

MARBOIS'S REPORT

To the French Council of Ancients, on the Subject of Maritime Prizes.

Mr. Russell,

At a moment when the measures adopted by the Executive of our government, relative to the recent French prizes, appear to have excited apprehensions in the minds of many good citizens, it may afford peculiar satisfaction to perceive that in this case no step has been taken—the policy and justice of which is not fully recognized by our gallic allies;—A circumstance which clearly evinces, that were the Constituted Authorities of the two nations left to themselves, unaided by collateral prejudices, but few circumstances would intervene to interrupt the harmony which ought ever to prevail between two Republics, whose common object is the establishment of a free government. Corroborative of this sentiment, I forward you the following translated extract from the Report of BARBE MARBOIS, made to the Council of Ancients, upon the resolution relative to decisions upon Maritime Prizes:—As the speech involves much matter of a local nature, I have extracted such parts only as are interesting to Americans. Yours, AMICUS.

WE now pass to the second part of the resolution:—After having prescribed the process to be pursued when the ships of the enemy are brought as prizes into the ports of the Republic, it anticipates the case when they will be conducted into foreign ports, and regulates by articles four, five and six, the mode which ought then to be pursued. We will in the first place examine, colleagues, whether the precision to be desirable in the laws, has not impaired the clearness of this;—the first of these three articles provides that the Chancellors of the Consulates shall discharge with respect to prizes, the formalities prescribed by the law of the 3d of Brumaire, to the Justices of Peace. The commission has consulted this law and all the treaties with foreign powers, with which it has been able to have communication, and from the comparison of them with each other, there has resulted several observations which it is about to submit to you. Article 6th of the law of the 3d Brumaire last, provides "that prisoners belonging to a captured ship, shall be given into the custody of a Justice of Peace," but if they are in like manner placed in the custody of the Chancellor of the Consulate; it must of course declare that the captivity which is not terminated by this deposit, cannot take place in the port of a neutral or an ally: Usage has been introduced to restore to these prisoners their liberty; their captain or master gives a receipt to the chancellor of the Consulate, which the latter forwards to the minister to whom he is subordinate, and this receipt passes in the respective exchanges which are made with the enemy to procure the enlargement of an equal number of French prisoners. Humanity and justice command at the same time, that from the funds of the prize there should be remitted to the captives thus liberated, a sufficiency to subsist, until they have found some employ or an opportunity of returning to their country: Articles 7, 8, and 9, of this same resolution of the 3d Brumaire suppose the exercise of a jurisdiction which belongs undoubtedly to the justices of peace throughout the Republic, since the legislative authority has attributed it to them; but whether the discharge, the proclamation, advertisement, the sale by a public auctioneer and the other acts of territorial power, can unequivocally be exercised by the chancellors in foreign ports? Is a question which your committee did not answer until they had examined the 3th article of the resolution which attributes to the councils the judgment of the validity of prizes after the arrangement of the process by the chancellor of the Consulate.—Here, colleagues, your committee have recollected those eternal maxims which regulated the duties of a society towards itself and its relations with other societies.—From its duties towards itself are deduced its independence, the unity of power and that of jurisdiction; the same principles prohibit the introduction of any foreign public authority whatsoever, into the bosom of the Empire. From its relations with other nations emanate different duties, amongst which there are but two which relate to the subject we are treating upon; these are the first reciprocity of usage, and next the obligation of contributing as far as it is in our power to the happiness of other nations to their prosperity and to the preservation of the peace they enjoy; this right of nations has received, by treaties and Conventions, different modifications, sometimes even restrictions, and a positive right has been introduced, which might be compared in its variety to those written customs, which diversified our civil right, the child of the legislation of an hundred heretofore independent and isolated Cantons.

But these Treaties, these Conventions, all agree with respect to the jurisdiction of Consuls, and refer us expressly to the sovereignty of the territory, the distribution of justice: We every day see the Council lending an attentive ear to discussions and in their details, but worthy of it from the grandeur and importance of the object; we are therefore not apprehensive of fatiguing it by the analysis of the treaties which we have been obliged to consult, in order to make a just application of rules to the resolution which is offered for your approbation.

The treaty of 1769, between France and Spain, provides, "that French captains, mariners or passengers shall preserve the right of applying to the justice of the country."

The treaty of commerce of 1796, between France and the city of Hamburg, announces article 9th, the design of establishing in that free and imperial city of the Teutonic Hanse, a French tribunal to decide in the causes and trials of the nation; but this establishment was found to wound every principle, and the article has never been put in execution.

We read the following in a treaty signed in 1776 between France and the Republic of Ragusa—"causes which may interest Frenchmen on one part and foreigners on the other, shall be subject to the cognizance of the judges of the territory." "Consuls cannot intermeddle in any thing which regards either the subject of the country or foreigners.

The treaty of commerce of 1779, between France and the United States of America, prohibits the officers of admiralty of American ports into which Frenchmen may conduct their prizes, from a cognizance of the validity of such prizes and reciprocally; But this same article adds, that they may freely depart to be conducted to the ports of armament, and the spirit of the treaty is, that judgment belongs to the tribunals of the state of which the captor is a citizen, but not to the Consuls. By the terms of the 22d article of the same treaty, no cruiser can sell prizes (taken from Frenchmen) in the ports of the United States, nor discharge any part of his cargo and reciprocally for prizes taken from Americans and conducted into French ports.

The 5th article of the convention of 1781, between France and the States General of the United Provinces, provides that prizes taken by the ships of war or cruisers of either of the two nations, shall be admitted into their respective ports, that they may be there discharged and sold agreeable to the formalities practised, in the state where the prize may be conducted; meaning that the legitimacy of prizes captured by French ships of war, shall be decided conformable to French laws, and reciprocally:—This article as well as all which precede it, is far from supposing that the Consul shall pronounce upon the legality of the prize.

Agreeably to the treaty between France and Great-Britain, judgments upon prizes are referred to the courts of Admiralty; and we find in the 3d article the following article, too well justified perhaps by the servile obedience of the British courts of Admiralty to the will of the British ministry: "Judgments shall be decided by judges superior to all suspicion, and who have no interest in the point in question"

The treaty of commerce of 1787, between France and Russia, attributes to the Consuls, an authority over the crews of the ships of their nation, and even judgment upon disputes which arise between seamen of their nation; but this disposition does not extend beyond the crews; the 6th article leaves the Consuls only the right of a voluntary arbitration over their countrymen; it adds, "that if either of the two parties do not consent to recur to the authority of his own Consul, they may apply to the local tribunals and both parties shall be subject to the judgment of such tribunal."

In vain has your commission sought for the establishment of a jurisdiction of French Consuls in foreign countries, of such a nature as that which the resolution supposes; it no where exists; and the purer the principles are upon which a nation has founded its constitution, & the nearer they approach real liberty, the more it is inclined to repulse every proposition of such a division of one of the most essential attributes of its sovereignty.

It is true that different capitulations and treaties with the deys and despots of the States of Barbary, and the ports of the Levant, suppose that trials between Frenchmen may be determined by Consuls; but those absolute princes who, without experience or controul are supreme Judges over the lives and fortunes of their subjects and slaves, easily figure to themselves, that the judicial authority of their country, must follow them wherever they go, into whatever country they transport their domicile, and from reciprocity, they discover themselves whenever the cause of a foreigner is in question; but little jealous of the exclusive exercise of this noble attribute of sovereign power, often fatigued with the plenitude of their authority, they without regret suffer a few parties of it to escape them, and this dereliction is to them rather a relief than a privation: You will not, however, amongst them see a Consul invested with the right of pronouncing in matters of prize between his countrymen and neutrals. Your commissaries have also analyzed the Treaties and Conventions of foreign powers relating to commerce and navigation; they have examined more than thirty documents of this nature, but they have no where discovered Consuls in foreign countries, established judges of prizes; all these treaties suppose that Consuls have no jurisdiction even over the individuals of their nations, unless it be voluntary on the part of the latter and reduced to the simple forms of arbitration; the power is even reserved almost generally to the two parties or either of them, to bring his adversary before the tribunals of the territory; but no one ever dreamt of rendering Consuls Judges between their countrymen and neutrals.—Thus it would be in vain for us to wish to confer upon our Consuls this prerogative which is truly extraordinary; it would also be necessary to secure them the exercise of it by a treaty; but supposing any foreign power were disposed thus to strip itself of a portion of its jurisdiction, you cannot, my colleagues, doubt that they would at the same time demand a reciprocal exercise in our ports.

A single example will render what I have observed much more striking: Let us suppose peace re-established between France and Great-Britain, and this power at war with Spain; an English privateer forced by stress of weather to put into our ports, brings in a Spanish prize, the brings in a neutral vessel or the property of neutrals; our fellow-citizens themselves are interested in the prize taken from the Spaniards; in fact the captured alleges to have been taken in the waters of our dominion, within cannon shot of our shores—in all these cases the territorial jurisdiction is claimed, and that of the enemy's Consul contested. Indifferent to the dispute, should we see the British Consul sovereignly pronouncing upon, discharge and restore the prize, and even prepare with a secret joy, the seeds of rupture or difficulty, between us and the nation whose citizens or subjects should conceive themselves aggrieved? In fact, a neutral nation between two belligerent powers, ought not to suffer either of them to exercise in its ports an act of sovereignty even towards its enemy—otherwise it exposes itself to indemnities and even to war, if it has been able to prevent this violation of its neutrality. A process totally different is pursued, and in those rare cases where no claim is made, where the captured themselves fully convinced of the validity of the prize, should consent to the sale, or where no trace of fraud may appear, the ships and cargoes may be sold and the Consul or the Chancellor may make the necessary arrangements, and consular acts which the nature of the affair and

conventions authorize; but if our maritime domain has been violated, and our citizens demand of neutrals, request the assistance of our tribunals, it can not be refused them: In fine, in all other cases the captors and captured after a longer or shorter stay a greivable to the spirit of their treaties, again proceed to sea, the prizes are conducted into the ports of the nation of the captor, and it is there they must be judged. This, Citizen Colleagues, is the reciprocity we demand in order to furnish it in return; it is thus we shall discharge the duties of friendship or benevolence towards our allies, and even towards those nations with whom we are only at peace.

The commission have not adopted the disposition which by assimilating the Consuls to the tribunals of commerce supposes at first that they are the most convenient for communicating the documents to a Commissary of the Executive Directory, and next the possibility of communicating in the space of a decade with the minister of justice and the Executive Directory, our Consuls are placed from two hundred to two thousand leagues from us, and this disposition is evidently impracticable of execution.

It was necessary for your commission to enter into these long details, in order that if the Council of Ancients adopts a resolution which is not clear as could be wished, no doubt may arise as the real sense in which it receives it.

The conduct of the commission has been dictated by the unalterable wish of maintaining our treaties unviolable, of respecting, and causing to be observed by all our agents and officers the rules of the rights of nations, of asking nothing of other nations except under the law of a just and perfect reciprocity; in a word, to prevent the assimilation in matters of prize, of the chancellors to the justices of the peace and of the consuls to the tribunals of commerce, except in so far as this disposition may be found to comport both with engagements already entered into, and our own domestic jurisprudence.

But it will be said that the view which the commission has presented to the Council, of the state of our commercial relations and the functions of our Consuls, proves the necessity of preferring to the greater part of these agents a rule of conduct in the important and delicate subject of prizes. Here colleagues, the constitution presents us a sufficient point of support in the attributions.—The experience and ability of a minister of foreign affairs: He is educated in the study of history and treaties, he has constantly on his desk, and much more perfectly in his memory all the conventions and acts which regulate our affairs with foreign nations.—He is even acquainted with the different interests and engagements of those nations amongst themselves.—He anticipates demands and complaints and is early to stifle the germs of discontent and the causes of rupture, or to prepare happy reconciliations, for oftentimes peace or war is in some degree in his hands. It is by his attentive cares that he secures our repose, the support of exterior tranquility is the product of his labor. Perhaps at this moment instructions wisely drafted trace the progress of Consuls, and this silent and secret work is so much more meritorious, as he is often ignorant of the persons who may reap the fruit of it.

The commissaries of the executive power near the tribunals, are also provided, by the ministers of justice, with extracts of all conventions and treaties of commerce and neutrality with foreign powers; it is their duty to remind the judges of the dispositions of these conventions and treaties, and to demand the execution of them as often as exigencies may require it. They prevent the tribunals of commerce from pronouncing slightly upon confiscations upon a pretence that indemnities may be granted in cases where a wrong decision may take place. In fine, they maintain a sincerity in judgment and more particularly in every thing which may interrupt the neutrality of powers not engaged in the war, or commit us in opposition to them.

We shall not examine whether the principles of that neutrality proclaimed with so much splendor by Russia, and received with so much acclamation by all commercial nations (except England) have not experienced formidable attacks in the course of the present war. It is sufficient for us that they are full, for us to persist in supporting them, we will bring back to them all nations, whom error, perhaps reciprocal, though transient, have carried away from them; they will on their part be convinced that it is their duty, as well as their interest, to take efficacious measures to cause their neutrality to be respected.

In fact our ministers by instructions wisely drawn will secure the execution of the law, the plan of which is submitted to the Council of Ancients.

We have said sufficient, Colleagues, to prove, that if it is adapted to present circumstances, still it requires developments, and is only the summary of a code which is yet incomplete; it will regulate every thing which may relate to trials by appeal; the manner of proceeding in them without prejudice to equity on one part, or a celerity which is indispensable on the other, and prevent tricks and chicanery in the tribunals of different degrees; it is time perhaps when all professions are freed from their ancient shackles, to prevent the exclusion by formalities which still hold to the infamy of navigation, those who demand to launch into the career of glory, of danger and of fortune. The legislator will combine at the same time with the utility of giving a greater liberty to cruising, the necessity of placing a check upon the excessive and imprudent ardour and avidity of cruisers, and of preventing the accidents which inexperience may occasion: But until this desirable work is presented to the Council, your Commission were of opinion that the law, the plan of which is submitted to you, would secure the object proposed which is the judgment of prizes. Let us hasten when the moment is so favorable for cruising, let us hasten to carry disorder and trouble into all the commercial operations of that government who would wish to see the ocean dried up even to its source, rather than partake its fruits with the other inhabitants of the globe. If nature has isolated her from every continent, her ships unite her to them, and open to her so many passages by which the may depart from the rays of the centre in which she is placed: Let her navigators meet a Barr, a Dugue Trouin, a Thurot in every route they may pursue; let insurances absorb from her subjects all the chances of gain, and

since she is devoured with the thirst of gold and riches, let us cut off, let us turn aside every channel, let us stop every source which may serve to quench it. Your Commission were in favor of approving the resolution.

Your committee propose to the Council to accept the resolution. The resolution was accepted.

BY THIS DAY'S MAILS.

NEW-YORK, July 25.

Pache, who was Mayor of Paris in 1793, has been arrested as one of the late conspirators.

Amar, an ex-constituent, who was the principal cause of the death of the celebrated Rahaut St. Etienne, is supposed to have been lately arrested, and confined in the house from whence in the days of his power, he brought out the victims of his revenge.

There has also been arrested a number of persons who stile themselves exclusive patriots, and assemble in the Rue Guerin Boiffeau.

The criminal tribunal of the department of Seine and the Marne have condemned to death, four of the assassins of the second of September, on the verdict of a jury which had declared them to have been guilty of premeditated assassination; a fifth has been condemned to 20 years imprisonment in irons, on the ground of his having acted without premeditation.

[Courier du Corps Legislatif, May 25.] Continuation of translations from the Daily Advertiser.

PARIS, 11th Prairial, May 20.

Copy of a letter from Citizen Buonaparte, General in chief of the army of Italy, to the Executive Directory.

Citizen Directors, I was of opinion that the crossing of the river Po, would have been the boldest action of the campaign, as likewise the battle of Mellesimo, one of the most vigorous actions ever known; but I have now to relate the battle of Lody.

The 21st, at three o'clock in the morning, the head quarters reached Casal; at five our vanguard encountered the enemy defending the approach of Lody. I immediately ordered all the cavalry to mount, and four pieces of cannon, which had just arrived, to be placed.

General Angereau's division who had slept at Borgerho and that of General Massina who had slept at Casal, marched immediately; meantime the vanguard overset all the different posts of the enemy, and took from them one piece of cannon. We entered Lody in pursuit of the enemy, who had already crossed Adda, over the bridge. Beaulieu with all his army was ranged in order of battle; 33 pieces of cannon directed the passage of the bridge. I caused all my artillery to be placed in one battery. The cannonade for several hours was very vigorous. As soon as the army arrived, they were ranged under a close column, having at their head the second battalion of the Carabiniers, and followed by all the battalions of grenadiers, heating the charge and exclaiming, Vive la Republique.

We soon reached the bridge, which is one hundred fathoms in length; the enemy made on us a tremendous discharge, the head of our column seemed for a moment to hesitate, our situation was really critical. Generals Berthier, Massina, Cervano, d'Allemagne, the chiefs of the brigade Lisle, and the chief of the battalion, Dupet, all perceived it, and throwing themselves at the head of the army, decided the fate of the engagement.

Our formidable column overset all that opposed it, all the enemy's artillery was carried away from them; Beaulieu's order of battle was broke, and in its flight spread every where terror and death. In an instant their whole army was scattered.

General Ruffa, Angereau and Berrant, crossed as soon as their division arrived and completed the victory. The cavalry crossed the Adda by a ford which being very bad, delayed their march and by that means prevented their charging the enemy. The horse of the enemy charged our troops, but did not find it an easy matter to terrify them. Night coming on and the extreme fatigue of the troops, part of whom had already marched more than ten leagues on the same day, we were not allowed to pursue them any farther. The enemy lost 20 pieces of cannon, two or three thousand men either killed, wounded or taken prisoners. Citizen Latour, aid-de-camp of General Massina, received several wounds with a broadsword. I demand that this brave officer be made chief of a battalion. Citizen Marmate, my aid-de-camp, chief of a battalion, had his horse wounded under him. Citizen Marrois my aid-de-camp capt. had his coat lifted with balls; the courage of this young officer is equal to his activity.

If I was to give the names of all the militaries who distinguished themselves on that glorious day, I should name all the carabiniers, and grenadiers of the vanguard, and almost all the officers of the Etat Major. But I must not forget to mention the brave Berthier, who was on that day a cannonier, a horseman and a grenadier at the same time. Sugny, chief of brigade, who commanded the artillery, behaved gallantly.

Beaulieu flies with the remainder of his army; he is now crossing over the flats of Venice; several towns of which have shut their gates. Since the beginning of the campaign, though we had very warm actions, and the army of the Republic were oftentimes forced to shew a great deal of boldness, none of them has yet been so terrible as the crossing of the bridge of Lody. If we lost but few men, it is owing to the haste of the execution, and the sudden effect which the mass and tremendous fire of that intrepid column produced on the army of the enemy. I demand that Citizen Mounier be confirmed adjutant general, who serves in that capacity, although he is not included in this affair. I demand that Citizen Rey, aid-de-camp of the brave Massina, and Citizen Thoiret, worthy adjutant of the third battalion of the grenadiers, be both made captains.

As soon as we shall be settled in a place, I will forward you a list of those who have distinguished themselves on that glorious day.