

Gazette of the United States.

A NATIONAL PAPER, PUBLISHED WEDNESDAYS AND SATURDAYS BY JOHN FENNO, No. 34, NORTH FIFTH-STREET, PHILADELPHIA.

[No. 127 of Vol. IV.]

SATURDAY, AUGUST 17, 1793.

[Whole No. 449.]

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

[CONCLUDED.]

THE question now before us renders it necessary to pay particular attention to that part of the 2d. sect. which extends the judicial power "To controversies between a State, and citizens of another State." It is contended, that this ought to be construed to reach none of these controversies excepting those in which a State may be plaintiff. The ordinary rules for construction will easily decide whether those words are to be understood in that limited sense.

This extension of power is remedial, because it is to settle controversies. It is therefore to be construed liberally. It is politic, wise and good that, not only the controversies in which a State is plaintiff, but also those in which a State is defendant, should be settled—Both cases therefore are within the reason of the remedy; and ought to be so adjudged, unless the obvious, plain and literal sense of the words forbid it.

If we attend to the words, we find them to be express, positive, free from ambiguity, and without room for such implied exceptions—"The judicial power of the United States shall extend to controversies between a State and citizens of another State."

If the constitution really meant to extend these powers only to those controversies in which a State might be plaintiff, to the exclusion of those in which citizens had demands against a State, it is inconceivable that it should have attempted to convey that meaning in words, not only so incompetent, but also so repugnant to it—If it meant to exclude a certain class of these controversies, why were they not expressly excepted—on the contrary not even an intimation of such intention appears in any part of the constitution.

It cannot be pretended that when citizens urge and insist upon demands against a State, which the State refuses to admit and comply with, that there is no controversy between them. If it is a controversy between them, then it clearly falls not only within the spirit, but the very words of the Constitution. What is it to the cause of justice, and how can it affect the definition of the word controversy, whether the demands which cause the dispute, are made by a State against citizens of another State, or by the latter against the former? When power is thus extended to a controversy, it necessarily, as to all judicial purposes, is also extended to those, between whom it subsists.

The exception contended for, would contradict and do violence to the great and leading principles of a free and equal national government, one of the great objects of which is, to ensure justice to all—To the few against the many, as well as to the many against the few. It would be strange, indeed, that the joint and equal sovereigns of this country, should, in the very Constitution by which they professed to establish justice, so far deviate from the plain path of equality and impartiality, as to give to the collective citizens of one State, a right of suing individual citizens of another State, and yet deny to those citizens a right of suing them.

We find the same general and comprehensive manner of expressing the same ideas, in a subsequent clause; in which the Constitution ordains, that "in all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."—Did it mean here party-plaintiff—if that only was meant, it would have been easy to have found words to express it—Words are to be understood in their ordinary and common acceptation, and the word party being in common usage, applicable both to plaintiff and defendant, we cannot limit it to one of them in the present case.

We find the Legislature of the United States expressing themselves in the like general and comprehensive manner—they speak in the 13th section of the judicial act, of controversies where a State is a party, and as they do not impliedly or expressly apply that term to either of the litigants, in particular, we are to understand them as speaking of both. In the same section they distinguish the cases where Ambassadors are Plaintiffs, from those in which Ambassadors are Defendants, and make different provisions respecting those cases; and it is not unnatural to suppose, that they would in like manner have distinguished between cases where a State was plaintiff, and where a State was defendant, if they had intended to make any difference between them; or if they had apprehended that the Constitution had made any difference between them.

I perceive, and therefore candor urges me to mention, a circumstance which seems to favor the opposite side of the question—It is this—The same section of the constitution which extends the judicial power to controversies "between a State and the citizens of

another State," does also extend that power to controversies in which the United States are a party. Now, it may be said, if the word party comprehends both Plaintiff and Defendant, it follows, that the United States may be sued by any citizen, between whom and them there may be a controversy. This appears to me to be fair reasoning—But the same principles of candor which urge me to mention this objection, also urge me to suggest an important difference between the two cases—it is this—In all cases of actions against States or individual citizens, the National Courts are supported in all their legal and constitutional proceedings and judgments, by the arm of the executive power of the United States—but in cases of actions against the United States, there is no power which the courts can call to their aid. From this distinction important conclusions are deducible, and they place the case of a State, and the case of the United States, in very different points of view.

I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could in the peaceable course of law, be compellable to do justice, and be sued by individual citizens—Whether that is, or is not, now the case, ought not to be thus collaterally and incidentally decided—I leave it a question.

As this opinion, though deliberately formed, has been hastily reduced to writing between the intervals of the daily adjournments, and while my mind was occupied and wearied by the business of the day, I fear it is less concise and connected than it might otherwise have been. I have made no reference to cases, because I know of none that are not distinguishable from this case; nor does it appear to me necessary to show that the sentiments of the best writers on government and the rights of men, harmonize with the principles which direct my judgment on the present question. The acts of the former Congresses, and the acts of many of the State Conventions, are replete with similar ideas; and to the honor of the United States, it may be observed, that in no other country are subjects of this kind better, if so well understood. The attention and attachment of the Constitution to the equal rights of the people are discernable in almost every sentence of it; and it is to be regretted that the provision in it which we have been considering, has not in every instance received the approbation and acquiescence which it merits—Georgia has in strong language advocated the cause of republican equality; and there is reason to hope that the people of that State will yet perceive that it would not have been consistent with that equality, to have exempted the body of her citizens from that suability which they are at this moment exercising against citizens of another State.

For my own part, I am convinced that the sense in which I understand and have explained the words "controversies between a State and citizens of another State," is the true sense. The extension of the judiciary power of the United States to such controversies, appears to me to be wise, because it is honest, and because it is useful.

It is honest, because it provides for doing justice without respect of persons, and by securing individual citizens as well as States, in their respective rights, performs the promise which every free government makes to every free citizen, of equal justice and protection.

It is useful—because it is honest—because it leaves not even the most obscure and friendless citizen without the means of obtaining justice from a neighboring State—because it obviates occasions of quarrels between States on account of the claims of their respective citizens—because it recognizes and strongly rests on this great moral truth, that justice is the same whether due from one man to a million, or from a million to one man—because it teaches and greatly appreciates the value of our free republican national government, which places all our citizens on an equal footing, and enables each and every of them to obtain justice without any danger of being overborne by the weight and number of their opponents—and because it brings into action, and enforces this great and glorious principle, that the people are the sovereigns of this country, and consequently that fellow-citizens and joint sovereigns cannot be degraded by appearing with each other in their own Courts to have their controversies determined. The people have reason to prize and rejoice in such valuable privileges; and they ought not to forget, that nothing but the free course of constitutional law and government can ensure the continuance and enjoyment of them.

For the reasons before given, I am clearly of opinion, that a State is suable by citizens of another State; but lest I should be understood in a latitude beyond my meaning, I think it necessary to subjoin this caution, viz. That such suability may nevertheless not extend to all demands, and to every kind of action—there may be exceptions—for instance—I am far from being prepared to say that an indi-

vidual may sue a State on bills of credit issued before the constitution was established, and which were issued and received on the faith of the State, and at a time when no idea or expectation of judicial interpolation were entertained or contemplated.

From the New-York DAILY ADVERTISER.

IT is somewhat extraordinary, that the spirit of jealousy and faction, which shewed itself heretofore with the greatest caution and with decency, since the arrival of the French Ambassador has broke out, with volcanic fury, threatening the President, the Secretary of the Treasury, and other officers, in its way, in short, the government itself, with annihilation. The intimate and almost exclusive connection Mr. Genet, it is said, has formed, with certain desisting, restless and ambitious men, to the southward, has induced a rational belief, independent of other circumstances, that either the French Ambassador has become the dup of a party, or that he meditates through it, against America, some designs as yet unpenetrated—and unaccountable. Because we cannot see a single advantage to be proposed either to himself, or the people who sent him here—by alienating the regards of nine tenths of a community, who, unmindful of their own internal dissensions, have uniformly, and at the present moment are testifying their regard to the cause of his country, by every expression of enthusiastic attachment—Some men have certain predominant natural propensities, which will discover themselves in every situation they can be placed.

Arnold is said to have been always a dishonest, jockeying man—To these propensities he sacrificed his fame, and would have sacrificed his fellow soldiers and countrymen—Dumouriez, though a man of great abilities, was known to be destitute of moral character, and therefore trusted with diffidence. His predominant vices tarnished all his glory—in attempting to betray to the despots of Europe the liberties of his fellow citizens—and thus, other men, not engaged in cabals and intrigue, are as miserable as fish out of the water.

It is supposed the following propositions do in reality form the political bible of every honest and unparty influenced inhabitant of the United States.

1. That a state of war, internal, or external, is a state of calamity—never to be courted—but always to be avoided, unless induced by the absolute necessity of self defence.
2. That Americans, under their existing constitutions, are the most happy, free, enlightened, and prosperous people on the face of the earth.
3. That such being their situation, it is their duty and interest to abstain from wars, both foreign and domestic—to maintain and cultivate the blessings of peace with all the world—and especially, by the most circumspect, wise and prudent conduct so to act, as by observing an impartial neutrality, with respect to the present belligerent powers of Europe, not to be drawn into the vortex of their politics.
4. That it is to the honor and advantage of all governments, and especially of the United States of America, as being the youngest on the list of nations, to perpetuate the glory they acquired in the establishment of independence, by the faithful observance of public treaties.
5. That it would most probably be our best policy, like the Chinese, to have no treaties, or stipulated communication with the nations separated from us by oceans, but those which should naturally arise out of commerce, the arts, and sciences.
6. That as in the federal government, all lawful authority is vested in, and can therefore only be exercised in, by and thro' the House of Representatives, Senate and President, all acts of the people, in their individual capacities, assuming legislative, judicial, or executive powers, are incompatible with the authority constitutionally and freely invested, by them, in their representatives: And are null and void.
7. That Americans being a considerate and wise people—whenever they discover deficiency in their Magistrates, laws, or constitution, they ought to seek redress and amendment, in a peaceable way, by solicitude and perseverance, tempered by prudence.
8. That it is the undoubted right of the Citizen, upon a supposed injury, to think, speak, deliberate, petition, address and remonstrate.
- That frequent and free elections, when unaffected by bribery and corruption, and uninfluenced by party, and the intrigues of artful and designing individuals, are the greatest and certain securities against the invasion of our liberties, by the servants of the public, and others—and ought therefore to be guarded and maintained inviolate.
9. That having a government, and officers of that government, who are by the known laws of the land responsible for their conduct, whilst the one exists, and the others are in office, they ought to be supported—they ought not to be insulted: But when guilty of crimes or misdemeanors, arrested, tried, adjudged

and punished by the tribunals for that purpose constitutionally established.

10. That our fellow citizen GEORGE WASHINGTON, a native of America, being elected General of the Armies of the United States of America, by the unanimous suffrages of Congress, in the late contest for Freedom with the government of Great Britain, having conducted himself during that long, eventful and bloody war, with unexampled firmness, disinterested patriotism and valour; perhaps unexceeded in the annals of mankind; having, Cincinnatus like, returned victorious over his enemies to the plow; having again been called out by the unanimous wish of his fellow citizens, to accept the chief executive of our extensive and complicated republic; and having in this capacity, amidst the clamours of discordant parties, conducted the public weal without the least impeachment of his political integrity, unless it is by the anonymous shafts of a few factions, envious, and ambitious T. actors, who forever exist in every community—he is entitled to the most grateful affection and support of all his countrymen.

11. That the citizens of the United States are free and independent. That they are capable, and have the full right to judge and determine of the conduct of all their public officers.

12. That any attempt by foreigners, in whatever character they appear, in the smallest degree to interfere with the local politics or parties of our country, or to insult the Executive Authority of the Federal, or any of the State governments, is an immediate insult to these governments, as well as the governed; and ought to be treated with the contempt and prompt chastisement due from all sovereign nations to the authors of such temerity.

13. That if the Ambassador from France has been guilty of the indignities to the Executive of our government, which are reported, and is uninvested, or is invested, into any of the prevailing parties in our country, he must certainly be actuated by improper motives—must lose all usefulness to us, or his constituents—must be a dangerous man—ought to be shunned as P. sential—and ought to be returned from whence he came, with all the expedition consistent with the usage of nations.

14. That having understood from this Ambassador's own declaration, that the Republic of France does not wish us to take a part in the present war with the tyrants of Europe—and finding at the same time that this Ambassador shews a disposition to aid and inflame the spirit of discord existing in the Union—and all this at a time when, however we differ about our own municipal interests, there is unequivocal and daily testimony given, of our being united in almost a frantic partiality to the cause of his countrymen. I say, we have but one of two conclusions to draw from this conduct, viz. Either that the French have some unhappy design upon our country; or that this inconsistency arises from the weakness, misjudged and unauthorised policy, or naturally unfortunate propensity in the individual for intrigue and cabal. The first seems impossible, the latter is most probable.

15. That until these things are cleared up, or better understood, it is premature to address the French Republic, thro' this Ambassador, and will be derogatory to the honor of the United States.

16. That the late proclamation of the President to the citizens of the United States, in obedience a strict neutrality, &c. was another instance of his watchful and paternal affection for the true interests and happiness of his fellow citizens.

That this proclamation was not an act of Legislation, that it was meant for, and could possibly amount to no more than a friendly motion to all, and especially to those, who, being influenced by extravagant attachment to the French, or prompted by inordinate prospects of gain, would, regardless of the general advantage and felicity of the commonwealth, have covered the ocean with American privateers—and led us headlong, with all our sins and debts upon our backs, into an unprofitable and ruinous war with England, Spain, Portugal, and Holland.

17. That though it could have made no essential difference otherwise—it would, possibly, have calmed the minds of a few weak, or have stopped the mouths of a few designing restless men—if the President in his proclamation had adverted to the treaties with France and other nations.

18. That from the uniformly patriotic conduct of the President of the United States—We have not the least reason to suspect that ever he has or will knowingly pursue measures, either in a public or private respect, injurious to his country—That he has not manifested, in any instance, a want of attachment to the French Republic—but upon every proper occasion which has occurred, the very reverse—that the same will be the conduct of Congress, when convened—That we ought to love Gen. Washington, and do love him—And any man who dares to insult, or report evil of him, must be a bad man, and ought to meet with chastisement and contempt from every freeman of America, who wishes a continuation of the blessings of prosperity and peace.

The residue respecting the violation of treaty by the convention—in the next, from

Your Fellow-Citizen,

W. M. WILLCOCKS.

New-York, August 5, 1793.