

of this state of things, to give warning to all within its jurisdiction to abstain from acts that shall contravene those duties, under the penalties which the laws of the land (of which the law of nations is a part) annexes to acts of contravention.

This, and no more is conceived to be the true import of a proclamation of neutrality. It does not imply, that the nation which makes the declaration will forbear to perform to any of the warring powers, any stipulations in treaties which can be performed, without rendering it an associate or party in the war. It therefore does not imply in our case, that the United States will not make those distinctions, between the present belligerent powers, which are stipulated in the seventh and twenty-second articles of our treaty with France; because these distinctions are not incompatible with a state of neutrality: they will in no shape render the United States, an associate or party in the war. This must be evident, when it is considered, that even to furnish determinate succours of a certain number of ships or troops, to a power at war, in consequence of antecedent treaties having no particular reference to the existing war, is not inconsistent with neutrality; a position well established by the doctrines of writers, and the practice of nations.\*

But no special aids, succours, or favors having relation to war, not positively and precisely stipulated by some treaty of the above description, can be afforded to either party, without a breach of neutrality.

In stating that the proclamation of neutrality does not imply the non-performance of any stipulations of treaties, which are not of a nature to make the nation an associate or party in the war, it is conceded, that an execution of the clause of guarantee contained in the eleventh article of our treaty of alliance with France would be contrary to the sense and spirit of the proclamation; because it would engage us with our whole force as an associate, or auxiliary in the war; it would be much more than the case of a definite limited succour, previously ascertained.

It follows, that the proclamation is virtually a manifestation of the sense of the government, that the United States are, under the circumstances of the case, not bound to execute the clause of guarantee.

If this be a just view of the force and import of the proclamation, it will remain to see, whether the President in issuing it acted within his proper sphere, or stepped beyond the bounds of his constitutional authority and duty.

It will not be disputed that the management of the affairs of this country with foreign nations, is confided to the government of the United States.

It can as little be disputed, that a proclamation of neutrality, when a nation is at liberty to keep out of a war in which other nations are engaged, and means so to do, is a usual and a proper measure. Its main object and effect are to prevent the nation being immediately responsible for acts done by its citizens, without the privity or connivance of the government in contravention of the principles of neutrality.†

An object this of the greatest importance to a country, whose true interest lies in the preservation of peace.

The inquiry then is, What department of the government of the United States is the proper one to make a declaration of neutrality in the cases in which the engagements of the nation permit, and its interests require such a declaration.

A correct and well informed mind will discern at once, that it can belong neither to the legislative, nor judicial department, and of course must belong to the executive.

The legislative department is not the organ of intercourse between the United States and foreign nations. It is charged neither with making, nor interpreting treaties. It is therefore not naturally that organ of the government, which is to pronounce the existing condition of the nation, with regard to foreign powers, or to admonish the citizens of their obligations and duties as founded upon that condition of things; still less is it charged with enforcing the execution and observance of those obligations and those duties.

It is equally obvious, that the act in question is foreign to the judiciary department of the government. The province of that department is to decide litigations in particular cases. It is indeed charged with the interpretation of treaties, but it exercises this function only in the litigated cases, that is where contending parties bring before it a specific controversy. It has no concern with pronouncing upon the external political relations of treaties between government and government. This position is too plain to need being insisted upon.

It must then of necessity belong to the executive department to exercise the function in question, when a proper case for the exercise of it occurs.

It appears to be connected with that department in various capacities.—As the organ of intercourse between the nation and foreign nations—as the interpreter of the national treaties in those cases in which the judiciary is not competent, that is, in the cases between government and government—as that power which is charged with the execution of the laws, of which treaties form a part—as that power which is charged with the command and application of the public force.

This view of the subject is so natural and obvious, so analogous to general theory and practice, that no doubt can be entertained of its justness, unless such doubt can be deduced from particular provisions of the constitution of the United States.

Let us see then if cause for such doubt is to be found in that constitution.

The second article of the constitution of the United States, section first, establishes this general proposition, that "the executive power shall be vested in a President of the United States of America."

The same article in a succeeding section proceeds to delineate particular cases of executive power. It declares among other things, that the President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; that he shall have power, by and with the advice and consent of the Senate, to make treaties; that it shall be his duty to receive ambassadors and other public ministers, and to take care that the laws be faithfully executed.

It would not conflict with the rules of sound construction to consider this enumeration of particular authorities as derogating from the more comprehensive grant contained in the general clause, further than as it may be coupled with express restrictions or qualifications; as in regard to the co-operation of the Senate in the appointment of officers and the making of treaties; which are qualifications of the general executive powers of appointing officers and making treaties; because the difficulty of a complete and perfect specification of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which grants the legislative powers of the government, the expressions are, "All legislative powers herein granted, shall be vested in a Congress of the United States." In that which grants the executive power, the expressions are, as already quoted, "The executive power shall be vested in a President of the United States of America."

The enumeration ought rather therefore to be considered as intended by way of greater caution, to specify and regulate the principal articles implied in the definition of executive power: leaving the rest to flow from the general grant of that power, interpreted in conformity to other parts of the constitution, and to the principles of free government.

The general doctrine of our constitution then is, that the executive power of the Nation is vested in the President; subject only to the exceptions and qualifications which are expressed in the instrument.

Two of these have been already noticed—the participation of the Senate in the appointment of officers, and the making of treaties. A third remains to be mentioned—the right of the legislature "to declare war & grant letters of marque and reprisal."

With these exceptions the executive power of the Union is completely lodged in the President. This mode of constituting the constitution has indeed been recognized by Congress in formal acts, upon full consideration and debate. The power of removal from office is an important instance. And since upon general principles, for reasons already given, the issuing of a proclamation of neutrality is merely an executive act; since also the general executive power of the Union is vested in the President, the conclusion is, that the step which has been taken by him, is liable to no just exception on the score of authority.

It may be observed that this inference would be just, if the power of declaring war had not been vested in the legislature, but that this power naturally includes the right of judging, whether the nation is under obligations to make war or not.

The answer to this is, that however true it may be, that the right of the legislature to declare war, includes the right of judging whether the nation be under obligations to make war or not, it will not follow, that the executive is in any case excluded from a similar right of judgment in the execution of its own functions.

If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; and when in pursuance of this right it has concluded, that there is nothing in them inconsistent with a state of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the laws of nations as well as the municipal law, which recognizes and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the nation, to avoid giving a cause of war to foreign powers.

This is the direct and proper end of the proclamation of neutrality.—It declares to the United States their situation with regard to the powers at war, and makes known to the community, that the laws incident to that situation will be enforced. In doing this, it conforms to an established usage of nations, the operation of which, as before remarked, is to obviate a responsibility on the part of the whole society, for secret and unknown violations of the rights of any of the warring parties by its citizens.

Those who object to the proclamation will readily admit, that it is the right and duty of the executive to judge of, or to interpret, those articles of our treaties which give to France particular privileges, in order to the enforcement of those privileges: But the necessary consequence of this is, that the executive must judge what are the proper bounds of those privileges—what rights are given to other nations by our treaties with them—what rights the law of nature and nations gives and our treaties permit, in respect to those nations with whom we have no treaties; in fine, what are the reciprocal rights and obligations of the United States, and of all and each of the powers at war.

The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of

government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized or not: And where a treaty antecedently exists between the United States and such nation, that right involves the power of giving operation, or not, to such treaty. For until the new government is acknowledged, the treaties between the nations, as far at least as regards public rights, are of course suspended.

This power of determining virtually in the case supposed upon the operation of national treaties, as a consequence of the power to receive ambassadors and other public ministers, is an important instance of the right of the executive to decide the obligations of the nation with regard to foreign nations. To apply it to the case of France, if there had been a treaty of alliance offensive and defensive between the United States and that country, the unqualified acknowledgment of the new government would have put the United States in a condition to become an associate in the war in which France was engaged—and would have laid the legislature under an obligation if required, and there was otherwise no valid excuse, of exercising its power of declaring war.

This serves as an example of the right of the executive, in certain cases, to determine the condition of the nation, though it may consequentially affect the proper or improper exercise of the power of the legislature to declare war. The executive indeed cannot controul the exercise of that power further than by its exercise of its general right of objecting to all acts of the legislature; liable to being overruled by two-thirds of both houses of Congress. The legislature is free to perform its own duties according to its own sense of them; though the executive in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decisions.

From the division of the executive power, these results, in reference to it, a concurrent authority in the distributed cases.

Hence in the case stated, though treaties can only be made by the President and Senate, their activity may be continued or suspended by the President alone.

No objection has been made to the President's having acknowledged the Republic of France, by the reception of its minister, without having consulted the Senate; though that body is connected with him in the making of treaties, and though the consequence of his act of reception is to give operation to the treaties heretofore made with that country. But he is censured for having declared the United States to be in a state of peace and neutrality with regard to the powers at war; because the right of changing that state and declaring war belongs to the legislature.

It deserves to be remarked, that as the participation of the Senate in the making of treaties, and the power of the legislature to declare war, are exceptions out of the general "executive power" vested in the President, they are to be construed strictly, and ought to be extended no further than is essential to their execution.

While therefore the legislature can alone declare war, can alone actually transfer the nation from a state of peace to a state of war—it belongs to the "executive power" to do whatever else the laws of nations, co-operating with the treaties of the country, enjoin in the intercourse of the United States with foreign powers.

In this distribution of powers, the wisdom of our constitution is manifested. It is the province and duty of the executive to preserve to the nation the blessings of peace. The legislature alone can interrupt those blessings, by placing the nation in a state of war.

But though it has been thought advisable to vindicate the authority of the executive on this broad and comprehensive ground, it was not absolutely necessary to do so. That clause of the constitution which makes it his duty to "take care that the laws be faithfully executed," might alone have been relied upon, and this simple process of argument pursued.

The President is the constitutional executor of the laws. Our treaties and the laws of nations form a part of the law of the land. He who is to execute the laws, must first judge for himself of their meaning. In order to the observance of that conduct which the laws of nations, combined with our treaties, prescribe to this country, in reference to the present war in Europe, it was necessary for the President to judge for himself, whether there was any thing in our treaties incompatible with an adherence to neutrality. Having judged that there was not, he had a right, and if in his opinion the interests of the nation required it, it was his duty as executor of the laws, to proclaim the neutrality of the nation, to exhort all persons to observe it, and to warn them of the penalties which would attend its non-observance.

The proclamation has been represented as enacting some new law. This is a view of it entirely erroneous. It only proclaims a fact with regard to the existing state of the nation, informs the citizens of what the laws previously established require of them in that state, and warns them that these laws will be put in execution against the infractors of them.

PACIFICUS.

### Philadelphia, June 29.

Abstract of further European News.

Seven thousand English troops have arrived at Ostend.—It is expected that Dunkirk will be attacked.—The extent of territory which his Majesty the King of Prussia has acquired in Poland, is estimated at 1000 square leagues; with a population of twelve or thirteen hundred thousand souls.—The Polish Noblemen at Vienna are set out to pay homage to the Empress and the King of Prussia.—It is reported that the French ministry are taking measures to detach Great-Britain from the general combination of powers.—A Spanish ship, the N. S. de la Concepcion, from Vera Cruz, taken by the French privateer Dumourier, is retaken by the Achilles privateer of Weymouth, and carried into Baltimore, in Ireland.—this is another Register Ship, which was taken in company with that re-captured by the Phaeton Frigate.—The bank of England

discounted in one day, bills to the amount of twelve hundred thousand pounds.—The Irish Catholic convention have voted an address of thanks to the King, acknowledging their gratitude for his generous recommendation, by which they have received substantial benefits from the wisdom and liberality of Parliament—also an address to the Lord Lieutenant—they also voted 2000l. for a pedestrial statue of the King, and donations to sundry of their friends.—After exhorting their brethren to join in every constitutional mode of promoting a Parliamentary reform, they concluded by declaring that they now look upon themselves as freemen—and then dissolved the convention.

The Custom House Revenues (says an Irish paper) of the port of London have fallen in the month ending the 25th April, fifty per cent! The communication between France and Ostend was wholly stopped the 5th May. The French in their late attack on the Austrian lines made great Havoc in the Prince de Ligne's Regiment. The English and Hanoverian troops under the command of the Duke of York it appears have been in some of the late engagements with the French.—A number of valuable captures have lately been made by the French privateers from the English and Dutch. On a motion for receiving a petition from the town of Birmingham respecting a Parliamentary reform, Mr. Pitt was in the majority for receiving the same.

The partitioning of Poland by the Empress and King of Prussia is a measure that meets with general execration.

The Snow Pallas, Capt. Avery, arrived at New-York last Monday afternoon, from London. Advices by this vessel are to the 9th of May.

The May Packet is also arrived at New-York, from Falmouth, but brings no intelligence later than has been already published.

The Ship Laurens of Charleston, South-Carolina, bound to London, was taken by a French privateer and carried into Havre-de-Grace, on suspicion of having British property on board. The case of this vessel having been investigated by the Court of Commerce at Havre, it was decreed that the ship should be restored to her Captain and owners—and the owners and Captain of the privateer was condemned to pay all damages.

Governor Moultrie of South-Carolina, has issued a proclamation, prohibiting all vessels from the windward Islands from immediately proceeding to the city of Charleston, or until they have been previously examined; this order is in consequence of information received that a pestilential disease has lately been prevalent in Grenada and other West-India islands to windward.

Preparations are making in almost all parts of the United States for a splendid celebration of the great American Anniversary, the 4th July—

*Hail the day! its triumphs tell,  
Then the power of Despot fell—  
Raise to seraph strains the lay,  
This is Freedom's Holiday!*

The militia guard which had been put on board the prize Ship William, was on Tuesday last removed, and the vessel delivered up to the captors—the President of the United States having, it is said, previously decided the question relative to her capture.

A French merchant ship, mounting 4 cannon, 4 swivels and 2 blunderbusses, is arrived at Baltimore, after having beat off an English privateer floop mounting 10 or 12 guns.

By recent information from the Southward, it appears that only four towns of the Creek nation are hostile to the United States. In the demolition of these towns, the Creek Chiefs say they are ready to co-operate with the whites.

The old American Company of Comedians, are arrived in town from New-York, we hear, the Theatre is to be opened the beginning of next week.

Extract of a letter from a Captain of a vessel at Falmouth, dated April 28.

"There is a very hot press here but not a man taken from any of the American vessels."

An India paper of the 29th Dec. printed at Calcutta—contains a melancholy account of the fate of Mr. Munro—only son of Sir Hector Munro—who lost his life by a Tyger.—Mr. Munro and some others had landed on Cox's Island to divert themselves with shooting deer—having fatigued themselves, at half past 3. P. M. they sat down on the edge of a jungle or thicket, to eat some cold meat—when a royal Tyger sprung on them from the bushes, seized Mr. Munro, who happened to be sitting down, by the head, and ran off with him as easily as a dog would with a kitten.—Three shot were fired which wounded the beast, who dropped his prey, but so horribly mangled that he died in great agonies 24 hours after. The Tyger was supposed to be 9 feet long and about 4½ feet high.

By an Act of Congress, passed at the last session, the Gold Coins of England and Portugal, are to pass at the same rate as at present, after the first of July—that is, 89 cents the penny-weight. But the Gold Coins of France and Spain, and the dominions of Spain, will from that period pass at the rate of 87 cents the penny-weight.

Married, at Shirley, Virginia, his Excellency HENRY LEE, to Miss ANN CARTER, daughter of CHARLES CARTER, Esq.

ARRIVED at the PORT of PHILADELPHIA,  
Ship Fame, Blunt, New-Hampshire  
Brig Houlbrooke, Hughes, Gibraltar  
Charlotte, Pride, Liverpool  
Schr. Recovery, Fortescue, Trinidad  
Two Sisters, Post, New-Providence  
Alexandria, Norris, Cape-Francois  
Sloop Freedom, Cooper, St. Croix

### PRICE OF STOCKS.

6 per Cents, 17/7  
3 per Cents, 9/10  
Deferred, 10/2  
Full shares Bank U. S. 5 per cent, 24/.

\* See Vattel, Book III. Ch. 6. Sec. 101.

† See Vattel Book III. Chap. 7. Sec. 113.