Judge Iredell's CHARGE, *Continued.*

The general duties of neutrality under the guidance of the respectable & appoved authorities I have alluded to, may be thus briefly comprehended: Voluntarily to furnish neither party with troops, arms, ammunition or any thing of direct use in war; nor indirectly to favour one party to the prejudice of the other, by the grant of privileges, otherwise indifferent, if done for the express purpose of assisting one party in its contest with the other, since this would be taking a side which the strict laws of neutrality forbid. But the exercise of independent rights with no view to favour one party to the prejudice of the other, merely on account of the war, such (for example) as the carrying on any accustomed trade from commercial motives only in any articles whatsoever, is no breach of neutrality, though the particular instance specified is liable to this restriction, that all commodities which are usually termed contraband, and by which are understood all articles peculiarly subservient to war, tho' the particulars are not perfectly agreed upon, if bound to any port of one of the belligerent powers, or articles of any kind, whether such as are usually termed contraband or otherwise, bound to a place actually besieged or blockaded, are liable to seizure and condemnation. These appear to me to be the general principles as to the conduct of a neutral power; but there are special exceptions in particular instances, where in virtue of previous treaties the engagements of the neutral power contain stipulations more in favour of one of the parties than the other. In respect to the present war, the United States are a neutral power of this description, they being expressly bound by their commercial treaty with France to grant certain privileges to French vessels of war and privateers, which they are not at liberty to grant to any other. So far however as they confine themselves to a faithful performance of this treaty, upon its true construction, and are in all other respects neutral, they are undoubtedly entitled to all the privileges and benefits of a neutral nation.

With regard to all the questions which may arise either on the duties of neutrality abstractly considered, or the particular construction of the treaty constituting certain exceptions to the general principles of it, the limits of a discourse proper for this occasion will by no means admit of a full discussion of them. But I deem it my indispensable duty to give you my opinion upon two pretensions, which have been very confidently urged, and have been attempted to be supported in such a manner as tended in an alarming degree to disturb the good order of our country, and produce the greatest mischief as well as greatest disgrace that can ever happen to any; the introduction of foreign influence to counteract the executiou of the laws by that authority entrusted by the people with this portion of their power, and in every instance responsible for the due exercise of it. Happily however, all danger of this kind has been honorably removed by an additional proof of national attention and respect which must be highly grateful to every friend of his country.

The two pretensions upon whith I have to remark are these:

1. A claim on behalf of the French to fit out privateers in the ports of the United States.

2. A right in the French nation, to enlist any of the citizens of the United States, either on board their armed vessels, or even on shore and in the very bosom of our territory, without the consent of the government, upon the principle that any citizen has a right to expatriate himself at his pleasure.

The first claim is grounded upon the 22d article of the treaty of Amity and Commerce, which is in these words:

"It shall not be lawful for any foreign "privateers, not belonging to subjects of "the Most Christian King, nor citizens "of the said United States, who have "commissions from any other prince or "state in enmity with either nation to fit "their ships in the ports of either the one "or the other of the aforesaid parties, to "sell what they have taken, or in any "other manner whatsoever to exchange "their ships, merchandizes, or any other "lading; neither shall they be allowed e-"ven to purchase victuals, except such as "shall be necessary for their going to the "next port of that prince or state from "which they have commissions."

The true construction of this article is of the highest importance, because if the French derive under it the right which has been insisted on, it is undoubtedly a breach of faith in the United States to deny them the exercise of it; if on the other hand, the treaty confers no such right, it will be a violation of the neutrality to permit it, and if supposed to be done deliberately and partially, and not merely from a mistaken construction, would be a justifiable cause of war. Fortunately the construction is not so difficult as it is important.

If words alone are to be regarded, they contain nothing more (so far as they affect the present question) than a stipulation that an enemy of either party shall not be permitted to fit out privateers in the other's ports. Whether the citizens of the United States shall be permitted to fit out privateers in the ports of France, or the French in the ports of the United States, the article does not say.

The usual way to ascertain the meaning of parties is to consider the words they use by which their meaning is or ought to be expressed. It must however be admitted, that a meaning is sometimes to be collected by implication, and it may be alledged in support of this claim that the implication in this case is sufficient to convey the right contended for.

To such an allegation the following objections occur.

1. That a construction by implication is never to be received, but where such construction is necessary and unavoidable, or the meaning of the parties can be collected either from the context or concurring circumstances. If such a construction was admitted upon any other principle, no man in any contract could be safe, unless he excluded every possible implication by direct negative expressions, a thing impossible to be practised, and highly irrational to be required.

2. There is not the least necessity for such a construction, the meaning being very sensible and compleat without it. Was it not important to stipulate for the exclusion of an enemy of either from the ports of the other, without at the same time agreeing to permit either of the contracting parties to arm in the other's ports? Do not the two cases stand on a very different footing, and have we not a right to say, that as the one is stipulated for, and the other not, the former must be granted, but the latter may be refused? The article being silent on the subject is easily to be accounted for, an express grant of the right would have imminently hazarded the peace of either country in case the other was engaged in a war in which they had no common concern. An express negation of it would very idly have excluded voluntary favours altogether in the power of either party to grant or to refuse, and would have been a stipulation (the first perhaps of the kind) for the benefit of other countries, without the least possible utility to either of the contracting parties. I might add, if the same provision was not to be found in other treaties where the circumstances were different, that the situation of the two countries at the time naturally dictated the silence observed upon this subject. The treaty of commerce was signed on the same day with the treaty of alliance. The former was permanent; the latter as to its principal object temporary. While the war subsisted, in which both parties were fully engaged on one side, the ports of either would of course be open to the vessels of war and privateers of the other. When peace took place, and the principal object of the nlliaece was thereby obtained, it became of moment to both that neither should be endangered, without a new engagement, by hostilities which the subsisting one had not contemplated. The case therefore was properly left at large to the discussion of either party, as future contingencies and the honour and interest of their respective countries might require.

3. There not only is nothing in the context or any concurrent circumstances requiring the construction contended for, but there are very material circumstances to evince that such could not have been the intention of the parties. I might instance its inconstency with the famous family compact entered into between France and Spain and the king of the Two Sicilies (a treaty universally known long before our connection with Faance), but as that stands on peculiar grounds of its own I chuse to confine myself to some striking circumstances of inconsistency, where the cases are exactly parallel, in relation to the respective commercial connexions, of Great Britain (before the present war), and the United States with France. At the time of the signature of our treaties with France, a commercial treaty between Great Britain and France was in full force, contain ng substantially, if not in the very same words, an article like that of the 22d in ours. The treaty (if I recollect right, for I have not the book by me, tho' I am certain of the fact in substance, because I have compared the treaties) was the commercial treaty of Utrecht of 1712-13, renewed as to this point from time to time, and finally by the treaty of Paris, of 1663. In the commercial treaty between Great Britain and France in 1786 there is also an article to the very same import. It is therefore apparent, in case the construction which was claimed against us be right, that under the joint operation of either of the treaties between France and Great Britain, and that between France and the United States, if we had been at wer with Great Britain and France neutra, France would have been bound by her treaty with Great Britain to admit her privateers to arm & exclude ours; bo her treaties with us, to admit ours, and exclude theirs. A consequence so absurd or so iniquitous we suaely have no right to fix on any engagement, without the least colour of evidence; and most ungrateful as well as weak should we be to attempt it in regard to a treaty, which we have uniformly acknowledged and sincerely believe was conducted, together with that which accompanied it, on the part o the French government towards us with singular magnanimity and candour, and on the part of our own with extraordinary ability, vigilance, and precaution. It is highly probable, that the American negociators who signed, and the Congress of the United States who ratified the treaty, were well acquainted with the contents of the commercial treaty of Utrecht, which was executed so many years before, and I doubt not had been repeatedly published, with its severrl confirmations; and it is certain that Great Britain when she executed the treaty in 1786 well knew all the particulars of ours of 1778, a compleat copy of it having been published in England (as I have lately had an opportunity to know) soon after its execution. She therefore could not have been deceived, if we were, had there been any real perfidy in the case, a supposition which unsupported as it is by either evidence or probability we reject with disdain.

Objections like these would, in my opinion, be sufficient to destroy any construction, even if the words were doubtful, but in the face of such objections to contend for such a construction by implication is paying very little deference to the understandings. or relying very much on the passions of those who are expected to acquiesce in it.

I therefore have not the smallest doubt, that the pretension I have been considering is utterly groundless.

The second pretension involves ths very important question as to the right of the French or any other foreign nation (for in this respect they are all on the same footing) to enlist citizens of the United States, either for their naval or land service within the territory of the United States, without the consent of the government. This is so palpably contrary to the Law of Nations, that it has scarcely been attempted to be supported upon its own ground, but a colour has been devised for it one of the most extraordinary which to be sure ever was attempted in a country where common reason had any sway. When a citizen of the United States is charged with this offence against his country, he very gravely defends himself by saying, that he has a right to quit his country when he pleases; that no country has a right to confine him as a prisoner for life; that it is at his option when he thinks proper to cease to become a citizen of the United States, and become a citizen of another country; that he did so in the present instance, and therefore his conduct was innocent. All this time however he forgets that it is material to prove the fact, or expects that we will take his word for it. Gentlemen, nothing but the prevalence of high passions, in disregard or contempt of the duty incumbent on all to respect and maintain the laws of their country, could amoug men of sense give currency to an absurdity like this. Let this right of expatriation be admitted, in the language of its warmest advocates, to be a natural and unalienable right, incapable of any modification even by Legislative authority, to guard against injuries to the rights of others by an abuse of the exercise of this; yet common sense must inform every man, that this important, and perhaps irrecoverable act ought to be done with some degree of deliberation and solemnity,—that it should take place before any act inconsistant with the duty of a citizen is committed;—and that in case of the fact being drawn in question it should be capable of proof, Juries in all cases being to be guided by proofs, and not by the allegations of any parties whatever. No person will be so absurd as to say, that a citizen of the United States may not if he pleases, without abandoning his country or intending to abandon it, enlist himself on board a foreign vessel or in a foreign regiment, running the risk of detection and punishment for this breach of a citizen's duties. What would have been thought of one of your citizens, when he was on his trial for treason in the late war, if he had alledged in his defence that the mere act of joining the enemy of his country constituted him a British subject, and of course he was entitled to be deemed a prisoner to war, and not liable to be tried for treason? The difference of joining a friend or enemy is is nothing as to the question of expatriation. Joining the former in hostilities contrary to law is equally an offence, though not in the same degree as the latter, & when once a man is really expatriated he has certainly a right to chuse his future country, whether it be that of a friend or an enemy, if he can get admitted by either. The fact therefore which is to constitute the vindication must in all instances be satisfactorily proved.

What may amount to a real expatriation, as it is a point much questioned among able men, had better be reserved for discussion when a case of the kind shall arrive. I doubt much whether in all the instances which have occurred of citizens of the United States enlisting themselves in the French service any case has happened where there was a previous deliberate attempt at expatriation apon any principle. So far as I have observed or heard the crime itself has been alledged to form its justification. It would give me pleasure, however, to find in any instance a more favorable case than that which I have supposed. But expatriation alone does not immediately entitle a man to be a citizen of any oiher country he chooses to adopt. It will therefore be necessary always to inquire further, whether the laws of his new favorite country have really recogzed him as such, before we admit him to the privileges of that character. The imminent danger, gentlemen, to which your country has been and may yet be exposed by secret and un authorized endeavours to raise troops among you, for the purpose (as it is alledged) of acting against some of the enemies of France, will particularly induce you to use the utmost vigilance in your inquiries upon this subject. No power on earth but the Congress of the United States can authorize such a measure. Every step out of the usual course, by which a neutral nation extends a favour to one of the belligerent powers, to the injnry of another, has a direct tendency to produce, if it does not justify, a war against such neutral nation by the party injured. If a war takes place against the United States, all the citizens of the United States must be involved in it.

It is therefore as just as it is constitutional that their Representatives alone should give authority to any hostilities which may occasion it. It certainly ought not to depend on a few unauthorized individuals whether we are to enjoy the blessings of peace or be exposed to all the calamities of war. The danger too of such a practice to the internal peace of our country as a consideration of no small moment. The power of raising troops, even by regular authority, is a very formidable one. There can be no security that when raised for one purpose they will not be employed for another, unless they are under the vigilant eye of men fully responsible for their conduct, and within the reach of being called to a strict account for it. The prevention of mischief by them is often found difficult under the best regulations—but what security can we have against foreign officers, and men who pretending to have abandoned their country may be expected to pay little deference to its interests? The weight of these considerations every reflecting man must be sensible of, and they have already appeared to have had their proper influence upon a people who value liberty, and naturally jealous even of armies raised by their own authority, feel proportionable indignation at an attempt to raise one in defiance of it.

(To be Continued.)

For the Gazette of the United States.

Mr. Fenno,

Mr. Monroe's apologist, replies to the observation, "that the legislature of Virginia might have appointed a successor to Mr. M. had he attempted to retain his seat," by remarking that if the two cases are parrallel, the President ought on the same principle to consider the office of Chief Justice as vacated and to merit a successor.

Without dwelling on the material distinction between a trust limited to a few months, and one which may continue for years, it is sufficient to observe, with respect to Mr. J. that either there is a constitutional incompatibility, or there is not. If there be a constitutional incompatibility, then Mr. J. *is no longer Chief Justice*; and there can be no censure on him for a supposed neglect of judicial functions. If there be no constitutional incompatibility, then it becomes a mere question of *expediency*, concerning which the President and Senate may exercise their judgment nnd discretion. They have done so, and have selected Mr. J. as the *fittest man*. This may be disagreeable to the friends of *other people*, and they will manifest their anger by vindictive and indecent attacks on the President. But in so doing they have involved themselves in an inextricable embarrassment in the case of Mr. M's appointment, being compelled either to relinquish a much coveted object, or to impugn their own principles recently established.

How does the apologist flounder through his vindication; at one time Mr. J. must be deemed to be *no longer Chief Justice*, at another, he is criminated for a neglect of duty *as Chief Justice*. On this head, it may well be asked which of the two characters is most liable to censure for *neglect of the duties* for which they had been elected, previously to their recent appointments. Mr. J. will return to this country before the session of the *Supreme* Court in February. He will be only absent from the Supreme Court in August: there are five other Judges, and four constitute a a quorum. At any session of that court, one or other of the judges is absent, and the attendance of the Chief Justice is no more required by law or propriety than one of the associate judges. On the *Circuit*, his tour of duty will be performed by one of his brethren, who will be remunerated for this extra trouble on a future occasion by a reciprocation of service. Now for Mr. M.—In the *absence* of his *colleague*, he accepts a foreign embassy, (having it is said previously declared that he would resign his seat, if appointed) resigns his seat in the Senate, leaving the state which sent him, *unrepresented*; a state which though the largest in the Union, has but the same representation as Delaware, and whose members should therefore be peculiarly fixed to their stations, and at a critical period when a *number of the most important bills were there depending*, viz. all the new revenue bills, the bill for the protection of the frontiers, the bill for the advance of money to France, the bill for building the gallies, the appropriation bill, and many others, at a time when the questions of *excise*, raising troops, providing vessels of war, granting power to the executive, and other momentous concerns were depending on one or two votes:—Let the candid public judge to which side *neglect of duty* may be charged.

The apologist *positively denies* Mr. M's opposition to any embassy to France, when Mr. G. M. was nominated. The fact can be easily ascertained; report at the time and since asserted the fact to be as stated; an appeal to the members of that time will determine the truth: the writer of this had it from good authority, and *believes it*.

A. B.

For the Gazette of the United States.

Mr. Fenno,

I never was more sensible of the insignificance of my character than last evening. I called to see an old acquaintance, my former school-fellow; he married young and has a number of prattlers about him, that have often almost excited in me an envy of his happiness, His eldest son is about ten years old, and has been about two years at the University—he has an intermediate daughter—his next son is about seven years old; he is in the habit of exercising his children in the learning in which their teachers are instructing them—reading in English, construing from other languages, were parts of the entertainment of the evening.

Your paper of the day was introduced, and after an observation that it was enlarged, a handsome boy was ordered to read a paragraph in it aloud to shew his ability and improvement he selected that in which your Lancaster correspondent is attempted to be ridiculed, for not understanding or misunderstanding the Greek words from which Aristocracy and Democracy are derived.

The child was puzzled by some hard words which occurred in your Correspondent's paragraph—upon which, my friend ordered the paper into the hands of his elder son, a pupil at the University; and the following conversation took place, which I shall never forget. It made me regret my not being a father, not having a son who could do me so much honor—but I must quit this subject to do justice to the conversation which was the exciting cause of it.

Father. Whence is the word Aristocracy derived?

Son. From the Greek word Αριστος an adjective of the superlative degree formed from Αγαθος the positive, signifying bonus in Latin, and good in English—Αμεινων comparative, melior, better; superlative, Αριστος optimus, the best.

Father. In what other senses hath this word been used?

Son. By a figure in rhetoric called metonimy, it is sometimes used to signify the best things or best men; thus *oi aristoi* h as been applied to the Nobility of a Country, who had no other merit than being born to the possession of wealth and power; and from this circumstance those men became odious.

Father. How is this compounded in Aristocracy?

Son. The word κρατος is a substative derived from the verb *kraiein* in Latin gubernare to govern, and signifying government or power; the junction of these two words signifies the government of the country, by the best people in it—such us our master tells us is the government of the United States.

The father ordered a lexicon, which he and I understood when we were at school but have long since declined the use of—it was brought and the explanation verified by it: We then turned to the Encyclopedia & found the child was right. I was edified by the conversation, but hurt at the idea that my friend had about him children capable of teaching me what their father knew nothing more of than I knew, about fifteen years ago, and what your correspondent in the paper of the evening, appears to know much less of, than either of us.

Yours,

A BACHELOR.

Foreign Intelligence.

CONSTANTINOPLE, March 1.

The Capt. Pacha, since his return from the Archipelago, has given subsequent marks of his severity, and much abuses the authority given him by the Grand Signior. He has lately beheaded a young Greek, a relative to the widow of the late Hospodor of Moldavia. Ismet Bely, formerly Plenipotentiary at the Congress of Sziftove, is disgraced and banished into Asia. Fires again become frequent. On the 15th, the place where the ships are careened, was set fire to, and burned six hours: there was another fire on the 22d, and a third one the 26.

The grand-son of the famous Kouli Khan, is at the head of 20,000 men in the environs of Bagdad. This new rebellion is supposed to be in consequence of a manœuvre of the court of Petersburgh, with a view to divide the Ottoman forces, in case of rupture.

WARSAW, March 26.

The Russian Minister, Baron Inglestrhon, has formally requested an investigation and account of the disturbances in the Nurer, Lomzyner, and other districts of the Waywodeships of Masuren, towards South Prussia; and on being informed that the insurgents were headed by a Nobleman, a brigadier of the Polish national troops, who refused to disband according to the late order for reducing the army, the Russian Minister made a further demand in writing, signifying, that as the disturbances were occasioned by an internal commotion, the troops of the Republic should be sent to quell the the disorder. Upon this the commissaries of war informed the council that