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FOR THE GAZETTE.

No. VII.

THE remaining objection to the Proclamation of neutrality, ſtill to be diſcuſſed, is that it was out of time and unneceſſary.

To give colour to this objection it is aſked—why did not the Proclamation appear when the war commenced with Auſtria and Pruſſia? why was it forborne, till Great Britain, Holland and Spain became engaged? why did not the government wait till the arrival at Philadelphia of the Miniſter of the French Republic? why did it volunteer a declaration not required of it by any of the belligerent parties?

To moſt of theſe queſtions ſolid anſwers have already appeared in the public prints. Little more can be done than to repeat & enforce them.

Auſtria and Pruſſia are not maritime powers. Contraventions of neutrality as againſt them were not likely to take place to any extent, or in a ſhape that would attract their notice. It would therefore have been uſeleſs, if not ridiculous, to have made a formal declaration on the ſubject, while they were the only parties oppoſed to France.

But the reverſe of this is the caſe with regard to Spain, Holland and England. Theſe are all commercial maritime nations. It was to be expected, that their attention would be immediately drawn towards the United States, with ſenſibility and even with jealouſy. It was to be feared, that ſome of our citizens might be tempted by the proſpect of gain to go into meaſures, which would injure them and commit the peace of the country. Attacks by ſome of theſe powers upon the poſſeſſions of France in America were to be looked for as a matter of courſe. While the views of the United States as to that particular, were problematical, they would naturally conſider us as a power that might become their enemy. This they would have been the more apt to do, on account of thoſe public demonſtrations of attachment to the cauſe of France, of which there has been ſo great a diſplay. Jealouſy, every body knows, eſpecially if ſharpened by reſentment, is apt to lead to ill treatment; ill treatment to hoſtility.

In proportion to the probability of our being regarded with a ſuſpicious and conſequently an unfriendly eye, by the powers at war with France; in proportion to the danger of imprudencies being committed by any of our citizens, which might occaſion a rupture with them—the policy on the part of the government, of removing all doubt, as to its own diſpoſition, and of deciding the condition of the United States, in the view of the parties concerned, became obvious and urgent.

Were the United States now what, if we do not raſhly throw away the advantages we poſſeſs, they may expect to be in fifteen or twenty years, there would have been more room for an inſinuation which has been thrown out—namely, that they ought to have ſecured to themſelves ſome advantage, as the conſideration of their neutrality; an idea however of which the juſtice and magnanimity cannot be commended. But in their preſent ſituation, with their preſent ſtrength and reſources, an attempt of that kind could have only ſerved to diſplay pretenſions at once exceſſive and unprincipled. The chance of obtaining any collateral advantage, if ſuch a chance there was, by leaving a doubt upon our intentions, as to peace or war, could not wiſely have been put for a ſingle inſtant in competition with the tendency of a contrary conduct to ſecure our peace.

The conduciveneſs of the declaration of neutrality to that end was not the only recommendation to the adoption of the meaſure. It was of great importance that our own citizens ſhould underſtand, as ſoon as poſſible, the opinion which the government entertained of the nature of our relations to the warring parties and of the propriety or expediency of our taking a ſide or remaining neuter. The arrangements of our merchants could not but be very differently affected, by the one hypotheſis, or the other; and it would neceſſarily have been very detrimental and perplexing to them to have been left in uncertainty. It is not requiſite to ſay how much our agriculture and other intereſts would have been likely to have ſuffered, by embarraſſments to our merchants.

The idea of its having been incumbent on the government to delay the meaſure for the coming of the Miniſter of the French Republic, is as abſurd as it is humiliating. Did the executive ſtand in need of the logic of a foreign agent to enlighten it as to the duties or intereſts of the nation? or was it bound to aſk his conſent to a ſtep which appeared to itſelf conſiſtent with the former and conducive to the latter?

The ſenſe of our treaties was to be learnt from the treaties themſelves. It was not difficult to pronounce before hand, that we had a greater intereſt in the preſervation of peace, than in any advantages with which France might tempt our participation in the war. Commercial privileges were all that ſhe could offer of real value in our eſtimation, and a *carte blanche* on this head would have been an inadequate recompence for renouncing peace and committing ourſelves voluntarily to the chances of ſo precarious and perilous a war. Beſides, if the privileges which might have been conceded were not founded in a real permanent mutual intereſt—of what value would be the treaty that ſhould concede them? ought not the calculation, in ſuch caſe, to be upon a ſpeedy reſumption of them, with perhaps a quarrel as the pretext? on the other hand may we not truſt, that commercial privileges, which are truly founded in mutual intereſt will grow out of that intereſt; without the neceſſity of giving a premium for them at the expence of our peace?

To what purpoſe then was the executive to have waited for the arrival of the miniſter? was it to give opportunity to contentious diſcuſſions—to intriguing machinations—to the clamors of a faction won to a foreign intereſt?

Whether the declaration of neutrality iſſued upon or without the requiſition of any of the belligerent powers, can only be known to their reſpective miniſters and to the proper officers of our government. But if it be true that it iſſued without any ſuch requiſition, it is an additional indication of the wiſdom of the meaſure.

It is of much importance to the end of preſerving peace, that the belligerent powers ſhould be thoroughly convinced of the ſincerity of our intentions to obſerve the neutrality we profeſs; and it cannot fail to have weight in producing this conviction that the declaration of it was a ſpontaneous act—not ſtimulated by any requiſition on the part of either of them—proceeding purely from our own view of our duty and intereſt.

It was not ſurely neceſſary for the government to wait for ſuch a requiſition; while there were advantages and no diſadvantages in anticipating it. The benefit of an early notification to our merchants, conſpired with the conſideration juſt mentioned, to recommend the courſe which was purſued.

If in addition to the reſt, the early manifeſtation of the views of the government has had any effect in fixing the public opinion on the ſubject, and in counteracting the ſucceſs of the effort which it was to be foreſeen would be made to diſunite it, this alone would be a great recommendation of the policy of having ſuffered no delay to intervene.

What has been already ſaid in this and in preceding papers affords a full anſwer to the ſuggeſtion, that the Proclamation was unneceſſary. It would be a waſte of time to add any thing more.

But there has been a criticiſm ſeveral times repeated, which may deſerve a moment's attention. It has been urged, that the Proclamation ought to have contained ſome reference to our treaties, and that the generalty of the promiſe to obſerve a conduct *friendly* and *impartial* towards the belligerent powers ought to have been qualified with expreſſions equivalent to theſe—"*as far as may conſiſt with the treaties of the United States.*"

The inſertion of ſuch a clauſe would have intirely defeated the object of the Proclamation, by rendering the intention of the government equivocal. That object was to aſſure the powers at war and our own citizens, that in the opinion of the executive it was conſiſtent with the duty and intereſt of the nation to obſerve a neutrality in the war, and that it was intended to purſue a conduct correſponding with that opinion. Words equivalent to thoſe contended for would have rendered the other part of the declaration nugatory; by *leaving it uncertain whether the executive did or did not believe a ſtate of neutrality to be conſiſtent with our treaties.* Neither foreign powers nor our own citizens would have been able to have drawn any concluſion from the Proclamation, and both would have had a right to conſider it as a mere equivocation.

By not inſerting any ſuch ambiguous expreſſions, the Proclamation was ſuſceptible of an intelligible and proper conſtruction. While it denoted on the one hand, that in the judgment of the executive, there was nothing in our treaties obliging us *to become a party in the war*, it left it to be expected on the other—that all ſtipulations compatible with neutrality, according to the laws and uſages of nations, would be enforced. It follows, that the Proclamation was in this particular exactly what it ought to have been.

The words "make known the diſpoſition of the United States" have alſo given a handle to cavil. It has been aſked how could the Preſident undertake to declare the diſpoſition of the United States. The people for aught he knew may have been in a very different ſentiment. Thus a conformity with republican propriety and modeſty is turned into a topic of accuſation.

Had the Preſident announced his own diſpoſition, he would have been chargeable with egotiſm if not preſumption. The conſtitutional organ of intercourſe between the United States and foreign nations——whenever he ſpeaks to them, it is in that capacity; it is in the name and on behalf of the United States. It muſt therefore be with greater propriety, that he ſpeaks of their diſpoſition than of his own.

It is eaſy to imagine, that occaſions frequently occur in the communications to foreign governments and foreign agents, which render it neceſſary to ſpeak of the friendſhip or *friendly diſpoſition* of the United States, of *their diſpoſition* to cultivate harmony and good underſtanding, to reciprocate neighbourly offices, &c. &c. It is uſual for example when public miniſters are received, for ſome complimentary expreſſions to be interchanged. It is preſumable, that the late reception of the French miniſter did not paſs, without ſome aſſurance on the part of the Preſident of the friendly diſpoſition of the United States towards France. Admitting it to have happened, would it be deemed an improper arrogation? if not, why was it more ſo, to declare the diſpoſition of the United States to obſerve a neutrality in the exiſting war?

In all ſuch caſes nothing more is to be underſtood than an official expreſſion of the *political* diſpoſition of the nation *inferred* from its political relations, obligations and intereſts. It is never to be ſuppoſed that the expreſſion is meant to convey the preciſe ſtate of the individual ſentiments or opinions of the great maſs of the people.

Kings and Princes ſpeak of their own diſpoſitions. The magiſtrates of republics of the diſpoſitions of their nations. The Preſident therefore has evidently uſed the ſtyle adapted to his ſituation, and the criticiſm upon it is plainly a cavil.

PACIFICUS.

FROM THE COLUMBIAN CENTINEL.

MR. RUSSELL,

THE queſtion whether a ſtate is *ſuable* or not, will ſpeedily arreſt the attention of the public. Every information on ſo important a ſubject, ought to have free circulation. The rant of *ſchool-boy* declamation, and the thunder of partizan champions, will doubtleſs be palmed on the public for argument and fact. To meet them then, early in the field, and to oppoſe to their bombaſt, real argument, iſſuing from a man, whoſe abilities, integrity, republican virtue, and unſhaken independence are known and acknowledged by every citizen, I ſend you a copy of the opinion of Judge Cuſhing, late chief juſtice of this Commonwealth, on the ſubject—with a requeſt that it may appear in the Centinel. It was delivered in the caſe decided in the ſuperior court of the United States in February laſt. The queſtion is not the ſame in this caſe, as in that which is now agitating; but the principles therein contained apply with additional weight in favor of a foreign citizen.

VERITAS.

JUDGE CUSHING.

THE grand and principal queſtion in this caſe is—whether a ſtate can, by the federal conſtitution, be ſued by an individual citizen of another ſtate?

The point turns not upon the law or practice of England, although perhaps it may be in ſome meaſure elucidated thereby, nor upon the law of any other country whatever; but upon the conſtitution eſtabliſhed by the people of the United States; and particularly upon the extent of powers given to the federal judicial in the 2d ſection of the 3d article of the conſtitution. It is there declared that—"The judicial power ſhall extend to all caſes in law and equity ariſing under this conſtitution, the laws of the United States, or treaties made or which ſhall be made under their authority; to all caſes affecting ambaſſadors or other public miniſters and conſuls; to all caſes of admiralty and maritime juriſdiction; to controverſies between two or more States and citizens of another State; between citizens of different States; between citizens of the ſame State claiming lands under grants of different States; *and between a State and citizens thereof and foreign States, citizens or ſubjects.*"

The judicial power, then, is expreſsly extended to "*controverſies between a State and citizens of another State.*" When a citizen makes a demand againſt a State, of which he is not a citizen, it is as really a controverſy between a State and a citizen of another State, as if ſuch State made a demand againſt ſuch citizen. The caſe, then, ſeems clearly to fall within the letter of the conſtitution. It may be ſuggeſted that it could not be intended to ſubject a State to be a defendant, becauſe it would affect the ſovereignty of States. If that be the caſe, what ſhall we do with the immediately preceding clauſe, "*Controverſies between two or more States,*"—where a State muſt of neceſſity be defendant? If it was not the intent in the very next clauſe alſo, that a State might be made defendant, why was it ſo expreſſed as naturally to lead to and comprehend that idea? Why was not an exception made if one was intended?

Again—What are we to do with the laſt clauſe of the ſection of judicial powers, viz. "*Controverſies between a State or the citizens thereof, and foreign States or citizens?*"

Here again, States muſt be ſuable or liable to be made defendants by this clauſe which has a ſimilar mode of language with the two other clauſes I have remarked upon. For if the judicial power extends to a controverſy between one of the United States and a foreign State, as the clauſe expreſſes, one of them muſt be defendant—And then, what becomes of the ſovereignty of States as far as ſuing affects it? But although the words appear reciprocally to affect the State here and a foreign State, and put them on the ſame footing as far as may be, yet ingenuity may ſay—that the State here may ſue but cannot be ſued—but that the foreign State may be ſued but cannot ſue. We may touch foreign ſovereignties but not our own. But I conceive the reaſon of the thing, as well as the words of the conſtitution, tend to ſhew, that the federal judicial power extends to a ſuit brought by a foreign ſtate againſt any one of the United States. One deſign of the general government was for managing the great affairs of peace and war, and the general defence, which were impoſſible to be conducted, with ſafety, by the States *ſeparately*. Incident to theſe powers, and for preventing controverſies between foreign powers or citizens from riſing to extremities and to an appeal to the ſword, a national tribunal was neceſſary, amicably to decide them, and thus ward off ſuch fatal, public calamity. Thus, ſtates at home and their citizens, and foreign ſtates and their citizens are put together without diſtinction upon the ſame footing, as far as may be, as to controverſies between them.

So alſo with reſpect to controverſies between a ſtate and citizens of another ſtate (at home) comparing all the clauſes together, the remedy is reciprocal—the claim to juſtice equal. As controverſies between ſtate and ſtate, and between a ſtate and citizens of another ſtate, might tend gradually to involve ſtates in war and bloodſhed, a diſintereſted civil tribunal was intended to be inſtituted to decide ſuch controverſies, and preſerve peace and friendſhip.

Further; if a ſtate is entitled to juſtice in the federal court againſt a citizen of another State, why not ſuch citizen againſt the ſtate, when the ſame language equally comprehends both? The rights of individuals and the juſtice due to them are as dear and precious as thoſe of States—Indeed the latter are founded upon the former; and the great end and object of them muſt be to ſecure and ſupport the rights of individuals, or elſe vain is government.

But ſtill it may be inſiſted, that this will reduce ſtates to mere corporations, and take away all ſovereignty. As to corporations, all ſtates whatever are corporations or bodies politic. The only queſtion is—What are their powers?

As to individual States and the United States, the conſtitution marks the boundary of powers. Whatever power is depoſited with the Union by the people for their own neceſſary ſecurity, is ſo far a curtailing of the power and prerogatives of ſtates.

This is, as it were, a ſelf evident propoſition; at leaſt it cannot be conteſted. Thus the powers of declaring war—making peace—raiſing and ſupporting armies for public defence—laying duties, exciſes and taxes, if neceſſary, with many other powers are lodged in Congreſs—and are a moſt eſſential abridgement of State ſovereignty.

Again, the reſtrictions upon ſtates, "No ſtate ſhall enter into any treaty, alliance, or confederation, coin money, emit bills of credit, make any thing but gold and ſilver a tender in payments of debts, paſs any law impairing the obligation of contracts; theſe, with a number of others, are important reſtrictions of the power of ſtates, and were thought neceſſary to preſerve the Union—and to eſtabliſh ſome fundamental, uniform principles of public juſtice throughout the whole Union.

So that I think, no argument of force can be taken from the ſovereignty of ſtates—Where it has been abridged, it was thought neceſſary for the greater, indiſpenſable good of the whole.

If the conſtitution is found inconvenient in practice in this or any other particular, it is well that a regular mode is pointed out for amendment.

But while it remains, all officers legiſlative, executive and judicial, both of the ſtates, and of the Union, are bound by oath to ſupport it.

One other objection has been ſuggeſted, that if a ſtate may be ſued by a citizen of another ſtate, then the United States may be ſued by a citizen of any of the ſtates, or in other words, by any of their own citizens. If this be a neceſſary conſequence, it muſt be ſo. I doubt the conſequence, from the different wording of the different clauſes, connected with other reaſons.

When ſpeaking of the United States, the conſtitution ſays, "Controverſies to which the United States ſhall be a party"—not controverſies between the United States and any of their citizens.

When ſpeaking of ſtates, it ſays—"Controverſies between two or more ſtates; between a ſtate and citizens of another ſtate."

As to reaſons for citizens ſuing a different ſtate, which do not hold equally good for ſuing the United States; one good one may be, that as controverſies between a ſtate and citizens and citizens of another ſtate, might have a tendency to involve both ſtates in a conteſt, and perhaps in war, a common umpire to decide ſuch controverſies, may have a tendency to prevent the miſchief. That an object of this kind was had in view by the framers of the conſtitution, I have no doubt, when I conſider the claſhing interfering laws which were made in the neighboring ſtates