

PLAN

Of a Constitution for the French Republic;

PRESENTED

By the Committee of Eleven, in the Sitting of the 5 Messidor, year 3d.

[Continued.]

The Executive Power.

XXIII. It appoints those placed at the head of the administrations of the indirect contributions, and to the administrations of the national domains.

XXIV. Those placed at the head, as well of the administration of the Posts as all those of the indirect contributions, have the appointment of the clerks of their office, and of those of the departments.

XXV. The directory superintends the coining of money, and appoints the officers charged with executing that superintendance.

XXVI. No member of the directory can leave the territory of the Republic, for two years after the cessation of his functions.

He is held to satisfy the legislative body concerning his residence during that interval.

XXVII. The directory is responsible for the execution of the laws and for the abuses which it does not denounce.

XXVIII. Its agents are respectively responsible as well for the execution of those laws which are transmitted to them, as of the decrees of the directory.

XXIX. The members of the directory may be tried by the legislative body, for the crime of treason, for corruption, for dilapidation of the public monies, and for every capital crime relative to their administration.

XXX. They are under the jurisdiction of the tribunals for ordinary and private offences; nevertheless they cannot be arrested, but in cases of being taken in the act, nor tried, without the authority of the legislative body.

XXXI. Every accusation against the directory as against one or more of its members, is addressed in writing to the Council of Five Hundred.

XXXII. If, after having deliberated on it in manner prescribed by the article 54, of chapter 4 the Council of five hundred admits the accusation, it declares it in these terms:

The accusation against _____ for the crime of _____ dated the _____, Signed the _____ is admitted.

XXXIII. The charge is then read over, and, if it be made to appear, explained in the midst of the place of the sittings of the council of five hundred.

XXXIV. The council of five hundred declares whether there is room for examination of the conduct of the accused or not.

XXXV. The arrested is afterwards heard by the Council of Ancients, at the bar; and if he is judged guilty, after deliberation had upon it in manner prescribed by the articles 55, 56, and 57, the council of ancients pronounces the accusation, which produces suspension; and it sends the accused before the high court of justice, which is bound to compare the accused with the law.

XXXVI. If the accused be acquitted, he resumes his functions.

XXXVII. The legislative body cannot send for the directory, nor any of its members, except in the case of the preceding articles.

XXXVIII. The accounts and the settlements demanded by the legislative body, of the directory, are furnished in writing.

XXXIX. The directory is bound at the opening of the session of the legislative body, to present to it in writing the aggregate of the expenses, the state of the finances, and of the existing pensions, in order that it may decree such arrangement of them as it shall judge convenient.

It shall also point out the abuses which may come under their knowledge.

XL. The directory may at all times request in writing the legislative body to take an object into consideration, but not to propose to it legislative orders, if it be not relative to peace and war.

XLI. No member of the directory can absent himself more than five days, nor remove at a greater distance than four myriameters (about ten leagues) from the place of residence of the directory, without authority of the legislative body.

XLII. The members of the directory cannot appear in public, nor out of doors, nor in the inside of their houses, without being clothed in the proper habits of office.

XLIII. The directory has its customary guard and paid as soldiers composed of one hundred and twenty foot, and an hundred and twenty horse.

XLIV. The directory is accompanied by its guard in all ceremonies and public processions, where it has always the first rank.

XLV. Each member of the directory may cause himself to be accompanied over and above by two guards.

XLVI. Every officer of the armed force owes to the directory and to each of its members the superior military honors.

XLVII. The directory resides in the same commune with the legislative body.

XLVIII. The members of the directory are lodged at the expense of the republic, and in the same edifice.

XLIX. The compensation of each of them is fixed at the value of fifty thousand myriagrammes (about ten thousand quintals) of wheat.

Chapter VI.

Administrative and Municipal Bodies.

Art. I. There is in each department a central administration, and in each canton one municipal administration at least.

II. Every commune the population of which is from five thousand to one hundred thousand, has for itself alone, one municipal administration.

III. In those communes whose population exceeds one hundred thousand inhabitants, there is, at least, three municipal administrations.

IV. The ancestors and descendants in line direct; brother, uncle, nephew, and relations in that degree, cannot, at the same time, be members of

the same administration, nor succeed one another, but after an interval of two years.

V. Each administration of department is composed of five members, who are renewed by a fifth every year.

VI. The administrators of department may be once re-elected, without interval.

VII. Every citizen who has been twice successively elected administrator of department, and who has performed the functions of that office, by virtue of each election, cannot be elected anew but after an interval of two years.

VIII. The departmental and municipal administrations have no character of representation. They cannot modify the acts of the legislative body, nor those of the executive power, nor suspend their execution.

They cannot interfere in matters depending on the judicial order.

IX. The administrators are essentially charged with the subdivision of the direct contributions and the superintendance of the monies accruing from the public revenues in their jurisdiction.

The legislative body fixes the rules and the mode of their functions as well on those objects as on the other parts of the internal administration.

X. The executive power appoints at the head of each departmental and municipal administration a commissary, whom it recalls when it sees proper.

The commissary superintends and requires the execution of the laws.

XI. The municipal administrations are subordinate to the administrations of department, and these again to the agents general of execution.

Of course, the agents general of execution may annul the acts of the administrations of department, and these again, the acts of the municipal administrations, when those acts are contrary to the laws, or to the orders of the superior authorities.

XII. The agents general of execution may also suspend those administrators of departments who have contravened the laws or orders of the superior authorities; and the administrations of department have the same right with regard to the members of the municipal administration.

XIII. No suspension becomes definitive without the sanction of the executive directory, which has also the right of pronouncing immediately, when it shall think necessary, the disqualification of the administrators, whether of department or canton, and to lay them before the tribunals, when there is a necessity.

XIV. The directory may likewise annul immediately the acts of the departmental or municipal administration.

XV. All decrees for the abrogation of acts, suspension or disqualification of administrators, shall set forth the motives.

XVI. The administrations, whether of department or canton, cannot correspond with one another but upon matters assigned to them by the law, and not upon the general interests of the whole Republic.

XVII. Every administration gives annually the account of its administration; the account is printed.

XVIII. The acts of the administrative bodies are made public by entry in a double register, open to all.

Chapter VII.

Judicial Power, of Civil Justice.

Art. I. The judicial functions cannot be exercised neither by the legislative body, nor by the executive power.

II. The judges are not to exercise the legislative power, nor make rules to interpret the laws.

They cannot arrest or suspend the execution of any law, nor cite before them, in virtue of their functions, the administrators.

III. The judges cannot be taken off from the law assigned them by any commission, nor by other privileges, or avocations than those which are determined by a law anterior.

IV. The right of making a decision on disputes, by arbitrators chosen by the parties, cannot be impeded.

V. The decision of arbitrators is without appeal, if the parties do not stipulate a reserve.

VI. Justice is rendered gratuitously.

VII. Judges cannot be disqualified but by a crime legally determined, nor suspended but by an admitted accusation.

VIII. The sittings of the tribunals are public; the judges deliberate aloud, the judgments are explained, which they announce in the terms of the law applicable to the case.

IX. The tribunals cannot take cognizance of a civil action if they are not satisfied that the parties are before the court, or that the defendant has cited the adverse party before mediators, to come to a reconciliation, save the cases excepted by the law.

X. Appeals in civil matters take place in cases which the law has determined.

XI. There are justices of the peace elected by the citizens of the circuit, determined by law.

XII. There is a civil tribunal for each department.

XIII. Each civil tribunal is composed of fourteen judges elected for five years; they are to be renewed after five years, and may be always re-elected.

XIV. The civil tribunal is divided into two sections, to judge of the ordinary affairs, and the appeals from the justices of peace of the department.

The two sections shall unite for causes appealed from judgments in the first instance by a civil tribunal of department.

XV. There is, besides each civil tribunal, a national commissioner and a substitute, appointed and removable by the executive power.

XVI. The national commissioner and the substitute are charged with requiring and superintending in the tribunals, the execution of the laws.

They have no deliberative voice.

XVII. The appeals from the judgments rendered by a civil tribunal of department, are carried to the civil tribunal of one of the three nearest departments.

XVIII. Notwithstanding, the parties may always agree among themselves in the choice of the tribunal to which they will appeal among the civil tribunals of the department.

XIX. Each section of a civil tribunal may pronounce, to the number of four judges, in the first instance, on the appeal from the judgments of the justice of peace.

The two sections united may pronounce, to the number of nine judges, on the appeal from the judgments of another tribunal of department.

XX. The two judges who are first appointed for the civil tribunal of each department are presidents of the two sections.

He that is appointed first shall preside when the two sections are united.

XXI. At the election of the judges, five suppliants shall be chosen, of which three shall be taken from among the citizens resident in the commune, or seat of the tribunal.

XXII. No citizen can be elected judge of a tribunal of department, under thirty years, nor a justice of peace, if he has not attained the age of twenty-five years.

Of criminal justice.

Article XXIII. In criminal matters, no person can be judged but on an accusation admitted by the juries, or decreed by the legislative body, in the case where it appertains to them to decree the accusation.

XXIV. A first jury declares whether the accusation ought to be admitted or rejected—the fact is recognized by a second jury, and the punishment determined by law, and applied by the criminal tribunal.

XXV. The judges cannot propose any complex question to the juries.

XXVI. The accused has the right to challenge a number of judges without giving his motives; the jury of judgment shall consist of twelve at least.

XXVII. The hearing of the cause is public, and they cannot refuse to the accused the aid of counsel, which they have the right to choose, where they are named to the office.

XXVIII. The juries vote by secret scrutiny.

XXIX. No one accused, can be apprehended but to be carried before the officer of police; and no one can be arrested or detained but in virtue of a warrant from the officer of police or of an ordinance from a tribunal to take the body, or by a secret accusation of the legislative body, in the case where it appertains to them to pronounce; or of a judgement of condemnation to prison, or correctional detention.

XXX. Every person arrested and carried before the officer of police, shall be examined immediately, or at farthest within twenty four hours.

XXXI. If it shall appear on examination that there is no room for criminating the person, they shall be set at liberty forthwith, or if there is cause of commitment, they shall be conducted immediately; and in no case shall they be confined more than three days.

XXXII. No person arrested, can be detained if he gives sufficient bail in all cases where the law permits bail to be taken.

XXXIII. No person, in the case where his detention is authorized by law, can be conducted to, or detained, but in those places, legally and publicly designated to serve as a house of arrest, a house of justice, or of detention.

XXXIV. No keeper or jailor can receive, or retain any person but in virtue of a warrant, of an ordinance to take the body, of a decree of accusation, or a judgement of condemnation to prison or correctional detention, and unless the transcription shall be made in his register.

XXXV. Every keeper or jailor is held upon his responsibility to report the person detained to the civil officer having the government of the house of detention, every time it shall be required by this officer.

XXXVI. The representative of the person detained shall not in like manner be refused being sent to his parents and friends, by the order of the civil officer, which he shall always be bound to give, at least when the keeper or jailor does not represent that he has an ordinance of the judge transcribed in his register to keep the person arrested in secret.

XXXVII. Every man, whatever may be his place, or occupation, other than those to whom the law empowers to arrest, who shall sign, execute, or cause to be executed an order to arrest an individual; or who, in the case of an arrest authorized by law, shall conduct, receive, or retain an individual in a place of detention, not publicly and legally designated, and who shall be guilty of the crime of arbitrary imprisonment.

XXXVIII. Every person acquitted by a legal jury, cannot be re-tried nor accused for the same fact.

XXXIX. There is for each department two juries of accusation; the two presidents of civil tribunal are foremen of the jury of accusation; they settle affairs in the order in which they are brought before them.

XL. There is a criminal tribunal for each department.

XLI. The criminal tribunal is composed of a president, a public accuser, and a register, all appointed for five years by the primary assemblies of department, and of four judges taken from the civil tribunal.

XLII. The two presidents of the civil tribunal cannot fulfill the functions of judges at the criminal tribunal.

XLIII. The other judges perform duty there, each in their turns, during six months, in the order of their appointment; and they cannot, during that time, exercise any function at the civil tribunal.

XLIV. The functions of the public accuser are to denounce to the directory of the jury, whether officially, or according to the orders which are given him by the executive directory.

Ist. The attempts against the individual liberty of the citizens.

2. Those committed against the law of nations;

3. Rebellion against the execution, whether of the judgments, or all executive acts emanating from the Constituted Authorities;

4. The troubles occasioned, and false statements committed with a view to shackle the collection of the contributions, the free circulation of provisions and other objects of commerce.

XLV. The public accuser is charged over and above;

1. To prosecute the crimes under the acts of accusation admitted by the first juries;

2. To be attentive in the course of the trial, to the regularity of the forms, and, before the judgement to the application of the law;

3. To pursue the execution of the judgment given by the criminal tribunal.

4. To superintend all the officers of police of the department, whom he is bound to inform in case of negligence, and whom he may also call before him for just causes, or denounce to the tribunal in the case of more important actions.

XLVI. The Foreman of the Jury shall inform eight days before hand the citizens chosen by lot to form the jury of accusation.

[To be Continued.]

FROM THE ARGUS.

THE DEFENCE.—No. X.

[Concluded.]

But this is altogether an erroneous inference.—The clauses last cited are inserted for greater caution, to guard expressly against any construction of the article, by implications more or less remote; contrary to the actual regulations of the parties, with regard to external commerce and navigation.

Great Britain does not now permit a trade by sea to Nova Scotia and Canada. She therefore declares that the article shall not be deemed to contravene this regulation. The United States now permit foreign vessels to come to certain ports of

entry from the sea, but exclude them from other more interior ports of entry, to which our own vessels may come. It is therefore declared on their part, that the article shall not be construed to contravene this regulation. This was more proper, as the right of inland navigation might have given some colour to the claim of going from an outer to an inner port of entry. But this negative of an implication, which might have found some colour in the principal provision, can never be construed into an affirmative grant of a very important privilege, foreign to that principal provision.

The main object of the article, it has been seen, is trade by land and inland navigation. Trade and navigation by sea, with our sea ports, is an entirely different thing. To infer a positive grant of this privilege, from a clause which lays, that the right of inland navigation shall not be continued to permit vessels coming from the sea, to go from the ports of entry, to which our laws now restrict them, to more interior ports, would be contrary to reason, and to every rule of sound construction.

Such a privilege could never be permitted to be founded upon any thing less than a positive and explicit grant. It could never be supported by an implication drawn from an article relative to a local and partial object; much less by an implication drawn from the negative of another implication.

The pretention, that all our ports were laid open to Great Britain by a covert and sidwinded provision, and this without reciprocity, without a right of access to a single sea port of the other party in any part of the world, would be too monstrous to be tolerated for an instant. The principles of equity between nations, and the established rules of interpretation would unite to condemn so great an inequality, if any other sense could possibly be pretended to be deduced. It would be in the present case the more inadmissible, because the object is embraced and regulated by other parts of the treaty on terms of reciprocity.

The different mode of expression, in the clause last cited, when speaking of the British territories, and when speaking of the United States, has furnished an argument for the inference which has been stated. But this difference is accounted for by the difference in the actual regulations of the parties as described above. The object was on each side to oust an implication interfering with those regulations. The expressions to effect it were commensurate with the state of the fact on each side; and consequently do not warrant any collateral or special inference.

The only positive effect of these clauses is to establish, that navigation from Montreal to Quebec, shall be carried on in what are called "small vessels trading bona fide between Montreal and Quebec."

In determining their sense, it merits some observation, that they do not profess to except from the operation of the general provisions of the article, the sea ports, &c. of the British territories; but declare, that it is understood that those provisions do not extend to them. This is more a declaration that the antecedent provisions were not so broad as to comprehend the cases, than an exception of the cases from the operation of those provisions.

Those who are not familiar with laws and treaties may feel some difficulty about the position, that particular clauses are introduced, only for greater caution, without producing any new effect; but those who are familiar with such subjects, know, that there is scarcely a law or a treaty which does not offer examples of the use of similar clauses;—and it not unfrequently happens, that a clear meaning of the principal provision is rendered obscure by the excess of explanatory precaution.

The next clause of this article is an exception to the general design of it, confirming the construction I have given. "The river Mississippi, shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of his majesty in Great Britain."

If the general provision gives access to all our ports, which must be the doctrine, if it gives access to our Atlantic ports, then it would equally have this effect with regard to the Mississippi. But this clause clearly implies the contrary, not only by introducing a special provision for the ports of the Mississippi, but by introducing it expressly, as a further or additional agreement; the words are—"it is further agreed, &c." and these ports are to be enjoyed by each party, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain. This reference to our Atlantic ports, coupling them with the ports of Great Britain, shews that the Mississippi ports are to be regulated by a rule or standard different from the ports for that inland navigation which is the general object of the article; else, why that special reference! why not have stopped at the words "used by both parties?" If it be said, that the reference to our Atlantic ports implies that they are within the purview of the article, let it be observed, that the same argument would prove that the ports of Great Britain are also within its purview, which is plainly erroneous, for the main provisions are expressly confined to the territories of the parties on this continent. The conclusion is, that the reference is to a standard, out of the article, and depending on other parts of the treaty.

It may be useful to observe here, that the Mississippi ports being to be used only in as ample, and not in a more ample manner, than our Atlantic ports and the ports of Great Britain, will be liable at all times to all the regulations, privileges and restrictions of the ports with which they are afforded.

The next clause is a still further refutation of the construction which I oppose. "All goods and merchandise, whose importation into his majesty's said territories in America shall not be entirely pro-

* An example of this is found in the state of New York. Foreign vessels can only enter and unlade at the city of New York; vessels of the United States may enter at the city of Hudson, and unlade there and at Albany.