

Ricketts' New Amphitheatre,

THIS PRESENT EVENING, January 12, Will be presented,

Surprising Feats of Horsemanship, AND Stage Performances,

Among which are, The Italian Shades; or, The Art of Magic. For the last time this Season, the much admired Pantomime of

HARLEQUIN STATUE;

Or, The Spirit of Fancy.

With many other performances, which will be announced in the bills of the day.

†† The Doors in future to be opened at FIVE and the Entertainment to begin at SIX o'clock.

There are a number of Stoves placed in the Amphitheatre which render it perfectly comfortable.

* Boxes, one dollar—Pit, half a dollar. † Those Gentlemen who intend to take places for the Boxes, are desired to send in time.

Canal Lottery Office,

Near the Bank of the United States,

January 9th, 1796.

TICKETS to be had at this office (warranted undrawn) at Twelve Dollars each, except during the hours of drawing.

STATE of the WHEEL:

Table with 3 columns: Prize amount, Number of tickets, and Total value. Includes prizes of 30,000, 20,000, 10,000, 2,500, 2,000, 1,000, 500, and 100.

With a proportionate number of 12 dollar prizes. The Wheel is much richer than at the commencement of the drawing, and the price of Tickets must rise in a few days.

By order of the Committee. Wm. Blackburn, Agent.

January 11. Note. A Check-Book kept at the above office for examination, at two cents each number, or twelve cents for registering. The Commissioners now draw 600 Tickets per day.

ADVERTISEMENT.

TO be sold at Public Vendue, on Tuesday, 19th January next, at 2 P.M. the Plantation of Mary Ramsey, deceased, in Finicum township, Bucks county, and state of Pennsylvania, containing 17 1/2 acres, adjoining land of William Cooper, Peter Loudon, and George D. Ross, and to be sold for Cash, by ROBERT RAMSEY, and SAMUEL RAMSEY, Executors.

TO THE PUBLIC.

Miniature Painting.

A LUMNER from Paris respectfully informs the public, that he paints Likenesses in Miniature, in so striking and pleasing a manner, as will, he hopes, satisfy those who may employ him. His Likenesses are warranted, his fittings short, and his terms easy.

His room is at No. 2, north Fifth Street. December 30. P. S. As he shortly intends returning to France, he invites such Ladies and Gentlemen as may be desirous of having their portraits drawn, to take advantage of the present time.

Portraits.

ANY Ladies and Gentlemen, who are desirous of having their Likenesses taken, may have them done by applying to the Painter, at No. 112, corner of Union and Fourth Streets, where they can be referred to specimens. October 29.

THIS DAY PUBLISHED,

By J. Ormrod, No. 41 Chestnut Street, in two volumes nearly bound, lettered and ornamented, with an elegant print, representing CYRUS consulting DANIEL, [Price two dollars.]

The Travels of Cyrus;

In French and English. To which is annexed,

A Discourse upon the Theology and Mythology of the PAGANS.

Translated and arranged in the most convenient order, for the immediate and greater improvement of those Ladies and Gentlemen, who wish to acquire speedily either the French or English language.

By J. E. M. De La Grange, L. L. D. Late Counsellor at Law in the Supreme Court of Cape Francois, and Translator of J. Moore's Journal in France.

Literal translations of the French and English classics have long been a desideratum. The different idioms of the two languages operate forcibly against the student, who is frequently bewildered in the intricate labyrinth of phraseology. To remedy this inconvenience, an entirely new translation, clothed in an elegant diction, combined with the modern improvements in orthography, is here given, corresponding verbatim with the English copy; so that the reader may, by a single glance, perceive the sense in either language.

The Editor of this publication has spared neither care nor expense to render it worthy the attention both of tutors and scholars; should he be so fortunate as to succeed, he will be highly gratified in having contributed his mite towards the promotion of useful literature.

January 9.

30 Pipes Cogniac Brandy,

Corks, in bales, and Holland Gin, in pipes,

For Sale by Benjamin W. Morris.

December 31.

For SALE, by the Subscribers,

On reasonable terms of credit,

6 Bales of low-priced Flax and Tow, Oznaburgs, 6 Bales of English Sail Canvas of the following numbers, viz. No. 4, 5, 6.

Willings & Francis,

November 21.

JAMES M'ALPEN,

TAYLOR,

No. 3 South Fourth Street,

RETURNS with great pleasure to his Friends and the Public for their liberal encouragement, and begs leave to signify a continuance of their favors.

At his Shop gentlemen may be furnished with the best materials and have them made up and finished in the most fashionable manner. He will thankfully receive any orders and pay a prompt and punctual attention to them.

FROM THE MINERVA.

THE DEFENCE.

—No. XXXVIII. and Last.—

[CONCLUDED.]

The manner of exercising a similar power under the Confederation shall now be examined.

To judge of the similarity of the power it will be useful to quote the terms in which it was granted. They are these, "The United States in Congress Assembled, shall have the sole and exclusive right and power of entering into Treaties and alliances, provided that no Treaty of Commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on Foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever" (Article IX.)

It will not be disputed that the words "Treaties and Alliances" are of equivalent import and of no greater force than the single word "Treaties" and alliance is only a species of treaty, a particular of a general—and the power of "entering into treaties" which terms confer the authority under which the former Government acted, will not pretend to be stronger than the power "to make treaties," which are the terms constituting the authority under which the present Government acts, it follows that the Power, respecting treaties, under the former, and that under the present government are similar.

But though similar, that under the present government is more comprehensive; for it is divested of the restriction in the provision cited above and is fortified by the express declaration that its Acts shall be valid notwithstanding the constitution or laws of any state.—This is evidence, (as was the fact) of a disposition in the convention to disembarass and reinforce the power of Treaty. It ought not to pass unnoticed, that an important argument results from the Proviso, which accompanies the power granted by the confederation, as to the natural extent of this power. The declaration that no treaty of commerce shall be made restraining the legislative power of a state from imposing such duties and imposts on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever is an admission. 1. That the general power of entering into treaties included that of making treaties of commerce, and 2. That without the limitation in the proviso, a treaty of commerce might have been made which would restrain the legislative authority of the state in the points interdicted by that proviso.

Let it not be said that the proviso by implication granted the power to make treaties of commerce, under which congress afterwards acted; for besides that this is inconsistent with the more obvious meaning of the clause, the first article of the confederation leaves to the states individually every power not expressly delegated to the United States in congress assembled. The power of congress therefore to make a treaty of commerce and every other treaty they did make—must be vindicated on the ground that the express grant of power to enter into treaties and alliances is a general, which necessarily included as particulars the various treaties they have made and the various stipulations of those treaties.

Under this power, thus granted and defined, the alliance with France was contracted: guaranteeing in the case of a defensive war her West-India possessions, and when the casus foederis occurs obliging the United States to make war for the Defence of those Possessions and consequently to incur the expenses of War.

Under the same power, treaties of commerce were made with France, the Netherlands, Sweden and Prussia—Besides that every treaty of commerce is necessarily a regulation of commerce between the parties it has been shewn in the antecedent comparison of those treaties* with that lately negotiated, that they produce the specific effects of restraining the legislative power from imposing higher or other duties on the articles of those nations than on the like articles of other nations, and from extending prohibitions to them which shall not equally extend to other nations the most favoured; and thus abridge the exercise of the legislative power to tax, and the exercise of the legislative power to regulate Trade.

These Treaties likewise define and establish the same case of Piracy, which is defined in the Treaty with Great Britain. Moreover the Treaty with France, as has been elsewhere shewn, with regard to rights of property Naturalizes the whole French Nation.

The consular Convention with France, negotiated likewise under the same Power, grants to the Consuls of that country various authorities and jurisdictions some of a Judicial Nature, which are actual transfers to them of portions of the internal Jurisdiction and ordinary judiciary Power of the Country; the exercise of which our government is bound to aid with its whole strength. It also grants, exemptions to French Consuls from certain kinds of taxes, and to them and French Citizens from all personal service; all which are extremely delicate interferences with our internal policy and ordinary Jurisdiction.

Under the same power the treaty with Morocco was formed, which, besides various other regulations relative to war, and several relative to trade, contains the rule that neither party shall make war without a previous demand of reparation; in restraint of the general discretionary power of Congress to declare war.

Under the same power, the treaty of peace with Great-Britain was made.—This treaty contains the establishment of a boundary line between the parties, which in part is arbitrary, and could not have been predicated upon precise antecedent right. It also prohibits the future confiscation of the property of adherents to Great-Britain; declares that no

* Articles 24, 3d and 4th of treaty with France 26, 3d, and 20th of treaty with Russia 2d, and 3d, of treaty with Holland 3d, and 4th of treaty with Sweden.

person shall on a colour of the party he took in the war suffer any future loss or damage in his person, liberty or property, and provides for the release of such persons from confinement and the discontinuance of prosecutions against them.

It is difficult to conceive a higher act of control both of the legislative and judiciary authority, than by this article. These provisions are analagous in principle to those stipulations which in the second and ninth articles of the treaty under examination have given occasion to constitutional objection.

Under the same power various treaties with Indians inhabiting the territory of the United States have been made; establishing arbitrary lines of boundary with them; which determine the right of soil on the one side and on the other. Some of these treaties proceed on the principle of the U. States having conquered the Indian country, and profess to make gratuitous concessions to them of the lands which are left to their occupation; There is also a feature of importance common to these treaties, which is the withdrawing of the protection of the United States from those of their citizens, who intrude on Indian laws, leaving them to be punished at the pleasure of the Indians.

Hence it appears, that except as to the stipulations for appointing commissioners the treaties made under the confederation contain all the features, identically or by analogy, which tones of constitutional objection to the treaty before us: They refrain, in certain instances, the legislative power to lay taxes; they make numerous and important regulations of trade; they confer the benefit of naturalization as to property; they define cases of piracy; they create causes of expatriation; they direct and modify the power of war; they erect within the country tribunals unknown to our constitutions and laws, in cases to which these are competent—whereas the treaty with Great Britain only provides for the appointment of Arbitrators in cases to which our tribunals and laws are incompetent; and they make dispositions concerning the territory and property of the United States.

It is true, that some of the treaties made under the former government, though subsequent to the proposing of the articles of confederation to the States, were prior to the final adoption of these articles; but still it is presumable that the treaties were negotiated with an eye to the powers of the pending national compact. Those with Great-Britain, Sweden, Russia, and Morocco, and the convention with France, were posterior to the completion of that compact.

It may perhaps be argued, that a more extensive construction of the power of treaty, in the confederation, than in our present constitution, was countenanced by the union in the same body of legislative powers with the power of treaty. But this argument can have no force when it is considered that the principal legislative powers with regard to the objects embraced by the treaties of Congress were not vested in that body but remained with the individual states—Such are the power of specific taxation, the power of regulating trade, the power of naturalization, &c.

If in theory the objects of legislative power are excepted out of the power of treaty, this must have been equally at least the case with the legislative powers of the state governments as with those of the United States.—Indeed the argument was much stronger for the objection, where distinct governments were the depository of the legislative power than where the same government was the depository of that power, and of the powers of treaty.—Nothing but the intrinsic force of the power of treaty could have enabled it to penetrate the separate spheres of the state governments. The practice under the confederation for so many years, acquiesced in by all the States, is therefore a conclusive illustration of the power of treaty, and an irresistible refutation of the novel and preposterous doctrine, which impeaches the constitutionality of that lately negotiated.—If the natural import of the terms used in the constitution were less clear and decisive than they are, that practice is a commentary upon them, and fixes their sense. For the sense, in which certain terms were practised upon in a prior constitution of government, must be presumed to have been intended, in using the like terms in a subsequent constitution of government for the same reason.

Accordingly, the practice under the present government before the late treaty has corresponded with that sense.

Our treaties with several Indian nations regulate and change the boundaries between them and the United States.—And in addition to compensations in gross they stipulate the payment of certain specific and perpetual annuities. Thus a treaty in August, 1790, with the Creeks, (Article 5) promises them the yearly sum of one thousand five hundred dollars.—And similar features are found in subsequent treaties with the Six Nations, the Cherokees and the North Western Indians.—This last has just been ratified by the unanimous voice of the Senate. It stipulates an annuity of 9500 dollars—and relinquishes to the Indians a large tract of land which they had by preceding treaties ceded to the United States.

Hence we find that our former treaties under the present government, as well as one subsequent to that under consideration, contradict the doctrine set up against its constitutionality—in the important particulars of making dispositions concerning the territory and property of the United States and binding them to raise and pay money. These treaties have not only been made by the President and ratified by the Senate, without any impeachment of their constitutionality, but the house of Representatives has heretofore concurred, and with out objection, in carrying them into effect by the requisite appropriation of money.

The consular convention with France stands in a peculiar predicament. It was negotiated under the former government, and ratified under the present; and so may be regarded as a treaty of both governments, illustrative of the extent of the power of Treaty in both. The delicate and even the extraordinary nature of the provisions it contains have been adverted to. Though all reflecting men have thought ill of the propriety of some of them, as inconveniently breaking in upon our interior administration, legislative, executive, and judiciary;

only acquiescing in them, in the necessity of getting rid of stipulations entered into by our public agents under competent powers, yet no question has been heard about their constitutionality. And congress have by law assented their execution by making our judicial tribunals and the public force of the country auxiliary to the decrees of the foreign tribunals which they authorize within our territory.

If it should be said, that our constitution by making all former treaties, and engagements as obligatory upon the United States, under that constitution, as they were under the confederation, rendered the ratification of the Convention a matter of necessity—the answer is that either the engagements which it contracted were already conclusive, or they were not—if the former, there was no need of a ratification, if the latter, there was no absolute obligation to it. And in every supposition, a ratification by the President with the consent of the Senate could have been predicated only upon the power given in the present constitution in relation to treaties; and to have any validity must have been within the limit of that power.

But it has been heretofore seen that the inference from this instrument is no less strong, if referred to the power under the confederation than if referred to the power under the present constitution.

How happens it, that all these invasions of the constitution, if they were such, were never discovered, and that all the departments of the government and all parties in the public councils, should have co-operated in giving them a sanction. Does it not prove that all were convinced, that the power of treaty applied in our exterior relations to objects, which in the ordinary course of internal administration and in reference to ourselves were of the cognizance of the legislative power? and particularly that the former was competent to bind the latter in the delicate points of raising and appropriating money? If competent to this, what legislative power can be more sacred, more out of its reach?

Let me now ask (and a very solemn question it is, especially for those who are bound by oath to support the constitution.) Has it not been demonstrated that the provisions in the treaty are justified by the true and manifest interpretation of the Constitution—are sanctioned by the practice upon a similar power under the confederation, and by the practice in other instances under the present government?

If this has been demonstrated, what shall we think of the candor and sincerity of the objections which have been erected on the basis of a contrary supposition? Do they not unequivocally prove that the adversaries of the treaty have been resolved to discredit by every artifice they could invent? that they have not had truth for their guide, and consequently are very unfit guides for the public opinion, very unsafe guardians of the public welfare?

It is really painful and disgusting to observe sophisms so miserable as those which question the constitutionality of the treaty retailed to an enlightened people, and insisted upon with so much seeming fervency and earnestness.—It is impossible not to bestow on sensible men who act this part the imputation of hypocrisy.—The absurdity of the doctrine is too glaring to permit even charity itself to suppose it sincere.—If it were possible to imagine that a majority in any branch of our government, could betray the Constitution and trifle with the Nation so far as to adopt and act upon such a doctrine—it would be time to despair of the Republic.

There would be no security at home, no respectability abroad. Our constitutional charter would become a dead letter. The organ of our government for foreign affairs would be treated with derision when ever he should hereafter talk of negotiation or treaty. May the great ruler of nations avert from our country so grievous a calamity! †† CAMILLUS.

† It is very probable that a treaty with Algiers is now on its way to the United States, which may be expected to contain similar stipulations with that with Morocco.—This treaty, which will have cost the United States no trifling sum, and will be of very great value to our trade, must equally fall, on the doctrine which I oppose.

CONGRESS.

HOUSE OF REPRESENTATIVES.

Monday, January 11.

The engrossed bill for establishing trading houses with the Indians, was recommitted to a Committee of the whole House for to-morrow.

Mr. Swanwick called up the petition of Joseph Brevar, which being read was, with the accompanying vouchers, referred to the Committee of Claims—as was, another petition on motion of the same member.

A memorial was read from sundry manufacturers of Snuff in Massachusetts, complaining of the unequal operation of the Duty on Snuff Mortars, as it affects the small manufacturers, and praying relief. On motion of Mr. Goodhue, referred to the Committee of Commerce and Manufactures.

A petition of Catherine Lowry was read and referred to the Committee of Claims.

A further report was read from the Committee of Claims on three petitions; this report is against the petitions respectively.

Mr. Giles called up the resolution relative to the officers of the Treasury being instructed to lay before the House a statement of the balances due to the officers and soldiers of the late army and navy for personal services, &c. The resolution was then read. On motion of Mr. Giles referred to the Committee of Claims with instructions to enquire and report thereon.

Mr. W. Smith—Referring to the law for building the frigates, recited the last Section which directs that the President in case of a peace with Algiers, shall cease all further proceedings in respect to constructing the said frigates. He observed that there was the greatest probability that a peace was concluded with that power, this appeared not only from the President's speech, but from