

Philadelphia, May 17.
INTERESTING CORRESPONDENCE,
RELATIVE TO THE AFFAIRS OF
FRANCE AND THE UNITED STATES.

The following correspondence, comprising the most important of the documents contained in the President's message to Congress of 19th January last, is perused with candor and attention, must satisfy every independent American of the sincere, active and unceasing efforts of our government to maintain inviolate the rights of France, refusing from the duties of neutrality, the laws of nations and existing treaties, and most completely vindicating our nation from the unjust reproaches and complaints of the French Directory and its agents.

Letter from Mr. Randolph to Mr. Fauchet.
(Continued from Monday's Gazette.)

The first part of your fifth allegation, which implies "That the United States quit the neutrality which they profess by subscribing through an excess of circumspection (management) to an order, like the proclamation has been just anticipated. To the second part, which asserts that we allow the neutrality, which we profess by being unable to maintain our treaties we answer that although to the best of our ability and understanding we have maintained our treaties, yet if any occasional or real inability has been shown this cannot be transformed into a renunciation of neutrality. Prove to us that this supposed inability has sprung from an unfriendly motive; that it has not been inseparable from the insanity and situation of our government; that it could have been remedied by any expedient at our command, except war or reprisal or the forcemakers of both; then and not till then, will it be incumbent upon us to account for it further. "That we have been obliged to abandon our relations exclusively to England" (as in the third place you have affirmed) is a question of fact between us. We deny it. The American navy cannot yet dispute the ocean; but American rights have not been relinquished. Of the time, mode, and style of enforcing them, the United States are the sole judge.

Throughout your letter, you have dispersed allusions to the late treaty of the United States with Great Britain. To this, as to a centre, the whole series of your observations has tended, and we are taught from one passage at last, to view it as a prelude to representations, which you meditate to the French republic.

That treaty has been communicated from the department of State, only to the chief magistrate of the Union. But it will not be conceived, that reasons peculiar to the case, caused their reserve. We were acquainted with no duty towards foreign nations, which should lead us to infringe the usage of suspending the publication of treaties, until the ratifications have been exchanged; or to impart to them more than has been already imparted to the committee of public safety in France by our envoy in London through our minister in Paris. Yes, Sir, you say, that you demand justice only: justice you shall have; and I repeat in the name of the President the promises, which I admit myself to have often made to you, that our treaties with France shall be sacred. No nation upon earth can control our will, unless preceding engagements be violated. To save the rights of the French republic was an ultimatum in the instructions to our envoy: the President and Senate are the final arbiters whether the treaty shall exist. It is with them to pronounce, with whom treaties shall be made, and upon what terms; they will doubtless move under the awful responsibility attached to the guardianship of national honor, faith and independence.

The President is willing to superadd any orders, which can with propriety be expected from him, for the execution of our treaties with France; if any such can be suggested beyond those already given. Every charge which can be brought against the government, we shall meet at the proper season, and in the armour of political integrity. We confide that the wisdom and magnanimity of the French republic which resisted past machinations to disturb our harmony, will receive with caution suspicions, which may hereafter be thrown on our fidelity. For her happiness we pray, and may our connection be perpetual.

I have the honor to be,
With the greatest respect and esteem,
Sir,
Your most obedient servant,
EDMUND RANDOLPH.

[TRANSLATION]
Joseph Fauchet, Minister Plenipotentiary of the French Republic near the United States, to Mr. Randolph, Secretary of State of the United States.

Philadelphia, the 20th Prairial, 3d year of the French Republic, one and indivisible, (8th June, 1795.)

Your letter of the 29th of May was received by me on the 2d inst. The different subjects therein discussed, meriting the most serious consideration, I have taken some time to prepare an answer which I shall now give with all the candor the subject requires.

In the first place I shall observe, that in writing my letter of the 2d of May in consequence of a crowd of complaints which were brought to me, I had not proposed to myself a plan so extensive as that you have pursued in your dispatch. It is observed that in order to give a motive for the conduct of the Executive in every circumstance that might infringe the interests of France, you have united under a single view my former and my present representations. I shall now communicate to you, freely, what the whole

of your letter appears to enforce the reflections its object has otherwise suggested.

What, Sir, is in question between us, and upon what can we rest our discussions? Upon the prescriptions of positive contracts or the general laws of nations. France being in a state of war, considers America as a neutral and an allied power. In the first situation she has rights common to all the belligerent powers; in the second she has particular rights which she is entitled to by treaties, and which America can allow her without ceasing to be neutral. If therefore, on the one hand, positive engagements giving us right to certain privileges have been neglected or executed with indifference; if on the other certain rights common to all are become doubtful as to us, by too much moderation in regard to the acts of other powers; I would say if your neutrality has been restrained by their arbitrary decisions, my complaints have been founded: for it is that to which they have been reduced; they rest upon fact alone: and do I require it to be observed that I have hitherto avoided touching the latter point, and that latterly I have spoken on it with all the circumspection and regard that could be desired, although my instructions oblige me constantly to ask what measures the United States take for the efficacious support of the neutrality of their flag.

After having reviewed the different particular cases upon which I have complained, permit me to give an opinion which has weight with me, which is, that it is impossible for me among the constructions given to that part of the treaty to discover the intention of the two contracting parties. By the treaty of alliance, France relinquished her former neighboring possessions to the northward of the United States in which she had ports of great convenience during her wars. By the treaty of amity and commerce signed the same day, she conceived that she assured to herself some advantages as an indemnification in the ports of the United States themselves of which she had in part deprived her enemies. This latter treaty has never said that there should be given an asylum to capturing vessels coming with their prizes, it says that an asylum shall not be given to any vessel having made prizes. Permit me, Sir, to say that this is not a construction but an addition which you give to the treaty, which are different things. According to this addition it were sufficient when I complain of the repairs made to the Thetis, to reply that she had a right to them.

From these forced constructions it results that the belligerent powers raise pretensions which were not looked for, and acknowledge themselves that the meaning of our treaties appear to them obscure. The correspondence which took place on this subject between you and the minister of Great Britain, is very important to consult on this point. Have not you yourself been struck with this avowal of Mr. Hammond, that the treaty specifies only the conduct to be observed towards the capturing vessels, and says nothing of the prizes? What trouble had you in urging your construction when you answered him—"I hope, Sir, that you will not interpret the article so literally as to pretend that it refuses asylum to capturing vessels, for it excludes every vessel which shall have made prizes of the French," without doubt, Sir, that is the true construction, every thing becomes clear when that is maintained; the capturing vessel as well as her prize are not admitted into your ports.

As to the rest, Sir, as you have observed, a difference of opinion between the agent of a power and the government to which he is sent, is not by any means conclusive. I address with all my heart, with you, to the principles contained in the part of Mr. Jefferson's letter which you cite; but I observe that there is no reason to make me the reproach you seem to insinuate. I ought to insist on my manner of construction, and present it to you under all its forms as long as you do not inform me that the President cannot admit my observations. Now you have done so, I should content myself with referring them to the French government.

(To be continued.)

CONGRESS.

HOUSE OF REPRESENTATIVES,
Tuesday, May 16.

Messrs. Coit Varnum, Williams, Dent, Harrison, Hartley and Baldwin, appeared from the minutes to be the newly elected committee of Elections.

Four new members, viz. Messrs. Schreman and Sinnickson, from New-Jersey; Mr. Sumpter, from S. Carolina, and Mr. Trigg, from Virginia, were qualified and took their seats.

A message from the Senate informed the house that they had appointed the Rev. Bishop White as their Chaplain, to interchange weekly with the Chaplain to be appointed by that house.

Mr. Sitgreaves wished that the choosing of a Chaplain for that house might be the order of the day for to-morrow.

Mr. Macon believed it was not necessary that any notice should be given for the purpose; it might be the order for any day on which the gentleman chose to bring forward the subject.

The Speaker said the notice was not necessary, but was not improper to be given.

It being near twelve o'clock, the Speaker observed, that it had been usual on similar occasions to the present, to send a message to the Senate, to inform them that the House is now ready to attend them in receiving the communication of the President, agreeably to his appointment; such a message was agreed to, and sent accordingly.

Soon after the members of the Senate entered, and took the seats assigned them; and a little after twelve, the President of the United States entered, and took the chair of the Speaker (which he vacated on the entrance of the Senate, the President and Clerk of the Senate being placed on the right hand of the Chair, and the Speaker of the House

of Representatives and the Clerk on the left). After sitting a moment, he rose, and delivered the following Speech:

(See Yesterday's Gazette.)

Having concluded his Speech, after presenting a copy of it to President of the Senate, and another to the Speaker of the House of Representatives, the President retired, as did also the members of the Senate; and the Speaker having resumed his Chair, he read the Speech: After which, on motion, it was ordered to be committed to a committee of the whole to-morrow. Adjourned.

For the Gazette of the United States.
MR. FENNO,
WHILE I am writing, the state of things may be so much changed, in the European world, that a complete and correspondent change will be necessary in the United States. It must, therefore, be kept in mind, that I write with special reference to the present appearance of Europe.

In my communication which was published in your paper of Monday, 8th inst. I asked the question, "What benefit is proposed by sending an envoy to France?" For it will certainly be acknowledged, unless some good can be fairly deduced from the measure, the propriety of its adoption will at least be doubtful.

Etiquette, it is said, requires it, and why? Because an Envoy Extraordinary was sent to Great-Britain in 1794.

If the difference of circumstances is not understood, and a clear distinction between our situation then and now, is not acknowledged, I must confess my intellect must be disordered, and my discernment gone. I think a part of the difference in circumstances has been pointed out in the communications I have made; and that the system adopted by the French government, which is manifest from all their late as well as former proceedings, is incompatible with any benefits which may or can be expected to arise from the mission contemplated. In addition to the existing state of things, since I began these papers, the French government, or rather the Directory, have published a decree, in confirmation and extension of their former system. They have, by this decree, modified the treaty of France and the United States of Feb. 6, 1778, with that of Great-Britain and the United States of 1794, commonly called Jay's Treaty, so as to place to their own benefit the whole and every part of each; and after having thus modified them, without consulting any other party, have ordered "this Treaty," as they emphatically stile it, to be inserted in the bulletin (or Journal) of the laws.

Take a candid view of their whole conduct, and what does it signify to talk of etiquette? Every body knows, that mere form or ceremony in distinction from substance, is meant by the word "etiquette." Can the mere form of Envoy Extraordinary produce in the French government a total overthrow of their whole system, as it respects the United States? Will they make us compensation for the piracy committed on our trade, and peacefully give up all their high-sounding claims upon us, at the sight of this magical Envoy? Such a belief borders so strongly on nonsense, that I cannot believe any man of information entertains an idea of the kind. Will the French government abandon the warmest wish of their hearts, to destroy the commerce and navy of G. Britain, if we find them an Envoy? The object of G. Britain in their depredations on our commerce in '93 and '94, was to starve France; this they were forced to abandon, as untenable by the law of nations; and this they gave up—in the compromise effected by Jay's Treaty. But this was far enough from being the result of etiquette on the part of Great-Britain. The object of the French government is to destroy the commerce of Great-Britain, and to make all the neutral nations in Europe, and the United States, subservient to this object. And the events of war abroad, or internal changes at home, and not etiquette, must change them in this darling object.

Do not the French complain of our Treaty with G. B. as not only an injury to them generally, but as a special breach of the 17th article of their treaty with us? In this point of view, an Envoy cannot be serviceable, but with powers to shape this business to their liking—this can as well be effected by Mr. Pinckney.

Is the French Directory capable of forming one or more treaties into such shape, as perfectly to satisfy their own wishes, and adapt them to their own circumstances, without consulting any other party, as they have done with the two treaties mentioned above? If so, the sending an Envoy will be, I acknowledge, a mere matter of etiquette; but for my life I cannot see any benefit resulting from it.

This last decree of the French Directory of March 2d, 1797, is so remarkable that it claims particular notice.

They remind "all French citizens, that the treaty, concluded on the 6th February, 1778, between France and the United States, has been, on the terms of the second article, modified of full right, by that which has been concluded at London on the 19th Nov. 1794, between the United States of America and England."

The people of the United States will please to observe, that the complaints of the French Government have been aimed chiefly at this very treaty; their partisans here have incessantly complained that Mr. Jay's treaty has injured the French, and broke our Faith with them. Take notice, on the second of last March the Directory say, the treaty of Nov. 1794, this same treaty so complained of, has of full right modified their treaty with us, and they now take all the advantages of both—on what ground? In virtue of the 2d article of their treaty with us, which is in these words, viz.

"The most Christian King and the United States engage mutually, not to grant any particular favor, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall

enjoy the same favor, freely, if the concession was freely made; or on allowing the same compensation, if the concession was conditional." This discovery, made by the Directory the 2d of last March, sets all this matter right.

What are we to think of such loud and reiterated complaints about a treaty, and the injuries it inflicted on the French, when we find, by the declaration of the Directory, that the benefits given to the English, in terms, and by force of an express provision, immediately attach themselves to France? If this construction is just, and who shall dare contradict it, the necessity of an Envoy ceases—for his main business was to effect a violation of the treaty with Great-Britain, or at least a modification of that with France, so as to place them on the same footing. But this we see is done by the Directory, and solemnly recorded among their laws.

Is there an antifederalist hardy enough to complain any more of Mr. Jay's treaty? I hope not.

Some few sentiments on the proper conduct with France, shall be offered in my next.

A FRIEND TO TRUTH.
May 16, 1797.

OPINION OF
Chief Justice Ellsworth,
In a case respecting BRITISH DEBTS, lately determined in the Circuit court of the United States for North Carolina district.

It is admitted that the bond on which this suit is brought, was executed by the defendant to the plaintiffs; and that the plaintiffs have not been paid. But the defendant pleads, that since the execution of the bond, a war has existed, in which the plaintiffs were enemies; and that during the war, this debt was confiscated, and the money paid into the treasury of the state. And the plaintiffs reply, that by the treaty which terminated the war, it was stipulated, that "creditors on either side, should meet with no lawful impediment to the recovery of bona fide debts heretofore contracted."

Debts contracted to an alien, are not extinguished by the intervention of a war with his nation. His remedy is suspended while the war lasts, because it would be dangerous to admit him into the country, or to correspond with agents in it: and also because a transfer of treasure from the country to his nation, would diminish the ability of the former, and increase that of the latter, to prosecute the war. But with the termination of hostilities, these reasons and the suspension of the remedy cease.

As to the confiscation here alledged, it is doubtless true, that enemy's debts so far as consists in barring the creditor, and compelling payment from the debtors for the use of the public, can be confiscated; and that on principles of equity, though perhaps not of policy, they may be. For their confiscation as well as that of property of any kind, may serve as an indemnity for the expenses of war, and as a security against future aggression. That such confiscations have fallen into disuse, has resulted not from the duty which one nation, independent of treaties, owes to another, but from commercial policy, which European nations have found a common, and indeed a strong interest in supporting. Civil war, which terminates in a severance of empire, does perhaps less than any other, justify the confiscation of debts: because of the special relation and confidence subsisting, at the time they were contracted, and it may have been owing to this consideration, as well as others, that the American states, in the late revolution, so generally forbore to confiscate the debts of British subjects. In Virginia, they were only sequestered; in South-Carolina, all debts to whomsoever were excepted from confiscation; as were in Georgia, those of "British merchants, and others residing in Great-Britain. And in the other states, except this, I do not recollect that British debts were touched. Certain it is that the recommendation of Congress on the subject of confiscation, did not extend to them.—North-Carolina, however, judging for herself, in a moment of severe pressure, exercised the sovereign power of passing an act of confiscation, which extended, among others, to the debts of the plaintiffs. Providing, however, at the same time, as to all debts which should be paid into the treasury under that act, that they would indemnify the debtors, should they be obliged to pay again.

Allowing then that the debt in question was in fact and of right confiscated can the plaintiffs recover by the treaty of 1783?

The 4th article of that treaty is in the following words. "It is agreed that the creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted."

There is no doubt but the debt in question was a "bona fide" debt, and therefore contracted, &c. prior to the treaty. To bring it within the article, it is also requisite that the debtor and creditor should have been on different sides, with reference to the parties to the treaty, and as the defendant was confessedly a citizen of the United States, it must appear that the plaintiffs were subjects of the king of Great-Britain; and it is pretty clear, from the pleadings and the laws of the state, that they were so. It is true that on the 4th of July 1796, when North-Carolina became an independent state, they were inhabitants thereof, though natives of Great-Britain;—and they might have been claimed and holden as citizens, whatever were their sentiments or inclinations. But the state afterwards, in 1777, liberally gave to them with others similarly circumstanced, the option of taking an oath of allegiance, or of departing the state under a prohibition to return, with the indulgence of a time to sell their estates, and collect and remove their effects.—They chose the latter;

and ever after adhered to the king of Great Britain, and must therefore be regarded as on the British side.

It is also pertinent to the enquiry, whether the debt in question be within the before recited article, to notice an objection which has been stated by the defendant's counsel, viz. that at the date of the treaty, what is now sued for as a debt, was not a debt, but a nonentity;—payment having been made, and a discharge effected, under the act of confiscation: and therefore that the stipulation concerning debts did not reach it.

In the first place, it is not true that in this case there was no debt at the date of the treaty. A debt is created by contract, and exists till the contract is performed. Legislative interference, to exonerate a debtor from the performance of his contract, whether upon or without conditions, or to take from the creditor the protection of law, does not in strictness, destroy the debt, though it may, locally, the remedy for it. The debt remains, and in a foreign country, payment is frequently enforced.

Secondly, it was manifestly the design of the stipulation, that where debts had been therefore contracted, there should be no bar to their recovery, from the operation of laws passed subsequent to the contract. And to adopt a narrower construction, would be to leave creditors to a harder fate than they have been left to, by any modern treaty.

Upon a view then of all the circumstances of this case, it must be considered as one within the stipulation, that there should be "no lawful impediment to a recovery. And it is not to be doubted, that impediments created by the act of confiscation, are lawful impediments. They must therefore be disregarded, if the treaty is a rule of decision. Whether it is so or not, remains to be considered.

Here it is contended by the defendant's counsel, that the confiscation act has not been repealed by the state; that the treaty could not repeal or annul it: and therefore that it remains in force, and secures the defendant. And further, that a repeal of it would not take from him a right vested, to stand discharged.

As to the opinion, that a treaty does not annul a statute, so far as there is an interference, it is unfounded. A statute is a declaration of the public will and of high authority; but it is controulable by the public will subsequently declared. Hence the maxim, that when two statutes are opposed to each other, the latter abrogates the former. Nor is it material, as to the effect of the public will, what organ it is declared by, provided it be an organ constitutionally authorized to make the declaration. A treaty when it is in fact made, is, with regard to each nation that is a party to it, a national act an expression of the national will, as much so as a statute can be. And it does, therefore, of necessity, annul any prior statute so far as there is an interference. The supposition that the public can have two wills at the same time, repugnant to each other, one expressed by a statute, and another by a treaty, is absurd.

The treaty now under consideration was made, on the part of the United States, by a Congress composed of deputies from each state, to whom were delegated by the articles of confederation, expressly, "the sole and exclusive right and power of entering into treaties and alliances;" and being ratified and made by them, it became a complete national act, and the law of every state.

If however, a subsequent sanction of this state was at all necessary to make the treaty law here, it has been had and repeated. By a statute passed in 1787, the treaty was declared to be law in this state, and the courts of law and equity were enjoined to govern their decisions accordingly. And in 1789, was adopted here the present constitution of the United States, which declared, that all treaties made, or which should be made, under the authority of the United States, should be the supreme law of the land;—and that the Judges in every state should be bound thereby;—in any thing in the constitution or laws of any state to the contrary notwithstanding.—Surely then the treaty is now law in this state, and the confiscation act, so far as the treaty interferes with it, is annulled.

Still it is urged, that annulling the confiscation act, cannot annul the defendant's right of discharge, acquired while the act was in force.

It is true that the repeal of a law does not make void what has been well done under it, but it also true, admitting the right here claimed by the defendant, to be as substantial as a right of property can be, that he may be deprived of it, if the treaty so requires.—It is justifiable and frequent, in the adjustment of national differences, to concede for the safety of the state, the rights of individuals. And they afterwards indemnified or not, according to circumstances. What is most material to be here noted is, that the right or obstacle in question, whatever it may amount to, has been created by law, and not by the creditors. It comes within the description of "lawful impediments;" all of which, in this case, the treaty, as I apprehend removes.

Let judgement be for the Plaintiffs.
CHARLESON, April 21.
From the Patriote Francais of yesterday. A letter from the Cape, received by the post, announces that the revolters and discontented, of all colours and of all kinds, who were at the Tannery, had advanced to Petit Anse, of which they made themselves masters, and from which they threatened to march against the Cape; that confederation and alarm existed to a great degree in that city, all communication with which was cut off; that it could not obtain sufficient provisions for its consumption; the inhabitants were reduced to half a ration, and this pittance could not last longer than 15 days, at the end of which time they must die of hunger, if not taken before.