

[Continued from our paper of Saturday last.]

THE logic employed by the writer on this occasion, will be best understood by accommodating it to the language of a proclamation, founded on the prerogative and policy of suspending the treaty with France.

Whereas a treaty was concluded on the day of between the United States and the French nation, through the kingly government, which was then the organ of its will: And whereas the said nation hath since exercised its right (no wise abridged by the said treaty) of changing the organ of its will, by abolishing the said kingly government, as inconsistent with the rights and happiness of the people, and establishing a republican in lieu thereof, as most favorable to the public happiness, and best suited to the genius of a people become sensible of their rights and ashamed of their chains: And whereas, by the constitution of the United States, the executive is authorized to receive ambassadors, other public ministers and consuls: And whereas a public minister, duly appointed and commissioned by the new Republic of France, hath arrived and presented himself to the executive, in order to be received in his proper character: Now be it known, that by virtue of the said right vested in the executive to receive ambassadors, other public ministers and consuls, &c. of the rights included therein, the executive hath refused to receive the said minister from the said republic, and hath thereby caused the activity and operation of all treaties with the French nation, *liberto in force, as Supreme Law of the Land*, to be suspended until the executive, by taking off the said suspension, shall revive the same; of which, all persons concerned are to take notice, at their peril.

The writer, as if beginning to feel that he was grasping at more than he could hold, endeavours, all of a sudden, to squeeze his doctrine into a smaller size, and a less vulnerable shape.—The reader shall see the operation in his own words.

“And where a treaty antecedently exists between the United States and such nation (a nation whose government has undergone a revolution) that right (the right of judging whether the new rulers ought to be recognized or not) 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 qualification of the suspending power, though reluctantly and inexplicitly made, was prudent, for two reasons; first, because it is pretty evident that private rights, whether of judiciary or executive cognizance, may be carried into effect without the agency of the foreign government; and therefore would not be suspended of course by a rejection of that agency. Secondly, because the judiciary, being an independent department, and acting under an oath to pursue the law of treaties as the supreme law of the land, might not readily follow the executive example, and a right in one expositor of treaties, to consider them as *not in force*, whilst it would be the duty of another expositor to consider them as *in force*, would be a phenomenon not so easy to be explained. Indeed as the doctrine stands qualified, it leaves the executive the right of suspending the law of treaties in relation to rights of one description, without exempting it from the duty of enforcing it in relation to rights of another description.

But the writer is embarked in so unfound an argument, that he does not save the rest of his inference by this sacrifice of one half of it. It is not true, that all public rights are of course suspended by a refusal to acknowledge the government, or even by a suspension of the government. And in the next place, the right in question does not follow from the necessary suspension of public rights, in consequence of a refusal to acknowledge the government.

Public rights are of two sorts; those which require the agency of government; those which may be carried into effect without that agency.

As public rights are the rights of the nation, not of the government, it is clear that wherever they can be made good to the nation, without the office of government, they are not suspended by the want of an acknowledged government, or even by the want of an existing government; and that there are important rights of this description, will be illustrated by the following case:

Suppose, that after the conclusion of the treaty of alliance between the United States and France, a party of the enemy had surprised and put to death every member of congress; that the occasion had been used by the people of America for changing the old confederacy into such a government as now exists, and that in the progress of this revolution, an interregnum had happened. Suppose further, that during this interval, the states of South-Carolina and Georgia, or any other parts of the United States, had been attacked and been put into evident and imminent danger of being irrecoverably lost, without the interposition of the French arms; is it not manifest, that as the Treaty is the Treaty of the United States, not of their government, the people of the United States could not forfeit their right to the guarantee of their territory by the accidental suspension of their government; and that any attempt, on the part of France, to evade the obligations of the Treaty, by pleading the suspension of government, or by refusing to acknowledge it, would justly have been received with universal indignation, as an ignominious perfidy?

With respect to public rights that cannot take effect in favour of a nation without the agency of its government, it is admitted that they are suspended of course where there is no govern-

ment in existence, and also by a refusal to acknowledge an existing government. But no inference in favour of a right to suspend the operation of Treaties, can be drawn from either case. Where the existence of the government is suspended, it is a case of necessity; it would be a case happening without the act of the executive, and consequently could prove nothing for or against the right.

In the other case, to wit, of a refusal by the executive to recognize an existing government, however certain it may be, that a suspension of some of the public rights might ensue, yet it is equally certain, that the refusal would be without right or authority; and that, no right or authority could be implied or proposed by the unauthorized act. If a right to do whatever might bear an analogy to the necessary consequence of what was done without right, could be inferred from the analogy, there would be no other limit to power than the limit to its ingenuity.

It is no answer to say that it may be doubtful whether a government does or does not exist; or doubtful which may be the existing and acting Government. The case stated by the writer is, that there are existing rulers; that there is an acting Government; but that they are new rulers; and that it is a new Government. The full reply, however, is to repeat what has been already observed; that questions of this sort are mere questions of fact; that as such only, they belong to the executive; that they would equally belong to the executive, if it was tied down to the reception of public ministers, without any discretion to receive or reject them; that where the fact appears to be, that no Government exists, the consequential suspension is independent of the executive; that where the fact appears to be, that the Government does exist, the executive must be governed by the fact, and can have no right or discretion, on account of the date or form of the Government, to refuse to acknowledge it, either by rejecting its public minister, or by any other step taken on that account. If it does refuse on that account, the refusal is a wrongful act, and can neither prove nor illustrate a rightful power.

I have spent more time on this part of the discussion than may appear to some, to have been requisite. But it was considered as a proper opportunity for presenting some important ideas, connected with the general subject, and it may be of use in shewing how very superficially, as well as erroneously, the writer has treated it.

In other respects so particular an investigation was less necessary. For allowing it to be, as contended, that a suspension of treaties might happen from a consequential operation of a right to receive public ministers, which is an express right vested by the constitution; it could be no proof, that the same or a similar effect could be produced by the direct operation of a constructive power.

Hence the embarrassments and gross contradictions of the writer in defining, and applying his ultimate inference from the operation of the executive power with regard to public ministers.

At first it exhibits an important instance of the right of the executive to decide the obligation of the nation with regard to foreign nations.

Rising from that, it confers on the executive, a right “to put the United States in a condition to become an associate in war.”

And, at its full height, authorizes the executive “to lay the legislature under an obligation of declaring war.”

From this towering prerogative, it suddenly brings down the executive to the right of “consequentially affecting the proper or improper exercise of the power of the legislature to declare war.”

And then, by a caprice as unexpected as it is sudden, it espouses the cause of the legislature; rescues it from the executive right “to lay it under an obligation of declaring war”; and asserts it to be “free to perform its own duties, according to its own sense of them,” without any other controul than what it is liable to, in every other legislative act.

The point at which it finally seems to rest, is, that “the executive in the exercise of its constitutional power, may establish an antecedent state of things, which ought to weigh in the legislative decisions; a prerogative which will import a great deal, or nothing, according to the handle by which you take it; and which, at the same time, you can take by no handle that does not clash with some inference preceding.”

If “by weighing in the legislative decisions” be meant having an influence on the expediency of this or that decision in the opinion of the legislature; this is no more than what every antecedent state of things ought to have, from whatever cause proceeding; whether from the use or abuse of constitutional powers, or from the exercise of constitutional or assumed powers. In this sense the power to establish an antecedent state of things is not constituted. But then it is of no use to the writer, and is also in direct contradiction to the inference, that the executive may “lay the legislature under an obligation to decide in favor of war.”

If the meaning be as is implied by the force of the terms “constitutional power,” that the antecedent state of things produced by the executive, ought to have a constitutional weight with the legislature: or, in plainer words, imposes a constitutional obligation on the legislative decisions, the writer will not only have to combat the arguments by which such a prerogative has been disproved; but to reconcile it with his last concession, that “the legislature is free to perform its duties according to its own sense of them.” He must shew that the legislature is, at the same time, constitutionally free to pursue its own judgment and constitutionally bound by the judgment of the executive.

HELVIDIUS.

Foreign Intelligence.

FRANCE.

NATIONAL CONVENTION.
JUNE 20.

Insurrection in Corsica.

BARRERE, in the name of the committee of public safety, made a report respecting the troubles in Corsica. “The whole island, said he, is in a state of counter-revolution, and your commissioners have been obliged to act on the defensive in the maritime parts of the republic, which yet remain faithful. You recollect the decree against Paoli; perhaps it was impolitic; and although you suspended the execution of it, Paoli found means to interest the inhabitants in his favor, by making them believe you would give them up to the Genoese, whom the Corsicans dread and abhor; or that you would crown the ci-devant Duke of Orleans, who is equally detested by the Corsicans, who love liberty, although they have been led astray by Paoli and the priests. Your two commissioners, Aniboul & Baux, have been stopped at Aix, in the name of the federative republic of the south.

The following letter from your commissioners at Bastia, in Corsica, dated from that town, June 27, will more fully explain to you the troubles in this island:

Letter from the Commissioners.

“All is lost—the counter-revolution is completed. Paoli is named generalissimo, that is to say, sovereign of the island. The clergy have been reinstated; the emigrants have re entered. Paoli, under the mask of religion, has abased himself to be elected President of the consulta (an extraordinary convocation of all the deputies of Corsica): the inhabitants have been led astray, respecting the situation of France, and the intentions of the convention. The insurgents are armed to the number of 1000, or 1200, and maintain themselves at the expense of the republic. They have seized on the stores and treasure, and those who show attachment to the French republic are shot. The towns in the interest of the republic, are declared rebels, and are kept in awe by strong garrisons placed in them. Paoli has published a writing against the Convention, whom he calls the agents of the Genoese. St. Florent, Bastia, and Calvi, are still in the republican interest, and well garrisoned with republican troops.

“The consulta opened on the 26th May. Paoli was declared President, Leonardo Vice-President, & Pozi di Borgi Secretary.

“Paoli has published a pretended letter from Marseilles, which, among other things, asserts, that all the communes of France have declared themselves in insurrection against the capital.

(Signed) “DALCHER, Comm’r.”
Couthon.—“Do you not see, that Paoli holds the same language in Corsica, as Gaudet, Vergniaux, Genfonne, and other conspirators did in the Convention? It is time that France should know who are her friends.”

Lacroix.—“Couthon might have said more. There exists a document in the committee of public safety, in which a conversation is represented to have taken place on the first of April last, between Dumourier and the Prince de Cobourg; in which the latter proposed, that Marat should be declared in a state of arrest, the primary assemblies be convened, and the Convention transferred to some other place than Paris. It is worthy of remark, that in this month propositions of a similar tendency were made in this assembly, by Gaudet, Genfonne, Briffot, and others, whom you have declared in a state of arrest.”

Barrere.—“Your committee has charged me to present you the project of a decree, which ought to be carried into immediate execution. Your committee has thought fit to cashier this consulta of Corsica, whose power would soon vie with your own. We have annulled all its acts, as being high treason against

the sovereignty of the people. You must send succours to those towns in Corsica which remain faithful to the republic. Your committee has likewise thought fit that you should enlighten the people by sending commissioners among them; for, according to every report, they are not inimical to the republic, but only misled by the rich. Every thing gives us reason to hope, that within one month all will be right, and that we shall be able to strike some decisive blow against the counter-revolutionists.”

Barrere then presented a decree, conformable to the above principles. Decreed.

Chabot.—“Rouyes and his colleague have been recalled from their commission, but are not returned. They have remained behind, in order to foment troubles in the department of Herault, and have protested against the Decrees of the Convention of the 31st of May. I move that they may be displaced.”

A deputy contradicted this statement, and the Convention passed to the order of the day.

Decreed, that the Armies should in future be paid in bills on the Treasury instead of assignats.

JULY 1.

The Envoy of the United States having demanded a suspension of the decree which permits the privateers of the Republic to attack American ships:—In consequence, the committee proposed the following decree:

The National Convention, desirous to maintain the union established between the French Republic and the United States of America, declares, that the vessels of the United States are not included in the dispositions of the decree of the 9th of March, according to the 16th article of the treaty made on the 6th February, 1788.—This decree was adopted.

LONDON, July 27.

It has frequently been asserted, and with great appearance of truth, that without good air, good exercise, and good hours, scarcely any person has good health, or attains old age; yet on Sunday last died at Chonies, in the county of Bucks, after a life of 92 years of uninterrupted health, Mary, widow of William Baidwynne, who had been mother, grandmother, and great-grandmother to above 200 persons, more than 150 of whom are now alive. The greatest part of her life she passed in a sick room; as her employment until within these ten years, has been that of nursing the sick, in which situation she was frequently many months without going into a bed, and took the little sleep she had in the day more frequently than in the night. The writer of this paragraph asked her by what expedient she had, in such an employment, enjoyed such a share of health, and had so long a life: her reply was memorable:—“I have never, during my whole life, drank any thing in the night, except tea; I have never suffered any event, however calamitous, to depress my mind or prey upon my spirits; and I have made it my constant endeavor to live in as good a humour with myself and all around me, as I possibly could.”

Prince Ernest had lately a very narrow escape before Valenciennes. A cannon ball had passed so near as to kill a grenadier in the file behind him.

General Dampierre’s Monument in the camp of Famars is not yet destroyed; on the contrary, a sentinell has been placed over it, to protect it.

A Courier, who arrived lately from Vienna, brings intelligence that the Emperor is very ill with a spitting of blood.

United States.

WILMINGTON, Sept. 7.

We are informed that the Committee of Correspondence have lately received from John Dickinson Esq. of the State of Delaware, 200 Dollars, for the relief of the fugitives from St. Domingo.