

CONGRESS.

HOUSE OF REPRESENTATIVES.

The Speech of Mr. SMITH, (S. C.) on the motion to strike out the sixth section of the bill, "For the punishment of certain crimes against the United States," which stood as follows, viz.

"And be it further enacted. That it shall not be lawful to sell, within the United States, any vessel or goods captured from a prince or state, or from the subjects or citizens of a prince or state, with whom the United States are at peace, which vessel or goods shall have been captured by any other foreign prince or state, or by the subjects or citizens of such prince or state; unless such vessel and goods shall have been first carried into a port or place within the territory of the prince or state to which the captors belong, but such vessels and goods shall be carried out of the United States, by those who shall have brought them in. And the sale of any vessel or goods prohibited as aforesaid, shall be utterly void."

This question ought to be considered under two points of view, 1st. As to the right of France derived from the treaty; 2d. As to the expediency of admitting the practice, independently of any existing right. 1st. As to the right. This must result either from the words of the treaty, or from such strong implication as cannot be resisted. It is evident that the right of France to sell prizes in our ports is not given by the terms of the treaty.—The only articles from which it can be pretended to be derived are the 17th and 22d. The 17th art. is in these words, "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, &c. they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to shew, &c." The true construction of this article is the very reverse of the right contended for; it is a permission to conduct whithersoever they please, the ships and goods taken from the enemy, without paying any duty: It is evident that it does not contemplate, but on the contrary, a departure to some other place, always to be expressed in their commission, where their validity is to be finally adjudged. And this construction is given to the article by Mr. Jefferson, the Secretary of State, in his correspondence with Mr. Morris our Minister in France, and with Mr. Genet, page 63, 67. where he says, "The article does not give the right at all," and again, "The admission to sell here the prizes made by France on her enemies is un stipulated in our treaties and unfounded in her own practice or in that of other nations, as we believe."

No right can be deduced from the 22d article but by construction and implication; the terms of that are, "It shall not be lawful for any foreign privateers, &c. to fit their ships, &c. to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandize or any other lading, &c."

From this negative stipulation as to the enemies of France, an affirmative right is attempted to be inferred in favor of France herself; but the inference is a false one. Here I again recur to the authority of the former Secretary of State, whose reasoning with respect to the right of fitting out privateers applies to this case, the right to sell prizes under this article standing precisely on the same footing as the right to fit out privateers. In page 60 of the printed correspondence, Mr. Jefferson says, after quoting the words of the article, "translate this from the general terms in which it here stands into the special case produced by the present war," privateers not belonging to France or the United States, and having commissions from the enemies of one of them, "are, in the present state of things, British, Dutch and Spanish privateers," substituting these then for the equivalent term, it will stand thus, "It shall not be lawful for British, Dutch or Spanish privateers to fit their ships in the ports of the United States."

Is this an express permission to France to do it? Does the negative to the enemies of France, and silence as to France herself, imply an affirmative to France? Certainly not; it leaves the question, as to France, open and free to be decided

according to circumstances, and if the parties had meant an affirmative stipulation, they would have provided for it expressly; they would never have left so important a point to be inferred from mere silence or implication. Suppose they had desired to stipulate a refusal to their enemies, but nothing to themselves, what form or expression would they have used? Certainly the one they have used, an express stipulation as to their enemies, and silence as to themselves. And such an intention corresponds not only with the words but the circumstances of the times. 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." This reasoning proved so conclusively the non-existence of the right to fit out privateers in our ports, that the French government withdrew their claim, instructed their new minister to express their approbation of the steps pursued by our executive, and ordered him to recall all the commissions of privateers illegally fitted out. Now there is not an argument against the right to fit out privateers which does not apply with equal force against that of selling prizes; the same words are used in the article for both cases, and no inference can be drawn in favor of the one which may not equally be drawn in favor of the other. The right to fit out privateers having been altogether abandoned by France, it would be not a little surprising that the right to sell prizes should now find advocates in our councils.

Admitting, that, by a forced construction of either of the two above mentioned articles of the treaty, an implication might arise favorable to the right, yet if the stepping beyond the line of strict obligation in favor of one belligerent power, be deemed a departure from the line of neutrality, it may well be asked, shall we hazard the blessings of peace and subject ourselves to the calamities of war by inference, implication or construction?

But let it be conceded that either or both the articles import in the clearest manner the right contended for, I am ready to prove that the treaty quo ad that grant, would be void and of no effect.

The United States was founded on principles of perfect reciprocity; we are not bound by any stipulation, which was intended to be mutual, if France was not equally bound by it; but France at the time of entering into this treaty, was restrained by antecedent and existing treaties from granting to the United States the right of selling their prizes in the ports of France; the United States would therefore be absolved from the stipulation, supposing it to exist.

These several points can be clearly established.

The preamble to the treaty in question has these strong expressions—"His most christian majesty and the 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 these burdensome preferences which are usually sources of debate, embarrassment and discontent, by leaving also each party 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."

It is laid down by Vattel, page 302, that "a sovereign already bound by a treaty cannot make others contrary to the first; the things about which he has entered into engagements are no longer at his disposal; if it happens that a posterior treaty is found, in some point, to contradict one that is more ancient, the new treaty is null with respect to that point, as disposing of a thing that is no longer in the power of him who appears to dispose of it."

The treaty of Utrecht, between France and England in the year 1713, stipulated in the 15th art. that, "it shall not be lawful for any foreign privateers, &c. who have commissions from any prince or state, in enmity with either nation, to fit their ships in the ports of one or the other of the aforesaid parties, to sell what they have taken, &c." In the event then of a war between the United States and Great Britain, France being neutral, we should have been restrained by the treaty of Utrecht, from selling our prizes in the ports of France: the reciprocity, which is the basis of the treaty, is done away, and we

are now called upon for a performance on our part, of a mutual stipulation, from which the other contracting power is by treaty and the law of nations absolved.

If it be said that the treaty of Utrecht was, on account of intervening wars, not in force at the time our treaty with France was entered into. I will remark in reply that the treaty of Utrecht was recognized by France, and revived by the treaty of Paris in 1763; and that it is an acknowledged maxim of the law of nations that the revival of a peace of a treaty which has been suspended by a state of war, restores the contracting parties to the same rights as if the treaty had never been suspended. Moreover, in the treaty of Paris in 1763 it is said, "that the treaty of Utrecht shall serve as a basis to that treaty, and is renewed and confirmed in the best form, as if it were there inserted word for word, so that it is to be exactly observed in future, &c. and the said parties declared that they will not suffer any privilege, favor or indulgence to subsist, contrary to the above treaty, &c."

But what is still more conclusive the very treaty between France and the United States refers to the treaty of Utrecht as being in full force at that time; in the 10th article, the United States are restrained from disturbing the right of fishery, belonging to France "on that part of the coast of Newfoundland which is designated 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." France was at peace with England in Feb. 1778, when our treaty was made, the treaty of Utrecht was consequently at that time in full force. But France was likewise restrained from granting us this right by the terms of the Family compact with Spain, which was unquestionably in full force at the time of our treaty.

The remarks of Mr. Jefferson on the subject of fitting out privateers, are so applicable and pointed, that I shall again quote him; page 60, he says, "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 (he might have added, or sell our prizes.)

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 ours, stipulating in the 16th Art. 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. So that to give to these negative stipulations an affirmative effect, is to render them inconsistent with each other, and with good faith; to give them only their negative & natural effect is to reconcile them to one another, and to good faith, and is clearly to adopt the sense in which France herself has expounded them. We may justly conclude then, that the article only obliges us to refuse this right in the present case, to Great Britain and the other enemies of France, it does not go on to give it to France, either expressly, or by implication; we may then refuse it."

(To be continued.)

From the European Magazine for March 1794.

Two Letters from General Washington to Lord Buchan.

LETTER I.

Philadelphia, May 1, 1792.

My Lord, I should have had the honor of acknowledging sooner the receipt of your letter 28th of June last, had I not concluded to defer doing it till I could announce to you the transmission of my portrait, which has been just finished by Mr. Robinson (of New-York,) who has also undertaken to forward it. The manner of the execution of it does not dif-

credit, I am told, to the artist; of whose skill favorable mention had been made to me. I was further induced to entrust the execution to Mr. Robinson, from his having informed me that he had drawn others for your Lordship, and knew the size which would best suit your collection.

I accept with sensibility and with satisfaction the significant present of the box* which accompanied your Lordship's letter.

In yielding the tribute due from every lover of mankind to the patriotic and heroic virtues of which it is commemorative, I estimate as I ought the additional value which it derives from the hand that sent it, and my obligation for the sentiments that induced that transfer.

I will, however, ask that you will exempt me from compliance with the request relating to its eventual destination.

In an attempt to excite your wish in this particular, I should feel embarrassed from a just comparison of relative pretensions, and should fear to risk injustice by so marked a preference. With sentiments of the truest esteem and consideration, I remain your Lordship's most obedient servant,

G. WASHINGTON.

Earl of Buchan.

LETTER II.

Philadelphia, April 12, 1793.

My Lord,

The favorable wishes which your Lordship has expressed for the prosperity of this young and rising country, cannot but be gratefully received by all its citizens, and every lover of it; one mean to the contribution of which, and its happiness, is very judiciously portrayed in the following words of your letter, "to be little heard of in the great world of politics." These words, I can assure your Lordship, are expressive of my sentiments on this head; and I believe it is the sincere wish of United America, to have nothing to do with the political intrigues or the squabbles of European nations; but on the contrary, to exchange commodities, and live in peace and amity with all the inhabitants of the earth: and this I am persuaded they will do, if rightfully it can be done. To administer justice to, and receive it from every power they are connected with, will, I hope, be always found the most prominent feature in the administration of this country; and I flatter myself that nothing short of imperious necessity can occasion a breach with any of them. Under such a system, if we are allowed to pursue it, the agriculture and mechanical arts—the wealth and population of these states will increase with that degree of rapidity as to baffle all calculation, and must surpass any idea your Lordship can, hitherto, have entertained on the occasion. To evince that our views (when they are expanded) are not confined to the liberty of sending you the plan of a new city, situated about the centre of the union of these states, which is designed for the permanent seat of the government; and we are at this moment deeply engaged, and far advanced in extending the inland navigation of the river (Potomac) on which it stands, and the branches thereof, through a tract of as rich country for hundreds of miles as any in the world. Nor is this a solitary instance of attempts of this kind, although it is the only one which is near completion and in partial use. Several other very important ones are commenced, and little doubt is entertained that in ten years, if left undisturbed, we shall open a communication by water with all the lakes northward and westward of us, with which we have territorial connections: and an inland, in a few years more, from Rhode-Island to Georgia inclusively, partly by cuts between the great bays, and sounds, and partly between the islands and sand-banks, and the main, from Albemarle Sound to the River St. Mary's. To these may also be added, the erection of bridges over considerable rivers, and the commencement of turnpike-roads, as further indications of the improvement in hand.

* A box made of the oak that afforded shelter to Wallace after the battle of Falkirk.

Foreign Intelligence.

BRUSSELS, April 8.

"Since the arrival of the Courier from Vienna, on the 2d instant, we know for certain that the King of Prussia withdraws his troops from the army of the Rhine, that is to say, the 25,000 men maintained by him during the last campaign, besides the contingent which the Diet of Ratisbon promised to pay monthly—a promise never kept, now disputed, and in the late sittings of the Diet, referred for consideration till peace shall be restored. The King of Prussia, therefore, will furnish only his contingent as elector of Brandenburg for the present campaign; and it is yet uncertain whether or not he will give the 15,000 men with which he is engaged to aid Great Britain, & the states General in certain cases being very ill defined in the treaty of alliance.

"This unexpected falling off has so disconcerted the intended plans that all operations have been for some time at a stand.

Great pains were taken to persuade the troops into British service. Counters were given the Cabinets London; and the nerve to prevent the themselves of the King of Prussia. A letter has been from the King of Prussia. Saxo Cobourg, and troops will be with the banks of the river. Some of our people of the late conference the Diet, imagine faint to draw the Prussian troops but Prussian troops were combined army in actually received and Welphalin. On the 5th terlich communication Brabant the intention with respect to his to take place in the He is expected here, Joseph, to-morrow few days will set out of the army. The Count de pected this evening contained clear the ministry. The return of M government, whom I consider as the cause times, is even dread have written letters De Govere and the hem, affuring them have the pleasure of etc. On the 5th, in arrived with the ne there entirely cleared Amund of the Republic. The Dutch to meet with some cla that on the 2d, they non. Our lords on the notwithstanding the the 22nd and was of Breachville only wounded, among w... From the imm... lery and ammunition one would imagine to all the French fo... In the action before yesterday, be French, about 1200 both sides without that the British themselves by their P. S. This m... tion from the State receive the empere night at Havre; t afternoon he will m emperor and king, van, were an amp arch is erected, he magistrates; re... Gondale, who... and thence to the p... al compliments. Twenty-four cavalry, and four ans, are under am order. Last night, have sent away 3 and other foreigne the road for Eng... UNITE... NEW-YO... We have this d London, dated Ap make the following The last advices ed some alarm in the peace of the t... 6th November last British cruizers an been the chief gr... effects; we have long that this gov... aments for the sp... your vessels under from annulled and with a declaration here, that every i... e redressed; the... apps, we are ve... government