications have been made from time to time to

As there can be no doubt, therefore, concerning the question of nationality, the Consul-General of the Em-peror at Smyrna was without doubt perfectly justified when, in virtue of those treaties which subject Austrian subjects in Turkey to consular jurisdiction, he seized the person of Koszta within the pale of his jurisdiction.

Such being the case, the Imperial Government trusts that the Government of the United States will hasten to instruct its consul at Smyrna not to interpose any obstacle to the extradition of the aforesaid Koszta by the Consul-General of France to the Consul-General of Austria at Emyrna.

But, apart from this question of jurisdiction, it is especially the mode adopted by the functionaries of the United States, in order to settle the matter, which has given erial Government the most legitimate grounds of

The act of violence which the commander of the sloop \* Literal-makes no mention of either translator.

war "St. Louis" threatened the brig of his Imperial and Royal Apostolic Majesty, the "Huszar," with a hostile attack, by bringing his guns to bear upon the latter, and by announcing, in writing, that if a certain individual detained on board, whose nationality was being discussed between the agents of the two Governments, was not delivered over to him at a stated hour, he would go and

take him by main force.

There can be no doubt but that the threat of attacking, by main force, a vessel-of-war belonging to the milieary marine of a sovereign State whose flag she carries s nothing else than a threat of an act of war. Now the right of making war is necessarily, and from the very nature of that right, inherent in the sovereign power. "A right of so momentous a nature," says Vattel, (Law of Nations, vol. 2, book 3, chap. 1, sec. 4.) "the right of judging whether the nation has real grounds of complaint; whether she is authorized to employ force, and justifiable in taking up arms; whether prudence will admit of such a step, and whether the welfare of the State requires it—that right and whether the welfare of the State requires it-that right I say, can belong only to the body of the nation or to the sover-eign, her representative. It is doubtless one of those rights I say, can be say the country of the control of those rights without which there can be no salutary government, and which are therefore called rights of Majesty."

The founders of the Republic of the United States fulling the rights.

ly recognised, from the beginning of the Union, the rights reserved to the sovereign power. The articles of per-petual confederacy and union between the States of New Hampshire, Massachusetts, &c. of 1778, contain already the following stimulation. (IX. 5 1:) "The right of as claring war and to make peace shall belong solely and exclusively to the Congress of the United States." This basis of the public law of the United States was preserved and sanctioned by the Constitution of the United States of 1787, which reserves the power of declaring war explicitly to Congress, (sec. VIII.) Upon this point the Constitution of the United States harmonizes perfectly

with the public law of Europe.

But this right, reserved to the supreme power of each country, would become illusory and null if commanders of naval forces or others were to be explicitly or tacitly authorized to undertake, either of their own accord or upon the order or with the consent of a diplomatic or consular agent, to commit acts of aggression and of war against the vessels or the troops of another nation without special instructions from the supreme authority of their own country, notified in the forms prescribed by the law of nations.

It is impossible that the regular Governments of the

civilized world can wish to expose their authority, as well as general peace, to the hazards of hostilities com-menced without their knowledge, and without special authority from the sovereign power, by such or such functionary, in a foreign land,

2dly. This act of hostility has been committed in a neutral port of a Power friendly to both nations.

Certainly, if there be one point in maritime and international law which is clearly and positively defined, and which has been adopted by all the Pewers of the world, it is the inviolability of neutral ports, the absolute prohibition from committing, in such ports, acts of war and of violence, even against the enemy with whom we are at open war. Modern history furnishes but few examples of cases of this kind. One of these rare instances is attack upon the Dutch East Indian fleet, which had taken shelter in the port of Bergne, in Norway, by the admiral commanding the forces of the enemy; and although that attack was repulsed by the guns of the fort of that neutral port, Vattel—an authority universally recognised in matters relating to the law of nations—does nevertheless accuse the neutral Power (Denmark) of having complained in too faint a voice of an undertaking so injurious to

her dignity and to her rights.

In order the better to establish the concurrence of all nations and the unanimity of all expounders of civil law on this question, we can quote the authority of an American statesman. The following is the opinion of Mr. Henry Wheaton:

"The rights of war," says he, (Elements of International Law, part IV, chap. III, § 7.) "can be exercised only within the territory of the belligerent Powers, upon the high seas, or in a territory belonging to no one. Hence it follows that hostilities cannot lawfully be exercised within the terriorial jurisdiction of the neutral State, which is the common frience of both parties."

of both parties."

Then, §9: "Not only are all captures made by the belligerent cruisers within the limits of this jurisdiction absolutely illegal and void, but captures made by armed vessels stationed in a bay or river, or in the mouth of a river, or in the harbor of a neutral State for the purpose of exercising the rights of war from this station, are also invalid. Thus, where a British privateer stationed itself within the river Mississippi, in the neutral territory of the United States, for the pu Empercr.

A few days later a new and lamentable episode occurred to aggravate the question. On the morning of the 2d of capture in question within three English miles of the alluvial was decreed by Sir W. Scott. So, also, where a belligerent ship, lying within neutral territory, made a capture with her its out of the neutral territory, the capture was held to be avalid; for, though the hostile force employed was applied the captured vessel lying out of the territory, yet no such see of a neutral territory for the purpose of war is to be ermitted."

If all hostility against an enemy declared to be within the territorial jurisdiction of a neutral State, which has friendly relations with both parties, is severely condemned by all writers on international law; if captures made belligerent cruisers in the bays of a neutral State, or even by the boats of the vessels stationed there out of that territory, are null and illegal, according to the law of the United States and the decrees of the maritime courts of Great Britain, an attack upon a vessel belonging to a friendly Power in a neutral port would deserve to be censured in still more severe terms.

The history of maritime wars at the period of the French revolution furnishes abundant proof of the very particular jealousy with which the Government of the inited States maintained the rights of neutrals; and the undersigned would cite some celebrated cases in which the first statesmen of the Union, the most distinguished predecessors of Mr. Marcy in the high position which he fills, have defended the absolute inviolability of neutral ports by means of most elaborate arguments. But as the ndersigned is fully persuaded that the same doctrines will serve as guides to the Government of the United States on the present occasion, he confines himself to this slight allusion to those principles which were fornerly maintained, and very recently supported, by the Government of the United States in relation to the rights of neutrals, and more especially in regard to the inviolability of neutral ports.

The Imperial Government entertains too high an opinion of the sense of justice and of integrity of the Gov-ernment of the United States to doubt for a single instant its anxiety to disavow the conduct of its agents circumstances above mentioned, and that it will hasten to call them to a severe account, and tender to Austria a satisfaction proportionate to the magnitude of the

The undersigned avails himself of this occasion to offer the Secretary of State the renewed assurances of his high consideration.
The Hon. WM. L. MARCY, HULSEMANN. Secretary of State of the United States.

Mr. Marcy to Mr. Hulsemann.

DEPARTMENT OF STATE, WASHINGTON, SEPTEMBER 26, 1853. The President has carefully considered the note of Mr. Hulsemann, Chargé d'Affaires of his Majesty the Empero of Austria, of the 29th ultimo, addressed to this Department, and the other documents relative to the much-re gretted occurrences at Smyrna in June and July last with a view to ascertain the nature of the complaints therein preferred against the American officers engaged in that affair, and for the purpose of giving such satis-faction as Austria might be entitled to receive in case he should find that these officers had not duly respected her

Though differing very much from the views presented by Mr. Hulsemann on behalf of his Government, the President still indulges the hope that the exposition of the principal reasons on which his own conclusions are founded will induce his Majesty's Government to look at the transaction in a different light from that in which it is presented by that Government.

rights.

It is the duty of the undersigned to present these reams to Mr. Hulsemann, and he will fail in his intention if, in performing this duty, he does not evince a friendly spirit, and avoid, so far as it can be done without impair ing the full strength of the case, the introduction of topics to which either Mr. Hulsemann or his Government

can take exception. To bring out conspicuously the questions to be passed upon, it seems to the undersigned that the facts should be more fully and clearly stated than they are in Mr. Hulsemann's note.

Martin Koszta, by birth a Hungarian, and of course an Austrian subject at that time, took an open and active part in the political movement of 1848-'49, designed to tach Hungary from the dominion of the Emperor of Austria. At the close of that disastrous revolutionary movement, Koszta, with many others engaged in the same cause, fled from the Austrian dominions and took refuge in Turkey. The extradition of these fugitives,

try for his future home.
On the 31st of July, 1852, he made a declaration, un-

egiance to any other State or sovereign.

After remaining here one year and eleven months, he returned, on account, as is alleged, of private business, of a temporary character, to Turkey in an American vessel, claimed the rights of a naturalized American citizen, and offered to place himself under the protection of the United States Consul at Smyrna. The Consul at first hesitated to recognise and receive him as such; but afterwards, and some time before his seizure, he and the American Chargé d'Affaires ad interim at Constantinople did extend protection to him, and furnished him with a teskereh—a kind of passport or letter of safe conduct usually given by foreign consuls in Turkey to persons to whom they extend protection, as by Turkish laws they have a right to do. 11 is important to observe that there is no exception taken to his conduct after his return to Turkey, and that Austria has not alleged that he was here for any political object, or for any other purpose than the transaction of private business. While waiting, and the united states, he was seized by a band of lawless men, freely, perhaps harshly, characterized in the despatches as "ruf-" "Greek hirelings," "robbers," who had not, nor did they pretend to have, any color of authority emanating from Turkey or Austria, treated with violence and cruelty, and thrown into the sea. Immediately thereafter he was taken up by a boat's crew, lying in wait for him, belonging to the Austrian brig-of-war the Huszar, forced on board of that vessel, and there confined in irons. It is now avowed, as it was then suspected, that these desperadoes were instigated to this outrage by the Austrian Consul-General at Smyrna; but it is tended that he acted under the civil authority of Turkey, but, on the contrary, it is admitted that on application the Turkish Governor at Smyrna, that magistrate refused to grant the Austrian Consul any authority to arrest

The Consul of the United States at Smyrns, as soon as he heard of the seizure of Koszti, and the Charge d'Affaires of the United States ad interim.at Constantinople, afterwards interceded with the Turkish authorities, with the Austrian Consul General at Smyrna, and the comnander of the Austrian brig-of-war for his release, on the ground of his American nationality. To support this claim Koszta's original certificate of having made, under oath, in a court in New York, a declaration of intention to become an American citizen was produced at Smyrna, and an imperfect copy of it placed in the hands of the Imperial Austrian Internuncio at Constantinople. The application to these officers at Smyrna for his liberation, as well as that of Mr. Brown, our Charge d'Affaires, to Baron de Bruck, the Austrian Minister at Constantinople, was fruitless, and it became notorious at Smyrna that there was a settled design on the part of the Austrian officials to convey him clanicatinely to Trieste, a city within the dominion of the Emperor of Austria. Opportunely the United States sloop-of-war, the St. Louis, under the command of Capt. Ingraham, arrived in the harbor of Smyrna before this design was executed. The commander of the St. Louis, from the representation of the case made to him, felt it to be his duty, as it unquestionably was, to inquire into the validity of Koszta's claim to American protection. He proceeded with deliberation and prudence, and discovered what he considered just grounds for inquiring into Koszta's claim to be discharged on account of his American nationality. During the pendency of this inquiry he received notice of the design to take Koszta clandestinely, before the question at issue was settled, into the dominions of the Emperor of Austria. As there was other evidence of bad faith besides the discovered design of evading the inquiry, Capt. Ingraham demanded his release, and intimated that he should resort to force if the demand was not complied with by a certain hour. Fortunately, however, no force was used. An arrangement was made by which the prisoner was delivered to the custody of the French Consul-General, to be kept by him until the United States and Austria should

it will correct some errors and aid in presenting with more ed into by Turkey and Austria. The "ancient capitula-distinctness the questions to be discussed. these several demands.

tender satisfaction proportionate to the outrage.

In order to arrive at just conclusions it is necessary to assertain and clearly define Koszta's political relation with Austria and with the United States when he was seized at Smyrna. This is the first point which naturally presents itself for consideration, and perhaps the most important one in its bearings upon the merits of the case.

There is great diversity and much confusion of opinion to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and, though esulting from the mere accident of birth, yet forever inding the subject to the sovereign; by others it is considered a political connexion in the nature of a civil contract, dissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent octrine, however, is, that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign Power, may at any time elease himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all ountries a home, and select any where that which offers him the fairest prospect of happiness for himself and his posterity. When the sovereign power, wheresoever it may be placed, does not answer the ends for which it is bestowed, when it is not exerted for the general welfare of the people, or has become oppressive to individuals, this right to withdraw rests on as firm a basis and is similar in principle to the right which legitimates resistance to

The conflicting laws on the subject of allegiance are of municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. All uncertainty as well as confusion on this subject is avoided by giving due consideration to the fact that the parties to the question now under consideration are two independent nations, and that neither has the right to appeal to its own municipal laws for the rules to settle the matter in dispute, which occurred within the jurisdiction of a third independent Power.

Neither Austrian decrees nor American laws can be properly invoked for aid or direction in this case, but inernational law furnishes the rules for a correct decision, and by the light from this source shed upon the transac tion at Smyrna are its true features to be discerned. Koszta being beyond the jurisdiction of Austria, laws were entirely inoperative in his case, unless the Sultan of Turkey has consented to give them vigor within his dominions by treaty stipulations. The law of nations has rules of its own on the subject of allegiance, and dis-regards generally all restrictions imposed upon it by mu-

This is rendered most evident by the proceedings of independent States in relation to extradition. No State can demand from any other, as a matter of right, the surrender of a native-born or naturalized citizen or subject, an emigrant, or even a fugitive from justice, unless the demand is authorized by express treaty stipulation. International law allows no such claim, though comity may ometimes yield what right withholds. To surrender political offenders (and in this class Austria places Koszta) s not a duty; but, on the contrary, compliance with such a demand would be considered a dishonorable subserviency to a foreign Power, and an act meriting the repro-bation of mankind. As rendering needless all further argument on this point, the undersigned will recall to Mr. Hulsemann's recollection what took place in 1849 and 1850 in relation to the reclamation of Polish refugees in Turkey by Russia, and of Hungarian refugees (of whom Koszta was one) by Austria. This demand was made in concert, as it were, by two powerful sovereigns while their triumphant armies, which had just put an end to the revolutionary movements in Hungary, stood upon the borders of Turkey, with power to crass her name from the list of nations. She might well apprehend for herself, as the nations of Western Europe apprehended for her, that a refusal in her critical condition would put in jeopardy her existence as an independent Power; but she did refuse, and the civilized world justified and commended the Both Austria and Russia placed their respective demands on higher grounds than a right of extradition unmands on higher grounds than a right of extradition under the law of nations; they attempted to strengthen their claim by founding it upon the obligations of existing treaties—the same, undoubtedly, that are now urged upon the consideration of the United States. Russia and Austria, however, both submitted to the refusal, and never presumed to impute to Turkey the act of refusal as a breach of her duty or a violation of their rights.

of war "St. Louis" committed against the Austrian brig is leaved by the save among them, was demanded and pressed with in this case were overruled and repudiated in 1849 and in in truth, it was the result of me entraction, and was accepted by her as a substitute for it. She had agents or commissioners at Kutahia to attend their embarkation, and to her the legal consequences of this act are the same as if it had been done directly by herself, and not by the agency of the Ottoman Porte. Koszta came to the United States and selected this country for his future home.

I have not hesitated to advise a decided resistance to the demand of extradition." From another letter of this Amoret and a demand of extradition. From another letter of this Amoret and a seasodor, dated the 17th of December, commenting on and never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose commending the courageous firmness of the Sultan in release of the Su

this extract is taken: On the 31st of July, 1852, he made a declaration, under eath, before a proper tribunal, of his intention to become a citizen of the United States and renounce all alerance of the United States and renounce all ale the degree of support which her Majesty's Government and that of France may find themselves at liberty to afford, not only in the first instance, but in still graver circumstances, should the present partial rupture unfortunately assume a more serious and menacing character."

In these views the French Minister resident at Constantinople fully concurred, and so did the British and French Governments; and both were prepared to espouse the cause of Turkey if her humane and honorable course in refusing these unwarrantable demands had provoked the resentment and brought down upon her the hostilities of these mighty potentates. The opinions of other dis-tinguished men approving of the decision of the Emperor of Turkey in refusing to surrender the Polish and Hun-garian refugees, both on the ground of humanity and right, nave fallen under the notice of the undersigned, but he has forborne to quote them on account of the unworthy motive ascribed therein to the Powers making the demand, and the harsh epithets by which their conduct is

characterized. It is an incident of great significance, and bearing au thoritatively upon some of the most important questions now raised, that the case of Koszta (for he was one of the Hungarian refugees then demanded) was fully discussed in 1849, not only by the parties, but throughout Europe, and decided against the right of Austria to require his extradition, either under the law of nations or by existextradition, either under the law of nations or by existing treaty stipulations. This decision deeply interested
not only rulers and statesmen, but the great body of the
people of every country. They investigated its merits,
admitted its justice, and commended the firmness and humanity of the Sultan for his course.

It is to be regretted that this claim for the surrender
of Koszta and his companions, so fully considered then
and so signally overruled, should be again revived by
Austria under circumstances which make the United

Austria under circumstances which make the United States a reluctant party in the controversy. The claim has been repudiated by the general judgment of Europe, and this Government is unable to discover any sufficient eason for dissenting from that decision.

Austria appears to have been aware that her right t seize Koszta could not be sustained by international law, and she has attempted to derive it from certain treaties, or "ancient capitulations by treaty and usage." The very slight and inexplicit manner in which this authority is adverted to in Mr. Hulsemann's note apparently indicates, if not a want of confidence in it, at least a desire authority, and it was of such an extraordinary character as it is assumed to be, it would have constituted, as Austria must have clearly seen, the main strength of her cruelly wronged, and he knew it was unfortunate. In manner as to leave the very existence of it open to doubt

such extraordinary means of enforcing it, strange indeed t is that more prominence is not given to the fact in Mr. Hulsemann's communication. Why are the dates of these treaties withheld? What is still more important, why is not the language conveying this authority quoted? The undersigned is constrained, for reasons he will briefly assign, to question the accuracy of the interpretation which derives the right claimed in the above paragraph from any existing treaty between Austria and the Otto

The Austrian Internuncio at Constantinople, in a con ference with Mr. Marsh, the American Minister Resident spoke of such a right as derived from "ancient capitulaagree as to the manner of disposing of him.

This full statement of the facts is deemed important, as The undersigned will now proceed to present the views of the President upon this transaction, and his reply to The undersigned will now proceed to present the views the President upon this transaction, and his reply to less everal demands.

The undersigned will now proceed to present the views the President upon this transaction, and his reply to scrutinized, and no such authority as is now claimed was found in them. The French and English Ministers at the commencement of the outrage and through its whole progress? They were all, in this individual becomes clothed with our national character, where the demand in that year the views of the surrender of the Hungarian refugees; they were served to not support the demand in that year the views of the surrender of the Hungarian refugees; they were strong the views of the outrage and through its whole progress? They were all, in this individual becomes clothed with our national character, where the demand in that year the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the Hungarian refugees; they were strong the views of the surrender of the surren him; that it shall disavow the conduct of the American agents in this affair, call them to a severe account, and tender satisfaction proportionate to the outrage. Lord Palmerston, then her Britannic Majesty's Principa Secretary of State for Foreign Affairs, carefully examined these treaties, and expressed his conclusions thereon in a letter to Sir Stratford Canning, dated 24th of September, 1849. In this letter, which contained an extract from one of these treaties—that of Belgrade—and referred to the claims of Austria founded on them for the surrender of these refugees, he says: "The utmost that could be demanded would be that they [the should not be allowed to reside permanently in the Turkisl

empire." Coming down to a later period-to the very transaction at Smyrna-abundant reasons are found for denying that Turkey was then under any treaty obligation to deliver Koszta to Austria, or that her Consul-General had autho rity to seize him. On this subject it is allowable to resort to the declarations of the public men of the Porte as evi dence in regard to an issue of this kind. Their explicit denial may be fairly considered as equivalent to Austria's affirmation without proof, where proof, if it existed, could

be so easily adduced. In a despatch to this Government of the 4th of August, 853, Mr. Marsh, the American Minister Resident at Constantinople, says :

" I have had several conversations on this subject with the Minister of Foreign Affairs and with Aali Pacha, Governor o Smyrns, at the time the affair took place. These distinguish Smyras, at the time the affair took place. These distinguished persons are very far from expressing any disantisfaction with the course pursued by us. They sustain the view the legation has taken of the legal character of the question, and Aali Pacha informs me that a few years since the Austrian Government refused to surrender to the Porte Turkish rebels who had fled into Austria, on the very ground now taken by the Porte—namely, that the treaties did not provide for the extradition of political offenders."

Mr. Brown, the Charge d'Affaires ad interim of the United States at Constantinople, writes that in an interview with Chehil-Effindi, also a Turkish officer of high rank and great experience, in which the affair at Smyrna was cussed, he observed that "the Austrian Government does not possess the power by treaty to arrest any one on Ottoman soil for political offences." There is now, however, something more decisive from Turkey than the opinion of her public men in opposition to this treaty-claim of Austria. The Government of the Porte has pronounced a judgment in relation to the seizure of Koszta, which Austria herself is bound to respect. It has protested against the conduct of the Austrian agents in affair as unlawful and a violation of its sovereignty; but not one word of complaint, not a murmur of dissatisfaction from Turkey against the conduct of the functiona-ries of the United States at Smyrna has yet reached this Government. This is certainly an anomalous case. Austria arraigns the United States for violating the rights of Turkey in the Koszta affair; Turkey, the offended party, exonerates the United States, and protests against Aus

ria, our accuser, for the very same offence. These considerations have led the undersigned, as he believes they will lead all others who duly reflect on them, to the confident conclusion that there exist no treaties between Austria and Turkey which could justify of in any way countenance the seizure or imprisonment of

Koszta by the Austrian functionaries.

But if Austria really has such authority by treaties as she now claims, it confessedly extends only to subjects." It could not, therefore, be applied to Koszta nless he was such a subject at the time he was seized. If the question of his nationality is to be settled by inter-national law, the only code which furnishes the rules by which this question is to be determined, there is no good reason for adjudging him to have been, when seized at Smyrna, an Austrian subject. But settle this question, as Austria would have it settled, by an appeal to her own civil code, the result will be the same.

By the consent and procurement of the Emperor of Austria, Koszta had been sent into perpetual banishment. The Emperor was a party to the expulsion of the Hungarian refugees from Turkey. The sovereign by such an act deprives his subjects to whom it is applied of all their

after be rightfully demanded as an Austrian subject.

The proposition that Koszta at Smyrna was not an "Austrian subject" can be sustained on another ground. By a decree of the Emperor of Austria of the 24th of March, 1852, Austrian subjects leaving the dominions of the Emperor without permission of the magistrate and a release of Austrian citizenship, and with an intention

the obvious and avowed intention never to return: howas, therefore, within the strict meaning of the imperial decree, "an unlawful emigrant." He had incurred and paid the penalty of that effence by the loss of all his civil and political rights. If he had property, it had escheatthe courageous firmness with which the cause of humanity and of the rights of honor and dignity, against a demand alike objectionable in substance and in form, I feel a deepening anxiety for the result of their resistance, and for the degree of support which her Majesty's Government and the degree of support which her Majesty her degree of support which her Majesty her degree of support whi He was, in regard to Austria, an outlaw. What right can a sovereign have to the allegiance of a person reduced by him to such a miserable condition? It seems to have been the very object of the Austrian decree to dissolve the pre-vious political connexion between the "unlawful emigrant" and the Emperor. In Koszta's case it was dis-

Some importance seems to be attached to Koszta's own opinion of his citizenship. The note of Mr. Hulsemann conveys the impression, though it does not contain the express averment, that he acknowledged himself to be a subject of the Emperor of Austria. The passage, when closely examined, shows that the alleged acknowledgment is only an inference from undisclosed premises. The lan-guage of the note on this subject is the following: "The very declaration of that refugee on board of the Huszar, in the presence of the American Consul and the commander of the St. Louis, shows that he still considered himself as a subject of the Emperor." The declaration re-ferred to in support of this inference is not given, but it is undoubtedly the response Koszta is reported to have made when interrogated as to his being an American citizen: "I am a Hungarian, and will live and die a Hunga-rian." Mr. Brown, the Chargé d'Affaires ad interim of the United States at Constantinople, who was not at Smyrna at any time during the transaction in relation to Koszta, stated in a letter to Baron de Bruck something like the foregoing declaration; but Capt. Ingraham, who was present, as Mr. Hulsemann states, when Koszta was examined and made the declaration imputed to him, says, in writing to the Minister Resident of the United States "I am astonished to see by Mr. Brown's letter that Kosz-ta declared himself on our first interview a Hungarian. I did not hear him say so." It may well be doubted whether Koszta ever used any such language. Should it, however, be admitted that he did make that or a similar declaration, it cannot be fairly understood to imply an acknowledgment that he was then a subject of the Emperor of Austria. To apprehend rightly what he meant by such a declaration it is proper to consider his situation, his known sentiments, and his antecedents. In his mind no two things could probably be more distinct from each cates, if not a want of confidence in it, at least a desire not to have it scrutinized. If there really was such an his aversion—the other an object of his love. His affeccase, and she would not have referred to it in such a his visions of the future he saw a happier destiny for Hungary. He saw her standing proudly among the indepen-dent nations of the earth, under a clement Government

ters, and warned of his own doom by the knowledge of the sad fate of so many of his unfortunate companions. In this forlorn condition he could not have intended, by the language ascribed to him, to acknowledge any unbroken tie which then bound him to the Emperor of Austria.

The undersigned is brought, by a fair application of

these circumstances—Austria without any authority, Turkey exercising none, and the American functionaries, as Austria asserts, having no right in behalf of their Government to interfere in the affair, (a proposition which will be hereafter contested)—what, then, was the condi-

ated region lying far beyond the confines of any sovereign globe. State whatever; they were the liege subjects of the law

American, and the Government of the United States had the right to extend its protection over him.

The genuineness of the certificate which he produced when he claimed protection as an American citizen has been questioned in consequence of the imperfect copy given by Mr. Brown to the Austrian Internuncio; but that which he produced to the American Consul at Smyrna which he produced to the American Consul at Smyrna and to Cantain Lographym to the commender of the Austrian Internuncio; the Austrian Internuncio; but that Power, in discharging, its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power, in discharging, its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power, in discharging, its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power, in discharging, its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power should stand upon its extreme rights in all cases; but that Power, in discharging, its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power should stand upon its extreme rights in all cases; but that Power, in discharging its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power should stand upon its extreme rights in all cases; but that Power, in discharging its duties of produced to the American Consul at Smyrna the leaves of the Austrian Internuncio; but that Power is decision. was genuine. A correct copy of it has been sent to this

is communication. It is not contended that this initiatory step in the process of naturalization invested him with all the civil rights of an American citizen; but it is sufficient for all nor is the practice of nations circumscribed within such turalized citizens, but to all residents in it who are there joyed. with or even without an intention to become citizens, provided they have a domicil therein. Foreigners may, and often do, acquire a domicil in a country, even though they have entered it with the avowed intention not to become naturalized citizens, but to return to their native land at some remote and uncertain period; and whenever they acquire a domicil international law at once impresses upon them the national character of the country of that domicil. It is a maxim of international law that domicil confers a national character; it does not allow any one who has a domicil to decline the national character thus conferred; it forces it upon him, often very much against his will and to his great detriment. garian refugees from Turkey. The sovereign by such an act deprives his subjects to whom it is applied of all their rights under his Government. He places them where he cannot, if he would, afford them protection. By such an act he releases the subjects thus banished from the bond of allegiance. Any other result would make the political connexion between the subject and the sovereign a state of unmitigated vassalage, in which all the duties and no rights would be on one side, and all the rights and no ternational law looks only to the national character in

to some of the positions taken by Austria, signed deems it respectful in such a case to su by reference to authorities:

"The position is a clear one that, if a person goes into a foreign country and engages in trade there, he is, by the law of nations, to be considered a merchant of that country, and a subject for all civil purposes, whether that country be hostile or neutral."—I Kent Com., 75.

Again: The same authority says that—
"In the law of nations, as to Europe, the vuls is that men take their national character from the general character of the country in which they reside."—161d, 78.

If Kozzta ever had a domicil in the United States, he was in virtue thereof invested with the nationality of this

was in virtue thereof invested with the nationality of this country, and in this character continued as long as that domicil was retained. There are cases in which it is difficult to settle the question of domicil; but that of Koszta is not one of them. The most approved definitions of a domicil are the following:

"A residence at a particular place, accompanied with positive or presumptive proof of continuing there for an unlimited time."—(1 Binney's Reports, 349.) "If it sufficiently appear that the intention of removing was to make a permanent settlement for an indefinite time, the right of domicil is acquired by a residence of a few days."—(The Venus, 8 Cranch, 279.), "Vattel has defined domicil to be a fixed residence in any place, with an intention of always staying there. But this is not an accurate statement. It would be more correct to say that that place is properly the domicil of a person in which his habitation is fixed, without any present intention of removing therefrom."—(Story's Con. of Laws, § 43.) "A person who removes to a foreign country, settles himself there, and engages in the trade of the country, farnishes by these acts such evidence of an intention permanently to reside there as to stamp him with the national character of the State where he resides."—(The Venus, 8 Cranch, 279.) resides."-(The Venus, 8 Cranch, 279.)

Apply these principles to the case under consideration, and the inevitable result is that Koszta had a domicil in the United States. He came to and resided in this country one year and eleven months. He came here with the intention of making it his future abode. This intention was manifested in several ways, but most significantly by his selemn declaration man each. his solemn declaration upon oath. There can be no bet-ter evidence of his design of making the United States his future home than such a declaration; and to this kind of evidence of the intention, the indispensable element of true domicil, civilians have always attached importance. (Phillimore, § 188.) In the case of Koszta we have all that is required to prove he had a domicil in the United

States—the concurrence of an actual residence with the intention to make this country his future home.

The establishment of his domicil here invested him with the national character of this country, and with that character he acquired the right to claim protection from the United States, and they had the right to extend it to him as long as that character continued.

The next question is, was Koszta clothed with that character when he was kidnapped in the streets of Smyrna, and imprisoned on board of the Austrian brig-of-war Huszar? The national character acquired by residence remains as long as the domicil continues, and that continues, tinues not only as long as the domiciled person continues in the country of his residence, but until he acquires a new domicil. The law as to the continuance and change of a domicil is clearly stated in the following quotati from an eminent jurist:

"However, in many cases actual residence is not indispensable to retain a domicil after it is once acquired; but it is retained, animo solo, by the mere intention not to change it, or to adopt another. If, therefore, a person leaves his home for temporary purposes, but with an intention to return to it, this change of place is not in law a change of domicil. Thus, if a person should go on a voyage to sea, or to a foreign country, for health or for pleasure, or for business of a temporary nature, with an intention to return, such a transitory residence would not constitute a new domicil, or amount to an abandonwould not constitute a new domicil, or amount to an abandon-ment of the old one; for it is not the mere act of inhabitancy in a place which makes it the domicil, but it is the fact complete with the intention of remaining there, animo manends (Story's Con. of Laws, 244.)

At the very last session of the Supreme Court of the or question. The paragraph referring to it is the consultation of nationality, the Consultation of nationality, the Consultation of the Emperor at Smyrna was without doubt perfectly justified when, in virtue of those treaties which subject Austrian subjects in Turkey of those treaties which subject Austrian subjects in Turkey in the consultation of Hungary he thought it base to disown her, and glorious to claim her for the land of his birth. His situation when this declaration is supposed to have ticularly the two most important in Koszta's case: first, that he acquired a domicil in the United States; and, second that he did not lose it by his absence in Turkey.—

that he acquired a domicil in the United States; and, second, that he did not lose it by his absence in Turkey.—
(14 Howard's Reports S. C. U. S., 400.)

As the national character, according to the law of nations, depends upon the domicil, it remains as long as the domicil is retained, and is changed with it. Koszta was, therefore, vested with the nationality of an American characters at Savarage if he is corresponded to a flaw had a The undersigned is brought, by a fair application of sound principles of law, and by a careful consideration of the facts, to this important conclusion—that those who acted in behalf of Austria had no right whatever to seize and imprison Martin Koszta.

It will be conceded that the civil authority of Turkey thring the whole period of the occurrences at Smyrna facts are necessary to affect a change of domicil; but not the control of them exists in Koszta's case. The facts show that he was only temporarily absent from this country on private business, with no intention of remaining per-manently in Turkey, but, on the contrary, was at the time manently in Turkey, but, on the contrary, was at the seizure awaiting an opportunity to return to the

gard to the treatment of Koszta. The Greek hirelings, koszta their victim, and the Austrian and American himself and his posterity, he can claim the protection of agents were, upon this supposition, all in the same condition at Smyrna in respect to rights and duties, so far out being obliged to explain its conduct to any foreign as regards that transaction, as they would have been in if it had occurred in their presence in some unappropri-Power; for it is its duty to make its nationality respected

This right to protect persons having a domicil, though of nature, moral agents, bound each and all alike to observe the precepts of that law, and especially that which is confirmed by divine sanction, and enjoins upon all men every where, when not acting under legal restraints, to do unto others whatsoever they would that others should do unto them; they were bound to do no wrong, and to ralized citizens pay for theirs. He is under the bonds of the extent of their means to prevent wrong from being done; to protect the weak from being oppressed by the strong, and to relieve the distressed. In the case supstrong, and to relieve the distressed. In the case supposed, Koszta was seized without any rightful authority. He was suffering grievous wrong; any one that could might relieve him. To do so was a duty imposed under the peculiar circumstances of the case by the laws of humanity. Capt. Ingraham, in doing what he did for the release of Koszta, would, in this view of the case, be fully justified upon this principle. Who, in such a case, can fairly take offence? Who have a right to complain? Not the wrong-doers, surely, for they can appeal to no law to justify their conduct. They can derive no support from civil authority, for there was none called into action; nor from the law of nature, for that they have violated.

To place the justification of the American agents still. To place the justification of the American agents still arther beyond controversy, the undersigned will now same nationality; and what right has any foreign Power, proceed to show that Koszta, when he was seized and imprisoned at Smyrna, had the national character of an look behind the character given them by that code which american, and the Government of the United States had

and to Captain Ingraham, to the commander of the Austrian brig Huszar and to the Austrian Consul-General the different classes of persons to whom it has the right, the civil distinctions which its own laws nake between under international law, to extend its protection. It will Department, and verified by a comparison with the record of the court in New York in which Koszta made his declaration in due form of law. To remove all doubt on this subject a certified copy of that record is annexed to tionality, have not been so permanently incorporated into

its political community.

Giving effect to these well-established principles and applying them to the facts in the case, the result is, that Koszta acquired while in the United States their national the purposes of this case to show that he was clothed with an American nationality; and in virtue thereof the Government of the United States was authorized to extend to him its protection at home and abroad. Mr. Hulsemann, as the undersigned believes, falls into a great error, as the undersigned believes, falls into a great error. great error—an error fatal to some of his most important conclusions—by assuming that a mation can properly extend its protection only to native-born or naturalized citizens. This is not the doctrine of international law, when the United States assert a claim to it as a common narrow limits. This law does not, as has been before inheritance, it should at once be discovered that it is remarked, complicate questions of this nature by respect doctrine fraught with danger, and likely to compromit for municipal codes. In relation to this subject it has the peace of the world. The United States see no clear and distinct rules of its own. It gives the national character of the country not only to native-born and na-

There may be a reluctance in some quarters to adopt the views herein presented relative to the doctrine of domicil and consequent nationality, lest the practical assertion of it might in some instances give a right of protection to those who do not deserve it. Fears are entertained that this doctrine offers a facility for acquiring a relicional control of the second control of th national character which will lead to alarming about that under the shadow of it political agitators, intent upon disturbing the repose of their own or other countries, might come to the United States with a view to acquire a claim to their protection, and then to return to their former scenes of action to carry on, under a changed national character, their ulterior designs with greater