

DOCUMENTS
Which accompanied the message of the President of the United States to both Houses of Congress, January 19, 1797.
Letter to Mr. Pinckney, Minister Plenipotentiary of the United States to the French Republic.
Continued.

In his letter of the 3d of June 1796, which you will find among the papers respecting the *Cassius*, Mr. Adet mentioned the affair of the *Favorite* at New-York; and intimated an idea that the Executive might, in like manner, cause the prosecution against *le Cassius* to cease. But the proceedings in the case of the *Favorite* were wholly in the hands of the executive officers, who were under the President's immediate controul, and to whom, on evidence satisfactory to the Executive, orders were given to discontinue the process. In this affair of the *Favorite*, we are fortunate in finding one case in which Mr. Adet (contrary to his assertion in his note of November 15th) acknowledges that justice was done by our government. You will observe in Mr. Fauchet's letter of the 23d of September 1794, a very formidable complaint in this affair of the *Favorite*; that it was pretended that a privateer, fitted for a cruise, had deposited arms on board her, and that this pretext was used for visiting and pillaging her: That she was a ship of war of the Republic, then serving as a store ship until she could be repaired: That the sovereignty of France was violated, and her flag insulted. Yet by the letter of John Lamb, Esquire, collector of the port of New-York, of the 22d of November 1794, you will see that at the time the seizure was made of the suspected articles on board the *Favorite*, "she having been totally dismantled, her crew sent on board other ships of war, and her sails, rigging, and other materials, sold at public auction, she was considered as a *bulk*; otherwise the event would not have taken place." The collector further declares that the charge of pulling down the national flag and hoisting another in its place, was groundless.

These are all the cases expressly mentioned by Mr. Adet, in which French privateers and their prizes have been brought under the cognizance of our courts of justice; and all, therefore, to which an answer can be directed. Had he cited the other cases, which he says would fill a volume, we have no doubt that there would be found in them, as in those which have been mentioned, abundant reason to justify the government and the tribunals.

Mr. Adet's complaints are not confined to imputations of injustice experienced by French privateers and their prizes, from our courts:

1st. "He protests against the violation of the 17th article of the treaty, in contempt of which the American tribunals have taken cognizance of the validity of prizes made by French ships of war or privateers, under pretext of original armament or augmentation of armament in the United States; or of capture within their line of jurisdiction." But his predecessor, Mr. Fauchet, after saying that our admiralty courts interfered in prize causes on the ground of "seizure within the jurisdictional line of the United States, or of armament or augmentation of armament of the capturing vessels in their ports," immediately adds: "On this subject, sir, you request me to specify to you a circumstance, in which a prize was arrested, which did not come under that denomination, and you take the trouble to establish that they have a right to interfere in every case that can be brought under those heads. In the first place, sir, I never have, at least to my recollection, contended the right of your courts, or of the government, to interfere in matters of the nature of those you mention: but I complain of the facility with which prizes have been thrown into those two classes, which do not belong to them." He then says that he could cite a great number of affairs to which he alludes: but contents himself with mentioning only two. The first is the case of *Talbot*, of which I have already given some details, and which, with the documents referred to, will shew this to have been an unfortunate instance to support his complaint. The other is that of the prizes of the *Citizen* of *Marseilles*, also already mentioned, and which will not justify a complaint; for although the final decision was in favor of the privateer, yet the sentence of the district court was not reversed in the circuit court but upon the introduction of *new testimony*: and the supreme court allowed no damages, because the testimony was so ambiguous as to justify the appeal.

But quitting the contradictory declarations of the French ministers; and referring you to the letter dated August 16, 1793, from the Secretary of State to our Minister at Paris (which has been published) for the reasoning of our government on this subject, and the demonstration of their right and duty as a neutral power, to prohibit any of the belligerent powers arming their vessels in our ports, consequently to restore to their proper owners prizes taken and brought in by vessels so unlawfully armed, or when taken within our line of jurisdiction, I will only add here—That the principles of the laws on this subject first adopted by the President on the most mature deliberation received afterwards the sanction of Congress, by their act of the 5th of June 1794, and of the Judges in all their judicial proceedings, in the prize causes in question. If then the 17th article of the French treaty has been violated, the Executive, the Legislature and the Judges of the Federal Courts have all deliberately concurred in the violation. This no American citizen will be inclined to believe, and we might suppose that the consideration of such concurrence in one opinion would any where produce a pause, and some diffidence in pronouncing it erroneous. Neither the rules adopted by the President nor the act of congress have made a new law respecting such prizes: they have only directed the modes of proceeding to fulfil our neutral duties agreeably to the universal law of nations. The judges have applied this law; but not without due attention to the obligations of our treaties, which they regard as supreme laws of the land.

* Letter, June 8, 1795.
† State papers, p. 75.

2. Mr. Adet "protests against the violation of the 17th article of the treaty, in contempt of which English vessels, which had made prize on Frenchmen, have been admitted into the ports of the United States." The construction of this part of the 17th article for which Mr. Adet, after his predecessor Mr. Fauchet, contends, is this—That if a national ship of war of the enemies of France has at any time, and in any part of the globe, made prize of a French vessel, such ship of war is to be allowed no shelter or refuge in our ports, unless she is driven in through stress of weather; and then she is to be made to depart as soon as possible. On the contrary, the construction adopted by the Executive of the United States, and expressed in the rules before mentioned, which had been transmitted to the collectors in August 1793, was this—That privateers only of the enemies of France were absolutely excluded from our ports, except as before, when compelled to enter through stress of weather; pursuant to the 22d article of the treaty; while the national ships of war of any other nation were entitled to an asylum in our ports, excepting those which should have made prize of the people or property of France, coming in with their prizes.

On the 9th of September 1793, the Secretary of State thus expressed to the British minister the determination of the Executive: "The public ships of war of both nations [French and English] enjoy a perfect equality in our ports—1st, in cases of urgent necessity—2d, in cases of comfort and convenience—& 3d, in the time they choose to continue, and though the admission of prizes and privateers of France is exclusive, yet it is the effect of treaty." &c.

In support of our construction of the treaty, it has been observed, that "the first part of the 17th article relates to French ships of war and privateers entering our ports with their prizes: the 2d, contracts the situation of the enemies of France by forbidding such as shall have made prize of the French: intimating from this connection of the two clauses, that those forbidden, are those which bring their prizes with them." To these observations I will add—That if the literal construction contended for by the French ministers were admitted, then although the public ships of war which had made prize of French people or property, would be excluded from our ports, yet the prizes of such public ships might be received, and they might be sold too; for the prohibition in the 22d article of the treaty applies only to privateers and their prizes; while the government of the United States judged that the 17th article was intended to exclude the prizes made on the French by public ships of war as well as those made by privateers; and gave directions accordingly to have them excluded. Further, if it had been intended to exclude from our ports the public ships of war of the enemies of France, coming without any prize, then they would doubtless have been comprehended in one provision with the privateers in the 22d article: for privateers are thereby excluded, whether they came with or without prizes. But public ships of war are not comprehended, or at all referred to in the 22d article; whence the conclusion is fair, that it was not intended to forbid them coming alone; and consequently that the exclusion provided in the 17th article applies to them only when they would come into our ports with their prizes; this last clause of the same article being in its form opposed to the first clause which admits the entrance of French ships with their prizes. Besides, if a public ship of war of the enemies of France comes into our ports without any prize, how is it to be known whether she has or has not made prize of the people or property of the French? Who is to create a tribunal to investigate and pronounce on the fact? But if she comes with a prize the case presents no difficulty; she brings with her the evidence which goes to the exclusion of her and her prize.

I must now advert to some others of Mr. Adet's charges against the government of the United States.

1st. "It [the government of the United States] put in question whether it should execute the treaties, or receive the agents of the rebel and professed princes." And is there any thing in this unjustifiable or extraordinary? Was it easy for a nation distant as ours, to obtain promptly such accurate information as would enable it duly to estimate the varying condition of France? In 1791 the constitution formed by the constituent assembly was accepted by Louis the 16th; it was notified to the United States in March 1792. Congress desired the President to communicate to the king of the French their congratulations on the occasion. In August 1792 the king was suspended. In September royalty was abolished; and in January '93, Louis the 16th tried and condemned by the convention, suffered death. Was it easy to keep pace with the rapid succession of such revolutionary events? And was it unlawful for our government under such circumstances even to deliberate? I do not find that information of the death of the king was received from our minister at Paris until May 1st, 1793. The news however had previously arrived in such manner as to attract the attention of government; for in April the President had determined to receive a minister from the French republic. And it is remarkable that this was before he knew that a minister had arrived in the United States. This promptitude in deciding a leading question does not bear any strong marks of hesitation. And was there no merit in this ready determination to acknowledge the French republic? Had it been before acknowledged by any power on the globe? How long did France hesitate to acknowledge the republic of the United States? A year and a half. And under what circumstances was the acknowledgment finally made? After the capture of a whole British army appeared to have established our independence. But of this more hereafter.—In matters of importance (and what could be more important than the decision of a neutral and allied nation on questions perhaps involving war or peace?) is it the part of wisdom to reject all deliberation even on points which do not obviously present difficulties? Will not prudence dictate to him who is to decide great national questions rather to deliberate long than risk the consequence of hasty decisions?

* State papers, p. 77.
† Secretary of State to Mr. Fauchet, Sept. 7, 1794.

2d. "It made an insidious proclamation of neutrality."

I have already remarked that this proclamation received the pointed approbation of Congress; and I might truly add of the great body of the citizens of the United States. And what was the general object of this proclamation? To preserve us in a state of peace. And have not the ministers of France declared that their government did not desire us to enter into the war? And how was peace to be preserved? By an impartial neutrality. And was it not then the duty of the chief magistrate to proclaim this to our citizens, and to inform them what acts would be deemed departures from their neutral duties? This was done by the proclamation. It declared it to be the duty, interest and disposition of the United States to adopt and pursue a conduct friendly and impartial toward the belligerent powers: It warned the citizens to avoid all acts which might contravene that disposition: it declared that whosoever of the citizens should render himself liable to punishment or forfeiture under the law of nations, by committing or abetting hostilities against any of those powers, or by carrying to any of them articles deemed contraband of war, would not receive the protection of the United States against such punishment and forfeiture: and that the President had given instructions to the proper officers to prosecute all persons who should violate the law of nations with respect to the powers at war or any of them. To what in all this can the epithet *insidious* be applied? On the contrary, is not the whole transaction stamped with candor and good faith?

3d. "By its chicaneries, it abandoned French privateers to its courts of justice." Abandoned them to its courts of justice! Sir, you know many of the judges personally, and all of them by reputation, and that their characters need no vindication from such an insinuation. They are judges with whose administration of justice our citizens are satisfied; and we believe they may challenge the world to furnish a proof that they have not administered justice with equal impartiality to foreigners. I will only add here one remark, that the correspondences with the French ministers formerly published joined to those now furnished you with the other documents accompanying them, will shew how loudly they can complain of the proceedings in our courts, and at the same time with how little justice.

4th. "It eluded the amicable mediation of the republic, for breaking the chains of its citizens at Algiers." We did not entertain any doubt of the friendly disposition of the French republic to aid us in this business. But what was really done we have never known. You will find herewith Mr. Fauchet's letter of June 4th, 1794, and the answer of the secretary of state, on the 6th, to which Mr. Adet refers. The information on the subject, which Mr. Fauchet expected "in a little time from Europe," probably never arrived; at least it was never communicated to our government. There is surely in the secretary's answer, no evidence that our government were unwilling to accept the mediation of the republic. On the contrary, we have relied upon it to aid our negotiations with the Barbary powers. Accordingly, when colonel Humphreys went from hence in 1795, clothed with powers for negotiating peace with those states, he was particularly instructed to solicit the mediation of the French republic; and for that purpose only, he went from Lisbon to Paris, where, through our minister, the committee of Public Safety manifested their disposition to contribute to the success of his mission. But colonel Humphreys was at the same time authorized to depute Joseph Donaldson, Esquire, (who had been appointed consul of the United States for Tunis and Tripoli, and who went with colonel Humphreys from America) to negotiate immediately a treaty with Algiers: for in a country where a negotiation depended on so many contingencies, it was of the last importance to be ready to seize the favorable moment to effect a peace whenever it should offer. Such a moment presented on Mr. Donaldson's arrival at Algiers. He had not been there forty-eight hours before the treaty was concluded. It is also a fact that it was effected without the aid of the French consul at that place.—However, with respect to Mr. Donaldson's negotiation, we are well informed that "His not conferring with the consul of France was not his fault; and if he had done it, that it would have injured his cause. Neither the republic nor her consul enjoying any credit with the dey." But we are at the same time informed that the cause of this was transitory, and ought not to hinder us from endeavoring to engage her interest for other places and in that place for future occasions. Agreeably to this idea, the agent of the United States applied to the French consul, Hercules, at Algiers, the last Spring, to recommend a suitable person to negotiate a treaty with Tunis. The person recommended was employed, and we have been informed, had in part succeeded, and was expected to complete a treaty of peace. This information was communicated to our minister at Paris, in a letter dated 30th of August last, from the French minister for foreign affairs, accompanied by an extract of a letter from the consul Hercules.

In all these transactions, far from discovering a trace of evidence to support Mr. Adet's charge, the reverse is manifestly proved.

5th. "Notwithstanding treaty stipulations, it allowed to be arrested vessels of the state." While we admit the fact that French vessels have been arrested, we deny that the arrests have infringed any treaty stipulations. The details in this letter and the documents referred to appear to us entirely to exculpate the government. And if neither the executive nor our tribunals could in any wise take cognizance of captures which the French privateers called prizes then they might take our own vessels in our rivers and harbors and our citizens be without redress. But "it is an essential attribute of the jurisdiction of every country to

* Letter from the Secretary of State to Mr. Morris, August 16, 1795, State Papers, page 62.

preserve peace, to punish acts in breach of it, and to restore property taken by force within its limits. Were the armed vessels of any nation to cut away one of our own from the wharves of Philadelphia, and to chuse to call it a prize, would this exclude us from the right of redressing the wrong? Were it the vessel of another nation, are we not equally bound to protect it, while within our limits? Were it seized in any other waters or on the shores of the United States, the right of redressing is still the same: and humble indeed would be our condition were we obliged to depend for that on the will of a foreign consul, or on negotiation with diplomatic agents."

The same reasoning will apply to captures made by illegal privateers; that is, by such as were armed and equipped in the ports of the United States; for it being by the law of nations the right of our government, and as a neutral power, its duty to prevent such armaments, it must also be its right and duty by all means in its power, to restrain the acts of such armaments, done in violation of its rights and in defiance of its authority. And such were the armaments made by French people in the ports of the United States. And the most effectual means of defeating their unlawful practices was the seizing of their prizes when brought within our jurisdiction. It is very possible, indeed, that in some cases the irritated subjects or public agents of nations whose property was taken by French privateers might commence vexatious prosecutions; but this is no more than happens frequently among our own citizens, and in every nation in the world; and the only redress on the vindictive passions of men, in such cases, which the policy of free governments has imposed, are the damages which the courts compel the malicious prosecutor to pay to the injured party. If, as Mr. Adet asserts, damages have in two cases only been granted by the courts to French privateers, even when the decisions have been in their favor, it has arisen from their own conduct; or the omission of their counsel; or from accidental circumstances, which, in the opinion of the courts, furnished reasonable presumptions against them of having violated the laws, either by illegally arming in our ports or making the captures within our jurisdiction. If, on the other hand, they have, in the event of contrary decisions, been always condemned to pay damages we may venture to say, it was because they were always in the wrong. For no one will find sufficient ground to impeach the discernment or integrity of our courts.

6th. "It suffered England, by insulting its neutrality to interrupt its commerce with France."

That our commerce has been interrupted by the armed vessels of England, and sometimes with circumstances of insult, we certainly shall not attempt to deny: the universal resentment and indignation excited by those injuries, were admissions of the fact; but that the government has *committed* at the practice (for that Mr. Adet must have intended to insinuate by the word "suffered") all its acts most forcibly contradicted. It was because of those aggressions that preparations for war were commenced, and to demand satisfaction for them was the leading object of Mr. Jay's mission to London. Satisfaction was demanded; and the arrangements agreed on for rendering it, are now in execution at London. But if by "suffered" Mr. Adet means that we did not arm, that is, make war on England, to obtain the indemnification, when humanity, reason and the law of nations prescribe the mode of previous peaceable demand—to these very principles we may appeal for our justification; and if it is necessary to go further, we say, That, as an independent nation, we must be left to determine in what manner we can most beneficially obviate an evil, and when it is most proper for us to repel an injury. To deny us this right of judgment, is to deny our independence. We have not been insensible either to our honor or our interest. If we have manifested much long-suffering, we have not been singular. Neutral nations very commonly endure many temporary evils; because these appear light when compared with the calamities of war; and they look forward, as we have done, to a period when returning justice may redress their wrongs. This period, we trust, will arrive in regard to those we are now suffering from the French republic. If a nation not bound to us by treaty, and between whom and ourselves actual circumstances and many recollections tended to excite peculiar passions, engaged to render us justice, shall we expect less of an avowed friend?

We may here properly enquire, what could have been the understanding of the parties on this point when the treaty of 1778 was made between France and the United States? She knew that notwithstanding the extent of our country and its rapid increase in population, many years must elapse before we could form a powerful navy to protect our commerce. She knew the conduct of maritime powers in all their wars; particularly she was acquainted with the maxims and measures of England, towards the commerce of neutral nations, in all her wars with France. And if knowing these things, France then expected that in all subsequent wars we should compel the maritime powers in general and Great Britain in particular to admit our commerce to perfect freedom, then instead of a treaty of commerce containing regulations for conducting it, when France should be at war, she would have demanded from us a stipulation, that in every future war in which we should be engaged with any other maritime power; we also should engage in it as her associate. But this is a condition which France was too just to demand, and to which the United States would never have agreed.

[To be Continued.]

Philadelphia and Lancaster Turnpike Company,

January 6, 1797.

At a meeting of the President and Managers, a dividend of five dollars per share, was declared for the last half year, which will be paid to the Stockholders, or their representatives any time after the 21st of this month.

TENCH FRANCIS, Treasurer.

Jan. 6.

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