

MR. BACHE.

I have seen in your paper many censures upon the conduct of the President and the Governor of this state, respecting the suspension of the intended settlement at Presqu'ille. Had the executive of the United States been alone concerned, these strictures would have not excited my attention: for it is to much a matter of course for the General Advertiser to misrepresent the conduct of that wise and good man; that the vehicle has at length become an antidote to the poison. But the implicating the Governor in the accusation, gives it an air of impartiality, and I was led, by it, to inquire into the facts, in order to discover how it happened that the President had so unconstitutionally put his veto on a law of Pennsylvania, and why the Governor had so tamely surrendered the dignity and interests of the state.

This inquiry ended in a conviction that the conduct of the two governments instead of deserving censure, marks on the one hand the paternal care of the President, and on the other, the attention of the Governor to the general interest of the union, as well as to the laws and constitution of the state. I will therefore see this matter set in its true light. Misrepresentation can do no good; at a distance it may do harm: and it, as one of your correspondents intimates, the Western dissatisfactions have been heightened by the suspension of this settlement, those who have mistated facts and misrepresented motives have much to answer for!

The following from the best information I could obtain, appears to me to be the true state of this affair.

On the 8th April 1793, the Legislature of Pennsylvania passed an act, empowering the Governor to lay out a town at Presqu'ille, and offering small bounties of a town lot and an out lot, to the first 200 persons who should settle there before the 1st January 1794. The town however was not laid out—some difficulties arose from the state of the country—the illness of the negotiations with the Western Indians, strengthened the reasons for delay—the governor did not then think it proper to call out the Militia—and the assembly met before the surveys were made.

The assembly did not intimate any dissatisfaction at this delay. They did not make any provision for a more prompt execution of the act; but still left the Governor the same or rather a greater latitude of discretion in point of time. They extended the period for settlement-bounties to the first of May 1795, and having directed four companies to be raised for the defence and protection of the port of Philadelphia and of the frontiers, they authorized the Governor to detach from these, as many men as could be spared from the specific objects of defence and protection, and to station them at Presqu'ille. These, could have been but a handful: sufficient, perhaps, to protect the commissioners from straggling parties of the Western Indians, but utterly insufficient to guard the settlement against the resentment of the Six Nations, once roused into actual hostilities. This forms a decisive proof that the Legislature of Pennsylvania did not expect that the measure they were adopting would excite the hostilities of the Northern Tribes: especially as the limitations of the companies were to expire on the first of December, and could not be continued by the Governor longer than the 2d Tuesday of that month.

As soon as the determination to proceed in laying out a town was fully known, it appears, that symptoms of strong disaffection were discovered by these Indian tribes. They denied the sale of these lands, alleging that the small sum received was considered as the usual present on the conclusion of a treaty of peace. Whether this pretence be well or ill founded—whether they were not excited by British agents, I know not: but their opposition to the intended measure was apparent: and so much so, that the Governor found himself unable to carry the act into execution with the force the assembly had provided.

In this new situation of things the Governor would have been justified—and it might have been advisable—to have made no further movement till the opinion of the legislature was known: for, it is presumable that under this great change of circumstances, the assembly would have immediately suspended the settlement until measures were taken to quiet the Indians. The Governor, however, who has been accused of inattention to the laws of the state, was so desirous of carrying the act into execution at all events, that he had recourse to his general powers as commander in chief of the militia, and de-

termined to call out a thousand men and march them to Presqu'ille. How far the vast expense of this voluntary movement of the consequences which might have resulted from it would have met the public approbation, it is not for me to determine. But the Governor did not chuse to take this step rashly. He knew that the legislature had not expected or required it; he knew that the measure was infinitely momentous as it respected the general interests of the Union; and he must have felt how responsible he would be to all America, if by raising up a new enemy he should defeat and ruin the operations of the western army. Upon these subjects the President could not but have superior information; and it was proper in the Governor to communicate with him before he hazarded a step which might interfere with the measures adopted for our general defence. He therefore made a formal communication to the President, of his intention to march the militia; and the President was, of course, obliged either to sanction the measure by his silence or to interpose his opinion. His duty evidently required the latter; and, I understand, that he intimated his opinion, that it would be prudent to suspend the settlement for the present until measures were taken to remove the temporary obstacles that opposed it. Even if the subject had not been brought directly under the eye of the President, I apprehend it would have been not only justifiable but indispensable for him, as soon as he was apprized of the call for the militia, to have made representations to the Governor, of the mischiefs likely to result from the prosecution of that measure. The Governor, it seems, complied with the request of the President. He had a right so to do. The act gave him latitude of discretion as to the time of carrying it into execution; and whether that were done in the spring or in the autumn was as to public considerations, perfectly indifferent.

The disposition of the Indians appears to have been soon after more fully ascertained at a public conference with them: and in consequence of their irritated temper no alternative is left to the United States; but to endeavour to remove their dissatisfactions or to count them among the number of their enemies.

This state of facts needs no comment. Yet it may be asked what other measures in point of prudence and propriety could have been adopted. The endeavours of the Governor to execute the act were carried quite far enough: one step more would have exposed the frontiers to the scalping knife—have delayed the settlement perhaps for years—and poured a new and fierce enemy on the Western army. As the act of assembly does not require an immediate laying out of the town, is there any one object of real importance that does? Are there any public reasons (I know there are private ones) that render it less advantageous to make this settlement in the fall or even in the next spring, than at present?

But it seems that one of your correspondents is of opinion that there ought to be a post established at Presqu'ille as it is essential either for attack or defence. That is a different question. The Governor was authorized merely to protect the infant settlements by a detachment during a few months—not to establish permanent military posts. If the legislature of Pennsylvania had thought it would have been proper to erect a fort and place a garrison there they would have directed it to be done. If Congress had thought it proper they would have noticed it in the late act for erecting fortifications? And if the President thinks it necessary, is it not presumable he will seize the advantage whenever it can be safely and properly done? Were a post at Presqu'ille ever so desirable, it would be little less than madness to risk a war with the northern tribes for the sake of an immediate occupation of the ground: when a little delay by means of the proposed treaty, may remove all difficulties and make the measure contemplated perfectly safe. If the treaty should fail of this—things cannot be worse than they are; and this advantage will at least be gained that the most critical part of the campaign will be past.

But it is also said that all these dissatisfactions are the effects of British influence. Be it so—but if the British agents are really active in exciting the Indians to hostilities against us, is the governor of Pennsylvania to co-operate with them and blow the coal into a flame. Because the British have made them suspicious of us, must we therefore make them hostile and drive them into the arms of our enemies?—Or because the private interest of a few men is to be promoted by this settlement must the great interests of the nation be sacrificed to their clamours? Believe it, Mr.

Bache, they count too much upon these interested clamours who think the Governor of Pennsylvania will be so much terrified by them as to sacrifice his duty to the whole people for the sake of securing a local or partial popularity.

A PENNSYLVANIAN.
Mr. Fermo, The foregoing has been sent to Mr. Bache. I request a publication of it in your paper also. A P—n.

For the Gazette of the United States.
MR. FERMO.

There is a certain Protean Dabbler in this city who is perpetually dimming the public with his incursions; writing what he does not believe, which he knows cannot be true, and which, if it were true, would render him, this writer, the most miserable of the creation. He now defends the institution of Democratic Societies, in his way—argument out of the question; he then inveighs against funding systems, in his own way—his arguments, such as they are, against himself. The next subject he attacks is—indirect taxes, all in his own way: his argument is, indirect taxes are bad, because most easily collected—see the Philadelphia Gazette of last evening—Direct taxes to be sure are best, because the people this Protean financier writes to, know very well they cannot be collected; and it is a blessed thing to be free from taxation—and to be sure we will give our suffrage to no man who will not ease our burthens, and we shall never know how it is done. Pay your debts says this Protean—pay your debts!—Doctor Franklin was an enemy to a funding system, says this Protean scribbler—and how does he prove it? In his own way—by arguments which conclude against himself. Doctor Franklin was an enemy to a funding system, because the people of the United States commissioned him to create a FUNDING Debt abroad, by borrowing, ha, ha. The Doctor complains of his ill success, and why? O, to be sure, because he was an enemy to a funding system. What are his words? "The foundation for credit abroad should be laid at home; and certain Funds should be prepared and established before-hand for the regular payment of the interest." This (according to our Protean financier) is so far from favoring a Funding System, that the conclusion to be drawn from what is said, "is directly the reverse."

This is gulping down an absurdity with a witness! but such is the disagreeable predicament some persons are in; that to keep themselves on the surface of what they conceive to be the popular opinion, they will quote the most respectable authorities against themselves: surely it would make the great Franklin blush in his grave, to know what purposes his opinions are applied to by the demagogues of the day. Taxes should be direct says Proteus; what does this mean? Dare Proteus tell; doubtless—he is not the only man among us who sports on a precipice.

AUTHENTIC.

Philadelphia, July 23, 1794.

Sir,
In the letter which I had the honor of addressing to you on the 10th ultimo, I endeavored to narrow our controversy which threatened an unimportant enlargement; and to throw into one summary reply those subjects, which did not seem to claim a more detailed discussion. Leaving them therefore at that point, beyond which our correspondence in relation to them can produce no good; I resume the examination of your remonstrance against the government of Rhode-Island, the French privateers at New-York, the embargo, and the state of Vermont.

1. On the 22d of May last, you were pleased to denominate the transaction at Rhode-Island "an unparalleled insult." Recently offered not by a lawless collection of the people, but by the Governor and Council of that State to the British flag, in the violent measures pursued towards his Majesty's sloop of war Nautilus, and in the forcible detention of the officers, by whom the vessel was commanded. My answer on the 2d of June, was accompanied by an authentic narrative of the proceedings, upon which so strong a censure was bestowed, and contained an assurance, that your animadversions, whenever they might appear, should receive particular attention.

On the 7th of June those animadversions were delivered in the following words:

"I consider the insult offered at Newport to his Majesty's sloop of war Nautilus to have been unparalleled; since the measures pursued there were directly contrary to the principles, which in all civilized states regulate cases of this nature. For if

on the arrival of a ship of war in an European port, information be given that that ship or war has on board subjects of the sovereignty of that port, application is made to the officer commanding her, who himself conducts the investigation; and if he discovers, that any such subjects be on board of his vessel he immediately releases them; but if he be not satisfied, that there be any such, his declaration to that effect on his word of honor, is universally credited. But the Legislature and judges of the state of Rhode-Island, refused to accept the assurances of the commander of the Nautilus, or to allow him to originate or prosecute the enquiry himself; and forcibly detained him and his lieutenant prisoners by virtue of the act of assembly which the vessel was cleared, and the American or pretended American seamen were liberated. I am certainly not inclined to dispute the merit, which the governor of Rhode-Island ascribes to himself for limiting the supplies, granted to the Nautilus, to such an amount, as was merely necessary to carry her to her destined port, though this limitation in the stipulations of the treaty with France is confined to privateers only, and does not extend to royal or national ships of war. But I must contend, that those individuals of the legislative or judiciary departments of Rhode-Island who were concerned in this transaction, conducted themselves neither with moderation, with decency, nor with that respect, which was due to the commander of a vessel belonging to a sovereign, with whom their country was at peace."

Although it was plainly to be inferred from the statement, forwarded from Rhode-Island, that at least the majority of the seamen liberated had been impressed into the British service; yet did the caution, in assuming facts, which cannot be too strictly observed by those, who criminate or those who defend a nation, require that the truth should be explicitly ascertained. The Governor of that state has accordingly transmitted a document in which is the following passage:— "Judge Marchant, Mr. Sherburne, Mr. Bots and Mr. Ellery, well recollected that of the 6 American sailors found, there was but one or two who confessed they had voluntarily entered on board. The other four or five by their own declaration, in the presence of the officers then on the quarter deck of the ship (which was not denied by them) had been impressed on board, neither did the officers produce any ship-book or papers, where either of the sailors had ever put down his name. The sailor who particularly appeared to have gone on board voluntarily, declared he was in Martinique, when taken by the British: That being destitute and in a starving condition, and not having eat for three days, he had entered on board the British ship from necessity. It was not disputed by the captain of the Nautilus, but that the other sailors had been impressed, though not by himself: for he disavowed such a conduct, and said, he had belonged to the ship but a short time, and he knew nothing of the particular circumstances of the sailors. Yet at first he was very positive that there were no American sailors on board the ship, and that he did not wish to have any."

My personal feelings, Sir, shall never mingle themselves, in my ministerial intercourse with the diplomatic gentlemen in the United States. But when the legislative and judiciary departments of a state—of a member of the American Union—are proclaimed to be deficient in moderation and even decency; it becomes my duty to demand that until the proofs shall substantiate this high charge against the lower house of assembly, the upper house, the judges of the superior court, and the judge of the district court, they also shall be presumed to venerate the dictates of honor—I must be permitted to ask too, whether it was not a measure of prudence to examine the subject with the coolness of deliberative bodies, rather than to hazard anything, when "great anxiety was occasioned" in the minds of the people?"

Under the Federal constitution, "the citizens of each state are entitled to all privileges and immunities of citizens in the several states." "To secure the blessings of liberty," is announced among the most important expectations formed of our government. Hence the neglect of one state to rescue from unjust confinement the citizens of another, would be deemed an infringement of social obligation, and might kindle a serious dissension.

In the present instance the state of Rhode-Island was urged by most weighty considerations. For, without enquiring under what circumstances these sailors were first cast into the power of the British ships of war, whether they belonged to vessels captured and forced into British ports, or had gone into the British territories of their own accord—it is enough, that they were impressed.

They were thus liable to become instruments of war against any nation, with out distinction, upon whom Great Britain might turn her arms. It was not the fault of our government, that no rule existed for distinguishing an American from a British mariner, since our minister in London earnestly proposed to the British ministry more than eighteen months ago, various expedients for its arrangement; but to this very day none has been established. Had not this opportunity been embraced, the unfortunate Americans might have been transferred from ship to ship, from one climate to another, beyond the reach of relief. Again: so watchful has the constitution of the United States been over the liberty of the citizens, that it forbids even our own legislature to suspend the privilege of the writ of habeas corpus, unless when in cases of rebellion or invasion, the public safety may require it. Or in other words, the privilege of an American citizen to have the cause of his detention examined, and himself to be liberated, if it shall be groundless, cannot be wrested from him, except on one of two great emergencies. It is not easy, therefore, to acknowledge upon principle, that "the commander of a vessel belonging to a sovereign, with whom our country is at peace," can assume in effect this transcendent power of precluding all enquiry.

These interesting motives are supported by the law of nations. "The empire," says Vattel, "united to the domain, establishes the jurisdiction of the nation in its territories, or the country that belongs to it. It is that, or its sovereign, who is to exercise justice in all the places under his obedience; to take cognizance of the crimes committed, and the differences that arise in the country." B. 2. C. 7. §. 84. See the translation in quarto—but even in the countries where every stranger freely enters, the sovereign is supposed to allow him access, only upon this tacit condition, that he be subject to the laws; I mean the general laws, made to maintain good order, and which have no relation to the title of citizen, or of subject of the state. The public safety, the rights of the nation and of the prince, necessarily require this condition; and the stranger tacitly submits to it as soon as he enters the country, as he cannot presume on having access upon any other footing. The empire has the right of command in the whole country and the laws are not confined to regulating the conduct of the citizens among themselves; but they determine, what ought to be observed by all orders of people, thro' the whole extent of the state." B. 2. C. 8. S. 101.

"As the right of supreme inspection in the sovereign extends to all persons, and all things found in his territory; strangers, as well as natives are subjected to it; those only being excepted, who enjoy the right of extraterritoriality, and who consequently cannot be reckoned among the temporary subjects of the state." Martens, B. 3. C. 3. S. 64.

Extraterritoriality is defined in B. 7. C. 5. S. 187. to be that privilege which is attached to diplomatic characters, and by which they are considered as if they were out of the territory of the government, within whose limits they are, and were in the territory of their own state. But captains and lieutenants of foreign ships of war, not being diplomatic characters, cannot claim exemption from the jurisdiction of the country on the ground of extraterritoriality.

When the message was sent by the General Assembly to captain Baynton, he was then on shore; and as he attended immediately with his lieutenant, it may be concluded, that the lieutenant was also on shore at the same time. Thus of their own free will had they placed themselves within the jurisdiction of the state of Rhode-Island, and become amenable to process civil or criminal.

It being always well to avoid unnecessary content, it will not be now canvassed, what precise degree of civil authority may be exercised by one nation, over the captain and lieutenant, being on board a ship of war of another; what examples of this kind have arisen in America before the revolution, what is the law of other nations with respect to foreign ships of war, having their subjects detained on board by force;—or what is the true distinction between a power of recovering from captivity by adequate means, a citizen impressed on board of a ship of war, and another power, which I believe, has not been yet doubted by yourself, of compelling a ship of war to deliver up a prize, taken within the protection of a neutral coast? In the case before us the captain and lieutenant were on land, and quitted any cover, arising from the mere being on board of the ship. If therefore it could be conceded, that a vessel of war