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Translated for the GALETTE of the UNITED STATES.

# FRENCH REPUBLIC. LEGISLATIVE BODY ..

COUNCIL of FIVE HUNDRED MOTION OF ORDER BY EMM. PASTORET, On the prefent flate of our political and com-mercial relations with the United States of North America.

Sutting of the 22d Meffider, 5th year, 20th June, 1997. Reprefentatives of the People, The Conflictution has ordained, that war

cannot be declared but upon the formal and neceffary proposal of the Executive Directory ; but it has also ordained that the Legiflative Body has the fole fupreme decifion of this queftion. The conflicution has ordained, that in cafe of hollilities impending or commenced, of menaces or preparations of war, against the French Republic, the Executive Directory shall be bound to employ, for the defence of the state, the means pla-ced at its difposal; but it has at the same ordained, that the Directory shall without

Yet, there is a people to whom treaties unite us; and we do not know what is our political fituation with respect to them .---On the one hand, the Executive Directory paffes decrees which are real aggreffionsdeclarations of war; on the other, we fay to ourfelvee, war does not exift ; for the Legiflative Body has not decreed it ; we are not in the predicament of hoftilities impending or commenced ; for the Legislative Bo-dy has not been informed of it. Can therefore the Executive Directory, at its pleafore the Executive Directory, at its plea-fure, add to or violate treaties and laws? If the general principles laid down upon this fubject by the Conflictution require develope-ment, does it not belong to the Legiflative Body to demand it? Ought it not to be re-membered that treaties are to nations what laws are to the citizens? The expression Punie faith, an expression invented perhaps by the jealoufy of the Romans, yet tarnishes, after twenty centuries, the country of Han-nibal. A treaty concluded on the 6th of Febru-do fo.

A treaty concluded on the 6th of Febru-ary 1778, unites, by the double tie of sommerce and friendship, France and the Uni-ted States of North America. This treaty embraces fome articles, which I am obliged embraces fome articles, which I am obliged be met with, either failing along the coafts to cite; becaufe they have become the or on the high feas, by any fhip of war of

ARTICLE II.

of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favor freely, if the conceffion was freely made, or on allowing the fame compensation, if the concession was conditional.

## ARTICLE XV.

And that more effectual care may be taken fon the fecurity of the fubjects and inhabitants of both parties, that they fuffer no injury by the men of war or privateers of the other party, all the commanders of the fhips of his most Christian majefty and of the faid United States, and all their 5th year, (2d March 1797.) fubjects and inhabitants, fhall be forbid "Article I. The commission

who are enemies of bot cher party, without any opposition or diffurbance whatfoever, not only directly from the places of the enemy aforementioned to neutral places, but allo from one place belonging to an enemy, to another place belonging to an. enemy, whether they be under the jurildiction of the fame prince, or under feveral. And it is hereby ftipulated, that free fhips fhall alfo give a freedom to goods, and that every thing fhall be deemed to be free and exempt which shall be found on board the thips belonging to the fubjects of either of the confederates, although the whole lad-ing or any part thereof thould appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner, that the fame liberty beextended to perfons who are on board a free thip, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free fhip,

unlefs they are foldiers and in actual fervice of the enemy ARTICLE XXV.

To the end that all manner of diffentions and quarrels may be avoided and prevented, on one fide and the other, it is agreed, that delay give information thereof to the Legif-lative Bedy. Yet, there is a people to whom treaties commander of the faid fhip, that it may appear thereby that the fhip really and truly belongs to the fubjects of one of the parties, which paffport shall be made out and granted according to the form annexed to this treaty; they shall likewife be recalled every year, that is, if the ship happens to return home within the space of a year. It is likewife agreed, that fuch thips being laden are to be provided not only with officers of the place whence the (hip fet fail, in the accuftomed form; and if any one shall think it fit or advisable to express in

# ARTICLE XXVII.

If the fhips of the faid fubjects, peopl or inhabitants of either of the parties shall pretext for divers decrees equally contrary to the other, or by any privateers, the faid the conflitution and to the laws. the other, or privateers, for the avoiding fhips of war or privateers, for the avoiding of any diforder, fhall remain out of cannon The most Christian king and the United States, engage mutually not to grant any particular favour to other nations, in respect three men only, to whom the mafter or commander of fuch fhip or veffel fhall exhibit his paffport concerning the property of the ship, made out according the property of inferted in this prefent treaty, and the ship, when the shall have shewed such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or fearch her in any manner, or to give her chafe, or force her to quit her intended course.

Let me now prefent the decree paffed by the Executive Directory, the 12th Ventole,

of the ex ecutive directory, to the civil tribunals of the departments, shall take care, that in disputes concerning the validity of maritime captures, no judgment shall be rendered upon the 7th article of the law of the 13th Nivofe; 3d year, without first confulting the minister of justice, conformably with the 3d article of the law of the 8th Floreal, 4th year, relative to treaties, in virtue of which, neutrals may claim an exemption, in confequence of the first of those laws, from the execution of that of the 9th of May, 1793. "Art. II. The minifter of juffice shall, in confequence, examine whether the treaties referred to, yet fubfift, or whether they have been modified fince their conclusion. minister of foreign affairs shall furnish him for

are enjoined to accelerate judgment on liti- of the papers in the registry of the tribunal." gations which may arife either concerning "If the commission of the tribunal is necessary, he the validity of the capture of cargoes or concerning the freights and detentions, by all the means in their power. "2d. Agreeably to the 18th article of

the treaty of London, of the 19th Novemticle of the treaty of the 6th February, 1778, the following are added : Timber for fhip building, Tar, \*pitch and rofin, Copper in fheets, Sails have and cordage

Sails, hemp and cordage, And everything ferving directly \* or indirect. ly for the armament or equipment of veffels, un-wrought iron and fir planks excepted. These various articles shall be confiscated as often as they shall be destined, or as it shall be at-

tempted to carry them to the enemy. "3". Agreeably to the 21ft article of the treaty of London of the 19th November, 1794, transcribed below (3) every in-dividual known to be American, bearing a commiffion given by the enemies of France, as also every failor of that nation, making part of the crew of the ships or veffels of the enemy, shall be, on that account alone, declared a pirate and treated as fuch, without being permitted, in any cafe, to alledge that he was forced to it by violence, menaces, or otherwife.

" Art. 4th. Conformably to the law of the 14th February, 1793, the provisions of the regulations of the 21st October, 1744, and of the 26th July, 1778, concerning the manner of proving the property of neutral fhips or goods, fhall be executed according to their form and tenor.

" Confequently, every American veffel, not having on board a rôle d'équipage in due form as prefcribed by the model annexed to the treaty of the 6th February, 1778, the execution of which is ordered by the 25th and 27th articles of the fame treaty,

thall be good prize." Let us in the 6rft place attend to the firft article. The Directory refers to the 3d gives a power : the decree of the 12th venofe impofes an obligation. It declares, " the commiffaries shall take care, that no judgment be rendered, without the minister of justice being first confulted." /Whereas the law only declares, in the 2d and 3d aricated to the commiffary of the executive directory, within 24 hours from the filing \* Thefe words are not contained in the Britifh treaty

# (2) ARTICLE XVIII.

In order to regulate what is in future to be effeemed contraband of war, it is agreed, that under the faid denomination shall be comprised all arms and implements ferving for the purposes of war, by land or sea, such as cannon, mulkets, mortars, petards, bombs, grenades, carcafes, fauciffes, carriages for cannon, mulket refts, bandoliers, gun-powder, match, faltpetre, ball, pikes, fwords, head-pieces, cuiraffes, halberts, lances, javelins, horfe-furniture, holfters, belts, and generally all other implements of war; as also timber for ship-building, tar or rozin, allo timber for thip-building, tar or rozin, copper in fheets, fails, hemp, and cordage, and generally whatever may ferve directly to the equipment of veffels, unwrought iron and fir planks only excepted; and all the a-bove articles are hereby declared to be juft we flipulate for treaties, for the public faith, ttempted to be carried to an enemy. And whereas the difficulty of agreeing on the precife cafes, in which alone provisions and other articles not generally contraband may be regarded as fuch, renders it expedi-ent to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed, that whenever any such articles fo becoming contraband, according to the exifting laws of nations, fhall for that reafon be feized, the fame shall not be conreatou be feized, the fame shall not be con-fifcated, but the owners thereof shall be speedily and completely indemnified; and the captors, or in their default, the go-vernment under whose authority they act, shall pay to the matters or owners of such vessels, the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the de-murrage incident to such detention. And whereas it frequently happens that And whereas it frequently happens that veffels fail for a port or place belonging to an enemy, without knowing that the fame is either belieged, blockaded or invefted; it is agreed, that every veffel fo circumstanced, nay be turned away from fuch port or place, but fhe shall not be detained, and her cargo, if not contraband, be confifcated, unlefs af-ter notice she shall again attempt to enter; but the shall be permitted to go to any other port or place the may think proper : Nor thall any veffel or goods of either party, that may have entered into fuch port or place, before the fame was belieged, blockaded, or invefted by the other, and be found therein after the reduction or furrender of fuch place, be liable to confifeation, but shall be restored to the owners or proprietors thereof. (3) ARTICLE XXI.

shall immediately referit to the minister of juftice, who, after having confulted the direc-tory, fhall within a decade, anfwer the letter of the commiffary." "The law expreisly determined to avoid the

ber, 1794, transcribed below (2) to the absolute obligation of a reference in all caf-articles declared contraband by the 24th arces; it determined it in order that it might es ; it determined it in order that it might not multiply the expenses and delays always too heavy, always too long for those who come to alk for justice. The decree of the 12th Ventole, on the contrary, impofes it as an indifpenfible neceffity. The decree then is in contradiction to the law: it is herefore in itfelf a real legislative act : it is then an usurpation of a power which the will of the people has not delegated to the directory ; and is therefore unconflitutional.

The minister of justice is to be confulted in relation to treatics in virtue of which neutrals clam an exemption, by the law of the 13th Nivofe, 3d year, from the execution of that of the 9th May 1793.

Let us first turn our attention to these two laws.

That of the 13th Nivole, Aug. 7, fays : "The national convention enjoins all the agents of the republic, all the commanders of the armed force, the officers civil and miitary, to caufe to be refpected and obferved all he provisions of the treaties which unite France to the neutral powers of the old con-tinent and to the United States of America. No infraction of those treaties shall be made. All provisions which are contrary to them, are annulled."

The following is the law of the 9th May

Article I. "The French veffels of war and privateers shall stop and bring into the ports of the republic, neutral vessels which ports of the republic, neutral venets which may be found laden in whole or in part, ei-ther with provisions belonging to neutral pow-ers and bound to enemy ports, or with mer-chandize belonging to enemies. "Art. 2. Merchandize belonging to e-nemies is declared good prize, and conficat-

article of the law of the 8th Floreal, 4th provisions. The law of the 8th Floreal at their value in the place for which they were deftined.

"Art. 3. In all cafes, neutral veffels shall be released as foon as the unlading of the provisions detained, or the merchandize feized, shall be effected. The freight for ticles, that " matters of prize, in which neutrals have any intereft, fhall be commu-nicated to the committeene for granted in proportion to their detention, by the tribunals who have cognizance of the validity of prizes." The law of the 9th May 1793, was repealed

on the 23 dof May following, on the report and request of the committee of public fafety, fo far as concerned the United States. Five days afterwards, on the 28th of the fame month, the national Convention, on the mo-tion of one of its members, abrogated the repeal, decreed that merchandize detained found continue provisionally fequestrated, and that the united committees of public fafety and of marine fould make a defini-

tive report to them in three days. This report was only made on the 1ft of July following; but it confirmed the ex-ception pronounced by the decree of the 23d of May, in favor of the United States.

comprehend them in it. The decree of the 23d May and 1ft July 1793; pronounces in their favor an exception at once jult and conformable with the treaty of the oth Feb. 1778. It is pretended, that the decree of the 27th of the fame month repeals it. 1

am far from thinking fo; no expression ma-nifest it; and in fact is it to be prefumed, that without the smallest difficultion (the newfpapers of that period do not even men-tion that the decree was proposed and paff-ed) a law was repealed, which had been made fome weeks before, made after a pub-lic opposition, after a frelh confideration twice adopted, always at the request of the committee of public fafety, and enacted exprefsly to prevent the American's being com-prehended in the law of the 9th of May '93.

Howfoever it might be, the doubt, if there existed a legitimate doubt, could not last longer than the 2d month of the 2d year. For a law of the 27th Brumaire fays : " Art. 2. The treaties which bind France

to the United States of America shall be faithfully executed."

"Art. 5. The committee of public fafe-ty is charged to take measures for drawing closer the bands of alliance and friendshi which unite the French republic to the U. nited States of America.'

Behold ! what the national convention declared, what it defired, even at the period when perjuries and crimes predominated ! It expressed the fame fentiment after the downfall of decemviral tyranny. The 7th arti-cle of the decree of the 13th Nivofe, 3d year, effectually renews the injunction upon the ci-vil and military officers to caufe to be ref-pected and observed all the provisions of the treaties between France and the United States. Have theie two laws been fince repealed? they have not. Supposing then that the decree of the 9th of May 1793 had recovered its force with refpect to North America, it loft it again. And how then is it poffible to imagine that the executive directory should found themfelves upon it? How imagine that the minister of justice could prevent the execution of a law in force, and direct the execution of one repealed ?

The 2d article of the decree of the 12th Ventofe charges the minister of justice to ex-amine whether treaties, which come in queftion, yet fublift, or whether they have been modified fince their conclusion.

We are in the first place aftonished, when treaties between two powers are in queffion,s that the directory flould addrefs itfelf to the minister of justice. The examination, the maintenance, the execution of treaties, belong, by the nature of things, to the minifter of foreign affairs ; and the law of the 10th Vendemaire, 4th year, contains an exprefs provision for that purpofe. I never-thelefs conceive, that the question being con-fidered in relation to prizes, a fubject of judicial cognizance, the directory should apply to the minister of juffice. But at leaft it should not charge him exclusively and without limitation with the examination, whether treaties yet Jubfil or whether they have been modified.

A treaty, moreover, is not the act and the property of one nation only ; it belongs to the two nations who have fubfcribed it ; the confent of both is necessary to defiroy it. If one of them thinks the other has we should not put into the balance with refusal to explain, or an unjust explanation thefe interests the produce of a few captures of the party complained against, the trea-of provisions. for the two flates ; it must be obeyed on war declared.

doing any injury or damage to the other fide ; and if they act to the contrary they shall be punished, and shall moreover be bound to make fatisfaction for all matter of damage, and the interest thereof, by reparation, under the pain and obligation of their perfon and go

# ARTICLE XVI.

All thips and merchandizes of what nature foever, which shall be refcued out of the hands of any pirates or robbers on the high feas, fhall be brought into fome port of either flate, and fhall be delivered to the cuttody of the officers of that port, in order to be reftored entire to the true pro-prietor, as foon as due and fufficient proof fhall be made concerning the property thereof.

### ARTICLE XVII.

It shall be lawful for the ships of war of either party, and privateers, freely to carry whitherfoever they pleafe, the fhips and goods taken from their enemies, without being obliged to pay any duty to the offi-cers of the admiralty or any other judges; nor shall fuch prizes be arrested or feized when they come to and enter the ports of either party; nor shall the fearchers or other officers of those places, fearch the fame, or make examination concerning the lawfulnefs of fuch prizes; but they may hoift fail at any time and depart, and earry their prizes to the places expressed in their commissions, which the commanders of fuch fhips of war fhall be obliged to fhew : on the contrary, no fhelter or refuge fhall be given in their ports to fuch as shall have made prize of the subjects, people or pro-perty of either of the parties; but if such shall come in, being forced by ftrefs of weather, or the danger of the fea, all pro-per means shall be vigorously used, that they go out and retire from thence as soon as possible.

#### ARTICLE XXIII.

It shall be lawful for all and fingular the fubjects of the most Christian king, and the citizens, people and inhabitants of the faid United States, to fail with their ships with all manner of liberty and fecurity, no diftinction being made who are the proprietors of the merchandizes laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the most Christian king, or the United States. It shall likewife be lawful for the fubjects and inhabitants aforefaid, to fail with the fhips and merchandizes aforementioned, and to trade with the fame liberty and fecurity

this purpose, with all the information he may fland in need of, and the former shall refer the matter to the executive directory, in the manner preferibed by the law of the 8th Floreal, 4th year. " Art. III. The executive directory re-

minds all French citizens, that the treaty made on the 6th February, 1778, between France and the United States of America, has been, according to the terms of its fe-cond article, modified of full right by that concluded at London, on the 19th Novem-ber, 1794, between the United States of America and England.

# " Consequently,

" 1ft. Agreeably to the 17th article of the treaty of London of the 19th of November, treaty of London of the right of November, 1794, transcribed below (1) all merchan-dize belonging to the enemy, or not suffici-ently appearing to be neutral, laden under the American flag, shall be confiscated; but the vessel on board of which it shall be found, shall be released and reftored to the owner. The commiffaries of the executive directory

(1) ARTICLE XVII.

It is agreed, that in all cafes where veffels hall be captured or detained on just sufpicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war; the faid veffel fhall be brought to the nearest or most convenient port ; and if any property of an ene-my fhould be found on board fuch veffel, that part only which belongs to the enemy fhould be made prize, and the veffel shall be at liberty to proceed with the remainder without any impediment. And it is agreed, that all proper measures shall be taken to prevent delay, in deciding the cases of ships or cargoes to brought in for adjudication ; and in the payment or recovery of any indemnification, adjudged or agreed to be paid from the places, ports and havens of thole, to the mafters or owners of fuch thips.

It is likewife agreed, that the fubjects and citizens of the two nations, fhall not do any acts of hostility or violence against each other, nor accept commissions or instruction fo to act from any foreign prince or flate, enemies to the other party; nor fhall the enemies of one of the partics be permitted to invite or endeavor to enlift in their military fervice, any of the fubjects or citizens of the other party; and the laws against all fuch offences and aggreffions shall be punctu-ally executed. And if any subject or citi-zen of the faid parties respectively, shall ac-cept any foreign commission, or letters of marque, for arming any veffel to act as a pri-vateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the faid party, to treat and punish the faid subject or citizen, having fuch commission or letters of marque, as a

## The law of the 1ft July 1793, is thus expreffed :

"The national convention, withing to maintain the union established between the French republic and the United States of America, decrees, that the veffels of the U- | faithful than themfelves ? nited States are not comprehended in the provisions of the decree of the 9th May ; ing it to be true, obviates the remarks I have conformably to the 16th article of the trea- made ; and as I little know to what extent ty concluded on the 6th Feb. 1778." On the 27th of the fame month, the fol-

owing decree was made :

"The national convention, after having heard the report of its committee of marine, upon the petition of the owners and crew of the privateer the Sans Culotte de Honfleur, praying that the deerce of the oth May laft may be maintained, decrees, that it maintains the provisions of the decree of the 9th of last May, relative to neutral veffels laden with provifious or merchandize belonging to enemy powers; that it shall have its full and complete execution ; and that confe- immediately become common to the other. quently all other provisions which may be to the contrary are and fhall be repealed."

Let us recapitulate these different laws, let us combine them together; let us fee what is their refult, what is confequently, in which directs the confife relation to the Americans, the flate of the French legislation upon the fubject of prizes. The law of the 9th May 1793, is the old-eft : how shall it be reconciled with the 23d

article of the treaty of 1778?

The 23d article permits the French and the inhabitants of the United States freely and fafely to frequent the ports belonging to a power in enmity with the two contracting parties or one of them; it not only permits a direct commerce from an enemy port to a neutral port, but even from one my's property on board of neutral veffels, enemy port to another; it adjudges free and to vellore neutral property found and guarantees all merchandize found on on board enemy veffels. Such was board of veffels of one of the two contract- always the fyitem of England. The United ing parties, and this, when the cargo belongs States, who, until then, had no treaty of in whole or in part to enemies of one of commerce with her, feverely felt the evil of the two ; contraband alone excepted.

What in the mean time fays the law of the 9th May 1793? It authorizes French thips of war and privateers to ftop and bring into our ports neutral veffels laden with provisions for an enemy port, or with merchandize belonging to an enemy, and declares this merchandize to be confifcated for the benefit of the captors.

The United States of America were not named in the law ; neverthelefs, as its pro- made in 1 visions are general, it was impossible not to America,

I know what will be answered. The treaty, it will be faid, was first violated by the Americans : should we then be more

fuch an excufe is proper. If I should ad-mit, in the mean time, the validity of the excufe and the precife application of the reproach, the truth of the infraction with which the United States of America is charged, would still remain to be proved. The 3d article of the decree of the 12th

ventofe declares the treaty of 1778 to be modified of full right by that of 1794. The treaty of 1778 lays, article 2d : "France and America engage not to grant any par-ticular favor to other nations, in refpect of commerce and navigation, which shall not party." What then is the modification produced in this article by the treaty of the

It is, fays the decree, in the 17th article which directs the confifcation of all enemy merchandize, or fuch as does not fufficiently appear to be neutral, laden under the American flag.

There never was a maritime war which did not induce discussions on the subject of prize, between the contending and the neu-tral powers. The principles of different nations have not always been uniform in this refpect : yet there is one of them which is more general, and which the law of na-tions does not difavow : it is, to take enctheir veffels being flopped and even detained, when in the end they must be reflored. I fuppofe that this confideration dictated the 17th article of the treaty of 1794 : but how then does it modify the 2d article of the treaty of the 6th Feb. 1778 ? Where then is the particular favour it grants to the English? The decree of the 12th ventofe afterwards

adds to the catalogue of contraband articles mentioned in the 24th article of the treaty made in 1778 between France and North