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Chief Justice JAY's opinion, on the question—  
"whether a State be liable to be sued by a private citizen of another State?"

[CONTINUED.]

WILL it be said, that the fifty odd thousand citizens in Delaware being associated under a State government, stand in a rank so superior to the forty odd thousand of Philadelphia, associated under their charter, that although it may become the latter to meet an individual on an equal footing in a Court of justice, yet that such a procedure would not comport with the dignity of the former?—In this land of equal liberty, shall forty odd thousand in one place be compellable to do justice, and yet fifty odd thousand in another place be privileged to do justice only as they may think proper?—Such objections would not correspond with the equal rights we claim—with the equality we profess to admire and maintain, and with that popular sovereignty in which every citizen partakes—Grant that the Governor of Delaware holds an office of superior rank to the Mayor of Philadelphia—they are both nevertheless the officers of the people; and however more exalted the one may be than the other, yet in the opinion of those who dislike aristocracy, that circumstance cannot be a good reason for impeding the course of justice.

If there be any such incompatibility as is pretended, whence does it arise? in what does it consist?

There is at least one strong undeniable fact against this incompatibility—and that is this—any one State in the union may sue another State, in this court—that is—all the people of one State may sue all the people of another State. It is plain then, that a State may be sued, and hence it as plainly follows, that *sovereignty and State sovereignty* are not incompatible.

As one State may sue another State in this court, it is plain that no degradation to a State is thought to accompany her appearance in this court—it is not therefore to an appearance in this court that the objection points—To what does it point? it points to an appearance at the suit of one or more citizens.

But why it should be more incompatible, that all the people of a State should be sued by one citizen than by one hundred thousand, I cannot perceive—the process in both cases being alike—the judgments alike—and the consequences of the judgments alike. Nor can I observe any greater inconveinence in the one case than in the other, except what may arise from the feelings of those who may regard a lesser number in an inferior light.

But if any reliance be made on this inferiority as an objection, at least one half of its force is done away by this fact, viz. that it is conceded that a State may appear in this court as plaintiff against a single citizen as defendant; and the truth is, that the State of Georgia is at this moment prosecuting an action in this court against two citizens of South-Carolina.

The only remnant of objection therefore that remains, is that the State is not bound to appear and answer as a defendant at the suit of an individual; but why it is unreasonable that the State should be so bound, is hard to conjecture—That rule is said to be a bad one, which does not work both ways—the citizens of Georgia are content with a right of suing citizens of other States; but are not content that citizens of other States should have a right to sue them.

Let us now proceed to enquire whether Georgia has not, by being a party to the national compact, consented to be suable by individual citizens of another State.

This inquiry naturally leads our attention,

- (1) To the design of the Constitution.
- (2) To the letter and express declaration in it.

Prior to the date of the Constitution, the people had not any national tribunal to which they could resort for justice—The distribution of justice was then confined to state judicatories, in whose institution and organization the people of the other States had no participation, and over whom they had not the least controul. There was then no general court of appellate jurisdiction, by whom the errors of state courts, affecting either the nation at large or the citizens of any other State, could be revised and corrected. Each State was obliged to acquiesce in the measure of justice which another State might yield to her, or to her citizens; and that even in cases where State considerations were not always favorable to the most exact measure—there was danger that from this source animosities would in time result; and as the transition from animosities to hostilities was frequent in the history of independent States, a common tribunal for the termination of controversies became desirable, from motives both of justice and of policy.

Prior also to that period, the United States had, by taking a place among the nations of the earth, become amenable to the laws of nations; and it was their interest as well as their duty to provide, that those laws should be respected and obeyed.—In their national

character and capacity, the United States were responsible to foreign nations for the conduct of each State, and of the citizens of each State, relative to the laws of nations, and the performance of treaties; and there the inexpediency of referring all such questions to state courts, and particularly to the courts of delinquent States, became apparent. While all the States were bound to protect each, and the citizens of each, it was highly proper and reasonable, that they should be in capacity, not only to cause justice to be done to each, and the citizens of each; but also to cause justice to be done by each, and the citizens of each; and that, not by violence and force, but in a stable, sedate, and regular course of judicial procedure.

These were among the evils against which it was proper for the nation, that is, the people of all the United States, to provide by a national judiciary, to be instituted by the whole nation, and to be responsible to the whole nation.

Let us now turn to the constitution. The people therein declare, that their design in establishing it, comprehended six objects.

- (1) To form a more perfect union.
- (2) To establish justice.
- (3) To ensure domestic tranquility.
- (4) To provide for the common defence.
- (5) To promote the general welfare.
- (6) To secure the blessings of liberty to themselves and their posterity.

It would be pleasing and useful to consider and trace the relations which each of these objects bears to the others; and to show that they collectively comprise every thing requisite, with the blessing of Divine Providence, to render a people prosperous and happy.—On the present occasion such disquisitions would be unseasonable, because foreign to the subject immediately under consideration.

It may be asked, what is the precise sense and latitude in which the words "to establish justice," as here used, are to be understood? The answer to this question will result from the provisions made in the Constitution on this head. They are specified in the 2d. sect. of the 3d. article, where it is ordained, that the judicial power of the United States shall extend to ten descriptions of cases, viz.

(1) To all cases arising under this Constitution.—Because the meaning, construction and operation of a compact ought always to be ascertained by all the parties, or by authority derived from them all; and not by one of the parties, or by authority derived only from one of them.

(2) To all cases arising under the laws of the United States.—Because as such laws constitutionally made, are obligatory on each State, the measure of obligation and obedience ought not to be decided and fixed by the party from whom they are due, but by a tribunal deriving authority from both the parties.

(3) To all cases arising under treaties made by their authority.—Because, as treaties are compacts made by, and obligatory on, the whole nation, their operation ought not to be affected or regulated by the local laws or courts of a part of the nation.

(4) To all cases affecting ambassadors, or other public ministers and consuls.—Because, as these are officers of foreign nations, whom this nation are bound to protect and treat according to the laws of nations, cases affecting them ought only to be cognizable by national authority.

(5) To all cases of admiralty and maritime jurisdiction.—Because, as the seas are the joint property of nations, whose rights and privileges relative thereto, are regulated by the law of nations and treaties, such cases necessarily belong to national jurisdiction.

(6) To controversies to which the United States shall be party.—Because in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to the others.

(7) To controversies between two or more States.—Because domestic tranquility requires, that the contentions of States should be peaceably terminated by a common judicatory; and, because, in a free country justice ought not to depend on the will of either of the litigants.

(8) To controversies between a State and citizens of another State.—Because in case a State (that is all the citizens of it) has demands against some citizens of another State, it is better that she should prosecute their demands in a national court, than in a court of the State to which those citizens belong—the danger of irritation and animosities arising from apprehensions and suspicions of partiality, being thereby obviated.

Because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid, that the latter should be the sole judges of the justice due to the latter; and true republican government requires that free and equal citizens should have free, fair, and equal justice.

(9) To controversies between citizens of the same State, claiming lands under grants

of different States.—Because, as the rights of the two States to grant the land, are drawn into question, neither of the two States ought to decide the controversy.

(10) To controversies between a State, or the citizens thereof; and foreign States, citizens or subjects.—Because, as every nation is responsible for the conduct of its citizens towards other nations; all questions touching the justice due to foreign nations or people, ought to be ascertained by, and depend on national authority.

Even this cursory view of the judicial powers of the United States, leaves the mind strongly impressed with the importance of them to the preservation of the tranquility, the equal sovereignty, and the equal rights of the people.

(To be continued.)

From the (New-York) DAILY ADVERTISER.

Messrs. CHILDS & SWAINE,

I HAVE been informed, that at the meeting in the Fields, on Thursday last, respecting the propriety of addressing Citizen Genet, I was proposed as one of a committee for that purpose—and that it was suggested by some one present, that I was opposed to the measure.

The part which I have pursued, in the most public and unequivocal manner, and the attachment I have manifested in various ways for the French Republic, has rendered it necessary that some reasons should be assigned for a conduct so apparently inconsistent with former professions.

It may not be amiss to premise, that some weeks ago, I very earnestly originated with another person, and promoted, means for an address to be then presented to the minister of France. It being deemed premature by a number of friends (tho' very much against my opinion) I formed that address for myself, which has been presented to public view—and tho' I am persuaded the affection of Americans to the cause of that new and great Republic, is not in the smallest degree diminished; yet circumstances have lately occurred, which might render it at least highly problematical how far we can be justified in duty to ourselves, in the way of address, to express our gratulations, thro' the Minister, to his constituents—I therefore, at least, would have been glad of a postponement.

My reasons were the following; they were presented for the time to me; and for the honor of my fellow-citizens, I believe if they had had the same impressions of their authenticity, nine tenths of those who met in the Fields, would have embraced the same opinion:

First—Mr. Genet has declared, that if the President of the United States of America pursued measures agreeable to his construction of treaties, he (Mr. Genet) would appeal to the people. This, or the substance thereof, is contained in one of his memorials to the President, or was verbally reported upon an official communication. Had he said, he would appeal to the constituted authorities of his own country, for advice and direction, he would have acted consistently; and like a man who knew the proper extent of his power and duty; but to threaten the first Magistrate of an independent Republic, that if he did not conform to the pleasure of a French Missionary, he would appeal to the people, that is, would incite them to insurrection, riot and treason, is a species of arrogance and indignity to that Magistrate, and thro' him to the whole government, and every free American, which could never have been expected, towards a people who have manifested the most zealous and decided partiality to the nation he represents. Mr. Genet, tho' heretofore he was the subject of a despotic monarchy, ought by this time to have at least learnt, that in a country where there is no tyrant, but the known laws of the land, the people, as such, have no judiciary, legislative, or executive powers to exercise, but thro' the medium of their respective representatives, in their several departments. By the Laws and Constitution of our country, all the powers of government have been confided to those representatives—they virtually constitute, and are the people, by representation, freely and legally conferred—they are the only organs of the law, known to us by the constitution; to them alone, in their different stations, appertains the exclusive right of making, of interpreting and of executing the laws when requisite. Foreign Ambassadors will find, most assuredly, that Americans are a sedate, orderly, reflecting kind of men—too sensible to be long imposed upon by the intrigues of English, or Frenchmen, and too spirited to suffer their dignity and sovereignty to be invaded by strangers, in their commerce with the Guardians of our Liberty and Honor. If a French or English Ambassador, charge d'Affaires or Consul, may say to us, or our Magistrate, *this is the construction you must put upon your treaty, or law, and shall oblige the same accordingly*, or I will appeal to the people—then (independent of the audacity of the thing, which is the same, whether right or wrong in his opinion) we have no further use for President, Congress, Governors or Constitution; we immediately become the vassals of foreign usurpers. No, my fellow citizens, so long as we acknowledge there does exist a Constitution, and that under it we have an organized government, we the people, independent of that constitution and government, have in our individual capacities, no acts of sovereignty remaining, but those of thinking, speaking, petitioning and remonstrating—a sovereignty which I hope we shall forever retain inviolate. If our magistrates

betray their trusts, we have by our own free will, already established means, adequate to their removal, or punishment. If our laws are in themselves deficient, we have preferred the mode, by which they shall be amended, explained, or annulled—and if the constitution itself, is imperfect, we have, by us, declared, the mode by which it shall be corrected. God forbid that in this happy, free, and enlightened community; we, or our posterity, should ever see the day, that a mob, especially under the auspices of any foreign influence, or connivance, should assume the reins of government, and declare in that form, to their public trustees, and the continent, what shall be the law of the land.

Secondly. It is reported, that the French Ambassador, when applied to by the Governor of Pennsylvania to deliver us, or order from on board one of the armed vessels of France in the Delaware, certain citizens of that State, who had entered into the service of the Republic, the Ambassador refused to do so—that he talked of the privateer defend us force by force—and even boasted that he soon expected the arrival of a fleet by which he would assert his right and oppose force to force. I have however the charity (the premises notwithstanding) to believe this cannot all be true. But upon what principle but that of contempt for our nation, and the government of it, could he refuse a request from the Governor, so reasonable and necessary on our part, as a people, who regard their public peace, and the faith of treaties.

Thirdly. There have been two publications, in Philadelphia, one in English the other in French verse, vilifying in the most impudent and opprobrious manner, not only persons in the highest departments of State, but even Washington, the brave, and virtuous father and saviour of our country. The first of these pieces, the printer was forced to acknowledge, was written by Mr. Genet's Secretary. The latter is imputed to him, as being in French verse, at which he is said to hold a dexterous pen. Can there be an American whose soul is not filled with holy affection, and gratitude at the remembrance of the deeds and conduct of General Washington? Yes—To the disgrace of human nature, there are even Americans, who fling the conviction of conscience—who wish to destroy the federal government, and with it our present tranquility and happiness, for the chance of plunder in the wreck; dark, concealed, traitorous men, who hoping to gratify their inordinate ambition, to raise their disappointed expectations, and repair their ruined fortunes, who ride in their coaches, and hold thousands in bondage, unable and unwilling to pay their British debts, to the amount of a million Sterling. I say there are such who dare, impiously dare, for those reasons, to profane the reputation of that soldier and patriot, whose name is revered by all the world. But language must want expression for our cruelty, impudence, or cowardice, if at home we tamely suffer the majesty of the nation to be insulted by the interference of foreigners in our internal politics, and the wanton abuse of our public officers.

Americans idolize the cause of the French—they consider it the cause of mankind—as their own cause, and that of their posterity, for ages to come. They would fight, they would die to support the independence of the Gallican Republic, when convinced it is necessary. They will ever pay a due respect to the servants of France, and all other nations, whilst they behave with propriety. These things have been fully evinced. But Americans pay more homage to their own country, and to their own ministers, than to those of any other nation; and if ever the competition arises, which is our favorite man, they will certainly, adopting the language of the poet, say,

"GENET and WASHINGTON, how they sound!  
"A feather, and ten thousand pound—"

Fourthly. It is also said, that Mr. Genet has attached himself in a particular manner to the known enemies of the federal government; to the revilers of the President, and of almost every public functionary of high rank in it, and that his general conduct has been such as to render it suspicious that he really wishes by management with a certain set of men to support the standard of party in our already too much divided land. If these imputations are founded in truth, and I have sufficient evidence to satisfy my mind, that they are all literally or substantially so, then if Mr. Genet regards the true interests of his country, if he has declared the fact when he said the Republic did not desire us to engage in the war, but only to manifest our good will, &c. If he wishes to avoid the retaliation of his indignities offered to our government, he will in the most public manner alter his past line of conduct, or return to his fellow citizens in France, for a substitute who may better understand the objects of his embassy, and have a juster sense of the real American character.

That "peace may be within thy walls, O Jerusalem," is the sincere prayer of your well meaning Citizen W. M. WILLCOCKS.  
New-York, August 2, 1793.

Stipulations on the foregoing, from Loudon's Diary.

BY the Constitution, the executive powers of the United States are vested in a President, and he alone is authorized to receive Ambassadors and other public Ministers; in this particular, he is the exclusive conductor of the nation; and in this particular, the sovereignty of the nation resides in him alone. The President, by virtue of this power, has received Citizen Genet as Ambassador, and still recognizes him as such,